

A trap for small businesses

Byzantine 'bank structuring' law catches a Md. dairy company in its net

By Walter Olson

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Laws are like fine nets, catching the common fish even as the biggest push their way through. Or so you might think on learning of how federal prosecutors keep nabbing small and medium-size businesspeople who violate an obscure law relating to bank paperwork, even as the best-known violator of the law so far (a certain well-connected politico named [Eliot Spitzer](#)) walks free.

Last month, the feds swooped down on a successful Maryland dairy business, South Mountain Creamery, seizing \$70,000 in its bank accounts and formally charging its owners, Randy and Karen Sowers, with the offense of bank "structuring." Based in [Middletown](#), outside Frederick, South Mountain has thrived as a direct-to-consumer seller at farmer's markets and other food events in Baltimore and elsewhere around the region. That means it does a lot of cash business, which helped get it in trouble. The feds charged last month that Randy Sowers had been arranging bank deposits so as not to put in more than \$10,000 at once, a threshold that triggers the requirement to file paperwork with the feds. There was no allegation that Mr. Sowers was engaged in tax evasion or other underlying illegality, aside from seeking to avoid large deposits.

Few among the general public realize it, but splitting up large bank deposits to avoid the need to file federal reports on them constitutes a criminal offense known as "structuring" under something called the Bank Secrecy Act. The idea is that the reporting requirement helps federal investigators detect some instances of drug money laundering and terrorist finance, and that if a pattern of repeated \$9,000 deposits were not also banned, the law would be too easily evaded. In fact, the feds instruct banks to report suspicious patterns of sub-threshold deposits, and not to warn customers that they are doing so. When the Supreme Court ruled in 1994 that the law would not support a conviction unless defendants knew the practice was illegal, Congress promptly passed a bill striking out the willfulness requirement.

You might think, as with some offenses of "money laundering," that federal prosecutors would refrain from pursuing structuring as a stand-alone charge in the absence of some wider illegality abetted by the deposits, whether it be terrorism or tax evasion. You would be wrong. A 2008 *Forbes* account by Janet Novack cited seizures aimed at a [Manhattan](#) restaurant, a Texas taxi company and an Illinois couple that owned motels. In Maryland, which has become the busiest federal prosecutorial district for structuring charges — coincidentally or not, the assistant U.S. attorney is the author of a book on forfeiture law — the feds last year seized \$90,000 from the bank accounts of a farm stand on the Eastern Shore, and gave back only about half of it after filing no criminal charges.

Do the Maryland federal prosecutors have any reason for their crackdown beyond just to show that they can? It's not clear. And their power to seize bank accounts first and negotiate later gives them the upper hand with most defendants.

What makes this all so infuriating is that in the most famous case so far of knowing structuring of bank deposits, the high-profile offender managed to walk away scot-free. Former New York Gov. Eliot Spitzer, as I have noted in a blog post, "had good reason to be intimately familiar with the bank reports system since he had relied on its output in conducting white-collar investigations, and he was [splitting up transactions] in furtherance of conduct that was itself illegal, as he knew well, having crusaded in favor of longer sentences for 'johns'" as part of his appeal to feminist groups. But as civil libertarian Harvey Silverglate points out, "Spitzer, with the help of a high-powered legal team, was able to convince the Justice Department's lawyers to drop the charges."

Now Mr. Spitzer goes on TV to denounce the federal government's failure to prosecute persons in high places. Maybe they're too busy going after the dairy farmers and motel owners.

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