

Asset recovery in fraud: A Spanish example

Héctor Sbert provides an example of the use of insolvency proceedings as an asset recovery tool in a Spanish case featuring FORUM FILATELICO



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In May 2006, the Spanish “Audiencia Nacional” (National Court) started criminal fraud proceedings against the directors of FORUM FILATELICO, S.A., a company established in 1979, offering stamp collections as a profitable investment for consumers.

The criminal case for fraud was built in view of the company’s inability to fulfil its contractual obligations to repurchase from its clients the stamp collections the company had previously sold them. In the frame of such criminal proceedings, the company’s premises were raided and the directors replaced by judicial trustees.

Almost simultaneously, a group of clients started mandatory insolvency proceedings against the company, on the grounds of its inability to buy back their stamps. Thus, in June 2006, Madrid Commercial Court n° 7 started insolvency proceedings against FORUM FILATELICO and appointed its own insolvency trustees.

In view of such a development, the “Audiencia Nacional” immediately revoked its appointment of the (criminal) judicial trustees, thus giving the insolvency trustees green light to exclusively deal with the assets, liabilities and day-to-day management of the bankrupt company, which immediately was put into liquidation.

In this way, the insolvency trustees were entrusted to use the proceeds of the company’s liquidation to compensate the victims of this massive fraud, which affected more than 260,000 customers and added up to a

value of more than 3 billion euros.

For several years now, the insolvency trustees have so far been able to return approximately 25% of their failed investments to those affected. This is not an insignificant percentage, considering the high level of debt and the massive negative net worth of the company, despite it possessing valuable assets, like real estate (in Spain and abroad) and art collections. The most recent payment to victims was made in March 2020.

In this article, we will try to evoke the most interesting milestones of this complex insolvency procedure. Though this text will focus on the case of FORUM FILATELICO, it is also interesting to note that there is another company in the same sector, called AFINSA, which was simultaneously involved in a similar fraud and whose insolvency proceedings have also allowed the victims to recover a substantial part of their money. Recovery efforts continue to this day.¹

FORUM FILATELICO’s “business model”

The company’s “business model” consisted of buying stamps from wholesalers and reselling them in lots to retail customers. To this end, the company entered into three different contracts simultaneously with each customer: a contract for the sale of philatelic lots, a contract for the deposit of the stamps purchased and a commitment to repurchase the stamps. At the expiration of the term established in each contract, the company had to buy

back the stamps, at a price that included a premium or revaluation of the price initially paid by the customer. However, it was soon established by the insolvency court that the company bought and sold the stamps to its customers on the basis of unilaterally drawn up price lists, which bore no relation to the actual market value of the stamps. In fact, the company could not prove that it sold stamps to persons other than its customers at the prices indicated in its catalogues.

A “good ol’” Ponzi scheme

In view of the above, the Spanish insolvency court considered this model a classic Ponzi scheme, since it needed new customers who, with their contributions for the purchase of stamps, could enable the company to pay the agreed revaluations to its old customers.

Although the company pretended the profit came from the revaluation of the stamps, this was not the case. On the one hand, because there was no evidence that the stamps were sold outside the circuit created by the company itself; on the other hand, because the stamps were later valued as being worth much less than what the company claimed, and therefore could not constitute a guarantee of success for the company’s business model.

FORUM FILATELICO had a large commercial network throughout Spain knowing that only by attracting new customers could it maintain its business model. Indeed, the company’s income came almost entirely from



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customer contributions, and it is only with these contributions that it was able to meet the obligations assumed in the philatelic sales contracts.

Therefore, the insolvent company must have been aware of the risk associated with its activity and the possibility that, in the short or medium term, the volume of business would decrease to such an extent that it would be impossible to meet its commitments, which would lead to insolvency.

Misleading accounting

On the other hand, the company's accounts did not reflect this risk. The company never made any provision for the repurchase commitments entered into with its customers, at prices that were overvalued by more than 12 times the usual price in the most solvent market catalogues. The company should thus have recorded in its balance sheet the amounts it had undertaken to repay by accruing the difference between those amounts and the cash received on a time basis, up to the date on which the customer was supposed to use its repurchase rights. These amounts should have been recorded to the income statement of each year. This shows that, at least two years before the bankruptcy was declared, the company should have declared a negative net worth, resulting in its obligation, at that point in time, to either proceed to a capital increase or apply for voluntary insolvency.

Suspicious transactions

In addition, the purchases of stamps were mostly made from companies whose sole customer was FORUM FILATELICO, had no employees, in some cases had been dissolved just after the judicial intervention of FORUM FILATELICO and, in short, did not appear to have any real commercial activity. In the opinion of the insolvency trustees and the Spanish Public Prosecutor's Office, all these suppliers that appeared in



FORUM FILATELICO's accounts as such and to whom enormous sums were paid were not wholesalers, but mere intermediary companies which allowed overpricing and intermediation margins to be charged without any commercial or mercantile justification.

The massive task of liquidating the company's assets and compensating the defrauded customers

Against this backdrop, the relative success that has enabled FORUM FILATELICO's customers to recover a respectable percentage of their investments has been due to the commendable work of the insolvency trustees. They found themselves with assets worth more than one billion euros, although insufficient to cover the company's total debts (mainly consisting, as mentioned above, of claims from defrauded customers).

Nevertheless, the company had assets of undoubted value: a large real estate portfolio, art collections, philatelic lots and a great number of securities

consisting of shares in other both public and private companies, investment funds and financial derivatives.²

Most of the real estate, works of art and stamp collections were sold at auctions held at various houses, including Sotheby's of London. In other cases, given the value of the works of art in question, the Spanish State exercised its right of first refusal.

In short, the results obtained speak well of the professionalism of the insolvency trustees, as well as of the ability of the Spanish insolvency procedure to deal effectively with complex liquidation operations, generating the necessary income to compensate, to the greatest extent possible, the victims of a fraud as massive as it was unprecedented. ■

Footnotes:

- 1 Interestingly, though, the insolvency trustees of AFINSA declared in March 2021 they have not managed to contact 28,320 former customers and have thus deposited 10.6 million euros with the court. If these amounts are not claimed within the next five years, they will be handed over to the Spanish Treasury.
- 2 Ironically, the company's debtors also included the Spanish Tax Agency itself, which religiously paid its dues to the insolvency estate.

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