

THE OPM CASE: What Really Happened

[Primarily drawn from Taylor, "Ethics and the Law: A Case History,"
New York Times Magazine (Jan 9, 1983)]

OPM LEASING in 1980

- Private company
 - 50% Mordecai Weissman, Board Chair
 - 50% Myron Goodman, CEO & Treasurer
- One of 5 largest computer leasing companies in US – 250 e'ees, 11 offices
- John Clifton, CFO – just an employee

Singer Hutner Law Firm

- General Counsel for OPM
 - 60% of firm's revenue
- Andrew Reinhard is the lead partner
 - Personal friend of both stockholders
 - Third member of OPM Board

June 1980

(after Reinhard/Goodman meeting)

- Hutner takes over from Reinhard, meets with Clifton's attorney, William Davis
- According to Davis Clifton has evidence that
 - O.P.M. had perpetrated a multimillion-dollar fraud
 - the opinion letters Singer Hutner had drawn up to obtain loans for O.P.M. had been based upon false documents
- In Clifton's opinion, to survive OPM would probably have to continue the same type of wrongful activity

- Singer Hutner obtains outside legal advice from Joseph McLaughlin (Dean, Fordham Law School) and Henry Putzel, a former federal prosecutor
 - The firm wanted to do the ethical thing, and
 - The firm wanted to continue representing O.P.M. unless they were ethically and legally obliged to quit.

- The firm's obligations to O.P.M. might be inconsistent with giving Goodman's secrets the fullest protection.
 - Thus, a lawyer is found to represent Goodman
- Goodman's new lawyer, Lawler ... tells Putzel that he knows of no ongoing fraud.

Duty of confidentiality

- New York Code of Professional Conduct at the time:
- DR 4-101(c)(3): "A lawyer may reveal .. the intention of his client to commit a crime and the information necessary to prevent the crime."

Advice from McLaughlin and Putzel

- Singer Hutner can ethically continue to represent O.P.M., based on Goodman's assurances that there was no ongoing fraud.
- Singer Hutner is bound to keep everything it had already learned secret, except from Weissman.
- It is not necessary to check the authenticity of the computer-lease documents with third parties
- Singer Hutner has no legal duty to withdraw past opinion letters
 - leaving the victims of a past fraud in the dark was not an ongoing fraud.

Summer 1980

Singer Hutner continues closing loans for O.P.M. without checking the legitimacy of underlying Rockwell leases.

September 1980

- 1st week of September, Goodman tells Hutner some of the details of the fraud
- September 23 the firm votes formally to resign as O.P.M.'s general counsel
- The firm quits O.P.M. gradually
 - assume that an abrupt withdrawal would cause O.P.M. to collapse
 - will handle legal business until OPM can find new counsel.

NY 7-102(B)(1)

- A lawyer who receives information clearly establishing that:
- The client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud shall reveal the fraud to the affected person or tribunal,
- except when the information is protected as a confidence or secret.

Duty of Confidentiality to OPM

The firm

- tells nothing to the corporations and bankers who had been defrauded
- responds to inquiries from lenders and other interested parties by saying Singer Hutner and O.P.M. had agreed to part ways.
- honors Goodman's demand that Gary Simon, the O.P.M. in-house lawyer who was preparing to handle new loan closings, be kept in the dark.

October 1980

- Peter Fishbein, a Kaye Scholer partner and an old friend, phones Hutner asking
 - "is there anything I should be aware of" in considering Goodman's invitation to represent OPM
- Hutner tells him only that
 - "the decision to terminate was mutual and that there was mutual agreement that the circumstances of termination would not be discussed."

December 1980

- Singer Hutner completes withdrawal
- Rockwell International
 - Receives bank inquiry and upon investigation
 - Discovers it was paying OPM on two leases for which it lacked documentation
- After further investigation, Rockwell and the bank contact the U.S. Attorney's Office

February 1981

- A federal grand jury issues a number of indictments
- Although federal prosecutors investigated Reinhard, neither he nor any of the other Singer Hutner lawyers are indicted.

March 1981

OPM files bankruptcy

December 1982

- Goodman pleads guilty to 16 counts of conspiracy, mail fraud, wire fraud and making false statements to a bank
 - given a 12 year prison sentence.
- Weissman also pleads guilty and receives a 10 year sentence.

The Truth about OPM

- O.P.M. was short for "other people's money."
- Almost from the start, the company was basically insolvent and survived by means of fraud and bribery.
 - A single computer would be used as collateral for two or three loans with different banks
 - the value of a given piece of equipment would be inflated to obtain larger loans.

The Financial Consequences

- OPM had defrauded banks and other lenders of more than \$210 million before the company went bankrupt in 1981
- **June - August 1980:** \$61 million in fraudulent loans were closed with Singer Hutner as OPM's lawyers
- **December 80 - Jan 81:** \$15 million in fraudulent loans were closed with in-house counsel and Kaye Scholer as OPM's lawyers

1983

- Settlement of lawsuit filed by 19 lending institutions against Singer Hutner, Rockwell, Lehman Brothers and two accounting firms.
- Total payment of \$65 million
- Singer Hutner contributed approximately \$10 million.

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