

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2104
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

JOHN E. SIGNORELLI,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(H-89-CR-00210-01)

(March 22, 1993)

Before JOLLY DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

John E. Signorelli appeals his conviction for mail fraud, in violation of 18 U.S.C. § 1341. We **AFFIRM**.

I.

Signorelli was chairman of the board and president of Central Mortgage and Trust, Inc. (CMT). In February 1992, following a jury trial, he was adjudged guilty on all 47 counts of mail fraud, involving CMT's marketing an investment program with the false representations that it was free of risk and fully insured and

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

guaranteed by the federal government. Signorelli had testified that, in reliance on the opinions of his lawyers and accountants, the representations were made in good faith; and he had denied that he had any fraudulent intent. He was sentenced, *inter alia*, to five-year imprisonment terms for each count, with four such terms to run consecutively and the rest to run concurrently.

II.

Signorelli moved *in limine* prior to trial to prohibit the government from introducing evidence that he had violated state civil securities registration requirements, but the district court admitted the evidence with limiting instructions. Signorelli's sole contention is that admitting such evidence constituted reversible error. We review evidentiary rulings only for abuse of discretion. ***United States v. Lopez***, 979 F.2d 1024, 1032 (5th Cir. 1992); Fed. R. Evid. 103 (substantial right must be affected).

The evidence complained of concerned correspondence and litigation between CMT and the securities regulatory authorities in Texas and New Mexico. First, Janet Mortenson, a former enforcement attorney with the Texas Securities Board (TSB), testified about a letter from CMT's attorney to the TSB, in which CMT asserted that its offerings were exempt from state registration requirements. Upon Signorelli's objection, the district court instructed the jury:

Ladies and gentlemen, it is not an issue in this case whether CMT should have registered these investments as a security with the State of Texas or with the federal government. Mr. Signorelli is not charged with failing to register them with the state or the federal government.

This is simply information to show you what information was given to this investigator and what Mr. Signorelli said and what she said to him.

Second, the district court admitted an order from New Mexico securities regulators to Signorelli, informing him that because the CMT securities were not insured by the federal government, they were not exempt from state law registration requirements. Again, the court instructed the jury:

Now, it doesn't make any difference in this case about the securities registration. I'm going to admit it only for a very limited purpose, that a letter was sent to CMT stating that in the opinion of the New Mexico authority, this transaction offered by CMT was not government secured and therefore not exempt under New Mexico law.

I'm not admitting it to prove that it wasn't exempt. They might have been wrong in New Mexico, in other words. Just simply to let you see that there is apparently this document sent to CMT telling them that, putting them on notice.

So it's admitted for a limited purpose.

Third, the district court admitted, without objection, a letter from the TSB to CMT's attorney, informing CMT that it was violating the registration provisions of Texas law, and warning it to stop. Upon Signorelli's request, the district court instructed the jury: "Once again, ladies and gentlemen, Mr. Signorelli is not charged with failing to register under the state law. This is just to show the intent".

Fourth, Mortenson testified about notice of a hearing before the state securities commissioner that TSB sent Signorelli, and ensuing litigation in which TSB successfully enjoined Signorelli's operations. After admitting the notice into evidence, the district

court once again instructed the jury: "I'm letting it in just to show what they were telling Mr. Signorelli . . . , not because of what they said was good law or accurate facts. So don't pay that much attention to it except for what was told to Mr. Signorelli . . .". Additionally, it instructed: "The injunction . . . is a civil matter. It's not a criminal matter. So really it's a totally different thing. I think it would be permissible simply to tell what the results of that hearing [were]."

Finally, during closing argument, the prosecutor referred to the various letters between CMT and the state securities authorities, arguing that they refuted Signorelli's claim that he relied on his attorney's advice. In its charge, the district court stated:

During this trial you have heard evidence of certain acts of the defendant which are not charged in the indictment; for example, the failure to file the tax returns or to register securities. You must not consider any of this evidence in deciding if the defendant committed the acts charged in the indictment. However, you may consider this evidence for other, very limited purposes.

If you find beyond a reasonable doubt from other evidence in the case that the defendant did commit the acts charged in the indictment, then you may consider evidence of such other acts allegedly committed on other occasions to determine whether the defendant had the state of mind or intent necessary to commit the crimes charged in the indictment.

These are the limited purposes for which any evidence of such acts may be considered.

This case is governed by *United States v. Kindig*, 854 F.2d 703, 706 (5th Cir. 1988), in which a defendant appealed his conviction for federal banking violations, contending, as does

Signorelli, that the evidence focused on a civil regulatory violation "so much as to bootstrap a civil regulation into a crime". In *Kindig*, the district court twice instructed the jury to consider the potential violations of the civil regulation only as evidence of intent, not as a crime. 854 F.2d at 707 n.1. This court approved the charge, and upheld the conviction.

Here, the district court likewise carefully instructed the jury at every juncture regarding the proper consideration to be given the evidence in issue. That evidence was relevant to whether Signorelli knew that the marketing representations were false. Furthermore, the timing of the various inquiries and responses tended to refute Signorelli's alleged reliance on the advice of his attorney in continuing the scheme. Thus, his compliance with the regulatory requirements was "highly relevant" to the issue of intent. *United States v. Christo*, 614 F.2d 486, 492 n.7 (5th Cir. 1980).

Unlike in *Christo*, 614 F.2d at 491, upon which Signorelli relies, the district court did not instruct the jury that the civil violations could constitute the criminal violation charged. To the contrary, as quoted earlier, it specifically charged the jury *not* to consider the evidence of civil violations in deciding whether Signorelli committed the crimes charged, and instructed the jury to consider that evidence only with respect to Signorelli's state of mind *and* only if it first found from the other evidence that he committed the acts charged. "If the evidence of civil violations is introduced for purposes other than to show criminal

misapplication and the evidence is not presented in such a way that the jury's attention is focused on the civil violations rather than the criminal ones, there is no error". *United States v. Stefan*, 784 F.2d 1093, 1098 (11th Cir. 1986) (followed in *Kindig*, 854 F.2d at 707, and *United States v. Saks*, 964 F.2d 1514, 1523 (5th Cir. 1992)). In sum, the district court did not abuse its discretion in admitting the evidence.

III.

For the foregoing reasons, the conviction is

AFFIRMED.