



Wall Street Crisis Highlights Benefits Of Forensic Accountants

More litigators leaning on specialists to uncover fraud and mismanagement

By **ARI J. HOFFMAN**

Any downturn in the financial markets generally leads to an increase in business fraud and securities litigation. The current crisis on Wall Street is proving no different. Now more than ever, securities and commercial litigators are relying on forensic accountants to uncover possible fraud or other alleged money mismanagement. In the post-Madoff world, lawyers more fully appreciate that financial schemes are frequently neither straightforward nor at all transparent. In many of our securities and commercial litigation matters, we use forensic accountants at every stage of the case, from preliminary case evaluation through the trial or arbitration hearing.

In nearly all customer-broker securities cases, we begin our evaluation process by having a forensic accountant review all relevant financial documents, including brokerage account statements. In many cases, a forensic accountant performs a profit and loss analysis, which examines the money transfers and withdrawals in the account and the customer's return on investment. In other situations, a commission and turnover analysis is also performed. We rely on the forensic accountant to calculate and quantify alleged losses. Having a forensic accountant analysis generally eliminates disputes concerning damages issues, allowing us to concentrate more fully on proving or disproving liability.

In many of our commercial litigation cases,

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we also use a forensic accountant to determine whether there was in fact fraud, by reviewing complicated and often voluminous financial documents probing for financial discrepancies and other "red-flags."

A forensic accountant assists us with proving and disproving securities' claims, which are often rooted in alleged over-concentration of certain securities, or alleged excessive trading for commissions, otherwise known as "churning." In a recent example, a client believed he had paid unreasonable amounts of commissions based upon the relatively short account life-span. The forensic accountant identified the damages and reinforced our theory of fraud liability based on churning. As a result, the conversation changed from proving the extent of the damages to a discussion about liability. We were able to focus on the elements of churning (control, misrepresentation, and excessive trading), and proceeded to confront the broker-dealer's counsel with a thorough and accurate analysis, which immediately settled the case.

A forensic accountant also assists us in those cases where there are certain discrepancies in a brokerage or other financial account, where there is alleged embezzlement, Ponzi schemes, or other improprieties. By reviewing a forensic accountant's analysis, which frequently pares down thousands of pages of complicated financial data to pointed and succinct summary documents, the alleged fraud or mismanagement is either uncovered or debunked. The analysis enables us to more proficiently and more cost-effectively develop and prove our case.

At the trial or arbitration hearing, we also rely upon forensic accountants to testify as

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expert witnesses to explain clearly and succinctly the mechanics of the financial fraud. They often employ computer technology to illustrate their analysis and conclusions. Since they may be the ones a judge, jury or arbitrator most relies upon in arriving at a decision, their command of the facts, and their expertise and presentation, are vital to the case. At times, we also use forensic accountants and their analyses in mediations to help us achieve a favorable pre-trial resolution.

The current economic slump creates fertile ground for financial scheming and embezzlement. Many more frauds will likely be discovered as the downturn continues. In complicated financial cases, it is essential for any lawyer to partner with a qualified forensic accountant, who has the skills and technology to mine voluminous data to locate financial improprieties or discredit alleged fraud. Without the forensic analysis, our fraud theories are only theories. The forensic accountant's work is to fill in the blanks so that we can persuasively present the complete case. We have used this partnership, in representing both plaintiffs and defendants, to great success. ■