



Brian D. Rowbotham, principal with Rowbotham & Company LLP, spent 14 years investigating the international fraud case of Robert Ian Maxwell.

Maxwell was born in Czechoslovakia, changed his name three times, and was dubbed the "Bouncing Czech" by British tabloids because he managed to embezzle more than 1 billion in British pounds during his professional career.

It started with Maxwell Communication Corporation, which became the flagship enterprise for his numerous ventures--many with questionable beginnings.

Immediately after his death in 1991, a number of Maxwell's loans went into default, forcing his public and private enterprises into bankruptcy. It turned out that embezzled funds were used to acquire investments and set up an illegal share support scheme.

While the big banks recovered most of their loans, the professional advisers and bankers hired by Maxwell didn't have a high success rate.

The following Q&A with Rowbotham details his experiences with the case, as well as provides some lessons learned.

Q: Describe your entrée into the Maxwell case. How would you describe working on such a high-profile assignment?

A: We were referred by a trust company in Europe due to the firm's international experience. After Maxwell's corporate empire went into bankruptcy, there were private and institutional creditors for public companies and subsidiaries in Europe and the U.S.; privately owned companies; U.K. pension plans; and private foundations.

In total, assets were approximately \$2 billion and liabilities \$4 billion.

Initially, Price Waterhouse, (now PwC), and Arthur Andersen (followed by E&Y) were in charge of the investigation and bankruptcy proceedings in the U.K. Rowbotham & Company was overseeing matters dealing with trusts and foundations in Europe. Initially, there was in excess of 200 professionals working on the Maxwell fraud and bankruptcy actions in the U.K. in the early 1990s.

'Bouncing Czech'

Lessons Learned from Robert Maxwell's International Fraud Case

BY DAMIEN M. ENGLISH

Maxwell commingled the funds of all groups, in part to deceive the auditors and outside regulators. We had many meetings with representatives of the other creditor groups, and we all had to work cooperatively to determine how and where the missing funds were misappropriated.

There were intense negotiations over the ownership of assets in the various groups since each firm represented a different creditor group.

Working on the engagement was a challenge due to constant negotiations. On one occasion, I flew to New York with our European counsel to meet with a law firm that had assisted Maxwell with past acquisitions. The law firm had documents that would help with our tracing of the funds.

After they escorted us to a large conference room with several partners, instead of giving us documents as promised, they served us with a summons. Unknown to us, they had filed a lawsuit against Maxwell companies we were representing that had still owed the law firm back fees.

In New York, a lawyer has a lien over original client documents if their fees are not paid, a quaint New York custom to say the least.

I recall a meeting in London where all the parties had to discuss and agree on how to divide the proceeds from the sale of one of the Maxwell companies. Title was clouded so each party came with their own documents to prove ownership.

The ultimate victims of major fraud are often the employees of the defrauded companies

The lead British attorney for one of the creditor groups had a very confrontational manner. There were huge egos arguing over huge sums. The British negotiate with great theatrics, which most Americans find uncomfortable. Over time, negotiations became a routine and the intimidation tactics became less upsetting and more entertaining and predictable.

We also crossed swords with the British barristers defending Ian and Kevin Maxwell against criminal charges. They hired the top white-collar criminal defense firms in London. Because the barristers would not help us with document requests, we were likewise unable to assist them.

The key things I learned during these negotiations included:

- o Do your homework so nobody can shake your confidence about the facts.
- o Try to map out the outcome you want.
- o Don't take things personally and try to be pleasant and cooperative.
- o However, if someone is inappropriate with their comments, feel free to shoot back; doing nothing encourages disrespect. In negotiations, the worst thing you can do to the other party is to walk out. We did this in one instance and attitudes immediately turned around.
- o When you're heading into lengthy negotiations, there's safety in numbers. If negotiations last several days, you'll tire out, and those with bigger teams will wear you down and prevail.
- o In negotiations where several parties are involved, it's important to include everyone in the process. If someone is bypassed or not copied on key correspondence, you can bet that they will throw a wrench into the works to make the point that they can't be overlooked.
- o Do the best you can and don't worry about the outcome, it's not your money.

Q: What was it like working with forensic accountants and legal advisers in other countries?

A: Cultural differences played a big part in the process. Working with French lawyers turned out to be very time consuming and a lot of patience was required. Americans tend to want to move quickly.

In general, the French don't like the way Americans work. I would define the French lawyers as more of a society unto themselves not withstanding the urgent needs of the clients.

During litigations against large law firms in New York there was a tendency for shouting and intimidation tactics similar to the British.

Since the fraud was principally committed in the U.K., most of the work took place in London. In the U.K., accounting firms are generally appointed to oversee bankruptcy actions. They have a similar role as a U.S. trustee in bankruptcy in the U.S., but with a much broader range of duties. As a result, the insolvency practices in the U.K. are very large and profitable.

Q: It seemed Robert Maxwell had enough money to transcend the rules. Why is that able to happen and can it be stopped?

A: Maxwell was able to manipulate people and institutions with a variety of tactics.

- o He was a physically large and intimidating person.
- o He was extremely confident and grand with his style.
- o He was viewed as being very successful because he courted others who were successful.
- o He hired the same professionals and used the same investment bankers, so professional fees were inducements to look the other way.
- o He confused people with elaborate holding structures and by using companies with similar names. This tactic was similarly used with Enron where the analysts didn't understand the numbers.
- o Maxwell had complete control of cash transactions where fraud was being committed.
- o Lack of internal controls was a huge problem. Had auditors and regulators insisted on changes, the magnitude of the fraud would have been less devastating.
- o Warning signs of problems went unheeded. People don't want to rock the boat.

Q: You quote the Department of Trade and Industry as saying that both the audit and the regulatory functions failed in this case "due to poorly trained staff." Is this a problem specific to this case, or more widely spread?

A: Government agencies are strapped for proper resources and there is often turnover of more experienced people. To some extent, they need to rely on independent accountants, however, accountants don't audit for fraud.

Q: What, in your opinion, has been SOX's impact on curbing fraud? Is there something missing in these efforts?

A: The following is effective:

1. Boards more involved with audit process.
2. Diversification of advisers.
3. Lawsuits keep accounting firms on the watch.
4. Rotating partner responsibility on large jobs.
5. Criminal sanctions for executive officers.

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Ineffective under SOX includes:

1. Audit committee members are not chosen by the board. The CEO and CFO still select audit committee members for the board to approve, so the audit committees are still friends of the executive team.
2. Audit committee members are supposed to be independent under SOX. However, SOX doesn't prohibit audit committee members from owning options or shares in the company.

Q: What do CPAs need to consider in terms of fraud? What advice would you give them?

A: Experience in past engagements on high-pressure jobs with competing interests and not being afraid to ask tough questions is helpful.

Q: How have the roles of corporate gatekeepers, such as controllers, CFOs, internal CPAs, etc. changed as a result of the various corporate accounting scandals and resulting regulations?

A: The ultimate victims of major frauds are often the employees of the defrauded companies. Careers and finances of many mid- and senior-level employees can be destroyed for life. Big frauds are orchestrated at the top for the benefit of the owners or senior management, not for the employees. The biggest defense may be an educated workforce, so employees are their own watchdogs.