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'Willful Blindness' Jury Charge Proper in Tax Fraud Conviction, 3rd Circuit Rules

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A U.S. appeals court has upheld the tax fraud conviction of real estate magnate Charles Kushner's brother-in-law, finding use of a "willful blindness" jury charge satisfied the willfulness element of a criminal tax offense.

The instruction may, where warranted by the trial evidence, "properly apply to a defendant's knowledge of his legal duties," the 3rd U.S. Circuit Court of Appeals panel held on Sept. 9 in *U.S. v. Stadtmauer*, 09-1575.

The court rejected a challenge to the charge by Richard Stadtmauer, an accountant and law school graduate who began working for Kushner in 1985 and eventually became executive vice president of the Kushner Cos.

In 2004, Charles Kushner pleaded guilty to assisting in the filing of false partnership tax returns and to engaging in federal campaign contribution offenses.

During the investigation of Kushner, Stadtmauer was charged with conspiring to take \$6 million in improper deductions on tax returns from 1998 to 2001 for 12 limited partnerships owned by Kushner.

Stadtmauer was convicted in 2009 on one count of conspiracy to defraud the United States and nine counts of willfully aiding in the filing of materially false or fraudulent tax returns.

To establish that Stadtmauer willfully aided in the preparation of false returns, the government was required to prove that he intentionally violated a known legal duty. So whether Stadtmauer had knowledge that the deductions were false was a critical issue at trial.

U.S. District Judge Jose Linares' charge allowed the jurors to convict if they found that the defendant knew about applicable Internal Revenue Service requirements for the prosecution years at issue or "deliberately closed his ... eyes to what he ... had every reason to believe." The judge added, "No one can avoid responsibility for a crime by deliberately avoiding what is obvious."

Stadtmauer claimed on appeal that the jury charge did not meet the requirement that the government establish that the law imposed a duty on the defendant and that the defendant knew of that duty.

He argued that the Supreme Court's ruling in *Cheek v. United States*, 498 U.S. 192 (1991), precludes meeting the willfulness element of criminal tax offenses with a finding of willful blindness.

But the appeals court found that Stadtmauer's reliance on *Cheek* was misplaced. There, the Supreme Court reversed the conviction of a defendant who stopped filing tax returns after joining a group that believed the federal tax system unconstitutional. The defendant claimed he sincerely believed his actions were lawful and that he acted without the willfulness required.

"Stadtmauer's attempt to equate a person who deliberately avoids learning of a legal duty with a person ... who is ignorant of that duty by virtue of a good-faith belief or misunderstanding is not persuasive," wrote Judge Thomas Ambro, joined by Ruggero Aldisert and Jane Roth.

Ambro said the 1st and 11th Circuits had similarly concluded that a willful blindness instruction that applies to a defendant's knowledge of tax law does not run afoul of *Cheek*. And the 5th and 7th Circuits also approved of a willful blindness instruction applying to a defendant's knowledge of tax laws without specifically discussing *Cheek*.

The appeals court also rejected Stadtmauer's assertion that the willful blindness instruction impermissibly applied to the element of intent. Stadtmauer argued that the instruction that the jury could find that he "acted knowingly and willingly" if he "deliberately closed his eyes to what he had every reason to believe" improperly substituted willful blindness for proof of a specific intent, since the element of willfulness encompasses both knowledge and intent.

The appeals court, while acknowledging that use of the word "willingly" may have misstated the law, said Linares' instructions "taken as a whole, properly instructed the jury as to the proof required."

The 3rd Circuit also rejected Stadtmauer's contention on appeal that trial evidence did not warrant the willful blindness instruction. Stadtmauer claimed that no government witnesses directly claimed that he deliberately tried to shield himself from learning about the tax returns. But the government did not need to present direct evidence of conscious avoidance to justify a willful blindness instruction, the appeals court said.

Evidence at trial showed that Stadtmauer was "intimately involved with the operations of the partnerships," but spent little time reviewing their tax returns and never asked Kushner's accounts about the propriety of deductions taken, the appeals court said.

Stadtmauer asked the jury to infer that he relied in good faith on his accountants to prepare the tax returns consistent with applicable law.

"However, another possible inference is that Stadtmauer deliberately avoided asking the natural follow-up questions -- e.g., whether the deductions claimed in the tax returns were consistent with how expenses were falsely characterized in the general ledgers and reported on the financial statements -- despite his awareness of a high probability of that fact," Ambro wrote.

The lawyer who argued Stadtmauer's appeal, Miguel Estrada of Gibson, Dunn & Crutcher in Washington, D.C., did not return a call. Estrada's co-counsel, David Debold of the same firm, declined to comment.

Assistant U.S. Attorney Steven Sanders argued the appeal for the government. Rebekah Carmichael, a spokeswoman for the U.S. Attorney's Office in Newark, N.J., said the agency would not comment.