Journal of Accountancy

Volume 50 | Issue 2 Article 4

8-1930

Accountant's Position with Regard to Embezzlement Cases

P. W. Fisher

Accountant's Position with Regard to Embezzlement Cases

By P. W. Fisher

Despite the prevalence of internal checks, audits and other safeguards provided to insure the proper accounting for funds handled by the employees of a business or institution, there still are frequent instances of embezzlement. This fact is known to every accountant having years of experience in the handling of audits. The extent of amounts embezzled has been tabulated for each year and covering the country by states. These figures are compiled from various sources of information, but are largely the amounts reported to surety companies. Upon reflection, it appears that numerous defalcations are not detected, and hence the actual number of cases and the extent of the shortages are far greater than any reports would indicate.

It has been my experience that the greater number of cash shortages occur where the audit has been neglected and other safeguards have not been used. Not infrequently in such instances the embezzler has become so bold in his practices that his employers have been aroused by his own statements to other employees or to those who transact business with the firm. Sometimes his habits throw suspicion around him, while a more careful and systematic embezzler might continue to pilfer without being detected. This is brought out in support of the opinion that numerous shortages are not detected, and, consequently, not reported and do not enter the compilation of reports intended to show the extent of monies embezzled. However, the amounts reported are stupendous, and any phase of the question relative to the work of the accountant in public practice is not only interesting but its study is constructive.

It is the purpose of this brief article to enumerate some of the things that confront the public accountant when he has discovered a shortage and the employer has taken legal steps to have the guilty employee punished. It is realized that all jurisdictions in which the trials incident to this kind of prosecution would fall are not identical in the administration of the law. However, this article is not intended to discuss the laws of the different states with regard to embezzlements, but to state some of the problems

that are confronted by the accountant who reports the shortage and upon whose report the legal accusation is made against the guilty party.

When an audit discloses an embezzlement by an employee, the bonding company, which is surety for the embezzler, is called upon to pay the amount set forth as short, or such amount as is covered by the bond in the case of incomplete coverage. Where the defalcation is beyond a reasonable doubt and is clearly set forth by the report of a reliable public accountant or firm of public accountants, the bonding company will usually pay the claim without any great delay—although it may require a subsequent investigation by one of its representatives as to the facts disclosed in the audit report. However, it frequently occurs that a surety company will require the firm or individual from whom the embezzlement has been made to take legal means of recovery from the embezzler or to have him punished. In fact, it is often stipulated in the conditions of the suretyship that the assured shall prosecute the employee with respect to any defalcation.

It often happens that the employee whose accounts have been found short will find a way to make good the shortage, in consideration of which the employer will release him from further liability. There are various reasons why numerous cases are never brought to a trial of the defaulter. It is obvious that the employer from whom funds have been stolen is interested in the recovery of such funds or even a part of them, and, since the punishment of the employee through the processes of law does not necessarily return the amount of the embezzlement to the employer, a compromise is usually entertained, if offered. There are, however, many cases that come before the courts, and the intricacies involved in the prosecution of the accused are both interesting and important.

It is worth while to consider the average juryman selected to sit at the hearing and pass upon the guilt of the defendant. His selection has probably more bearing upon the outcome than any other factor, and the counsel for the defense often pays great attention to those drawn for that purpose, objecting to persons who have been selected for this duty. It is possible that many juries are composed of men of less than average education—if not less than average intellect. In the first place, those men who represent the business life of the community often have legitimate excuses to be relieved from jury duty. Secondly, but of great

importance in a case involving embezzlement, a certain number of objections to the jurymen are allowed both the prosecution and the defense. Objections may be made by the defense counsel to one who has had experience in the handling of accounts, whose business connections would indicate that he would be familiar with the mechanics of bookkeeping, or who has a broad knowledge of the intricacies of modern business. We, therefore, find that the evidence is heard by a jury of men not easily impressed with facts relating to auditing procedure. In short, it would often have a greater influence on the minds of the jury in such a case, at least as to the guilt of the accused, to show that he had been seen to remove an article of small value from the office than to show that through a series of manipulations of accounts large sums had been misappropriated.

Since relatively few cases of embezzlement are brought to trial, the accountant is not always familiar with the proceedings of the court. If he acquires some knowledge of the taking of his testimony as a witness, he is able to make himself of more value in the immediate prosecution, and incidentally impress the court, which is made up in part of influential men of the community, with his ability and forceful personality. He, as a rule, wishes to be of service in the prosecution of a man of whose guilt he is sure, and frequently he reasons with himself that the case is so clear that the hearing of the evidence will be simple and conclusive. He is sometimes informed or knows from experience that he may not be allowed to refer to his report while he is testifying. This, however, is not always the case. In view of this possibility he will naturally review the report and working papers or notes on the audit to the extent of memorizing the important dates and amounts involved. This is desirable because much delay is likely to occur between the completion of the audit or investigation and the date of the trial.

It is a part of the evidence of the employer to show that the one accused was in his employ, the nature of his duties and that certain funds and accounts were in his charge. The accountant is thereby relieved of identifying the embezzler and his evidence is narrowed to showing the existence of the defalcation. This is not to be taken too literally, as in some cases the accountant has a first-hand knowledge of some of the acts of the employee which are connected with or are a part of his acts of embezzlement. In any event, care should be exercised by the accountant to limit his

testimony to his own findings, and not to make direct accusations which are apparent from his work but not of his own knowledge.

One of the methods of defense attorneys in questioning an accountant regarding an embezzlement is to ask a number of questions with requests to answer in the affirmative or negative and without explanations. In this way it is very easy to break down the completeness of practically any audit. The audit report will be attacked as a document purporting to show that a number of "errors" or "mistakes" in the bookkeeping have been made; that the employee accused was not seen to place any of the funds in his pockets; that it is not known whether he misappropriated currency or cheques; and various other facts that will be followed by questions to the accountant framed to get an answer that will bear out the inconclusiveness of his findings. The attorney for the defense will often throw a "smoke screen" around the evidence of the accountant that will perplex him and impress the jury.

Here is a list of actual questions put to the accountant in cases of this sort:

1. Did you verify the cash receipts, as shown on the books, with the customers?
2. You did not see Mr. Blank take any of the money, did you?
3. What kind of an audit were you employed to make, and just what did you do?
4. Did you send out all the letters of confirmation to debtors by registered mail?
5. Is it not possible that some cash was paid out and no record made of it?
6. You do not know that Mr. Blank made all the entries in the books, do you?

Questions are asked that would not have any bearing upon the completeness of the work of the accountant, and, as has been stated before, are framed in such a way as to require an answer that would reflect unfavorably upon the audit. It is the desire of every true accountant to defend his work as being not only correct but complete. It follows that, in order to make this defense, he is forced to explain some of his answers and to use a great amount of tact in doing so. Sometimes questions are asked by the defense attorney that do not have any bearing upon the case. The accountant should refuse to answer, unless the court rules that he must answer. In this event, he is usually accorded the courtesy of being allowed to make some explanation.

Few accountants will recall an audit of any magnitude in which all the items of cash receipts recorded in the cashbook were confirmed by communication with the parties from whom the cash was received. In fact, it would, in most cases, be impossible to make such confirmations satisfactorily. So, in answer to question No. 1, we should be obliged to say "No." The skilful counsel for the defense who has asked the question then makes the emphatic declaration: "Then you have not made a complete audit." The answer to question No. 2 would likewise be in the negative, unless the situation were extraordinary. It is not necessary to go further into these questions, as it will be seen that they are framed alike—to break down the work of the accountant as incomplete and to make it appear a perfunctory operation.

In manipulations of footings of cash columns, there are cases where it is impossible to include the shortage within the limits of dates, as for instance "on pages thirty-two to thirty-four inclusive" and "embracing March 20th to 23rd inclusive." This, of course, would give rise to long-winded attacks from the defense. In instances of this kind, care should be exercised in the drawing of the bill of particulars in the case, as the accountant is usually more accurate in testifying as to dates, pages, etc., than some lawyers are in preparing such a document. Previous to the prosecution, the accountant is often asked for facts by the counsel for the party making the complaint, and he can be of much assistance in explaining his report and furnishing additional data from his notes on the audit.

In testifying, the accountant is frequently ready to talk freely as he feels that he can make it all very clear. This feeling is a natural result of his intimate knowledge of the facts in the case. It is, however, a bad policy to appear to have too great an interest in the prosecution of the case. It is a trick of some attorneys to provoke the witness, which will, if successful, sometimes reflect unfavorably upon the accountant and his testimony.

It is my opinion that an accountant should be ready to render such service as he can in the prosecution of embezzlement cases which are based upon the disclosures of his audit. He should be careful in trying to preserve the effect of completeness in his work, and should use tact in trying to present the facts to the jury. Not only does he serve the client, and probably the public at large, in so doing, but it is to the best interests of himself and the accounting profession that his work prove valuable and effective.