

They Aren't All Criminals

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One of the most common things I hear in my area of accounting is accusations of criminal activities and improprieties carried out by directors. Being a former police officer I am well aware of how to spot and identify criminal acts. When I do I report them to the Australian Securities and Investments Commission for investigations. That is rare and I have only reported criminal offences on four or five occasions. One involved one of the Country's largest superannuation frauds and one of the directors is currently spending time as Her Majesty's guest. Unfortunately as the investigations are continuing in aspects of that Company and other related entities I cannot go into detail.

Leaving those rare examples aside, the majority of directors of failing and failed companies are not criminals. They get into trouble not because of intentional criminal acts but errors of judgement, misfortune, ignorance, misinformed beliefs, adverse economic conditions, industry challenges and even the failure and behaviour of others (creditors not paying them and the thing snowballs). The majority do not set out to "rip off" or "steal" money from others but sometimes businesses just don't work out. This is not uncommon as approximately 30% of small businesses fail.

So why do people accuse the directors of failing and failed companies of being criminals? The simple answer is emotion. The accusers are left owed significant amounts of money which ultimately lead to the failure of their own companies. That's enough to increase any one's stress levels and emotional state. So they lash out at the person they see as the one that caused them that stress. It is common human nature and I don't blame these people. They're going through so much and like most insolvency practitioners I give them the opportunity to vent their anger and frustration at the situation they find themselves in, but at the end of the day it is unlikely a criminal act has occurred. However, if I find evidence to support an allegation I refer the matter onto the correct authority.

As said earlier, it is rare that criminal acts are committed by directors of failing and failed companies but that does not mean other offences have not occurred such as breaches of director duties under the Corporations Act etc. Those are commonly referred onto ASIC. However, that does not mean criminal acts do not occur. So what do you do if you seriously suspect a crime has occurred? Gather the evidence you have and present to the relevant party as logically as possible. Be it to the Liquidator, ASIC or the Police, they need the evidence to support a case.

This brings me to my final point, without evidence there will be no prosecution. One thing that was drilled into me at the Police Academy was that "knowing who did the crime and proving it are two different things." Basically it all comes down to evidence and without it you can't satisfy the court that an offence has been committed and the identity of the person responsible for the criminal act.

So, if you do suspect a crime in a business sense such as fraud, embezzlement and theft, gather the evidence you have and ask an expert for advice. A few minutes with a forensic accountant, insolvency practitioner, lawyer, your insurer, private investigator or other type of expert would save you months and months of anguish and frustration while law enforcement officers work through their procedures to finally make an arrest or worse for you, they finalise the matter with no further action due to a lack of substantiating evidence.