



MALIK LAW GROUP LLC
ATTORNEYS AT LAW

Daniel Hamrin
T 678.216.4634
daniel.hamrin@maliklawgroup.com

1180 W. Peachtree Street | Suite 1910
Atlanta, GA 30309
maliklawgroup.com

Information Re *US v. Fisher*

Recently the DOJ/IRS has touted the DOJ's victory in the well-known *Fisher* case as evidence that donations of conservation easements by partnerships are fraudulent. This is a misdirect. While headlines might say something like "TWO TAX SHELTER PROMOTERS FOUND GUILTY IN BILLION-DOLLAR SYNDICATED CONSERVATION EASEMENT TAX SCHEME", the substance of the case against Fisher and co-conspirators is about fraudulent actions that would be wrong in any scenario. **This case was not about the overall validity of tax deductions generated from donations of conservation easements (or property). It was about fraud.**

Prior to explaining the relevant charges, here is a quick brief on some of the parties:

- Inland Capital Management, LLC – "Sponsor" entity of development opportunities with conservation options
- Jack Fisher – CEO of the Sponsor (sentenced to 25 years)
- James Sinnott – Executive Member of the Sponsor (sentenced to 23 years)

Count #1 – Conspiracy to Defraud the United States

Conspiracy to defraud the United States requires: the intent (a) to defraud, (b) to make false statements or representations to the government or its agencies in order to obtain property of the government, or that the defendant performed acts or made statements that he/she knew to be false, fraudulent or deceitful to a government agency, which disrupted the functions of the agency or of the government. In this case, the agency was the IRS and its function was the ascertainment, computation, assessment, and collection of U.S. individual income taxes.

Jack Fisher, James Sinnott, and some of their associates were found guilty of conspiracy to defraud the U.S. **They engaged in a consistent scheme to backdate subscription agreements and other investment-related documents.**

If a partnership had not sold all of its units by the end of the tax year, Fisher and his affiliates would continue to market those units and sell them to investors. In their internal books, they marked leftover units as "LTS" or "Left To Sell". They backdated and caused to be backdated subscription agreements, checks, and other documents to make it seem like the units were purchased prior to the donation of the conservation easement, instead of the following tax year.

Subscriptions in already closed partnerships were accepted even as late as 7 months into the new tax year.

When a conservation easement is donated, the benefits of that donation flow through to the partners as of that date. Any future partners do not receive the benefit of any deduction associated with the donation of a conservation easement (or similar property). **Thus, Fisher, Sinnott, and their affiliates were knowingly working to get individuals tax deductions that they were not entitled to.**

Additionally, if one partnership was oversubscribed after the end of the year, Fisher and his affiliates would move some of the investors in the oversubscribed fund to other partnerships that had donated conservation easements prior. This is identical to allowing investors to invest after the donation of the easement and allocating deductions to them. **Again, Fisher, Sinnott, and their affiliates were knowingly working to get individuals tax deductions that they were not entitled to.**

Another example of conspiring to defraud the U.S. included Fisher's fraud in IRS audits of investors. Multiple investors requested assistance from Fisher regarding an IRS audit of their individual returns, including the documentation relating to their investment in a partnership that donated a conservation easement. Their investment documentation had never been signed, so Fisher let them know that Fisher and his affiliates would prepare and send them copies of agreements that needed to be signed and backdated. This allowed investors to submit documentation to the IRS that was fraudulent. **Fisher, Sinnott, and their affiliates were knowingly working to get individuals tax deductions that they were not entitled to and was assisting in providing fraudulent documentation to the IRS.**

Count #2 – Wire Fraud Conspiracy

Wire fraud conspiracy requires: (1) that the defendant voluntarily and intentionally devised or participated in a scheme to defraud another out of money; (2) that the defendant did so with the intent to defraud; (3) that it was reasonably foreseeable that interstate wire communications would be used; and (4) that interstate wire communications were in fact used.

This facts for this tie into the Count #1. Essentially, because Fisher and his affiliates were conspiring to commit fraud and used interstate wire communications in furtherance of that, then they were guilty of Wire Fraud Conspiracy.

Other Counts – Aiding and Assisting the Filing of False Tax Returns, Subscribing to False Tax Returns

In conjunction with Counts #1 and #2, Fisher, Sinnott, and others were also charged with Aiding and Assisting the Filing of False Tax Returns and Subscribing to False Tax Returns. These charges tied in with the above fraudulent conduct as well as other actions by Fisher, such as convincing an appraiser, Walter Roberts II, to manipulate data to get a higher value.

Conclusion

All of these actions are actions that are fraudulent in essentially any partnership context. None of the counts evaluated the merits of the value of the conservation easements. Notably, Clayton Weibel, an appraiser used by Fisher and his entities, was acquitted on all charged counts (Count #1, Count #2, and counts of Aiding and Assisting the Filing of False Tax Returns). **This demonstrates that the issue with the case was not regarding the value conservation easements. The issue was fraud.**