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This Scam Alert Went Unheeded

Now a law firm may be on hook for $350,000.

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A copy of the erstwhile client's check, now entered into court evidence.
Photo: Diego M. Radzinschi / NLJ

Months after more than $300,000 went missing in an alleged check fraud scheme, a Washington law firm is at odds with its bank and insurance company over who should pay.

Hughes & Bentzen, a boutique firm with a broad practice, agreed to collect a debt last fall, according to court documents. An attorney at the firm received a check for the presumed debt, which was deposited in the firm's trust account. The lawyer then wired the money to Japan for the apparent client. Weeks later, the firm learned the check was bad.

Hughes & Bentzen is a defendant in two lawsuits filed this month in District of Columbia Superior Court. United Bank wants a judge to order the firm to cover the $350,000 check, including the $330,000 wired overseas. In a separate suit, the firm's insurer, American Guarantee and Liability Insurance Co., asked a judge to rule that the loss isn't covered by its professional liability policy.Assuming the facts in both lawsuits are true, Hughes & Bentzen fell victim to a check fraud scam that's plagued U.S. law firms for years. The government's Internet Crime Complaint Center has received more than 600 complaints from law firms since 2007 involving reported losses of more than $18 million.

The scheme tends to follow the same script: A potential client, often overseas, contacts a law firm, usually by email, and hires it to collect a debt. The firm receives a check for the client and deposits it in its trust account. After getting initial clearance from the bank, the firm wires the money to the client, minus an agreed-upon fee.

Because of delays in the banking system, it can take weeks before banks on both sides of the transaction realize the check is bad, said Daniel Mills, assistant director of the D.C. Bar Practice Management Advisory Service. By then, the money is gone.

"The scam has gotten far more sophisticated," Mills said. "The alleged client can appear very legitimate and the contact can come not just by email but by phone and letter, and it can all look really on the up and up."

The problem is so widespread the FBI issued a national alert in 2012 warning law firms to "use caution" when engaging with clients solely by email, especially if they are located abroad.

Hughes & Bentzen managing partner Philip McNutt and Stuart Sorkin, a Hughes attorney named in the lawsuits as handling the transaction, did not return requests for comment. The firm's attorney, Robert Scanlon of Anderson & Quinn, could not be reached.

FINGER POINTING

Hughes & Bentzen's troubles began in September 2013. According to court papers, that's when Sorkin received an email from a potential client, Tohoku Electric Power Co. Inc. Tohoku told him it was acquiring a U.S.-based company, Sypris Electronics LLC, and wanted the firm to collect money Sypris supposedly owed to Tohoku, according to the lawsuits.

Tohoku and Sypris are real companies, but it wasn't clear in court documents whether they were actually involved. According to bar association notices warning lawyers about check fraud, some scammers use the names of legitimate companies. Tohoku did not return a request for comment. A Sypris spokeswoman declined to comment.

Sorkin executed a retainer agreement with Tohoku — or an entity pretending to be Tohoku — and soon received a $350,000 check for part of the debt Sypris supposedly owed Tohoku, according to court documents. The check ostensibly was drawn against an account for A Digital Solutions Inc., a litigation support company in Washington.

But Darrell Edwards, chief executive officer of A Digital Solutions, said his company never issued the check. A copy of the check included with one of the lawsuits lists a street address affiliated with the company, but Edwards said other information, such as the ZIP code, was wrong. A Digital Solutions doesn't use the bank listed, Royal Bank of Canada, he said.

The firm deposited the check in its trust account at United Bank, according to the court papers. The bank says it gave the firm "provisional credit" for the check in early October, with the understanding that it was subject to the $350,000 actually being transferred later. Sorkin wired $330,000 to an account in Japan, per instructions from Tohoku.

In November, however, United Bank notified Hughes & Bentzen that the check was counterfeit. The money, by then, was gone.

NO 'LEGAL SERVICES'

American Guarantee argues it need not cover the loss because the claim wasn't based on the firm performing, or failing to perform, "legal services" under its policy. The insurance company also claimed Sorkin was operating under his personal professional corporation, "Stuart H. Sorkin P.C."

When firms are hit by check fraud, clashes with insurers over coverage are common, said Michael Downey, chair of the American Bar Association's Law Practice Division and a litigation partner at Armstrong Teasdale in St. Louis. "Usually, the bank is going to look to the law firm, the law firm is going to look to insurance," he said. "Of course, no one wants to get stuck with that."

Neither lawsuit says whether the alleged fraud was reported to law enforcement. A spokeswoman for the Metropolitan Police Department, which typically investigates local check fraud, said it had no record of Hughes & Bentzen. A spokeswoman for the FBI said she couldn't confirm or deny complaints. There were no court cases in D.C. federal or local courts to which Tohoku was a party.

Besides litigation, the firm could face scrutiny from the D.C. Office of Bar Counsel, since the money went through its trust account. The office doesn't confirm or deny complaints or pending investigations.

Bar counsel Wallace Shipp Jr. said his office "constantly" warns lawyers to thoroughly vet new clients. "If it looks too good and it's impossible to believe the good luck you're having, then you need to take a break and look at it," he said.

Lawyers should be wary of new clients seeking fast wire transfers of funds from a check, Mills said. If lawyers do agree to wire funds, they should be prepared to wait for confirmation the money was actually transferred. "The problem is, the profession needs work," he said. "People are hungry — that's one of the reason why firms are falling for this."

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