FRAUD TALK – EPISODE 91

The Man Who Follows and Recovers Money Around the World
In this episode of Fraud Talk, asset recovery lawyer Martin Kenney, CFE, shares stories from his decades-long career in finding money lost to fraud and corruption.

Transcript

**Mandy:** Welcome to Fraud Talk. This is Mandy Moody, the communications manager here at the ACFE. I am excited to be joined by Martin Kenney today. Martin, welcome.

**Martin:** Hello, good afternoon.

**Mandy:** Good afternoon. Martin is actually no stranger to the ACFE. He won the Cressy Award five years ago, I believe, and he is someone who we have always had a lot of respect for with his efforts in asset recovery. I'm going to give a little recap to give listeners a little insight into who you are. One of the world's leading asset recovery lawyers. Ranked number one in asset recovery in the offshore world by Who's Who Legal International for, I think, the third year in a row. The media has called you one of the sharpest fraud busters in the world, and the top international asset chaser. Those are all great introductions.

**Martin:** Thank you. Yes, some people have said some kind things about my work.

**Mandy:** I think our favorite was one of the sharpest fraud busters.

**Martin:** That is directed to my whole team. That was from Wired Magazine, and they were talking about the whole team that I attempt to lead.

**Mandy:** That's true. You've got a whole team in the British Virgin Islands (BVI). Tell our listeners a little bit about you and your team and what you guys do every day.

**Martin:** Well, we represent the interests of the victims of global economic crime in some of the world's most complex and challenging cases. Normally, involving a number of victims, sometimes thousands of people or large companies, or even sovereign governments, when they are visited by some form of dishonest behavior, fraud, breach of fiduciary duty that's dishonest, a complicated scheme to trick people out of their money or to breach their trust. Our job is to try and find assets, which have been stolen from clients, and then gather evidence of the relation between those assets and the wrongdoers or the wrongdoing. And then swoop down suddenly, secretly, with court orders around the world to freeze those assets that we find and have a big row or fight over all of that with the other side and then try and recover and liquidate those assets to cash for our clients.
Mandy: That's a good synopsis. You've been doing this work a long time, but I was curious to know how you initially got started into this and when you first knew that this is what you wanted to do. I bet our listeners can tell that you are a proud Canadian. Tell me how you ended up where you are now?

Martin: Well, I first became a lawyer in British Columbia, Canada in 1984. I had articulated, which means interned. In Canada, you don't have the honor of being a lawyer until you've practiced for a year under the supervision of a senior lawyer. That's called articling — or a doctor might in America, internship. I did my articles with the Ministry of the Attorney General in Victoria, British Columbia. I was taught criminal prosecution work, securities fraud, investigation and injunctive relief to stop bad issuers of securities on the Vancouver Stock Exchange from peddling their rubbish to investors.

I learned about mining leases and oil and gas leases in Northern British Columbia, a lot of different things. I decided to take a job with one of Canada's wealthiest families who'd offered me a job to work in their offices in America. I did that for seven years. I learned an awful lot about corporate law, taxation, financial accounting and the rudiments of commerce, as applied by the legal science, in terms of protecting clients’ interests in very large commercial transactions. I learned how to take a company public on the New York Stock Exchange.

Through that learning, I guess I understood what a $100 billion legitimate revolving line of credit facility may look like because I negotiated or drafted such documents. I think that foundation and learning was important for me as a fraud recovery lawyer because I have an understanding of what a legitimate transaction looks like. By knowing the legitimate, you can more easily detect the flawed, the false, the transactions lacking credibility. It's the facility to juxtapose the honest against the dishonest that allowed me to, I think, become a better fraud lawyer later on in my career when I started doing that work in about 1991.

Mandy: Do you remember a specific case where you got really intrigued by the idea of working fraud cases?

Martin: I have two insights there. One, when I was working for the family office from Canada, on my watch, $400,000 of my employer's money was stolen, under my very nose, through a trick by a fraudster. On my watch, I allowed my employer to lose $400,000. I was a young man, 26 years of age, only a two-year qualified lawyer, and I was tricked. It was a simple fraud of switching bank account formation cards — the mandate cards for opening a bank account — where my employer was asked to put $400,000 of earnest money deposit into a new partnership account.

The partner opposite undertook to open up the bank account on the basis of an account mandate card that he had me sign on behalf of my employer. He signed it in front of me.

What I didn't know is when he left the room, he threw that card away in the trash and then used a new card without my signature on it so that when the partnership account received $400,000 wire transfer from my employer, he just stole the money. It's was a simple fraud, breach of trust. I learned a good lesson that day when I was 26. I was humiliated and ashamed.

Fortunately, my employer understood that these things happen, and they felt partially to blame for having put me in the position of having to deal with someone who they trusted as well. We were both defrauded in a sense. That humiliation I felt was very visceral and carries forward even to me personally to this day in psychological terms. I think that's my first visceral experience with fraud being a victim myself, not me,
per se, but as someone who was the guardian for a victim. I let my guard down, and I caused injury to my employer and it was very sad for me.

I have some empathy or understanding of what victims go through from personal experience. I got hired by an English firm of lawyers after my postgraduate studies from London in '91. They put me in their New York office and all they did was cross-border mitigation so I could apply what I just learned. They did a lot of creditors’ rights for international bankruptcy cases. We acted for some exotic clients. Like most of the major casinos in Atlantic City, in New Jersey and Las Vegas. Whenever large-value gamblers would come from Asia and sign...

In one case, I acted for Donald Trump and one of his three casinos at the time when he challenged a gambler called Mr. Kashiwagi to a game of baccarat one night. Kashiwagi came with six million of cash in a bag, and Trump gave him a $6 million credit terms on a marker. Kashiwagi lost $11.5 million that night. Mr. Trump instructed our firm to enforce the marker — five and a half million dollars outstanding balance on a casino gaming marker in Japan against this very wealthy individual called Akio Kashiwagi, who happened to be the head of the Japanese Yakuza, apparently. I didn't know that at the time. He was murdered in the middle of the case.

The work I was exposed to in New York with this English firm allowed me to apply this new learning I had in a practical way. I ended up working on a major fraud case for a Canadian bank called CIBC and their securities dealer, Wood Gundy, where there was a massive circular check kite in the Bahamas. They were victimized. Well, the actual loss profile in the case wasn't this big, but the total value of the fraud in terms of how the check kite worked was $720 million of false checks written — 1,555 checks over 18 months written by a fraudster in the Bahamas. What he would do is he would play on the float of the check. The institution mistakenly gave him immediate credit for the value of an item that he would deposit in Montreal to support his trading in the stock market. He would deposit a check for $10 million on day one of the kite, and it would take a month for that check to clear at the banking system from Montreal to Buffalo, New York to Miami to Nassau, the Bahamas. In that 30-day period, he would trade on the float, on the concession that he got.

There was no hold placed on the value represented by what turned out to be a false check that had no value supporting it. He would trade on $10 million and he would merchant that up to 20 million. He's at risk 20 million in the stock market on the promise of a check that was worthless. What he would do is on day 25, he would order the securities he was trading to be liquidated, and he may be in gain a couple of million dollars or he may be in loss. No matter that, he would just simply repay the merchant loan. If he was in deficit, he'd write another check. Then he would order that enough money would be wired to his bank account in the Bahamas just in time to cover the value of the false item he'd written 28 or 27 days.

If you write a $10 million false check on day one and you liquidate your stock position on day 25 to cash, you can then, day 26, wire the value of the false item down to the Bahamas just in time electronically for credit just before the piece of paper called the check showed up for presentation and for drawing on the account for payment. He got this down to a science, this fraudster, and he wrote 1,500 false checks, more than 1,500, over an 18-month period totaling $720 billion in false checks, allowing him to take risk in the market to the tune of $1.5 billion of risk.

At any one time, he was down $65 million at one point to was five million. The institution was lucky. My client stopped all of this merry-go-round with the checks when a young analyst got suspicious and convinced his boss in Montreal to bring an end to this special payment concession allowing the kite to
happen. I got engaged by the financial institution to try and recover this five-million-dollar loss they'd suffered through the fraud. It could easily have been 65 million. They just got lucky.

I surrounded the other side with orders, did an investigation initially secretly. I used an investigator who got close to the other side, close enough where the other side started boasting about the fraud and how stupid our client was and how particularly dumb their lawyers were. We provided evidence to the chief justice in the Bahamas, who allowed us a special order called an Anton Piller order, allowing us to enter the premises of the fraudster's home and office in Nassau to execute a private search and seizure order to obtain incriminating documents, or documents that would support our case theory, because they were under threat of destruction, we thought, given his dishonesty.

We also started a racketeering action in New York. We froze assets in New York and in Florida and in the Bahamas. We wrapped him up in so many orders. It was, I guess suffocating, for the defendant. Within about a month's time of fighting, he showed up in Toronto and asked to settle. He agreed to pay all the lost stock plus legal fees that the client had incurred on the condition that they agreed to take me away and “get Kenny off his back.” That was the end of my first major exposure to a cross-border fraud case of some moment.

Mandy: Well, I would consider that successful if a fraudster wants to get you off their back.

Martin: Yes. Sometimes I'm told I'm not a nice person at all. One fraudster's lawyer called me an “international commercial terrorist who practices extortion by court order.” I wore that as a badge of honor, that, if we can get the other side's lawyers that upset, then we're probably doing our jobs adequately.

Mandy: Yeah, definitely. Well, you just mentioned some really interesting cases and I know you've worked for a lot of different types of companies and people. You mentioned working for the Trump casino and I know you've done a lot of work on the recovery efforts with Allen Stanford who is no stranger to us here based in Texas. What do you consider one of your most memorable cases that you've worked on?

Martin: There are quite a few and I think an important one that we're running now is an element of the Stanford International Bank fraud. This involves nontraditional asset recovery. Traditional asset recovery is “go find a bank account in Switzerland, freeze it and recover it.” Just on August 20, for a client from Asia, we froze a 37-meter $15 million superyacht registered here in the BVI in a fraud case. That's traditional asset recovery. Yachts, homes, the mistress' flat on Fifth Avenue in New York, the Swiss bank accounts.

Nontraditional asset recovery involves the identification of third parties facilitating or enabling fraud and crossing a line of legal responsibility from innocence to culpability, or liability, civilly. This continuum of liability can be everything as benign as negligence — meaning when you get into your automobile today, you're not allowed to drive it carelessly into someone else causing them injury. We call that negligence and you can be sued for damages if you were to do that and be careless when you drive a car.

Equally, I like to say if you drive a bank around and you're a banker running a bank and it's foreseeable that you could cause loss to people by allowing fraudsters to use your banking system to steal money or hide money, maybe on some legal systems you can sue the bank for damages or negligently causing people injury as a facilitator or enabler of fraud.
In America, you can't do that. Banks are protected by laws in America, and you have to show that the banker was in on the fraud or had actual knowledge and took over an action in the fraudsters' activities to harm people before you can sue a bank in America in these cases as an enabler of fraud.

In Canada, where I'm from, under the law of Ontario, we're able to do a bank there in the Stanford International Bank fraud case for massive damages. We're suing the bank for five billion U.S. dollars of damages. Why? Because that bank, for 17 years — it's called Toronto Dominion Bank (TD Bank) — provided the most important correspondent banking services to Mr. Stanford’s fraudulently managed bank in Antigua where he, Stanford, took in deposits from 22,000 people, from 141 countries over a long period of time running from 1991 to 2009. The total deposits that went into Mr. Stanford's so-called bank, is about $10 billion.

Now an important part of this case to know or understand is that this offshore paper bank had no master account to the payment system. It had no direct access to Fedwire or CHIPS. No one could send it money, and it couldn’t send money absent access to the payment system in U.S. dollars. The access point that it got that was the most stable and reliable for the fraudsters involved was TD Bank in Toronto. Curiously, a bank in Canada opens up a U.S.-dollar correspondent bank account for an Antiguan offshore bank, at times when Antigua was known in the banking industry to be a very high-risk money laundering center with low banking regulations.

There were red flags flying all over the place, and we say on behalf of the victims that the bank got AML compliance horribly wrong over 18 years and breached their duty of care that reasonable bankers owe to customers in Canada when providing correspondent banking services of this kind. We started that action in 2011, and we fought hard. Now it's 2019. Today, I'm happy to say that we have a three-month trial scheduled to commence on January, I think the 8th, 2021, against the bank. Discoveries have been concluded. We've done our expert reports. They amount to more than 600 pages in length, and we're having a trial and what could well be a bellwether for the future on suing banks and holding them responsible for causing horrible losses to victims of fraud.

That's a nontraditional form of asset recovery in a case where that's vital because traditional asset recovery in Stanford will only fetch in about...So far I think we've recovered for the insolvency estate that we act for in Antigua, $300 million, more or less, of value, and the receiver in Dallas, maybe the net recovery there is $150 million. These folks might get three or four cents on a dollar of loss in traditional asset recovery. In that case, where nontraditional may fetch 30, 40, 50, 60 cents, 70 cents in a dollar, if we’re fortunate in our cases. We brought cases against HSBC, and now soon, another bank in Europe on the same kind of theories that I've described with respect to TD Bank.

Mandy: What advice do you have for our listeners or fraud examiners who are maybe new to this field or working to recover assets, have been doing it for a short amount of time, but faced with those challenges of the statistics you're up against after the fraud has been committed? What would you say to them?

Martin: One, whether the fraud is small or large, you still need to spend a little time on gathering and understanding of the facts, always aspiring to have a 360-degree view of the facts. When a fraud case first comes to you and you don't know anything about it, it's like being in a dark room with no light. You have to feel your way around, spatially see, “How big is the room and where do I start?”

Well, the first thing is to sit the victim down or his representative or her representative, like a lawyer. If the case comes to a fraud examiner, from a lawyer or from a victim directly, you’ve got to sit them down and interview them, and gather the basic documents of the fraud.
Many fraud recovery cases are solved by reading the papers available to us. As I like to say to young fraud lawyers, we have to start by reading the papers at our feet because most cases are solved by simply absorbing and looking critically at the available material. Almost all fraud cases involve money and banking. The first thing is to know, “Where did the victims send their money, to which bank and which company, name or account holder?” We start with that.

Number two, if it's a small fraud... I got a call in 2003 from a victim of a Ponzi scheme.

He was in San Francisco. He said that he’d lost $500,000, which was his life savings. I explained to him that that’s a tough case for me to work on because our model is effective but very expensive and requires critical mass, so I can't really work. My own model is such that I can't help in a case unless it's worth $50 million or more, in terms of losses today. Although we can still give advice and give some coaching, which we do frequently, in smaller dollar value cases, say in the $10 million-plus range. I said to this victim who’d lost a half a million dollars, all his life savings, so to him this was dire, this was absolutely critical that he figure out what could be done to recover.

I said, "Okay, well, do you have $5,000?" He said, "Yes, I have that. I can send that to you." That will give us enough scope to be able to give you some sound advice. For a $5,000 retainer — of course, we spent more than that, but it just got the case going — we discovered quickly that there were another 650 victims. We helped our client to create a website for victims. That attracted victims to him, and he was able to build a team of about 30 people who chipped in, each chipped in small amounts, and that was enough for me to figure out where some money was from the fraud.

What I did was I looked at all of the payments made by the victims that we represented, about 30 people, and we discovered that all their money is being wire transferred to a bank offshore, I guess it was in St. Lucia. The bank was called Bank Caribe, as I recall. That bank was in liquidation and I knew the liquidator.

I ran into him at a conference in Miami, and I said, "Are you the liquidator of this bank offshore?"

"Yes."

"Did you freeze any money when you were appointed as liquidator?"

"Yes."

"How much did you freeze?"

"About $15 million."

"Of that 15 million, are you holding any for this company that stole money from my 30 clients?"

"Oh yes, about $4 million."

There you go. We were able to recover $4 million quickly, and that funded a wild campaign that took us to Singapore, ports all over America, Jamaica, Belize, the Bahamas, the BVI, many places. We took houses and boats and docks and bank accounts, and we stripped the fraudster family clean of every penny they had, through the use of that one technique of pulling victims together into a little group and doing a hop-skip-and-jump routine into an initial recovery, which then funded the rest of the recoveries and the whole case went forward over a number of years thereafter.
Mandy: That's great advice for some of our listeners I know who often deal with the challenge of budget and resources even.

Martin: I guess the moral of that story is you have to start somewhere. Start small and see if you can build up from there, and hit some low-hanging fruit and then use that to fund. Now today we have also options. We have hedge funds that will invest with victims to pay our professional fees in meritorious cases that have a good chance of recovery. Once you build up a file, you can always help the client raise some litigation funding today, investigation funding for these cases. So what looks like the possibility may not be if you just apply yourself a little bit to the facts.

Mandy: I know we've covered a lot and I think our listeners can find a lot of value in just hearing how you have worked these different cases. What do you see in the future, and what do you think we're going to start to deal with in the next two to three years as far as asset recovery and even regulations and who holds that accountability?

Martin: I would say that the trend line is good for people who wish to work in the field of representation of victims to recover assets. We are learning new techniques and new targets. I think the new trend line will be the area of big data. That's going to revolutionize asset finding and asset recovery. I'm working on a case right now for a national government, which was victimized by massive corruption. I'm working with a big data team, which has taken the property ownership records, land title records, company ownership records, directors and officers of companies, ownership records of airplanes, yachts, cars, which are all in the public domain in many countries.

Well, they've taken data from 160 public registries and put it onto a big database. They're able to mine that data, looking for leads between a target in a case and assets that are lying in the open. Of course, usually names are shrouded in some way in secrecy, but this big data can find links. For instance, a fraudster may own a $20 million residence in Miami Beach, Florida in the name of the BVI company. A lot of fraudsters are stupid, and they will subscribe for electricity supply to their mansion that they purchased with stolen money, oftentimes in their own names, with Florida Power and Light.

You can get access potentially to the link between the fraudster paying for their electrical bill in a huge mansion and this house. Now you know the fraudster lives in this house. You would go to the British Virgin Islands, open up a discovery application here secretly, which we can do, and gain evidence that the fraudster owns the company. Then we can swoop down in Florida and try and recover the home as long as it's not a Florida homestead. Well, which we can appear sometimes if we can show that the homestead was acquired with stolen property. Basically, this piecing together information available publicly online in a deliberate and intelligent way in order to find assets, this can be done today on desktop investigations, which all investigators should be doing.

I'm just saying the trend line is that in the future, more and more of us will have access to big data, which will supercharge desktop investigations by exponential bounds and leaps in my view.

Mandy: Yeah, definitely. Well, thank you so much. I feel like I could talk to you for two more hours.

Martin: Well, it's a pleasure and I appreciate the opportunity to speak with you and the members of the ACFE listening. I first became a fraud examiner in 1996. I'm looking at my wall — April 25th, 1996. I share a lot of affection for the ACFE and its members. I think that both the association and its membership do great work for people. Just keep it up, work hard and in a disciplined fashion and win some cases.
Mandy: Yes, thank you. Now, well, the feeling is mutual. We’re very proud to have you in our ranks.

Martin: Okay.

Mandy: All right. Thank you.

Martin: Bye-bye.

Mandy: Thank you to Martin and thank you all for listening today to *Fraud Talk*. This is Mandy Moody, signing off until next time.