

ARTICLE

Professional Athletes Should Beware Financial Fraud

Law360

December 14, 2018

On Nov. 7, 2018, Peggy Ann Fulford was sentenced to 10 years imprisonment after her guilty plea for defrauding, among others, athletes Ricky Williams and Lex Hilliard of the National Football League and Travis Best and Dennis Rodman of the National Basketball Association. In her plea agreement, Fulford admitted that over 13 years, she stole millions of dollars from her athlete clients utilizing her advisory firm, Premier Management. She further admitted that as part of the fraud, she lied to her clients about having graduated from the Harvard Business and Law Schools and about having made millions of dollars buying and selling hospitals. According to the U.S. Department of Justice press release issued after Fulford's sentencing, Fulford's victims gave her access to their bank accounts after she told them she did not charge a fee because she "already had millions of dollars and just wanted to protect them." At Fulford's sentencing, when asked how much money Fulford stole, Ricky Williams' ex-wife testified — "all of it."

The moment you sign a contract with a professional sports team, you are no longer a private person. You are a public figure and everything you do will be examined, for better or worse. Fans learn all possible details about the players on their favorite team. For most fans this stops after weight, speed and stats. For financial predators, it does not. Professional athletes can become targets for unscrupulous advisers. Much like the stories of lottery winners who end up destitute, there are legions of professional athletes whose good fortune turns sour due to preventable mistakes. Unfortunately, that on-and-off the field diligence that created such great wealth does not always translate into the same diligence when it comes to an athlete's own

Authors

Colin J. Cloherty
Associate
202.719.3564
ccloherty@wiley.law

Practice Areas

Securities Enforcement and Litigation
White Collar Defense & Government
Investigations

financial security. A recent study by Ernst and Young highlighted the problem — from 2004 to 2017, professional athletes alleged nearly \$500 million in fraud-related losses. That same study identified professional football players as making up 41 percent of the fraud victims.

That professional athletes continue to be victims of financial fraud is not news. But a dive into some of the recent cases brought by the U.S. Securities and Exchange Commission and federal prosecutors around the country reveals common themes that can hopefully serve both as a warning to professional athletes and their families and provide guidance to anyone advising them.

Undisclosed Conflicts and Compensation

According to a SEC complaint filed in 2014, former investment adviser William “Billy” Crafton ran an advisory firm whose “clients consisted primarily of present and former professional athletes in Major League Baseball, the National Football League, the National Hockey League, the National Basketball Association, and other professional sports leagues.” Crafton took over a million dollars in undisclosed compensation related to the “investments” into which he directed his clients’ money. Crafton also misappropriated another \$700,000 in client funds.

Unfettered Access to Bank Accounts

Former NBA star Glen Rice and professional boxer Mike Tyson were victimized by financial adviser Brian Ourand. According to the statement of offense filed with Ourand’s plea agreement in 2017, Ourand “deposited nearly 100 checks, drawn on the accounts of Mr. Rice, Mr. Tyson [and other professional athletes] for which the clients had not provided authorization. Defendant Ourand made the majority of the checks payable to his own name or to cash.” The statement of facts also detailed wire transfers from the victim athletes’ accounts into Ourand’s personal account as well as unauthorized credit card charges, including from one victim athlete’s foundation’s credit card account. As the government noted in its sentencing memorandum, “Ourand served as a financial advisor with primary responsibilities of paying invoices and bills, coordinating tax preparation, and providing estate planning on behalf of individual clients.” Ourand, a former executive at FX Financial Advisory Management Enterprises, instead spent the athletes’ money on tanning salons, hotel stays and retail purchases which the government described as ranging from “the most ordinary, everyday expenses ... to stays at high-end hotels like the Ritz Carlton.” Boxer Mike Tyson and his wife, in their victim impact statement, reflected on how “Ourand occupied a unique position of trust in [our] lives and was such a close friend [we] considered him family.” After pleading guilty in 2017, Ourand was sentenced to 33 months imprisonment.

Miami Beach developer Michael A. Stern and his girlfriend, financial adviser Eva D. Weinberg, defrauded former Colts star Dwight Freeney of millions of dollars. According to pleadings in Stern’s criminal case filed by attorneys for Freeney, when Stern was arrested in 2012 trying to board a plane from Miami to LA, “he had on his person a check from the Indianapolis Colts to Mr. Freeney for \$31,785 and another check from the NFL

Players Association to one of Mr. Freeney's companies for \$2,270.52. He also had a BOA Visa card in Mr. Freeney's name." A witness who was with Stern at the airport overheard Stern discussing the need to find a check cashing store to cash Freeney's check. The same pleadings reveal that while awaiting trial, Stern bragged to his cellmate that "all football players have head injuries, and they don't remember what they signed, and he counterfeited many times D[wight] Freeney's signature when collecting his debts." Stern used the money for personal purchases, including a \$700,000 private plane. Stern was sentenced to five years in prison and ordered to pay \$2.5 million in restitution to Freeney.

Affinity Fraud

In May of 2016, the SEC obtained an emergency injunction freezing the assets of investment adviser Ash Naryan and two other individuals associated with The Ticker Reserve Inc. In the amended complaint filed in January of 2018 in that matter, the SEC described how many of Naryan's "high net worth" clients included "current and former professional athletes," who "lacked meaningful financial or investment expertise." Public reporting established that the defendants were accused of defrauding, among others, Denver Broncos quarterback Mark Sanchez, San Francisco Giants pitcher Jake Peavy, and former MLB pitcher Roy Oswalt. The SEC's amended complaint alleged that Naryan earned their trust based on the athletes' and his "shared Christian faith and interest in charitable work." It further noted that Naryan falsely indicated he had a CPA license. The two current professional athletes had their salaries direct deposited to Naryan's advisory firm, which the SEC charged with fraudulently obtaining over \$33 million in client funds. One athlete had 80 percent of his salary direct deposited to Naryan's firm.

Lack of Investment Documentation

Phil Kenner and Tommy Constantine embezzled nearly \$30 million dollars from NHL players, including Michael Peca, Bryan Berard, Darryl Sydor, Steve Rucchin, Owen Noal, Joe Juneau, Jay McKee, William Ranford and Tylor Nash. When Kenner and Constantine were charged in a superseding indictment in 2015, the government described Kenner as advising the "player-clients on their financial affairs, manag[ing] their accounts at various financial institutions, and recommend[ing] various investments to them, including investments in real estate development projects and small, privately held companies." Kenner was a licensed financial advisor. Constantine was a self-proclaimed former professional racecar driver who partnered with Kenner to defraud the athletes. While telling the players they were investing in legitimate projects, Kenner and Constantine were instead diverting a substantial amount of the money to their own uses, and utilizing lines of credit in the players' names to cover up the thefts. Kenner and Constantine spent the money on private jets, personal homes and worthless investments. Red flags that could have alerted better informed and more diligent individuals about the fraud were on display at trial. For example, the government established that Peca received no official paperwork about one of his investments. Another investor testified that "the biggest issue was not getting the documentation."

Lessons Learned

When emphasizing the importance of proper nutrition, training and rehab, coaches are fond of reminding players that they are “the CEOs of their business, and the business is their body.” Players are also CEOs of their finances. Professional athletes must attend to their finances with the same dedication that they demonstrate in the weight room or on the field. As the cases highlighted above demonstrate, it is clear that a player’s financial adviser can be as much a liability as an asset to his financial portfolio. Recognizing some of the issues common to many of these cases can help current and future professional athletes avoid similar fates. As professional athletes have heard a hundred times: failing to prepare is preparing to fail. With that in mind, there are some simple steps professional athletes can do to protect themselves and their families.

Get References, but ...

One of the best ways to find a financial adviser is to ask friends and teammates. That said, as almost all of the cases discussed above demonstrate, affinity fraud is a real problem in sports. Whether it is a business partner who claims to be a fellow professional athlete like Constantine or Naryan’s “shared Christian faith,” that personal connection can also cause victims to let down their guard. References are a great start, but they are only the beginning, not the end of due diligence. High net worth individuals, like professional athletes, simply cannot rely on friends, teammates or colleagues to do the work for them.

Knowledge Is Power

Researching each financial adviser prior to meeting him or her is as essential as watching film of an opponent before a game.

Do your own background checks. If they say they are a CPA, as Naryan did, go to the state licensing board website and attempt to verify their licensing status and disciplinary history. Use the Financial Industry Regulatory Authority BrokerCheck website to research each financial adviser. BrokerCheck will identify information about a registered individual’s employment history, regulatory history, licensing information and complaints against that individual.

For example, a search on BrokerCheck will show that Success Trade Securities and its president and CEO Fuad Ahmed “perpetrated securities fraud when he ... sold at least \$18 million, though fraudulent and unregistered sales, in promissory notes ... to 58 investors, most of whom are current or former National Football League and National Basketball League players.” That simple search could save a potential victim from losing millions of dollars.

Shop Around

Interview several financial advisers before you commit. Have a list of questions that you require each financial adviser to answer. Try to get to know them. You may have a negative gut reaction. Listen to it. And if something does not feel right, or you are not getting the answers you like, walk away.

Trust, but Verify

Every play, in both games and practices, is filmed from multiple directions for one reason: accountability. Coaches and players break down every play to hold each other accountable for both positives and negatives. Apply the same concept of accountability to your finances.

Hire an independent tax or auditing professional who is unrelated to your financial adviser. The independent professional you hire should report directly to you, not the financial adviser. She or he will be able to comb through your finances at least once a year during tax preparation and identify any questionable practices or red flags. Even the presence of an independent monitor on your finances may discourage bad actors from targeting you instead of easier prey. Someone regularly looking at the books for Mike Tyson or Dwight Freeney may have noticed the unauthorized checks drawn on their accounts and stopped the fraud, or at least lessened the damage.

Finally, demand to see your documents. If you are not getting account statements or documents reflecting investments you have made, do not let that go. And once you get the relevant documents, look at them. Ask questions. If you are not satisfied with what you see or hear, do not hesitate to hire an independent third party to review your materials. That extra effort towards financial security will be well worth the minimal additional cost.