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## Former MCF treasurer sentenced to 18 months in prison for embezzlement

By Vera Kochan

After countless delays, and nearly two years of waiting for justice to be served, Francis Robert (Bob) Fritzky has been sentenced to 18 months in prison. Following that, he will be placed on supervised release for three years. A restitution hearing is scheduled for Nov. 5.

In early September 2019 the Moraga Community Foundation revealed that Fritzky was suspected of making unauthorized withdrawals as Foundation treasurer, between June 2016 and August 2019, of more than \$330,000 from MCF's bank accounts to himself, to his majority-owned company MedMatRx, LLC and to the Jeanette Fritzky Foundation, which he founded and controlled. Fritzky was also believed to have provided false financial reports to MCF's board of directors.

During an Aug. 21, 2020, court appearance before United States District Judge Jon S. Tigar out of the U.S. District Court, California Northern District (Oakland), Fritzky pleaded guilty to the two felony counts filed against him. Count One: wire fraud and aiding and abetting; and Count Two: making and subscribing a false tax return.

An initial sentencing hearing was scheduled for January 2021 with Fritzky's attorney Randall Luskey of Orrick, Herrington & Sutcliffe, stating that "Mr. Fritzky is working hard right now to earn enough money to be able to commit to a sizable payment plan, and I want to give him as much time as he needs to do that." The Court extended the sentencing hearing twice more when on May 6 it was revealed that Fritzky had acquired a new attorney, Assistant Federal Public Defender Graham Archer, to take over his case. The Court once again granted Fritzky extra time while Archer was caught up to speed on the case and rescheduled another appearance for May 21. The latest delay occurred during a July 30 hearing when Fritzky alleged that he was suffering COVID symptoms and was awaiting test results to either confirm or deny his illness. The Court granted a continuance to an Aug. 27 in-person hearing and ordered Fritzky to present a negative COVID test prior to the proceedings.

In a Victim Impact Statement from MCF to the Court dated April 7, MCF requested that "The 'intended loss' is \$337,786, and for sentencing purposes should be set at no less than \$257,371.70." The larger figure "is the 'gross' amount Mr. Fritzky stole from MCF. The lower \$257,371.70 figure is only arrived at after crediting the defendant for amounts he returned, over the course of the scheme, to cover his tracks." MCF also requested "that the Court order a sentence of not less than 24 months. The relevant factors include the history and characteristics of the defendant, promoting respect for the law, 'deterrence' and the need to impose a 'just' punishment. Application of these factors to Mr. Fritzky - who abused a position of trust in the Moraga community to steal over \$300,000 from a nonprofit, from his neighbors, from his friends - points to a sentence of at least two years."

Prior to Fritzky's July 30 hearing, Graham submitted a Defendant's Supplemental Sentencing Memorandum to the Court. In it he asked the Court to "impose a sentence of 12 months of home incarceration to be followed by three years of supervised release." He also agreed that "there are a number of people in Moraga who are angry with Mr. Fritzky for what he did. Mr. Fritzky acknowledges and understands their anger. He is deeply apologetic for the breach of the community trust, the damage done to the reputation of the Moraga Community Foundation, and the money that remains unreimbursed."

A July 27 Supplemental Impact Statement to the Court from MCF stated, "Mr. Fritzky borrowed and obtained under false pretenses hundreds of thousands of dollars in loans from other Moraga residents in 2018 and 2019. Those loans remain unpaid to this day. The folks who loaned money to Mr. Fritzky trusted him, and he betrayed their trust. Such behavior toward his fellow citizens is the antithesis of selfless and law-abiding conduct." The Statement also pointed out that Fritzky had missed making his \$5,000 per month restitution payments for May, June, and July. The August payment was also unpaid.

During the Aug. 27 sentencing hearing, Fritzky disclosed that a test for COVID determined that he was diagnosed with Long-haul COVID symptoms that could last for weeks or months. The Court asked him whether he was able to go through with the hearing, to which Fritzky replied to the affirmative. Assistant United States Attorney Barbara Valliere pointed out to the Court that Fritzky had created "a profound and pervasive abuse of trust" and that he "has a penchant for dishonesty" when she recommended a sentence of 21 months in prison, three years of supervised release, and restitution.

MCF President Dave Trotter also recommended that Fritzky "serve his time in prison and not home confinement."

Archer reiterated his request for a 12-month home confinement with three years of supervised release, and restitution.

The Court gave Fritzky an opportunity to speak before sentencing was handed down. "I accept responsibility for my actions," he responded. "I have had the opportunity to read about other nonprofit embezzlement cases and understand what was their motivation. I did not do it just to buy more watches, more TVs or homes. The motivation was not to get rich - it was just to try and make it. I ask for your mercy."

Before making a decision, Tigar explained, "This is probably the hardest thing I do in cases - to impose sentencing." The judge brought up the fact that it was clear to him that Fritzky knew what he was doing over the course of several years, and that his crime wasn't just a one-off. The Court noted that Fritzky accepted loans from Moraga citizens and friends totaling more than \$200,000 with the excuse of wanting to buy-out his MedMatRx business partner, of which there was none. The Court also pointed out that Fritzky used donations to the Jeanette Fritzky Foundation as his personal bank account, adding that "This conduct

was long-running and on-going while he was being interviewed by the FBI."

In handing down the sentence of 18 months in prison and three years of supervised release, the Court made several stipulations which included: that Fritzky not hold a fiduciary position; that he must pay restitution (which will be determined at a later hearing); that he cooperates with the IRS to pay tax liabilities; that he not open new lines of credit or incur any debt; that he goes through periodic credit checks; that he is subject to a search clause regarding his phones, computers, etc.; that he cooperates with any drug tests and DNA collections; that he be housed in a facility as close to the San Francisco Bay Area as possible; and that he surrenders of his own accord to the Marshal's office at 5 p.m. on Nov. 8.

United States Pre-Trial Services Officer Katrina Chu asked the Court to impose an electronic monitoring devise on Fritzky as he had not yet surrendered his passport when requested. Fritzky explained that he had informed authorities that it had expired 11 years ago and assumed there was no rush to turn it over. The Court informed Fritzky that he must turn over his passport regardless, and cautioned him that any attempt at flight would not bode well.

In a press release following the sentencing hearing, Trotter stated, "The Moraga Community Foundation thanks the Court and the U.S. Attorney's Office for filing criminal charges against Mr. Fritzky. On balance we believe that justice has been done in this case."

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