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An Empire of Concealed Assets

How Richard Goldberg and David Shuster got terminating sanctions in a bankruptcy case BY TREVOR KUPFER

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In 2014, Richard Goldberg and Dave Shuster filed suit against businessman Vince Abell. At issue were Abell's sketchy real estate dealings—primarily, residences in the DC area.

"Some he'd flip, others he'd rent," says Goldberg, of Shapiro Sher. "But where he got into trouble was mortgage-rescue scams. He would follow the foreclosure dockets and seize on the elderly, minorities and unsophisticated borrowers."

Abell would approach these homeowners, offer them funds to help them out of foreclosure, and ask them to sign paperwork. But hidden in those documents were the deed to the home and a lease to rent the property. Abell would then proceed to evict them from "his" new homes. Eventually he got caught, attracted lawsuits and began fleeing his creditors.

"Vince's other game was hiding his assets," Goldberg says. "He would form phantom companies and a tangled web of—how many properties were in Exhibit 1, Dave?"

"Oh, hundreds," says Shuster, of Kramon & Graham. "There were houses and buildings in LLCs under other people's names but, in actuality, belonged to Vince, and should be subject to the bankruptcy state and liquidation."

"[Fellow trustee Roger Schlossberg] and I were convinced from day one, from the first time we met with the debtor, that they were hiding assets," says Goldberg. "So we set out to prove that Vince Abell had an empire of concealed assets."

The bankruptcy case came to Goldberg in 2013. Goldberg had represented the plaintiff, Schlossberg, many times over the years. Oddly enough, both Schlossberg and Goldberg were asked by separate creditors to handle the Chapter 11 case against Vincent Abell. In the end, Schlossberg was appointed and retained Goldberg's team at Shapiro Sher, but it could easily have been the other way around.

The first step was to accumulate and sell some of Abell's assets—about $8 million worth—with the intent of "building up a war chest to go out and engage a high-end litigation attorney," Goldberg says. Enter Dave Shuster and his team at Kramon & Graham.

The two firms collaborated on nearly every aspect of the case, with one major difference between them: the fee arrangement. Goldberg had hourly rates, while Shuster worked on contingency—a considerable risk in a bankruptcy case. "In many of these kinds of cases, you can work for months or even years and never recover anything," says Shuster, who joined the team in 2014.

"Winning is extraordinarily difficult, and collecting can oftentimes be even more difficult," Goldberg adds.

Also difficult was proving that Abell hid assets (which is generally difficult in such matters, the lawyers note), but they got a big break. Abell and his wife handled their properties through computers, which the firms duplicated and examined. "That's when everything turned," Goldberg says.

"We did a forensic image of all their computers and my partner, Jean Lewis, noticed a number of files labeled as a string of 'Z's. Our forensic expert explained that they're remnants from a program called CCleaner," Shuster says. "It was clear they used a wiping program to permanently delete their records."

"Literally it was days prior to us getting the computers that they ran the program," Goldberg adds.

They then filed a motion for sanctions for the spoliation of evidence, and presented their findings in a five-day bench trial in April 2015 at the Bankruptcy Court for the District of Maryland.

"If the court finds spoliation, there are a range of sanctions the court can impose, depending on how severe the spoliation is. In this case, because the court found that the spoliation was intentional and widespread, the court granted terminating sanctions," Shuster says. "The judge wrote a 51-page opinion and found in our favor on every single factual contention and granted us the ultimate relief. It's no easy thing for a court to disqualify a litigant from even putting on a defense, but the judge had plenty of evidence, and we obviously think it was the right thing to do."

"It's probably the most comprehensive spoliation opinion in the country," Goldberg adds. In fact, the judge issued a separate order that Abell pay hourly attorney's fees, which amounted to more than $600,000.

The ruling came about a year after the trial, in April 2016, and the duo recalls vividly how they heard. "I was at my rock climbing gym and I got a call from Dave," Goldberg says.

"I was in the car on my way home," Shuster says.

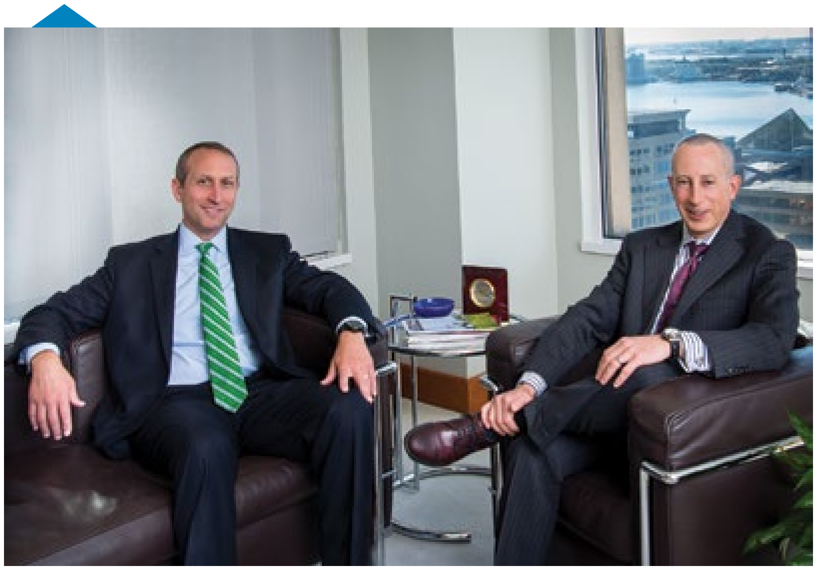
"He was downloading it onto his phone and saying, 'I think we won,'" Goldberg says with a laugh, "and I'm like, 'What did we win?'"

"I was scrolling through trying to get to the end and, sure enough, we won," Shuster says.

Later that summer, they auctioned another 33 properties for about $8 million. To date they have sold about 60 entities and paid between $10 and $15 million of creditor claims.

There are still assets to liquidate, and others to uncover, but they couldn't be happier with the unlikely result.

"This was the goal, but they don't all turn out like this," Goldberg says. "We had a great trustee, a great bankruptcy team, and an equally great, if not better, litigation team. We collaborated and pulled this whole thing together." SL



Shuster (left) and Goldberg (right) say they couldn't have worked this case alone. Goldberg calls Anastasia McCusker his "brilliant associate," while Shuster says Jean Lewis was "an equal partner in all of this."