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USA v. Meyers

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1727

UNITED STATES OF AMERICA

v.

JOHN W. MEYERS, SR.,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
D.C. Criminal No. 99-cr-00142
(Honorable Yvette Kane)

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 15, 2002

Before: SCIRICA, GREENBERG and BRIGHT*, Circuit Judges

(Filed: March 26, 2002)

*The Honorable Myron H. Bright, United States Circuit Judge for the
Eighth Judicial
Circuit, sitting by designation.

OPINION OF THE COURT

SCIRICA, Circuit Judge.

This is an appeal from a criminal conviction and sentence.

I.

John Meyers, a failed general contractor, represented himself as an
experienced

bank debenture trader and the head of RWAI Group, Inc., an "international investment group." Meyers provided potential investors a list of his "clients," all affluent individuals, who had invested "billions of dollars" with him. Meyers told potential clients their investments, like those on the list, would be protected in escrow accounts and by other procedural stratagems, and that he would take no commissions from those sums. Several investors deposited a total of \$1,625,000 in RWAI, with promises of million-dollar returns. Meyers used \$475,000 of this money for personal purchases. Only \$300,000 was invested in bank debenture programs. Some clients lost every dollar invested.

A jury convicted Meyers of all charges in a thirty-seven-count indictment of wire fraud, mail fraud, money laundering, engaging in illegal transactions, and making false statements to the Federal Bureau of Investigation. He was ordered to forfeit \$1.25 million, two automobiles and offshore funds. Meyers was sentenced to 131 months' imprisonment and three years of supervised release. This appeal followed.

II.

The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291.

III.

The District Court permitted the testimony of Gerald Robinson, an attorney who had represented RWAI and Meyers in prior civil litigation. Meyers contends Robinson's testimony violated his attorney-client privilege and the attorney-work-product doctrine. But Robinson testified only to Meyers's prior business practices and history, not "private communications." That Meyers had filed for bankruptcy and been involved in lawsuits were matters of public record. Neither the attorney-client privilege nor the work-product doctrine was implicated in Robinson's testimony. Accord *Hickman v. Taylor*, 329 U.S. 495, 508 (1947). We review for abuse of discretion. *United States v. Console*, 13 F.3d 641, 659 (3d Cir. 1993). Robinson's testimony demonstrated Meyers misled potential clients about his past qualifications and experience. Investors detrimentally relied on Meyers's representations. We see no error in admitting Robinson's testimony.

IV.

Prior to trial, the District Court ruled Herbert Biern could testify as an expert of bank debenture programs, but could not testify whether Meyers's investment plan was fraudulent. Meyers suggests Biern "implicitly" violated the order by encouraging an inference that Meyers was guilty. Meyers failed to object, so we review for plain error. *United States v. Olano*, 507 U.S. 725, 732 (1993). Biern's testimony focused on banking terminology, the accuracy of representations made about the Federal Reserve Board, and certain documents. It did not "seriously affect[] the fairness, integrity or public reputation of judicial proceedings." *Id.* (quotation and citation omitted). The Court was well within its sound discretion in allowing this testimony. Cf. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 158 (1999) ("Rule 702 grants the district judge the discretionary authority, reviewable for its abuse, to determine reliability in light of the particular facts and circumstances of the particular case."). We see no error.

V.

Meyers contends the evidence did not demonstrate the offshore trading program he "established" constituted an illegal scheme to defraud, because he honestly believed the program existed. Reviewing the evidence in the light most favorable to the government, *United States v. Coyle*, 63 F.3d 1239, 1243 (3d Cir. 1995), we find "substantial evidence supports the jury's verdict." *United States v. Paramo*, 998 F.2d 1212, 1216 (3d Cir. 1993). Witnesses testified Meyers intentionally misled his clients and federal investigators about the offshore trading program. We see no error.

VI.

Meyers claims statements he made to potential investors concerning his financial acumen and his "humanitarian" motives were "puffing," not illegal misrepresentations. Viewing the evidence in the light most favorable to the government, *Coyle*, 63 F.3d at 1243, Meyers's statements were "material" to his conviction. Several of Meyers's clients testified his biographical statements influenced their decision to provide him funds for investment. Additionally, the government presented evidence that Meyers had lied to investors and federal agents about the disposition of "invested" funds. These statements, not Meyers's self-aggrandizing biographical boastings, provided sufficient evidence for

his convictions of mail and wire fraud. Cf. *In re Weinroth*, 439 F.2d 787, 787-88 (3d Cir. 1971). We will not disturb the verdict.

VII.

Meyers alleges his sentence was inappropriately enhanced, in violation of *Appendi v. New Jersey*, 530 U.S. 466 (2000). We disagree. The jury found the fraudulent scheme involved \$1,250,000. The District Court's calculated loss to RWAI's three joint venture partners (\$400,000) was well within this amount, rendering *Appendi* inapplicable. We see no error.

VIII.

For the foregoing reasons we will affirm the judgment of conviction and sentence.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Anthony J. Scirica
Circuit Judge