

What to expect in a Fraud Examination?

For the last year and a half, I have been working on a fraud investigation in the financial services sector. The lead came to our firm as a whistleblower complaint from current and former employees of the suspect organization. Over the period of nine months I met with the whistleblowers to go through the area's where fraud may be occurring and researched how to best present our case to the appropriate regulatory organizations. Approximately a year into the investigation we submitted our case, and evidence supporting it, to three different regulatory organizations. Based upon ethics, oversight and guidelines we felt our case was strong and clearly showed where one individual may be committing acts that may be deemed as fraud.

Two weeks after submitting our case the first regulatory organization requested a meeting where we presented our evidence. It was clear from this meeting that they had not read what we provided. After 2 hours of meeting with them they said that of the two areas we chose to focus our investigation, one was a “gray area” and the other needed more evidence such as a customer complaint. The second regulatory organization we submitted our case to has never responded other than to give us a case number. The third organization spent two months “investigating” based on our evidence and decided they could not pursue the case because “they did not understand it”.

I present this example to you as what to expect in a fraud examination. While there may be evidence that a person or organization are committing what appears to be fraudulent activities, oversight, regulatory and law enforcement organizations may choose not to pursue action against the suspected fraudster.

A fraud examination is defined as “a methodology for resolving fraud allegations from inception to disposition. It involves obtaining evidence and taking statements, writing reports, testifying to findings and assisting in the detection and prevention of fraud”. What a fraud examination is not is an assumption that a suspect is guilty and that our job is to obtain evidence against them. Sometimes, at the conclusion of a fraud examination there may be no evidence that fraud is occurring, or as our opening example suggests there is not enough evidence to satisfy regulatory, oversight and law enforcement organizations that a fraud has occurred, or a criminal act has been committed.

Unlike on television an investigation is going to take longer to complete than 60 minutes. It is imperative that proper expectations are set with the client during the initial meeting to discuss the case. I think back to an investigation we conducted in the healthcare field. The following morning after my initial meeting with the client I had an email asking if we found anything yet and if we could give her an update because her husband’s birthday was today, and she would like to give him some good news. I pointed out to her that the investigation was just starting, we were going to have to rebuild their accounting system because they were using an unfriendly proprietary system that could not convert to another system, and we had just left their offices yesterday with four boxes of files we had not had a chance to start going through. I set the expectation that we

needed 30 days to just go through that information before we could even begin our investigation. The messages continued through the next 30 days from the client asking for updates on the case. We continued to inform her that we were inputting data and when we had something, we would notify her. At the end of the first 30 days we met with the client to ask questions of what information we were able to examine during our data entry input. What we really determined was that the client appeared to have sloppy data entry processes and that they were not reporting all their cash income. Unhappy with the way the investigation was going because there was not evidence that pointed to their suspect along with the fact that she felt it was taking too long the client ended our engagement in the investigation.

Oftentimes, fraud examinations have a life of their own. I have worked cases that were pretty simple to investigate, and our suspect was clearly committing fraudulent activity. I have worked others where it has taken months to years to investigate and at the end of the investigation, the suspect may have done nothing wrong, or law enforcement and the legal system conducted their due process and prosecuted our suspect. Every case is different and needs to be treated as such.

It is not a fraud examiner's job to find guilt or innocence in an investigation. The fraud examiner is going to investigate the evidence and determine if there are areas where fraud may, or may not, be occurring. From there that evidence may lead to a suspect that may or may not be committing a fraudulent act. Once that is determined, the fraud examiner will take that information to the appropriate authorities and from there assist those authorities if requested in their investigation or prosecution. The fraud examiner may also be required to testify in court on their findings or serve as an expert witness for one or both parties.

I recently met with an agent from the Federal Bureau of Investigation (FBI) on a case I have been working on. While there has been some evidence to suggest that our suspect may be committing fraudulent acts, there has not been enough evidence to move forward with legal action or a prosecution. The FBI was alerted to the case by an employee within the organization that had a relationship with another FBI agent that does not investigate these types of criminal activities. I have worked with the agent I was meeting with on a couple other cases previously where we had clear evidence that a crime was being committed. As we discussed this case in question, we both agreed there was not enough evidence to suggest a crime was being committed. As my FBI agent friend stated, "sloppy record keeping is not enough to warrant a criminal investigation".

The outcomes to a fraud investigation are not always going to be clear, or what you think they may be before starting them. There is a fine line between vengeance and justice for those that feel they may be the victim of fraud. Fraud examiners, like law enforcement and others in the legal system, have a code of ethics they must follow that ensures the accuracy and authenticity of their investigation.

I would like to conclude this white paper with one more example. For about a year we investigated a retail establishment. Our initial engagement was to investigate embezzlement. During the course of our investigation we uncovered money laundering, false sales tax reporting, false employment

tax reporting and drug trafficking. Local law enforcement and the FBI were engaged as part of this investigation. The evidence was clear. Upon being presented to the client that engaged our services he chose not to pursue legal action because he did not want to be "the bad guy" to those that were stealing from him. Because of this, law enforcement was unable to proceed with the other criminal elements of the investigation and to this day the fraudsters are still walking free while the organization has had to file bankruptcy. Try as we might sometimes these investigations go off in a completely different direction from what they start out with initially.