SMSF fraud: take care with your transactions

TONY NEGLINE

This is the story of a financial fraud that occurred more than 15 years ago — it could still easily occur now, and anyone with a self-managed superannuation fund should read on.

In October 1999, Barry Maher, who had recently celebrated his 65th birthday, gained full access to his super benefits and asked his financial adviser to rearrange his affairs.

He wanted $30,000 paid to a joint bank account he held with his wife, $5000 for the purchase of Coles Myer shares and $245,000 to a non-super investment administration platform jointly held by Maher and his wife.

The super fund and non-super investment platform were run by Asgard, now owned by Westpac. Maher had asked that the third transaction happen internally within Asgard, presumably to avoid having to receive the money and then deposit it with the same organisation. To effect the requested changes Maher signed and dated a blank withdrawal notice for the transactions and handed it to his adviser. His adviser then completed the form, not as he and Maher had agreed, but instead requesting the money be paid to the bank account of his advice business.

The adviser then actioned the first of Maher's two requests: he created a non-super investment account of $245,000 but provided details of an advice business different to the one he had previously used.

The cheque he sent for this transaction bounced. He sent a second cheque that also bounced and claimed a third was sent, but Asgard said it never arrived and that he later notified them verbally the client didn't want to proceed with the investment.

The simple fact is Maher's $240,000 was stolen by his adviser, who was later jailed for the misuse of more than $5 million of client money: Maher had sold his financial planning business to the adviser.

Asgard said it wasn't to blame and merely followed signed instructions and refused to pay any compensation to Maher.

He then took the matter to the Super Complaints Tribunal, which found in Maher's favour and said he should be fully compensated for his loss, but any payment he received from Asgard mustn't impact the benefits of other fund members.

Asgard didn't agree with this decision and began action in the Federal Court.

A critical part of this case involved Asgard's defence, which said the law allowed it to pay money out of a super fund to any person or entity nominated by a fund member.

This is actually common in practice and has long been approved by APRA. The Federal Court initially disagreed with Asgard's interpretation and said the law only allowed benefit payments to be made to fund members or bank accounts held in their name.

When this decision was announced there was great concern in the super industry, as, if it stood, it would have changed how the financial services industry operated.

Asgard then appealed to the Full Federal Court, which stated a trust's beneficiary had the right to "require the trustee to convey or distribute the trust property to a third party" because they were the "owner of the property and can deal with it as he likes". Asgard won the case and Maher received no compensation.

We can probably imagine how Maher felt once this whole saga was over. His one mistake appears to be that he trusted his financial adviser, whom he had known for many years to act honourably and honestly.

Since July 2003, when the Full Federal Court handed down its decision, there have been a number of significant developments in relation to fraud, identity theft and cybercrime. Much of our lives, especially our financial transactions, are conducted electronically, including via the internet and related infrastructure.

It's remarkably easy for criminals to steal identities or pretend to be you and thereby commit technology-based crimes.

Earlier this year, the Australian Crime Commission warned financial advisers might be coerced or exploited into committing crimes or other illegal activities as they know their way around the financial services labyrinth.

It is vital to be careful with your financial transactions.

Tony Negline is author of The Essential SMSF Guide 2015/16 published by Thomson Reuters

New order take the reins

ADAM YIP

Steve Tucker and Paul Heath of Koda left banks to take them on

intro
here

ANDREW MAIN

You would expect the founders of a successful independent wealth management business to question the old sales and distribution model of its bank-owned rivals, but Steve Tucker and Paul Heath have an extra reason to toot the horn about their Koda Capital business: they are both former executives of big bank-owned wealth managers.

Tucker's been in the Wealth industry for 27 years, most recently as chief executive of MLC, while Heath's a relative newcomer with 23 years' experience, latterly as CEO of JB Were. Both legendary brands were bought by NAB, which is how they met.

Koda's just passed its first anniversary and now boasts 16 partners and $2 billion in FUA, Funds Under Administration.

Paul Heath says the problem with the old model is that the banks expect too much return on their investment at a time when employees are also getting a disproportionately big share of the non-growing pie.

"By starting with a blank sheet of paper, we were able to address one of the most significant challenges for the industry which is adviser compensation.

"In the wealth businesses of the investment banks an adviser would earn 50 per cent of the revenue they produce as cash compensation. But, at Koda, we were able to say we'd have a lower component of cash compensation, closer to a third, but we'd give advisers a piece of equity in the firm. That has cultural benefits as well as commercial ones. So in many ways we're going back to the economic model of the independent firms in the 1990s.

In other words, the way it works is a neat split: A third on costs, a third on compensation and a third to shareholders."

Heath explains: "With 50 per cent compensation, plus costs, you have got nothing left over for shareholders ... it's unsustainable. That's why a number of private wealth management businesses in investment banks will exit this market, taking the lead from UBS in the next three years." (In May this year UBS announced a withdrawal from wealth management in Australia, some former staff established the independently owned Crestone Wealth Management".

The Koda team admit having a significant advantage in that their business started with FoFA firmly established, banning the payment of commissions.

As Steve Tucker says, in having a blank sheet of paper, "what we could do was design a firm that is agnostic as to what happens with FoFA.

"We designed out of our model all of those conflicts and relationships that regulators are having such a struggle dealing with."

Both agree that the banks which own wealth businesses are very focused on ROI, (Return on Investment), in a situation where wealth management will never have such a high ROI as the simple business of lending for housing.

Tucker says the reason why NAB recently announced the sale of the MLC Life business to Nippon Life was because of what he called 'the ROI challenge".

"The banks have to hold more capital against wealth management businesses at a time when they are being asked to hold more capital anyway.

As UBS and NAB made their moves, Westpac recently dropped its holding in BT Investment management, a successful fund manager on any measure, from 59 per cent to 31 per cent by offering stock to Westpac holders.

The scariest news from the duo, for the big banks still in the wealth business is that there won't be many buyers around when assets come up for sale in the future.

As Tucker points out: "Wealth management businesses are no longer necessary for distribution purposes as much as they used to be. The world has got multiple channels now that didn't used to be there. If investment banks have great product that they want to get out there, we'll use it."

Heath says the challenges market for the big players remain fundamental:

"Typically, in the Australian market you can't just simply import a global platform because it doesn't work to the conditions here so you have to own your own technology platform. The High Net Worth and Ultra High Net Worth markets in Australia are highly competitive, given the small size of the number of potential clients and finally it's a compensation model is more aligned with a sales and distribution culture than it is with an advisory culture. I just don't think those problems are easily solved here."

FLOAT WATCH

Animal health worth vetting

Apiam Animal Health

ASX CODE: AHX
SHARES ON OFFER: 40 million
LISTING PRICE: $1
MARKET CAPITALISATION: $98.5 million
LISTING DATE: December 17

SIMON HERMANN

Animal health-related stocks have been a key growth area in the ASX in recent months, with pet care chain Greencross perhaps the best known company in the sector.

Apiam Animal Health is planning to list on the ASX just before the Christmas break on December 17. The plan is to raise $40 million in an initial public offering by issuing 40 million shares at $1 a share, which will result in a pro-forma market capitalisation of $98.5m.

The heart and soul of the company is managing director Chris Richards, who founded the company in 1998 as a single veterinary practice focused on the pig industry.

In the past 17 years Apiam has evolved into a vertically integrated animal health business providing products and services to the rural industry as well as farming markets.

The company will provide veterinary services to about 35 per cent of the pig industry, 50 per cent of the beef cattle feedlot industry and 25 per cent of the dairy cattle industry. The IPO will pay for the most recent acquisitions and provide access to capital markets for Apiam's long-term growth plan.

Earlier this year, Apiam entered into an agreement to acquire 12 veterinary businesses for a total consideration of $54.6m, comprising of $25.6m in cash and $29m in equity. The average price paid for each practice is roughly six times EBITDA for financial 2016, as the board forecasts $4.8m of revenue in the year for each veterinary business.

The company's projections are based on the assumption the veterinary businesses can be successfully integrated in its own health business model. The offer price values the company's price-earnings multiple at 13.7 for financial 2016. Apiam has achieved revenue and earnings growth over the past three financial years and is self-funding. But the most recent acquisitions, and any future deals, are subject to integration risks and there is no guarantee revenue growth can be achieved or capital will be available.

Overall the offer looks favourable, as Apiam is self-funding and is experiencing revenue growth through a mix of organic expansion and acquisitions. Integration of pending acquisitions and future funding are primary risks.

The company does not expect to pay a dividend for financial 2016.

Simon Hermann is an analyst at wise-owl.com.

The superannuation concession few would claim to want — but all should take

MONICA RULE

The issue of personal injury claims has been in the headlines recently as listed law firm Slater & Gordon struggles to deal with tighter compensation rules in its offshore divisions.

But did you know that if you are seriously injured and receive a personal injury payment in Australia, the payment can be contributed into your self-managed superannuation fund (SMSF) and not treated as a non-concessional contribution?

To put it another way, you can contribute the money into super, it will be classified as a personal injury contribution and it will not disturb your non-concessional contributions cap, which remains at $180,000 a year. But to receive this benefit, you must have the appropriate medical papers and you must lodge the monies within 90 days of receiving it.

This year, an SMSF trustee came to me for help, as his accountant had refused to assist him with an excess non-concessional contribution (NCC) tax assessment received from the Australian Taxation Office.

The accountant told him he should not have contributed the extra $150,000 into his SMSF without talking to him first. I sat down with the SMSF trustee and questioned him about the contribution.

I explained that if the payment was made in error, where either he did not meet the work test (he was 67) at the time of making the contribution, or if the payment was for personal injury, then we might have a chance of the ATO changing its decision and refunding the excess non-concessional contribution tax.

My questioning paid dividends when the SMSF trustee revealed he had received the $150,000 as part of a settlement for a personal injury claim resulting from a car accident, and he met the work test.

I applied to the ATO on behalf of my client by submitting the relevant documents to prove the $150,000 contributed into his SMSF was a personal injury payment, and asked if the excess NCC tax assessment could be withdrawn.

Our application was successful and my client received a refund of $69,750 — that is, $150,000 NCC x 46.5 per cent tax — from the ATO within three weeks.

We were successful because my client had all the relevant evidence to prove this was a personal injury payment.

The documents you need, and which should be available to the ATO if requested, are:

- A written agreement between the relevant parties — whether or not the agreement is approved or endorsed by a court — stating the payment is for the settlement of a claim for compensation or damages for personal injury suffered by you, and the claim in based on the commission of a wrong, or on a right created by a statute.
- Certifications from two legally qualified medical practitioners stating you are not expected to ever work again in a role in line with your education, training or experience.
- Your SMSF's bank statement showing the payment was contributed into your SMSF within 90 days from when you received the payment.

If the payment is a combination of compensation for personal injury and compensation for medical expenses or property damage, then only the amount relating to the personal injury will be treated as a personal injury payment and exempt from the non-concessional contributions cap.

You also need to be aware that if you are over 65, but less than 75, you need to be gainfully employed for at least 40 hours in a period of not more than 30 consecutive days in the financial year to be able to make contributions into your SMSF.

If you are not able to provide the necessary documents, then the personal injury payment, when contributed into your SMSF, will be treated as non-concessional contribution and counted towards your NCC cap.

You then need to be careful you don't exceed your non-concessional contribution cap and receive an excess tax assessment from the ATO.

Monica Rule is an SMSF specialist and author. www.monicarule.com.au