

Accounting 520-11
Ethics Paper

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An efficient and free marketplace requires trust, honesty, and integrity. Investors demand these because it allows them to make good decisions, based on accurate and up-to-date information. When investors are given incorrect and time-delayed information, they cannot make the correct decision, which is necessary for fair competition and so that investor's capital is appropriated to the best performing, and most efficient, organization in the industry. Fair competition also mandates that organizations in an industry cannot "secretly collude to restrict trade or commerce" (2). When Incorrect and delayed information is disclosed, and a conspiracy of several or all of the organizations in an industry to establish industry-wide unfair practices, several ethical issues are faced by stakeholders, management involved, accountants involved, and perhaps legal representation acquired.

An example of the first situation was recently reported in the Wall Street Journal in the article entitled, "Bayou Drained Accounts in '04 of \$161 Million". The article covers the recent movement of cash through several bank accounts throughout the United States, Germany, China, and the United Kingdom. The money belonged to investors who gave the "Connecticut hedge-fund firm" the capital expecting a high rate of return on their investment (1). The firm is also accused for "defrauding investors by misrepresenting the value of the fund's assets and reporting fictitious rates of return, as well as creating a phony accounting firm called Richmond-Fairfield Associates that never in fact conducted audits for the fund" (3). McDonald, the author of the article from the Wall Street Journal, mentions the "ethical considerations and concerns" that have been raised in the case, and caused the lawyers representing Bayou's chief executive officer Samuel Israel III and the chief financial officer, Daniel Marino (1). The ethical issues in

this case include the dishonesty of the CEO, reporting false earnings, not reporting the losses the firm was sustaining, not reporting the activities of the fund accurately (what type of investments the fund was in was not reported), and the conspiracy between the CEO and the CFO. The second situation has been reported by the Wall Street Journal as well, and is titled “Did Credit-Card Issuers Collude to Force Arbitration.” In this article, Mollenkamp, the author, ascribes how perhaps credit card companies have worked together to establish unfair practices in the industry, which forces a person when signing up for a credit card to agree to not file class-action law suits against the company and force them into arbitration instead of court. In the end, arbitration is usually much cheaper for the credit-card company than a lawsuit, which often includes the exorbitant legal fees. The ethical issue addressed in the article is the fact that the companies involved have a large market share of the credit-card industry and are working together to establish these unfair practices (2). The Sherman Anti-Trust act established the unlawful activity of organizations getting together, conspiring, or forming a cartel that limits the output, production, or in this case the acceptance of card-holder agreement that includes a mandatory arbitration clause (2). The complaint, filed in federal court in New York City, alleges that the credit-card issuers violated the first section of the Sherman Act, by agreeing within the group of credit-card suppliers, to impose and maintain the arbitration clauses. It also states that the credit-card issuers involved violated Section 1 of the Sherman Act, by collectively refusing to deal with any cardholder who refuses to accept arbitration clauses as a term and condition of their cardholder agreement.

According the text Introduction to Accounting, A user perspective (2nd edition) the authors, Werner and Jones, outline the two types of ethics and personal values. The

first is virtues ethics, sometimes referred to as character ethics, which is derived from the “teachings of Socrates, Plato, and Aristotle” (4). Virtue ethics are established by first identifying the kind of person one wants to be, then determining the virtues and character traits that will direct your actions to be that kind of person (4). This type of approach to ethics is an individualistic approach because your decisions are based on internal virtues. In the first article, involving Bayou, the CEO’s desirable character traits did not include the respect for the value of accurate disclosure to investors. This is an example of one of the problems with virtue ethics, in that people do not always identify the right virtues to base their decisions upon. The CEO, Mr. Isreal, could have identified with trying to be a successful CEO no matter the costs to others as the type of person he wanted to be, and thus he acted in only the best interest of keeping the fund afloat. Following the failure of the fund, the Mr. Isreal and the company try to keep the remaining money in the fund, and shuffle it through several accounts throughout the world, which should be against their virtues, and shows the problem with virtues ethics. In the second article, the credit-card issuing companies that were involved in the “Arbitration Coalition meeting” where the group of companies outlined how to “work together on promoting mandatory arbitration”, are using virtue ethics. The companies’ officials determined that the bottom line is more important than their customers as the kind of company they wanted their respective companies to be. The charter traits based off of that lead the officials to deciding to work together to mandate that all their customers agree to the arbitration clause. The second type of ethics is rules ethics, otherwise referred to as quandary or modern ethics, and “traces its roots to organized religion and law” because it compels all individuals to the same “rules that dictate how to react to given problem” or situations

(4). In the first article, the Mr. Isreal did not act according the rules that stated that he has to accurately report the financial statements to public investors, and decided to instead apply his own virtue ethics, thus deciding to lie to the public (3). In the second article, the credit card companies ignored the rules agreed to by society, written in the Sherman Act that defines monopolistic characteristics, which these companies did not apply to their decision to work together. Both of these ascribe the potential problems with modern ethics, which is because this type of ethics “depends on the individual’s ability to apply the appropriate rule in a given situation and on society’s acceptance of the rules and those who establish them” (4). The problem boils down to the fact that the rules, or character traits they are based upon, are forced upon all people in the society as long as the majority of the people accept the rule. In both articles, people decided to follow their own virtues, in the best interest of themselves and their organizations, and not those set forth by society, which is in the best interest of society.

The stakeholders in both situations involved not only the shareholders and the management that made the decisions that landed the companies in court; but also their customers, competitors, lenders, investors, communities, and society as a whole. In the first article, Bayou’s stakeholders were their investors who gave millions of dollars to the fund in the hope of gaining a large return on their investment, the employees who worked for the hedge fund, other hedge funds that had to compete for investors with Bayou, and the entire market place of current investors and potential investors. The stakeholders for the credit-card companies that are mandating binding arbitration include their officials and employees, stockholders or investors, and most importantly their borrowers or customers.

In defense of the credit card companies and Bayou, their management was following their virtue ethics defined by the desire for the companies to be successful in their industry. The credit card companies also did not intentionally violate section 1 of the Sherman act; they might have had no idea that it applied to what they were doing. Additionally, the companies were simply trying to cover themselves and their shareholders from loss of profit due to lawsuits and legal liabilities. For Bayou, the CEO and CFO were trying to keep the fund afloat, perhaps so when the fund is profitable it can repay its lenders and perhaps generate the return the investors are looking for. Defending the credit card companies would be possible because of their lack of ability to apply the rules to their situation. However, they are knowingly working together to mandate certain principals that could lead to exclusion of customers, directly affected competitors not working with the group, and the customers who were forced to agree to the clause. Because of their intention to force unfair practices upon the consumers as a group of suppliers, defending the credit card companies would be unethical according to some people's virtue ethics, including my own, but doesn't violate any rules ethics. However, some may feel that the companies did not intend to violate the rules in the Sherman act and will be able to ethically represent the companies. For Bayou, it would be very difficult for anyone to be able to ethically defend the actions. When Mr. Isreal and the CFO, Mr. Marino, knowingly reported inaccurate figures on their financial statements, they knew what they were doing was unethical and wrong. According to rules ethics, a lawyer can only defend a person if they disclose all information to the lawyer, which Bayou failed to do (1). Bayou had money scattered in accounts around the globe including money that was unaccounted for, and unless this information was disclosed, a

lawyer would not ethically be able to defend them. It would also violate a lawyers virtue ethics, and my virtue ethics, because the Mr. Isreal and Mr. Marino decided to try to cover it up, hide and not face the consequences of their actions, which they did fully knowing what they were doing was wrong and unethical.

In conclusion, both of these companies failed to follow either type of ethics rules and effectively apply ethics to their decisions. These failures financially hurt many people who trusted these companies to act responsible to their stakeholders and ethically to society. Without the trust of investors, companies will be unable to convince people to give them money in exchange for ownership in the company. Consumers trust companies to act ethically and responsible, ensuring the protection of their rights.

Works Cited

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