

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-1727

UNITED STATES OF AMERICA

v.

JOHN W. MEYERS, SR.,
Appellant

On Appeal from the United States District Court
for the Middle District of Pennsylvania
D.C. Criminal No. 99-cr-00142
(Honorable Yvette Kane)

Submitted Pursuant to Third Circuit LAR 34.1(a)
January 15, 2002

Before: SCIRICA, GREENBERG and BRIGHT*, Circuit Judges

(Filed)

*The Honorable Myron H. Bright, United States Circuit Judge for the Eighth Judicial Circuit, sitting by designation.

OPINION OF THE COURT

SCIRICA, Circuit Judge.

This is an appeal from a criminal conviction and sentence.

I.

John Meyers, a failed general contractor, represented himself as an experienced bank debenture trader and the head of RWAI Group, Inc., an "international investment group." Meyers provided potential investors a list of his "clients," all affluent individuals, who had invested "billions of dollars" with him. Meyers told potential clients their investments, like those on the list, would be protected in escrow accounts and by other procedural stratagems, and that he would take no commissions from those sums. Several investors deposited a total of \$1,625,000 in RWAI, with promises of million-dollar returns. Meyers used \$475,000 of this money for personal purchases. Only \$300,000 was invested in bank debenture programs. Some clients lost every dollar invested.

A jury convicted Meyers of all charges in a thirty-seven-count indictment of wire fraud, mail fraud, money laundering, engaging in illegal transactions, and making false statements to the Federal Bureau of Investigation. He was ordered to forfeit \$1.25 million, two automobiles and offshore funds. Meyers was sentenced to 131 months' imprisonment and three years of supervised release. This appeal followed.

II.

The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291.

III.

The District Court permitted the testimony of Gerald Robinson, an attorney who had represented RWAI and Meyers in prior civil litigation. Meyers contends Robinson's testimony violated his attorney-client privilege and the attorney-work-product doctrine. But Robinson testified only to Meyers's prior business practices and history, not "private communications." That Meyers had filed for bankruptcy and been involved in lawsuits were matters of public record. Neither the attorney-client privilege nor the work-product doctrine was implicated in Robinson's testimony. Accord Hickman v. Taylor, 329 U.S. 495, 508 (1947). We review for abuse of discretion. United States v. Console, 13 F.3d 641, 659 (3d Cir. 1993). Robinson's testimony demonstrated Meyers misled potential clients about his past qualifications and experience. Investors detrimentally relied on Meyers's representations. We see no error in admitting Robinson's testimony.

IV.

Prior to trial, the District Court ruled Herbert Biern could testify as an expert of bank debenture programs, but could not testify whether Meyers's investment plan was fraudulent. Meyers suggests Biern "implicitly" violated the order by encouraging an inference that Meyers was guilty. Meyers failed to object, so we review for plain error. United States v. Olano, 507 U.S. 725, 732 (1993). Biern's testimony focused on banking

terminology, the accuracy of representations made about the Federal Reserve Board, and certain documents. It did not "seriously affect[] the fairness, integrity or public reputation of judicial proceedings." Id. (quotation and citation omitted). The Court was well within its sound discretion in allowing this testimony. Cf. Kumho Tire Co. v. Carmichael, 526 U.S. 137, 158 (1999) ("Rule 702 grants the district judge the discretionary authority, reviewable for its abuse, to determine reliability in light of the particular facts and circumstances of the particular case."). We see no error.

V.

Meyers contends the evidence did not demonstrate the offshore trading program he "established" constituted an illegal scheme to defraud, because he honestly believed the program existed. Reviewing the evidence in the light most favorable to the government, United States v. Coyle, 63 F.3d 1239, 1243 (3d Cir. 1995), we find "substantial evidence supports the jury's verdict." United States v. Paramo, 998 F.2d 1212, 1216 (3d Cir. 1993). Witnesses testified Meyers intentionally misled his clients and federal investigators about the offshore trading program. We see no error.

VI.

Meyers claims statements he made to potential investors concerning his financial acumen and his "humanitarian" motives were "puffing," not illegal misrepresentations. Viewing the evidence in the light most favorable to the government, Coyle, 63 F.3d at 1243, Meyers's statements were "material" to his conviction. Several of Meyers's clients

testified his biographical statements influenced their decision to provide him funds for investment. Additionally, the government presented evidence that Meyers had lied to investors and federal agents about the disposition of "invested" funds. These statements, not Meyers's self-aggrandizing biographical boastings, provided sufficient evidence for his convictions of mail and wire fraud. Cf. In re Weinroth, 439 F.2d 787, 787-88 (3d Cir. 1971). We will not disturb the verdict.

VII.

Meyers alleges his sentence was inappropriately enhanced, in violation of Apprendi v. New Jersey, 530 U.S. 466 (2000). We disagree. The jury found the fraudulent scheme involved \$1,250,000. The District Court's calculated loss to RWAI's three joint venture partners (\$400,000) was well within this amount, rendering Apprendi inapplicable. We see no error.

VIII.

For the foregoing reasons we will affirm the judgment of conviction and sentence.¹

¹Meyers filed a Pro Se Supplemental Brief suggesting several additional grounds for reversal, including a "defective indictment" and the purported unconstitutionality of the underlying statutes and sentencing guidelines. We have considered all of Meyers's claims and find them to be without merit.

TO THE CLERK:

Please file the foregoing opinion.

Circuit Judge

DATED:

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JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on January 15, 2002. On consideration whereof, it is now hereby

*The Honorable Myron H. Bright, United States Circuit Judge for the Eighth Judicial Circuit, sitting by designation.

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered March 9, 2001, be, and the same is hereby affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

Clerk

DATED:

March 25, 2002

TO: Marcia M. Waldron, Clerk
FROM: Judge Scirica
RE: United States v. John W. Meyers, Sr.
No. 01-1727
Submitted: January 15, 2002

Dear Marcy:

Please file the attached not precedential opinion which has been cleared in accordance with our procedure. The signed original is being delivered to your office.

Sincerely,

Anthony J. Scirica

AJS/sss

cc (letter only): Judge Greenberg
Judge Bright