SPP Guiding Case No. 187: Case of Shen Moumou and Zheng Moumou for Corruption

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Keywords

Corruption; futures trading; abnormal trading indicators; determination of the amount of corruption.

Holding

For a state functionary who, by taking advantage of his or her position, embezzles public funds through the addition of reciprocal trading links in futures trading, such conduct may be lawfully determined to constitute the crime of corruption. During examination, the analysis and argumentation should center on the abnormality of the trading conduct and the connection between the perpetrator's profits and his or her positional convenience. The amount of the crime of corruption may, in light of the specific circumstances of the case, be determined on the basis of the perpetrator's actual profits. At trial, the procuratorial organ may use multimedia methods of presenting evidence and comprehensively employ dynamic process simulation diagrams and mind maps to present the evidence, thereby revealing the criminal conduct and its results and enhancing the effect of prosecution at trial.

Basic Facts

Defendant Shen Moumou, male, former director of the futures department of a state-owned company A.

Defendant Zheng Moumou, male, former deputy director of the futures department of a state-owned company A.

From July 2012 to May 2020, Shen Moumou successively served as trader, temporary person-in-charge, deputy director and director of the futures department of company A. During that period, he was responsible for the day-to-day operation and management of the futures department, participated in formulating company A's futures trading strategy, determined the specific trading prices on the basis of market conditions, and issued futures trading instructions and personally executed the trades. From February 2014 to May 2020, Zheng Moumou successively served as manager, senior manager and deputy director of the futures department of company A, participated in formulating company A's futures trading strategy, and personally executed trades on the relevant futures accounts in accordance with the decision-making instructions.

From July 2015 to May 2020, Shen Moumou and Zheng Moumou, acting in conspiracy, borrowed multiple futures accounts from others and, taking advantage of the aforesaid positions, after learning company A's futures trading strategy in advance, used the borrowed personal accounts to buy or sell, at favorable prices and ahead of time, futures products identical to those in company A's strategy so as to place orders in advance. By adopting methods such as using prices identical or close to company A's order prices, closely connecting the timing of the orders, and using company A's large orders as cover, they carried out reciprocal trading with company A's futures account by buying low and selling high or selling high and buying low, causing the accounts actually controlled by the two of them to obtain a total profit of more than 30 million yuan, which the two defendants divided equally and appropriated as their own.

During the same period, without Zheng Moumou's knowledge, Shen Moumou, taking advantage of his position and using the aforesaid identical method, carried out reciprocal trading with company A's futures account through multiple futures accounts that he borrowed and actually controlled, as well as through his own futures account, personally obtaining a total profit of more than 10 million yuan.

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The case was transferred for prosecution after the supervisory commission of Hongkou District, Shanghai concluded its investigation. On June 23, 2021, the Second Branch of the Shanghai Municipal People's Procuratorate initiated a public prosecution against defendants Shen Moumou and Zheng Moumou for the crime of corruption. On June 29, 2022, the Shanghai No. 2 Intermediate People's Court rendered a first-instance judgment, sentencing Shen Moumou to fixed-term imprisonment of 13 years, deprivation of political rights for three years, and a fine of 4 million yuan for corruption; Zheng Moumou, who had circumstances of voluntary surrender and meritorious service and voluntarily pleaded guilty and accepted punishment, was lawfully entitled to a mitigated penalty, and the court sentenced him to fixed-term imprisonment of five years and a fine of 1 million yuan for corruption. After the first-instance judgment was pronounced, Shen Moumou appealed. The Shanghai High People's Court rejected the appeal and affirmed the original judgment in a second-instance ruling.

Procuratorate Performance of Duties

(1) Examination and prosecution. This case was a new type of duty-related crime in which state assets were embezzled by adding trading links in futures trading. At the examination and prosecution stage, the Second Branch of the Shanghai Municipal People's Procuratorate carried out examination and argumentation centering on ascertaining the facts, understanding the professional knowledge of futures trading, and clarifying the characterization of the conduct.

First, it verified the control and use of the accounts involved, confirming that the reciprocal trading among the accounts involved was all operated by Shen Moumou and Zheng Moumou. The procuratorial organ suggested that the supervisory organ retrieve information on the terminals used for the illegal trading involved and match the MAC addresses (local area network addresses) and IP addresses (Internet protocol addresses); it lawfully seized the computers, mobile phones and other devices involved and conducted appraisal of electronic data, establishing that the MAC addresses and IP addresses of the devices used to log into the personal controlled accounts and the company account overlapped to a large extent and that the accounts involved were controlled and used by the defendants. At the same time, after communication with the supervisory organ, the procuratorial organ conducted supplementary investigation on its own, questioning witnesses such as company A's futures traders and retrieving objective evidence such as WeChat chat data, and cross-comparing the login data and trading data of the futures accounts involved, further excluding the possibility that other persons used the relevant accounts during the period in question.

Second, it conducted data modeling to discover and analyze the true circumstances behind the various categories of abnormal data. By establishing an "abnormal risk-bearing model," a "trading-time-difference model," and a "first-quote ratio and price model," the procuratorial organ ascertained that the trading among the relevant accounts displayed abnormal indicators different from normal futures trading, such as closely connected trading times, an extremely high profit ratio, and a marked increase in the number of trading lots.

Third, it strengthened communication with professional futures institutions to delineate the boundary between normal futures trading and the corrupt conduct of illegally profiting by adding futures trading links. The procuratorial organ studied the rules of futures trading in depth and, together with professionals of the Shanghai Futures Exchange, deliberated on the issues involved in the futures trading of the case and the difficulties in data analysis, jointly resolving key issues such as the analysis and application of basic data, the abnormal characteristics of the trading pattern, and the determination of the method of profit-making.

Fourth, it reasoned through the distinction between the crime of corruption and the crime of abuse of power by personnel of a state-owned company. By taking advantage of the company's trading instructions that they knew in advance and their convenience in executing trades, Shen Moumou and Zheng Moumou used their personally controlled accounts to buy or sell the same futures products ahead of time and subsequently carried out reciprocal trading with the state-owned company to make profits, which increased company A's trading costs; this constituted abuse of power by personnel of a state-owned company. However, the crime of abuse of power by personnel of a state-owned company does not assess the perpetrator's intent and

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conduct of directly appropriating state property as his or her own; moreover, where one act simultaneously constitutes both that crime and the crime of corruption, it is an imaginative joinder of offenses, and punishment should be imposed for the more serious offense. Because the statutory penalty for the crime of corruption is more severe and the crime of corruption can more comprehensively assess the defendants' criminal conduct, criminal liability should be pursued for the crime of corruption.

(2) Charging and proving the crime. To enhance the effect of prosecution at trial, the procuratorial organ innovated its mode of presenting evidence and proving facts, presenting the evidence through charts such as mind maps, trading-structure model diagrams, profit-process schematic diagrams, and trading comparison and analysis tables, thereby intuitively revealing the criminal means, process and results. In response to the arguments raised at trial by the defendants and defense counsel that the conduct was normal futures trading, that no public property was embezzled, and that no loss was caused to the state-owned company, the procuratorial organ conducted targeted rebuttals.

First, the defendants' profiting by adding futures trading links was not normal market trading conduct, and there was a high degree of connection between their duty-related conduct and their trading profits. In terms of the basic trading pattern, after Shen Moumou and others used their positional convenience to learn the state-owned company's relevant trading instructions, they immediately manipulated their personally controlled accounts to establish positions and place orders in advance, and then, within seconds to minutes, operated the company account to place orders and complete trades with the personally controlled accounts, which displayed close temporal connection and consistency in the types of trading. In terms of the number of trading lots, the number of lots traded between the accounts controlled by Shen Moumou and others and the company was markedly higher than that of other entities, with the multiple of the difference in lots reaching 10 to 50 times, displaying abnormality in trading habits. In terms of trading profit and loss, the profit ratio of the accounts controlled by Shen Moumou and others reached over 91%, and some accounts even achieved 100% profit, displaying abnormality in the profit ratio. In terms of the trading counterparties, before Shen Moumou and Zheng Moumou conspired, the accounts controlled by the two of them had almost never traded with the company; after the conspiracy, they began to execute a large number of trades with the company, displaying abnormality in the trading counterparties.

Second, the defendants embezzled the state-owned company's property through futures trading, and the state-owned company suffered actual loss as a result of increased trading costs. Because the company's trading instructions included only the trading object, direction, price range and total number of lots, the defendants, through their personally controlled accounts, first traded with other market entities at more favorable prices and then placed orders to complete trades with their own company by buying low and selling high (the personally controlled accounts buying first and selling later) or selling high and buying low (the personally controlled accounts selling first and buying later). Although this did not violate the operation of the instruction order, it directly caused the company to buy futures contracts at higher prices or sell futures contracts at lower prices, increasing the company's trading costs and causing the benefits that should have belonged to the company to be taken by individuals; this constituted conduct of embezzling the state-owned company's property.

Third, the portion of the defendants' profits obtained by using their personally controlled accounts to conduct reciprocal trading with the company should be determined as the amount of corruption. In this case, after the defendants placed orders in advance through their controlled accounts, the company completed trades with the personal accounts, directly causing the company to pay additional costs in that reciprocal trading; this portion was consistent with the defendants' actual profits, and the amount of corruption should specifically be calculated as the difference obtained by deducting, from the company's trading costs, the trading costs paid by the defendants when they placed orders in advance. In addition, the losses from the trading of the defendants' controlled accounts in this case should not be deducted from the amount of the crime. After the personally controlled accounts placed orders in advance, if, due to a sudden reversal of market conditions,

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the products could not be transferred to the company at the preset profit-making price, trading at the normal market price at that time would necessarily produce relatively large losses. The defendants then operated the company account to "take over" at a price more favorable than the then-current market price and complete trades with the personally controlled accounts, thereby reducing some of the defendants' trading losses. As to the defendants' actual losses, the company's trading costs were not reduced as a result; therefore, the defendants' trading losses constituted criminal costs expended in the course of their illegal profit-making and should not be deducted from the amount of the crime.

Guiding Significance

(1) For a state functionary who, by taking advantage of his or her position, embezzles public funds through the addition of reciprocal trading links in futures trading, such conduct may be lawfully determined to constitute the crime of corruption. After a state functionary uses his or her positional convenience to learn a state-owned company's futures trading instructions in advance, he or she first uses personally controlled accounts to buy or sell futures products and then conducts reciprocal trading with the state-owned company's account. This constitutes the addition of reciprocal trading links in the course of normal futures trading; such conduct directly increases the state-owned company's trading costs, causes the benefits that should belong to the state-owned company to be appropriated by individuals, and there is a criminal-law causal connection between the conduct of adding trading links and the individual's illegal profits. It has the nature of embezzling public property and may be lawfully determined to constitute the crime of corruption.

(2) The amount of corruption committed by using futures trading methods may, in light of the specific circumstances of the case, be determined on the basis of the perpetrator's actual profits, without deducting the losses in trading. Where a perpetrator increases a state-owned company's expenditure costs by adding reciprocal trading links in futures trading and appropriates public property for profit, the amount of the crime of corruption may, when determining it, be calculated on the basis of the perpetrator's actual profits, taking into account the perpetrator's method of profiting, the loss of public property, the causal connection and other circumstances. As to the losses from the perpetrator's trading with the state-owned company, if they were caused by the perpetrator's improper trading or a reversal of the market and the state-owned company's trading costs were not reduced thereby, they may be determined as criminal costs and are not deductible from the amount of the crime.

(3) Given that securities- and futures-related crimes are highly complex and technically specialized, multimedia methods may be used to present evidence and strengthen the effect of proof. Dynamic process simulation diagrams and mind maps may be used to comprehensively reveal the defendant's criminal process and behavioral pattern and to parse the procuratorial organ's logic in charging and proving the crime; trading-structure model diagrams and trading comparison and analysis tables may be used to systematically present the voluminous evidence after summarizing and analyzing it, making abstract and obscure professional concepts and data concrete and visual, thereby effectively enhancing the effect of prosecution at trial.

Relevant Legal Provisions

Criminal Law of the People's Republic of China, Articles 25, 382 and 383.

Criminal Procedure Law of the People's Republic of China (2018 Revision), Article 170.

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