



When Keeping It Real (Housewives) Goes Wrong: Lessons from the Jen Shah Prosecution

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On March 30, 2021, the reality television world was rocked by news that Jen Shah, the tempestuous breakout star of the first season of Bravo's newest hit, *The Real Housewives of Salt Lake City* (RHOSLC), was arrested on charges of conspiracy to commit wire fraud and conspiracy to commit money laundering. Recently, the first two minutes of Season 2 of RHOSLC showed the world that Ms. Shah was arrested while cameras were rolling and gave viewers a sneak peak into Ms. Shah's ongoing legal battle.

The authors, who are members of the white-collar defense team at Williams Mullen, are almost as passionate about reality television as the rights of the accused. This isn't the first time a Bravo housewife has been charged in federal court—but Ms. Shah's case to date displays some noteworthy aspects of federal white-collar prosecutions.

Target Letter

In its simplest terms, a target letter is formal notification that the United States Attorney's Office, the prosecuting arm of the Department of Justice, has substantial evidence linking the recipient to criminal activity. Once a target letter is sent, there is a high likelihood that criminal charges will follow.

Generally, the target letter gives some basic details of the crimes the government is investigating but does not necessarily reveal the full scope of the potential case. This pre-indictment notification allows the potential defendant to engage in early resolution discussions with the United States before the details of the investigation, charges or crime are made public.

It is not clear if prosecutors issued a target letter to Ms. Shah. Target letters are more common in relation to economic offenses like the ones with which she has been charged. Even if she had some notice of the government's investigation, however, the news that law enforcement was on its way to her location likely came as a shock, because?

Arrest

White collar defendants often are permitted to report themselves to the courthouse for booking and processing once they've been indicted. This allows defendants to avoid the potential embarrassment of a public arrest and to make arrangements before heading to the courthouse.

Here, news reports indicated²and the RHOSLC premiere showed³that federal agents attempted to arrest Ms. Shah while she was filming with her fellow Housewives and preparing for an out-of-state trip with them. Ms. Shah's castmates appeared shocked by the development. Later, Ms. Shah was apprehended while driving. It's unclear whether federal agents (perhaps mistakenly) believed that she was attempting to flee when boarding a private plane. How agents knew where to look for Ms. Shah on that day looks to feature as a prominent plot point in the upcoming season of the show, and might indicate that another cast member was in communication with law enforcement^[1]

Superseding Indictment

The charging document in Ms. Shah's case is identified as a superseding indictment. In the federal system, a grand jury returns the indictment against a defendant when it has found probable cause that the person has committed the specified offense. The grand jury can amend its charges⁴adding or removing charges, allegations or defendants⁵by returning a new indictment that "supersedes" the previous one.

Here, it appears Ms. Shah's indictment and charges are related to charges filed in November 2019 against 10 other defendants for conspiracy to commit wire fraud on seemingly similar facts. The connection between Ms. Shah and the other defendants, or why Ms. Shah was charged by superseding indictment some sixteen months after the indictment of her co-defendants, is unclear based on the publicly available documents.

Speaking Indictment

The indictment against Ms. Shah is noticeably sparse⁶providing few details of how Ms. Shah allegedly committed the crimes of which she is accused. Granted, Ms. Shah's own description of her marketing and sales lead generation businesses on last season's RHOSLC reunion special was also relatively thin.

An indictment is required to be detailed enough to provide the defendant notice of the charges to prepare a defense. However, the grand jury's accusations of a white-collar defendant are often set out in what is referred to as a "speaking indictment."⁷ This is an indictment that provides, in substantial detail, the government's theory of the defendant's alleged wrongdoing. It may also set forth the defendant's alleged motive or other conclusory statements advocating the government's view of the charges.

Criminal defendants are often frustrated with speaking indictments because they amount to a press release from the government, laying out detailed accusations long before the defendant has an opportunity to present any defenses or respond in any way to the allegations. These types of

indictments may provide sensational content ripe for additional media attention.

On the other hand, detailed allegations by the government can also be helpful to the defense. In cases involving economic crimes, the line between lawful and unlawful behavior is often very thin. Without substantial details of the alleged offense, it can be difficult to understand what the government's theory of wrongdoing is in order to prepare a defense. Sometimes, if the indictment is not detailed enough, the defendant may seek a bill of particulars to require the government to provide more details of the alleged offense.

Here, the allegations against Ms. Shah are relatively scant for a telemarketing fraud scheme. At this time, it is not clear if this is a result of special consideration for Ms. Shah's celebrity status and expected media attention. However, if this is a trend in the Southern District of New York, which often sets the national tone for these types of cases, it would amount to a major sea change.

Bill of Particulars

Ms. Shah's attorney apparently agreed that the indictment's allegations left something to be desired in describing Ms. Shah's allegedly criminal conduct. Ms. Shah made a couple of motions related to her indictment, including a motion for a bill of particulars. A bill of particulars is a written document providing specific details of the charges against the defendant. A bill of particulars is intended to inform the defendant of the precise nature of the charges to ensure that he or she can understand and prepare to defend the charges and avoid unfair surprise at trial, and to prevent a defendant from facing double jeopardy. Ms. Shah's attorney argued the superseding indictment didn't provide enough details of Ms. Shah's allegedly illegal conduct. The Court, however, disagreed in part because the prosecutor agreed to provide information throughout the discovery process.

Investigating Agency

The relative paucity of the factual allegations in the indictment makes it hard to tell exactly what the government's theory is as to Ms. Shah's alleged wrongdoing. Generally, it appears that the government alleges that she, and others, were involved in a telemarketing scheme that sold business consulting and marketing advice to people who had no actual need for those services. The indictment alleges there were "hundreds" of victims, many of whom were over the age of 55. According to the indictment, Shah used encrypted messages, incorporated businesses in other people's names, and instructed proceeds of the scheme to be deposited in offshore accounts.

The investigating agency involved in this case is interesting. Instead of the FBI, which normally has jurisdiction over cybercrime such as telemarketing, Homeland Security Investigations ("HSI") is the noted investigating agency. This may be because the defendants are alleged to have engaged in financial structuring and suspicious overseas transfers of the proceeds.

HSI's lead investigative role may be an indication that the case originally came to law enforcement's attention, not through the victims of the alleged scheme, but through reports of suspicious activity from financial institutions. In other words, the way the scheme's proceeds were being deposited or withdrawn caught law enforcement's, and the banks', attention. It's possible that the suspicious

transfers and offshore deposits led law enforcement to uncover the alleged fraudulent scheme that was generating the money. The old adage of "it's not the crime, it's the cover-up" is often true in economic cases. Here, it might have been an attempt to disguise and abscond with the money (which, like attempted coverups, would itself constitute another crime), and not the fraud itself that unraveled the alleged scheme.

Current Case Status

The case against Ms. Shah is still in its relatively early stages. She has pleaded not guilty to the offenses alleged and has been released pending her trial under certain conditions. The court denied Ms. Shah's requests to dismiss the charges against her. In a recent filing, prosecutors indicated that they believe Ms. Shah is among the most culpable of the defendants charged in this alleged scheme—including individuals who have already been sentenced to six and a half and seven years of imprisonment.

It remains to be seen whether and how the government can prove its allegations against Ms. Shah at the trial scheduled for March 2022—or how much of this legal drama will be featured on her reality show. If her Season 2 tagline—"The only thing I'm guilty of is being Shah-mazing"—is any indication, Ms. Shah will continue vigorously defending these charges. As the case develops, we will be watching more intently than spectators at a Brooks Marks fashion show.

[1] There are any number of ways that law enforcement may have located Ms. Shah on that day. But none of them promises the drama of Housewives accusing each other of being the snitch.

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