

Reprinted from
HARTFORD BUSINESS JOURNAL

November 14, 2011

TALKING POINTS

Game of Monopoly teaches life lessons

By **Stephen A. Pedneault**

There's a lot you can learn about fiduciary relationships from a game of Monopoly.

I found that out recently when I took a look at the rules after being away from the game for many years. The section I found most interesting pertained to "The Banker." The instructions said that the banker should be someone who "will look after the bank and take



charge of auctions. It is important that the banker keeps his personal funds and properties separate from the bank's."

Clearly the instructions establish a fiduciary relationship between the individual chosen to be the banker, the bank and the other players. They also make it clear that keeping the bank's funds separate from the banker's personal funds is a critical part of that relationship. That's a good lesson for anyone engaged in a fiduciary relationship such as administrators of estates, trustees managing assets on behalf of beneficiaries, guardians and conservators.

But, the real lesson comes from what the rules don't include and what that says to anyone with a fiduciary relationship. The rules don't mention the consequences to the banker if he or she co-mingles their personal "funds" with the bank's, or worse, if they inappropriately "borrow" funds from the bank for their own use, providing them an unfair advantage over the other players. The directions also fall short of identifying the consequences to any other player found to be cheating at the game. This would certainly be a great deterrent if they were included. And here's where the game and real life mimic each other.

How about a few additions to the Monopoly rules to make the game much more realistic in today's society and climate? For example, how about something like: "Should the banker be found to have co-mingled

their property and/or funds with those of the bank's, the banker shall forfeit all property and funds in their possession to the bank, and a new player will be assigned the responsibility of the banker for the remainder of the game"? Or, "Should any player be found to have cheated during the game, the player shall forfeit to the bank three times the value of the transaction in which they cheated, if the amount can be determined. If the amount cannot be determined, the player shall forfeit all property and funds to the bank, and be eliminated from the game. The player's pawn will go directly to jail and remain there for the duration of the game as a reminder to all the other players." That should keep the players honest, right?

As a forensic accountant, I often see the negative results when those handling the money for others (like Monopoly's "banker") make improper use of the funds entrusted to them. Most heartbreaking is when family members or friends handing the finances for elderly people play fast and loose with those funds for their own personal gain. And just like in Monopoly, it's not that hard for the "banker" to get away with it.

Here's how that often works: The person obtains durable power of attorney over the individual's affairs. Once granted, the designated individual has full control over the individual's finances, including bank accounts, investment accounts, safe deposit box contents, and all of their other assets. As a fiduciary, this person's role is to act in the best interest of the individual and ultimately their beneficiaries. This means, ensuring the funds are properly maintained and safeguarded from abuse or theft.

Unfortunately, there are some individuals who abuse this responsibility. They co-mingle their own personal funds with the individual's ultimately depleting the individual's funds and assets for their personal gain. Sadly, this often means there is little or nothing left for the individual and their beneficiaries. Worse of all, these crimes often go undetected because there is no recording or reporting of durable power of attorneys

within Connecticut. Sometimes, they will be revealed when a family member or potential beneficiary starts asking questions. But often, they are never revealed at all.

Investigating, proving and resolving embezzlement perpetrated through a fiduciary relationship can prove difficult and costly. Often the records have not been maintained, or worse have been intentionally discarded, requiring subpoenas and court orders to obtain and reconstruct the activity. It is not uncommon for cases to take months if not years to fully determine what occurred, and in many instances, the full extent of the theft can never be determined.

Can measures be taken to reduce the risk of fiduciary theft and embezzlement, as well as increase the rate of detection early in a scheme? Definitely. As a fraud investigator, here's what my experience tells me is the best way to do this: Fiduciaries need to be held accountable to someone, whether it is to the beneficiaries or to a third party. The accountability needs to be periodic in nature and be provided on an ongoing basis. The substance of the accountability needs to reflect transparency in the fiduciary's actions, and include sufficient detail to enable the reader, regardless of who the reader is, to be able to understand and follow along the actions taken by the fiduciary. The fiduciary must also maintain original records, such as bank and investment statements, paid invoices, receipts and other supporting documentation, to be able to provide such documentation when and if needed to substantiate their periodic accountings. In order to ensure these occur, fiduciaries must be informed that these will be required of their fiduciary actions, which will put them on notice from inception that it is their duty to comply with these requirements of any fiduciary.

How can these be accomplished? First and foremost, these requirements of the fiduciary should be spelled on within the documents and/or court orders of appointment,

Continued on next page

 **from previous page**

establishing the expectation of behavior when the fiduciary relationship begins. The documentation should also clearly identify to whom the accountings should be provided, as well as the frequency of the accountings. The documentation should also identify the consequences should the fiduciary not fulfill the requirements, including identifying within which venue a stakeholder could bring an action to either compel the fiduciary to perform, or to remove the fiduciary.

With durable power of attorneys, attorneys in fact, these requirements under the present system could prove to be a challenge. It is my hope that someday in the future a court will be required to approve these fiduciary appointments and oversee any individual's actions acting under the authority of a power of attorney.

And that brings us back to Monopoly.

If there are clear and defined written instructions whenever a fiduciary relationship

is established these could lay the foundation for preventing this kind of abuse. These instructions would include a clear definition of the fiduciary relationship. They would clearly identify that a fiduciary relationship has been established, define exactly what that means, identify the person to whom the individual owes the fiduciary duty, and outline how the fiduciary would perform their duties on behalf of the benefiting individual. And, like Monopoly, there should be an explicit warning that the fiduciary must keep personal funds separate from the individual's funds and property. Included should be a reporting mechanism to account for the fiduciary's actions and activity, as well as the venue and frequency to which the fiduciary needs to report. The documentation should also clearly identify the consequences to the fiduciary in the event the fiduciary does not act in the best interest of the individual, or

worse, inappropriately embezzles funds for personal purposes.

In Monopoly, an unscrupulous banker can spell the end of an evening or a friendship. In life, an unscrupulous fiduciary threatens the health, safety and security of another person. Both situations are sad. The second is dangerous. Neither should be tolerated. ■

Stephen A. Pedneault is the principal and founder of Forensic Accounting Services, LLC, a public accounting firm specializing in fraud investigations, forensic accounting, employee embezzlement, fraud prevention, litigation support services, internal control evaluations, due diligence analysis and various other special projects. He is an author and frequent public speaker on issues related to fraud. Reach him through his website at www.forensicaccountingservices.com.