

Ex-Outcome Health Execs' Greed Led To \$1B Fraud, Jury Told

By **Celeste Bott**

Law360 (January 30, 2023, 7:52 PM EST) -- Executives of the once-celebrated Chicago tech startup Outcome Health grew it into a company worth billions by lying to lenders and investors, cherry-picking or exaggerating data, and silencing employees who raised concerns, prosecutors told a Chicago federal jury Monday.

Attorneys spent most of the day making opening statements in a \$1 billion criminal fraud trial in Illinois federal court against former Outcome CEO Rishi Shah, former president Shradha Agarwal, and former operational and finance chief Brad Purdy, who face charges of wire fraud, mail fraud and bank fraud. Shah also faces a charge of money laundering, while Purdy is additionally charged with making a false statement to a bank.

After days of jury selection to find jurors able to sit through an estimated 14 weeks of proceedings, prosecutors told them Monday that the trial was about "ambition, greed and fraud."

"At its core, this trial is about lies to get money. And it's about what it took to hide those lies," Kyle Hankey of the U.S. Department of Justice said.

The company, founded in 2006 when Shah and Agarwal were students at Northwestern University, formed around a lucrative idea: build a national network of screens that would play educational content in doctor's offices, with pharmaceutical companies paying millions to get their advertising directly in front of patients visiting their physicians. The idea expanded to putting tablets in exam rooms that patients could interact while waiting for their doctors.

Shah, Agarwal and Purdy caused their company to commit fraud in four main ways, Hankey said. They sold advertising inventory that they didn't truly have to their clients; billed clients for advertising they didn't deliver; lied to banks and investors to raise hundreds of billions of dollars; and lied to keep those stakeholders from finding out what they did, he said.

The execs committed fraud right at the outset by telling clients they had more offices available and a larger network size than they really did, Hankey said. Clients were paying for screens in offices where no screens were present, tablet metrics were inflated to hide their poor performance, and problems compounded when many of the defendants' projections missed the mark by large margins, he said.

At the center of the trial is a witness described by the government as a "willing student" eager to go along with the fraud his mentor, Shah, perpetrated. But the defense characterized the fellow ex-Outcome executive as a "wunderkind" who was the true fraudster, continually lying to Shah about his misconduct while being a "cancer" growing inside the company.

That government witness is Ashik Desai, Outcome's former chief growth officer, who **pled guilty** in December 2019 to wire fraud. Prosecutors said at the time they intended to ask for a significantly reduced prison sentence given Desai's cooperation in their investigation and his forthcoming testimony at his co-defendants' trials.

Nicknamed "mini Rishi," Desai is a former intern who was later hired in 2013 and put in charge of sales to clients at the age of 20. Hankey said he was the perfect fit for the defendants' fraud scheme.

"They trusted him with the dark secrets behind the success of their company. He was their protégé,"

he said. "They found a willing student in Desai, eager to please his new teachers."

The fraud was in full swing several years later, as the company experienced explosive growth but was recording millions in revenue and profit that it didn't actually earn, Hankey said. And they had to scramble to cover up the scheme for Deloitte auditors they needed to sign off on their finances so they could secure even more massive investment, he said.

They ultimately got \$110 million from banks in 2016, and an additional \$375 million from lenders to buy a competitor at the end of that year. The company then got \$487 million from investors in May 2017, including the private investment arms of Goldman Sachs, Google parent Alphabet Inc., and Pritzker Group Venture Capital, founded by billionaire and now Illinois Gov. J.B. Pritzker. By the end of that month, Outcome said it was **valued at \$5 billion**.

But right around the time, new employees hired to keep up with the company's growth began raising concerns about its operations, Hankey said, and the executives couldn't let that stand.

"They threw smoke bombs to hide the fraud. They marginalized or pushed these concerned employees out of the company and lied about why they left," he said, adding that the ex-executives would claim those staffers were "toxic" or didn't fit the culture of the company.

Ultimately the fraud was exposed when an analyst who worked for Desai spilled the beans to the Wall Street Journal, Hankey said. And he told jurors they would be hearing from former Outcome employees — some of whom were directly involved in the fraud and some who attempted to report it — employees of the defrauded clients, and representatives of one of the banks and investors.

But one of Shah's attorneys, John Hueston of Hueston Hennigan LLP, told jurors not to buy the government's narrative. The real story in this case is about a fraud perpetrated by Desai that crushed Shah's American dream, he said.

"He didn't follow any lead of Mr. Shah's. He went in a completely different, illegal direction," Hueston said. "The story you'll hear about Rishi Shah at trial is the story of a young entrepreneur with a dream to try to build a great company. ... The evidence will show his one fatal flaw was putting great trust and responsibility in the one executive who would betray him: Ashik Desai."

Desai, even at his young age, was a celebrated rising tech star in Chicago, the toast of the town, Hueston said.

"He was a little boy genius who was impressing everybody," he said.

Shah wasn't orchestrating the fraud or covering anything up, and he certainly wasn't banishing employees who raised issues with him, Hueston went on. Shah was willing to hear out employees' concerns, and even hired Greenberg Traurig LLP to investigate one such grievance, Hueston said. But the law firm later told Shah that the employee who reported fraud appeared to be fabricating information to get a big settlement payout, Hueston said.

Shah asked questions each time an employee raised concerns over altered or inflated metrics and other issues, but Desai convinced him each and every time that those concerns were unfounded, Hueston said. And along the way, as the company was growing fast, Shah was hiring more and more employees from other major tech companies like Facebook and bringing them into the fold, he said.

"Would a so-called mastermind of fraud hire new top executives to look under the hood and see the fraud? Would a master of fraud meet with these people who have issues and try to get to the bottom of his own fraud? Does that make sense to you?" Hueston asked the jury. "Did Mr. Shah commit errors of judgment? Yes. Did Mr. Shah make mistakes? Did Mr. Shah trust people he shouldn't have? Yes, he did. And he's going to live with that. What he didn't do, the evidence will show, is commit fraud."

Similarly, counsel for Agarwal and Purdy pointed to Desai as the true mastermind of the scheme, arguing their clients acted in good faith in their roles at Outcome.

Agarwal was promoted several times during her tenure before becoming president, but her job

consistently dealt with marketing, human resources, company culture, recruiting and hiring, and the educational content aired in doctors' offices, said one of her attorneys, Alexander Lowder of Larson LLP. She wasn't in charge of finance and accounting, he said.

Agarwal was a proponent of bringing in new analysts and software engineers to improve and streamline systems, and giving people more access to data on performance and inventory, which is inconsistent with someone trying to cover up fraud, Lowder said. And her push for that bore fruit when Desai's scheme was uncovered, he said.

She was not a knowing participant, and failing to uncover a colleague's wrongdoing is not fraud, Lowder said.

Ted Poulos of Cotsirilos Tighe Streicker Poulos & Campbell Ltd., representing Purdy, told jurors that the former CFO never lied to a single client at Outcome.

"Brad Purdy didn't deal with pharma clients. He wasn't in sales. He didn't make any representations about contract delivery or their devices," Poulos said. "Brad Purdy didn't know Desai had cooked up those books."

Hired at 25 with no accounting experience, Purdy in turn hired top talent and experienced professionals to manage the accounting department, who began implementing systems to track the contractual requirements of Outcome, according to Poulos. Purdy made sure the accounting department was interacting with the sales team to make sure they were properly accounting, showing good faith on his part, he said.

"There's no dispute among the parties that fraud was committed. It was Ashik Desai's fraud," Poulos said.

Desai was initially charged by information and slapped with a parallel civil case from the U.S. Securities Exchange Commission in November 2019, but both cases were expanded two weeks later to include claims against Shah, Agarwal and Purdy. Former analysts Kathryn Choi and Oliver Han were also charged and **pled guilty** in a separate criminal case over the alleged fraud.

As a result of its former employees' conduct, Outcome overcharged clients \$6 million in 2015 and more than \$25 million in 2016, the company admitted in a **nonprosecution agreement** it entered with the government. The company has already paid out \$65.4 million to victims of the fraud but set aside \$4.5 million more for other victims pursuant to the nonprosecution agreement.

The government is represented by Kyle Hankey and William Johnston of the DOJ's Criminal Division, and Matthew Madden and Saurish Appleby-Bhattacharjee of the U.S. Attorney's Office for the Northern District of Illinois.

Shah is represented by John Hueston, Karen Ding, Michael Hayes Todisco, Spencer M. Schmider and Vicki Chou of Hueston Hennigan LLP, and Christopher Grohman of Benesch Friedlander Coplan & Aronoff.

Agarwal is represented by Stephen Larson, A. Alexander Lowder and Koren Bell of Larson LLP, and Jodi Garvey, Patrick W. Blegen and Kelsey Hipp Killion of Blegen & Garvey.

Purdy is represented by Theodore Poulos, Eric Pruitt, John Pavletic Jr. and Terence Campbell of Cotsirilos Tighe Streicker Poulos & Campbell Ltd.

The case is U.S.v. Shah, case number 1:19-cr-00864, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Lauraann Wood. Editing by Adam LoBelia.