

'Fake It Till You Make It' Was The Outcome Way, Jury Hears

By **Lauraann Wood**

Law360, Chicago (March 28, 2023, 9:23 PM EDT) -- Three former Outcome Health executives who purposely oversold health advertising to pharmaceutical companies should be convicted for selling the future without ever disclosing to clients that they couldn't meet demands of the present, federal prosecutors told an Illinois jury Tuesday.

In closing arguments, the U.S. government told jury that evidence they heard over nine weeks of trial against former Outcome CEO Rishi Shah, co-founder Shradha Agarwal and financial chief Brad Purdy prove that the company had fostered a "fake it till you make it" culture since its early days in 2013 and only came clean about advertising underdelivery and inaccurate financial analyses when people outside the company grew suspicious about their operations.

Trial evidence proved that Outcome's senior executives lied about the inventory available to air clients' health-related advertising, the number of medical offices in their advertising network, whether clients' purchased ads were running at all, and the value those ads were bringing to both the client and the company, prosecutor William Johnston told the jury. None of those issues, however, were caused by "growing pains" at a then-new company or a rogue employee who was secretly engaging in fraud on his own, as the executives have suggested, Johnston said.

"These practices were the predictable results and conscious choices of the defendants who wanted to grow Outcome as fast as possible without giving up any ownership so they could be the next Google or Facebook, the next hundred-billion-dollar company," he told the jury. "It was 'fake it until you make it.'"

Emails, voice messages and live testimony presented throughout trial have proved that "it was Shah and Agarwal alone who planted the seeds of fraud" during Outcome's early years by encouraging employees to misrepresent important information to clients, such as the network of medical offices with screens and tablets installed to air their advertising, Johnston said. The jury also saw evidence of Shah and Agarwal separately discussing "smoke bombs" the company would throw so those outside the company received a less transparent view of their business practices, he noted.

And while Purdy "may not have been in the trenches of the fraud every single day," emails and other evidence the jury will consider proves "he was just as willing to lie if he thought it was necessary," Johnston said during closings.

The jury will conclude as much when it reviews testimony from and evidence involving Ashik Desai, a former Outcome analyst and sales chief who **has admitted** he committed fraud at Outcome and discussed **his role** in the company's bad practices for more than two weeks during trial, Johnston said.

Beyond his testimony, jurors also saw several emails and other messages in which Desai and former analyst **David Ma** ran inflated numbers past Purdy, who'd simply "shrug" them off and sometimes even use the made-up data in documents for clients, the prosecutor added.

Desai performed some parts of Outcome's fraud without involving other senior managers, such as when he falsified return-on-investment reports Outcome sent to clients, Johnston told the jury. In one instance, when he was confronted over the practice, Desai lied and blamed the inflated numbers on an employee who didn't exist, he said.

Shah, Agarwal and Purdy point to that occurrence to assert that Desai was the root cause of any fraud that happened at Outcome, Johnston said. They've supported that assertion through trial by setting up "this straw-man notion that members of a scheme always share everything with each other and never lie or hide anything," Johnston said.

"You know that's nonsense," he told the jury. "Fraudsters lie, including to each other, and you saw that throughout this trial."

The government is set to finish its closing argument Wednesday morning, and Shah's counsel is expected to deliver his closing afterward. The jury is expected to start deliberating Thursday afternoon.

Each defendant faces wire fraud, mail fraud and bank fraud charges on allegations of growing Outcome into a company worth billions by lying to clients, customers and investors. Shah also faces charges of money laundering, while Purdy is additionally charged with making a false statement to a bank.

The government claims Outcome **lied to clients** about the number of doctors they could advertise to, charged them for advertising that never ran because of lack of equipment, and fabricated return on investment studies to cover their tracks. The company's former executives hid their conduct by sending clients false proof that the company had satisfied its end of the deal, according to the government.

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 Koren Bell, A. Alexander Lowder and Stephen Larson of Larson LLP and Patrick W. Blegen 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 et al., case number 1:19-cr-00864, in the U.S. District Court for the Northern District of Illinois.

--Editing by Linda Voorhis.