

Outcome's Problems Came From 'Fraud Island,' Jury Hears

By **Lauraann Wood**

Law360 (March 29, 2023, 10:48 PM EDT) -- Outcome Health's former CEO shouldn't be convicted of lying about inventory and revenue to grow his health advertising business because the company's problems came from an employee who was operating on a "fraud island" and hiding it from executives, an Illinois jury heard Wednesday.

During the second day of trial closings, an attorney for former Outcome CEO Rishi Shah asserted that the evidence jurors heard over nine weeks of trial unquestionably proves former analyst and sales chief Ashik Desai was the root cause of any material misrepresentations to the company's clients, auditors and investors. Far from a scheme to defraud, the evidence instead proves the lies that prosecutors target in their case are frauds that Desai "invented" himself while keeping Shah and other high-level executives out of the loop, John Hueston of Hueston Hennigan LLP argued.

"This wasn't 'fake it till you make it,'" Hueston said, recalling **the government's closing remarks** from Tuesday. "They were making it until Ashik Desai showed up and started faking it."

Federal prosecutors say Shah, former Outcome co-founder Shradha Agarwal and former financial chief Brad Purdy **lied to clients** about the number of medical offices in their advertising network, 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 has satisfied its end of the deal, according to the government.

But Desai, who was initially charged alongside his former colleagues and **later pled guilty** to wire fraud, testified during trial that he was solely responsible for falsifying Outcome's ROI studies and never learned that bad business practice from anyone else at the company, Hueston told jurors Wednesday. Trial evidence proves Desai limited the knowledge of his ROI fraud to the analysts on his team and never even hinted about it when communicating with Shah, he said.

And while the government asserts Outcome's ROI studies were Desai's only independent fraud, **his cross-examination** during trial proves otherwise, Hueston said. For example, Desai acknowledged that he also began falsely confirming clients' advertising delivery by taking screenshots of clients' ads and using a date and time that made the photo seem recent instead of simply visiting a medical office and taking the photo in real time, according to the attorney.

Desai's so-called screenshot-fraud testimony was "one of those telling moments" during trial because he'd begun the practice when he was still new at Outcome, and he acknowledged that he'd thought to use the screenshots as a shortcut for completing Outcome's delivery confirmation process, Hueston said.

And "when he began using this, it was addictive, like popping pills, because he got results to happen without the work and [it] made him look good," the attorney told the jury.

Desai also acknowledged on the stand that he sometimes used Shah's name without his knowledge in emails to make it seem like the CEO had approved of his approach to a particular report or issue, Hueston noted. But "the ultimate conman" would never include Shah in those emails because that would expose his lies, he told the jury.

The trial has clearly demonstrated that Desai only discussed his frauds with the analysts whom he hired and supervised, Hueston asserted. But many of those analysts even left the company after they grew tired of navigating and working around Desai's lies, he said.

"The only team of fraudsters in this case is the team that Mr. Desai created when he built his analyst group," Hueston told the jury. "The saddest thing you heard [throughout trial] was how he brought young analysts in and corrupted them one, by one, by one."

Hueston is the first of the defendants' counsel to deliver closing arguments, which began Tuesday. With no trial scheduled on Friday, jury deliberations are expected to begin Monday.

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

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. Outcome has already paid out \$65.4 million to victims of the fraud and set aside \$4.5 million more for other victims, pursuant to the agreement.

The government is represented by Kyle Hankey and William Johnston of the U.S. Department of Justice, 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 Covey Son.