

Fabulous Fab Shows Managers 'Oblivious' to E-Mail Peril

By Katie Hoffmann - Apr 27, 2010

While Fabrice Tourre may have found himself fabulous when devising intricate transactions and presuming he survived their collapses, the e-mail trail he left behind was a less-than-marvelous repetition of history.

E-mails from the Goldman Sachs Group Inc. director are the center of the case saying the firm misled investors into a mortgage-linked investment. In one he wrote, "The whole building is about to collapse anytime now," according to the complaint. "Only potential survivor, the fabulous Fab."

His messages left lawyers asking: What was he thinking?

"It is shocking how people are oblivious to the fact that e-mails are a treasure trove for lawyers," said Jacob Frenkel, a partner at Shulman Rogers Gandal Pordy & Eckerin in Potomac, Maryland. "It's a combination of not thinking, ignorance and arrogance."

Corporate history is filled with instances of employees sending e-mails -- and coming to regret it.

American Home Products Corp., a predecessor of what is now Pfizer Inc.'s Wyeth unit, was forced to set aside billions to pay to dieters who suffered heart-valve damage and a fatal lung disease as a result of taking its diet pills. In some of the cases, the plaintiffs' lawyers produced an American Home memo that they said characterized the company's callous attitude toward the health problems.

'Silly Lung Problem'

"Do I have to look forward to spending my waning years writing checks to fat people worried about a silly lung problem?" said the e-mail from a low-level American Home official to one of the company's executives.

Silicon Valley investment banker Frank Quattrone was charged in 2003 by Federal prosecutors with obstructing justice after he wrote an e-mail that prosecutors said strongly advised bankers to destroy underwriting records. He was convicted in 2004 and sentenced to 18 months in prison.

“Having been a key witness in a securities litigation case in south texas (miniscribe) i strongly advise you to follow these procedures,” Quattrone wrote in the e-mail to his team, referring to company procedures to discard internal memos and nonessential records. Miniscribe was a client that had been the subject of litigation.

Two years later, he won his appeal, authorities dropped both cases and he avoided jail.

Two Bear Stearns hedge-fund managers were indicted in 2008, with the evidence including e-mails that prosecutors said showed the men touting funds while bemoaning their failure privately. They were acquitted in 2009.

‘Monstruosities’

Tourre, 31, is accused of misleading an investor, ACA Management LLC, into thinking that a hedge fund planned to invest in the equity of the deal instead of betting against it. He is denying the allegations. Pamela Chepiga, his lawyer at Allen & Overy LLP in New York, didn’t immediately return a call.

In a January 2007 e-mail to a friend, he described “all these complex, highly leveraged exotic trades” that he created “without necessarily understanding all the implications of those monstruosities!!!”

In a March 7, 2007, e-mail released by the firm, Tourre described the U.S. subprime mortgage market as “not too brilliant” and said that “according to Sparks,” an apparent reference to Daniel Sparks who ran Goldman Sachs’s mortgage business at the time, “that business is totally dead, and the poor little subprime borrowers will not last too long!!!”

Leaving a Trail

E-mails help prosecutors because they show “the intent or mindset of someone,” said Charles Parker, head of securities practice at Locke Lord Bissell & Liddell in Houston. Before e-mails, prosecutors lacked such insights, he said.

“Once a judge admits one of these emails into evidence, the company knows it’s in trouble,” he said. “The jury will latch onto these things and remember ‘em when it comes time to deliberate.”

Many executives prefer e-mail over a phone call because it’s faster and easier, said Marc Hirschfeld, founder of Precision Legal Services, a Washington-based company that helps law firms gather and produce their clients’ e-mails and electronic communication. Many don’t realize that an e-mail leaves a trail, said Hirschfeld, a former litigation attorney.

“People use e-mail as they used telephones about 10 or 15 years ago,” he said. “They become more

susceptible to saying things that are inappropriate. They feel that it's not going to come up in talk ever again and what they don't realize, is that there's a permanent record."

Stolen E-mails

Innocuous e-mails, such as jokes, can prove to be harmful later on, especially if used as evidence, Hirschfeld said.

"That joke can be taken so far out of context, especially in legal proceedings when lawyers get their hands on it," he said. "People also use terms that sound criminal, but they have no intention of meaning it."

A newer risk is text messages, which are also used increasingly for business purposes, he said.

Mishaps with e-mails aren't confined to business executives. Private e-mails from scientists debating climate change were stolen and posted on the Internet in November. The e-mails showed researchers musing that they may withhold data from critics seeking to discredit their work. Skeptics of man's contribution to global warming cited the e-mails as evidence of a conspiracy to manipulate findings about climate change.

"You would think that with the high-profile cases of the past few years, where e-mails have been the source of great embarrassment, or worse, for high-profile companies and individuals, by now people would have learned," Frenkel said.

'Crap' Investments

At a hearing over the Goldman Sachs case today, Senator Carl Levin asked what Chief Financial Officer David Viniar felt when he read e-mails in which the bank's employees described mortgage-linked securities as "crap" or "shitty."

"I think that's very unfortunate to have on e-mail," Viniar said, drawing laughter from the audience and the press.

"Please don't take that the wrong way," Viniar said when pressed by Levin. "I think that's very unfortunate for anyone to have said that in any form."

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