'More money is taken by pencil than by pistol'

Sunday, August 30, 2009 at 10:45pm

By Ken Whitehouse Nashville City Paper

David Raybin

It has been an eye-opening year for Nashville businesses with companies such as SouthEast Waffles, owners of area Waffle House franchises, and the major law firm of Harwell Howard Hyne Gabbert & Manner PC being stung by revelations that trusted employees absconded with millions of dollars of embezzled funds.

Area Ponzi-scheme operators Gordon Grigg and Michael Park were one thing. They were operating from the outside and trying to sweet talk their way into your wallet.

But the people who took from SouthEast Waffles and H3GM had control of the wallet the whole time, and while the front door was guarded, they took money out the back door. Every year, untold billions of dollars go missing due to white-collar criminals. Nashville defense attorney David Raybin says it is too often a case of the person you most trust being the culprit.

“More money is taken by pencil than pistol,” Raybin said. “You shouldn’t worry about crime in the streets; worry about crime in your suites.”

In addition to cases defending former Williamson County Sheriff Ricky Headley, who faced drug charges, or Dr. Christ Koulis, who was convicted of negligent homicide, Raybin also assists with asset recovery for corporations and small businesses and white-collar criminal matters.

Raybin is in the middle of a white-collar case now representing former SouthEast Waffles CEO Jim Shaub in a lawsuit filed by SunTrust Bank. The bank filed suit stating that Shaub depleted the company's assets for his own use and took part in a $3.7 million check-kiting scheme.

Also named in the suit is Becky Sullivan, longtime chief financial officer of the company. She allegedly floated worthless company checks back and forth between SunTrust and Nashville's FirstBank from late June to August 2008.

The bank blames them both while Shaub has asserted throughout the bankruptcy of SouthEast Waffles that Sullivan alone is responsible for the banking fraud. The courts will settle this one but regardless of who did what, Raybin says that most fraud can be caught early with proper controls.

“Above all else,” Raybin said, “make sure your bookkeeper takes a vacation.”

According to Raybin, fraudulent bookkeepers are constantly covering their tracks and by being in the office no substitute can come in and discover their scheme.

“The ones I have seen are most often discovered when something unexpected happens, like when they have to take sick leave or be out for a family emergency,” he said. “Enforce a vacation audit while they are gone, make sure the bookkeeper isn’t present during the audit because they can manipulate it if they are present.”

While some employers might feel that their longtime bookkeeper is “part of the family” and their “most trusted” employee, it is necessary to look over their shoulder despite your trust Raybin says.

“Background checks on employees who commit these crimes are good but don’t turn anything up that would prevent the person from being hired,” Raybin said. “It is never someone new — it is that employee that has been there a long time and knows the system.

“It starts out self-delusional. The bookkeeper has a sense of entitlement seeing millions of dollars come in and out of a company while they have a $30,000 salary. Most companies can get shaved 10 percent and never know it. If you have a high number of vendors and a high cash flow, then your company is a prime target.”

So how else can one safeguard against fraud and loss? For starters, take out theft insurance. Raybin says he has been astounded through the years how many companies are insured for fire and flood and not theft.

“You can afford a $5,000 deductible, not a $5,000 hit,” he said.

Perform random audits and don’t tell employees what the outside auditors are there for, said Chris Lovin, a CPA and certified fraud examiner (also known as a forensic accountant) with Lattimore, Black, Morgan & Cain. He told The City Paper that he has gone into companies at the request of management looking for fraud, but employees were told that he was looking for “operational control efficiencies.”

According to Lovin, the employees were a great asset in not only identifying legitimate ways to make the company work better but also unwittingly pointed out the weak spots where fraud could and actually had occurred.

Raybin and Lovin agree that proper controls or having more than one person keeping the books are the best way to guard against fraud and embezzlement.

Lovin says that he and other forensic accountants are often called in when management notices a change in an employee's lifestyle. Maybe they bought a car they probably couldn’t afford or embarked on renovating a home inexplicably. If there is suspicion, Lovin says he believes it is in everyone’s best interest to investigate.

“I want to know who makes the check, who signs the check, who reviews that it is for legitimate purposes, and who reconciles the books. All too often it is one person doing all of these tasks,” Lovin said. “If we find something, we get attorneys involved and call the person in. We need to know if there are recoverable assets.”

A few times there are.

Raybin says that in many cases employers don’t want to throw good money after bad as only 15 to 20 percent of the cases he deals with have enough assets to recover the losses.

A certified fraud examiner since 1999, Lovin says that he has only been involved in two cases that resulted in prison sentences and the rest involved employers who declined to prosecute.

For some employers, despite the severity of the crimes against them, Lovin says is difficult for them to see those they trusted get put behind bars.