



United States
Office of Government Ethics
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November 15, 1993
DO-93-031

MEMORANDUM

TO: Designated Agency Ethics Officials, General Counsels and Inspectors General

FROM: Stephen D. Potts, Director

SUBJECT: Recent Settlements of Civil Penalty Actions Brought Under 18 U.S.C. § 216(b)

Two recent civil penalty cases brought by the U.S. Department of Justice pursuant to 18 U.S.C. § 216(b) were settled with the defendant in each case making a payment of \$5,000 to the United States Treasurer. Because of the significance of these precedent setting cases under the new authority of Title IV of the Ethics Reform Act of 1989 and because the cases might not otherwise be readily available to the ethics community, we are providing a short summary and a verbatim reprint of the factual stipulation by the parties in each case. Please note that in each of these cases the subject did not admit to any wrongdoing. However, the cases are an indication of the Department's interpretation of the statutes involved.

In *United States v. Schnabel*, Civil Action No. 93-1290 (D.D.C., June 24, 1993), the complaint alleged a violation of 18 U.S.C. § 205 and sought civil penalties pursuant to 18 U.S.C. § 216(b). The answer filed by the defendant denied liability and requested that the complaint be dismissed. Under the terms of the Settlement Agreement and Stipulation of Facts, the defendant agreed to make a lump sum payment of \$5,000 payable to the United States Treasurer. Pursuant to agreement of the parties, the complaint was dismissed with prejudice. According to the stipulated facts, the matter involved a telephone call and the transmittal of a letter by the defendant, who was then the Deputy Secretary of the Department of Commerce, to the Deputy Secretary of the Department of Veterans Affairs.

In *United States v. Seger*, Civil Action No. 93-1700 (D.D.C., August 17, 1993), the complaint alleged a violation of 18 U.S.C. § 207(c) and sought civil penalties pursuant to 18 U.S.C. § 216(b). The answer filed by the defendant denied liability and requested that judgment be entered in her favor. Under the terms of the Settlement Agreement and Stipulation of Facts, the defendant agreed to make a lump sum payment of \$5,000 payable to the United States Treasurer. Pursuant to agreement of the parties, the complaint was dismissed with prejudice. According to the stipulated facts, the matter involved a meeting which the defendant, a former member of the Board of Governors, arranged for and attended at the Federal Reserve within one year of her resignation.

Attachments

United States v. Schnabel
Civil Action No. 93-1290 (D.D.C., June 24, 1993)
Factual Stipulation

"Rockwell Schnabel was confirmed by the Senate as Deputy Secretary, United States Department of Commerce, on March 21, 1991. Before that, Mr. Schnabel served as Under Secretary for Travel and Tourism at the Department of Commerce.

"In the winter of 1991, Mr. Schnabel and Bruce Del Mar, owner and president of Del Mar Avionics and Mr. Schnabel's father-in-law, discussed difficulties Del Mar Avionics claimed it was having in the administration of its contract with the Department of Veterans Affairs ("VA"). Del Mar Avionics is a California-based manufacturer of surgical and medical instruments, selling goods to the VA and to private concerns. Mr. Schnabel had no financial interest in Del Mar Avionics during the period in question. Del Mar Avionics had business dealings with VA for approximately 20 years, but had recently experienced difficulty in adding a new version of a product to an existing federal supply contract. The federal supply contract is a mechanism for providing, at prenegotiated prices, goods and services required by federal departments and agencies.

"On December 31, 1991, Mr. Del Mar sent a letter on Del Mar Avionics' letterhead to the Commerce Department, to the attention of Mr. Schnabel. In the letter, Mr. Del Mar explained the delays experienced in modification of the supply contract and asked for the `Department's intervention with the Department of Veterans Affairs on our behalf concerning this matter.'

"At the same time the letter was sent by Mr. Del Mar to Mr. Schnabel, a letter was sent from Jack Hammond, Senior Vice President of Del Mar Avionics, to the contracting officer at the VA in charge of Del Mar Avionics' contract. Mr. Hammond's letter noted that a letter seeking assistance was sent to the office of the Deputy Secretary of Commerce, and enclosed a copy of Mr. Del Mar's letter to Commerce.

"After receiving Mr. Del Mar's letter, on or about January 9, 1992, Mr. Schnabel called Anthony Principi, the Deputy Secretary of the VA, who Mr. Schnabel knew in primarily an official capacity. Mr. Schnabel informed Mr. Principi that Del Mar Avionics was owned by his father-in-law, and inquired of Mr. Principi if it would be appropriate for him to forward a copy of Del Mar Avionics' letter to Commerce to Mr. Principi. Mr. Principi, whom Mr. Schnabel knew to be an attorney, indicated that there was nothing inappropriate with the request, and a copy of the letter was then sent to Mr. Principi.

"Mr. Schnabel did not request Mr. Principi to take any specific action with respect to Del Mar Avionics' contract with the VA. Mr. Principi did make inquiries within the VA about the contract, and directed his undersecretary to look into the matter. At the time, the VA was experiencing a backlog and manpower problems. As a result of Mr. Principi's actions, the

contracting officers gave the Del Mar Avionics' contract priority over other pending contracts. The desired contract change would have, however, occurred in the normal course of business. The updated product was added to Del Mar Avionics' contract on February 4, 1992."

United States v. Seger
Civil Action No. 93-1700 (D.D.C., August 17, 1993)
Factual Stipulation

"Dr. Martha R. Seger, a financial economist, university professor, and former Commissioner of Financial Institutions for the State of Michigan, was appointed to the Board of Governors of the Federal Reserve System ("Fed") in July 1984. In January 1991, she publicly announced that she would be resigning from the Board to pursue other interests and to tend to personal and family responsibilities. At the time of her resignation, effective March 11, 1991, Dr. Seger was the senior member of the Board of Governors.

"Following her resignation from the Fed, Dr. Seger was elected to the boards of directors of a number of public corporations, including the Kroger Company ("the Company"), none of which were regulated by the Fed.

"In July 1991, the Fed and other bank regulatory agencies requested public comment on guidelines issued by the agencies requiring reporting by banks of certain highly leveraged transactions ("HLT's"). Pursuant to the definition used by regulators, an HLT was a buy-out, acquisition, or restructuring that resulted in a high liabilities-to-assets leverage ratio for the borrower. Banks were required to report HLTs as part of their quarterly statistical call reports.

"The Company submitted a written comment to the Fed on the HLT guidelines discussing the effect of the guidelines in curtailing the availability of domestic bank financing to companies with a high liabilities-to-assets leverage ratio, such as itself, and requesting modification of the guidelines.

"In addition to submitting a written comment, Company officers met with John P. LaWare, a member of the Fed's Board of Governors, on August 27, 1991, in his office. Dr. Seger had suggested LaWare as a person at the Fed with whom the Company might wish to meet to discuss the HLT issue. Dr. Seger arranged the meeting by telephoning LaWare's secretary to schedule it.

"Dr. Seger attended the meeting, along with the Company's Chief Executive Officer and Chief Financial Officer. After Dr. Seger introduced them, the Company's officers made a presentation on the effects of the HLT guidelines on the Company and similarly situated companies. Dr. Seger said nothing during this substantive part of the meeting. The meeting, which occurred during the public comment period, lasted approximately 45 minutes.

"The Company paid Dr. Seger \$1,500, a sum equivalent to the normal director's fee for attendance at a board meeting, and expenses. The letter transmitting the check stated that the Company's policy on directors' compensation was to pay the equivalent of a board meeting fee

when extraordinary requests were made of directors' time. Dr. Seger had not requested the payment."