



FOLLOW THE MONEY

Kiwis stung in the Evergreen/First Equity scandal, uncovered after the World Trade Center was destroyed, turn to an Auckland-based legal sleuth to recover their funds.

BY ANDREW STOKES

It pays to be flexible in Aucklander Mark van Leewarden's line of business.

"You come to work at nine one morning, that afternoon you're flying to Bangkok," he says. His phone rings at all hours of the night.

He has worked the last two Christmas mornings and he can live out of hotel rooms for weeks at a time.

In many ways, he's an archetype of the global New Zealand businessman, using skilled staff and modern transport and communication links to keep track of a financial world

that doesn't sleep. But there's a twist. Van Leewarden is not so much focused on making money as on finding where it went. He's an investigative barrister, a specialist in corporate fraud.

That flight to Bangkok could involve shadowing a fleeing businessman, who

has left behind a number of unhappy investors, missing millions, and unanswered questions. Not surprisingly, van Leewarden runs into the odd unsavoury character. In some cases, he has had a contract put on him. "People who want to," he pauses to chuckle, "who want to slow you down," he says. "Some of the people you're involved with ... there can be a lot of money involved."

A lot of money can involve a sum such as \$40 million, the amount that New Zealand investors saw disappear in the Evergreen/First Equity scandal, the bizarre financial sting that emerged in the wake of the World Trade Center disaster last year.

It was that affair that brought van Leewarden, who usually operates behind the scenes, briefly to public notice, after he emerged in New York having tracked some of the missing cash to Switzerland. He has been on the hunt for the rest of the cash ever since (another \$70 million), acting on behalf of disgruntled New Zealand and Australian investors.

The ingredients in the Evergreen case are astonishing. Employees of Evergreen in New York called investors around the world, offering enormous returns on trading in foreign exchange. Many prominent people in this part of the world parted with their money, in some cases millions of dollars, as they jumped on the bandwagon. The money was transferred to First Equity, Evergreen's clearing-house.

But, according to court papers, that money was never traded, it was instead funnelled off to accounts in Hungary and elsewhere. Meanwhile, investors kept receiving notification of their burgeoning funds, and even regular gifts embossed with the Evergreen insignia.

It was in the wake of the terrorist attacks on the World Trade Center, in which Evergreen and First Equity had offices, that the ruse was uncovered, as investors sought to recover funds. The firm's head, Russian Andre Kou-dachev, believed to have connections with the Russian Government, fled the country, and certain remaining executives allegedly sought to cover up the conspiracy, according to court papers.

Van Leewarden was first told about the situation on October 5 last year by some burnt Kiwi investors. Three days later he was winging his way to Switzerland, the first stop in a three-week trip following the money trail.

It was by no means his first trip on the road. His job has taken him

through about 15 countries, mainly focusing on northern Europe, the United States, South-East Asia and Pacific Islands.

Speaking in his Auckland office, van Leewarden chooses his words carefully. He doesn't normally do interviews, he says, and refuses to be photographed. A trim man, hair close-cropped, he radiates efficiency and directness. He believes corporate fraud is booming. Like all good entrepreneurs, he's very much switched into the international scene.

"The single most important factor has been the globalisation of fraud," he says. "So where it used to be 10 years ago you would move funds rapidly from one country to another to avoid detection, now the operations themselves are moving to different countries."

Van Leewarden is a former detective who became involved in commercial and private investigations. From there he went to the bar as a barrister in 1992, did some traditional legal practice, then went exclusively into investigative work. He believes that there is no other lawyer in New Zealand and Australia specialising in this kind of investigation.

This has led him and his small staff to co-ordinate international investigations out of New Zealand. It may not be highlighted in any government reports, but investigating corporate fraud could

prosecuting fraud]. It is all down to the private sector."

Van Leewarden says the actions of his firms, whether legal or investigative, should never be inconsistent with what law enforcement agencies are doing. This means getting to know different jurisdictions well and knowing how to be most effective. In some cases it's a matter of dealing with paramilitary-based agencies and cooling your heels while waiting for court orders.

One gets the impression that there's a lot of careful negotiation that goes on to ensure van Leewarden and his team are kept in the loop by such organisations as the US Department of Justice, which is calling the biggest shots in the Evergreen/First Equity investigation.

"The sad thing is, like First Equity ... New Zealanders and Australians think that if something is based in Europe or the States it's somewhat better than New Zealand," van Leewarden says. "In First Equity it was quite well done, many of [the investors] did very careful due diligence on it, invested money and withdrew, sometimes several times, before they made a significant investment."

His firm's activities have also included guarding celebrities and major executives and engaging in counter-espionage activities. As well as surveillance activities, one of his

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be a nice little growth industry.

"We've found from an investigation point of view that the New Zealand detectives and lawyers are well trained," van Leewarden says. "Kiwis are clean and green and can travel the world and people will open their arms. It's proved to be a prime way for us to operate in the global marketplace.

"Each brief is different. You have to deal with circumstances. It can be put together in a particularly complex manner, but the underlying principal is still the same – it's stealing. In the private sector, the client's principal objective is to recover funds, where enforcement bodies are looking for arrests. There is no global entity in terms of government-backed action [in

employees may go undercover to be a willing investor in a suspect scheme. Phone-tapping, which is illegal, is not on the menu.

Van Leewarden nominates Thailand, the Philippines and Malaysia as the most dangerous places to work.

"There have been times I've been worried. In 1990, for a Swiss bank, we were negotiating in Malaysia with a fraud suspect. According to information from the States, there was a million-dollar contract out on him, and that they planned to blow up the place we were staying.

"It's sort of like living in a movie sometimes," van Leewarden admits. "The things you see on the screen are the things that you are doing." ■



POUVOIR JUDICIAIRE

PROCUREUR GÉNÉRAL

Correspondance :
Case postale 3565, 1211 Genève 3
Tél. 319 26 00/01/02

RECOMMANDE

BNP Paribas Private Bank (Suisse) SA
Service juridique
Pl. de Hollande 2
1204 Genève

N/réf : SCJ/lem

Concerne : P/13671/2001

Madame, Monsieur,

Dans le cadre d'une enquête préliminaire menée pour blanchiment d'argent (art. 305bis CP), nous ordonnons la saisie conservatoire des avoirs et valeurs dont **Fondation Exista**, resp. MM. **Gary Farber/Farberov** et **André/Andreï Koudatchev/Koudachev** sont titulaires ou ayants droit économiques auprès de votre établissement, notamment du compte **565 084.5**.

Vous voudrez bien empêcher tout acte de disposition de ces avoirs, nous indiquer le solde du ou des comptes, et nous remettre copie des documents d'ouverture ainsi que des derniers relevés, y compris des éventuels relevés de placements.

Ces mesures, fondées sur l'article 115A CPP Ge, sont destinées à permettre, cas échéant, une confiscation des avoirs.

Vous êtes autorisés à en informer les clients concernés.

Une instruction préparatoire sera requise. Le Juge d'instruction vous indiquera s'il maintient, étend ou lève la saisie. A défaut, la mesure reste en vigueur.

La présente ordonnance peut faire l'objet d'un recours auprès de la Chambre d'accusation, dans les dix jours de sa notification. Vu l'urgence, une copie vous en est transmise par fax. L'original vous parviendra par poste.

En vous remerciant de votre assistance, nous vous prions de croire, Madame, Monsieur, à l'assurance de nos sentiments distingués.

Jean-Bernard SCHMID, Procureur

Free translation of the seizure order of October 11, 2001
from Prosecutor Jean-Bernard Schmidt
to BNP Paribas Private Bank (Suisse) SA

Court of Justice, October 11, 2001

Registered mail
BNP Paribas Private Bank (Suisse) SA
Service juridique
Pl. de Hollande 2
1204 Genève

N/Réf : SCJ/lem

RE : P/13671/2001

Dear Madam, Dear Sir,

Within a preliminary investigation opened for money laundering (art. 305bis of the Swiss Criminal Code), we order the attachment for preservation of the assets and values of which **Foundation Exista**, respectively Mr. **Gary Farber/Farberov** and **André/Andreï Koudatchev/Koudachev** are holders or beneficial owners with your bank, in particular of the account N° 565 084.5.

You shall prevent any act of disposal of these assets, inform us of the balance of the account (s) and transmit us a copy of the documents of the opening of the accounts as well as the last banking statements, including the eventual investment statements.

These measures, based on article 115A CPP G, are meant to enable, if necessary, a confiscation of the assets.

You are authorized to inform the concerned clients.

A preparatory investigation will be requested. The investigating judge will inform you if he maintains, extends or lifts the seizures. Without news from his part, the measure remains in force.

An appeal may be filed against the present order at the Chambre d'accusation within ten days from its notification. Considering the emergency, a copy of it is transmitted to you by telefax. The original will be sent to you by mail.

Thanking you for your assistance, we remain, dear Madam, dear Sir,

Yours very truly,

Jean-Bernard Schmidt, prosecutor