

## United States v. Garth Peterson (E.D.N.Y. 2012)

### Nature of the Business.

Garth Peterson, an American citizen, was a managing director in charge of Morgan Stanley's Real Estate Group's ("MSRE") Shanghai office. Morgan Stanley is a global financial services firm listed on the New York Stock Exchange. Morgan Stanley, through MSRE, created and managed real estate funds for institutional investors and high-net-worth investors.

### Influence to be Obtained.

In the fall of 2004, a Chinese official at Yongye helped to facilitate Morgan Stanley's purchase of a building. To consummate the purchase, MSRE required the consent of the Chinese Official. MSRE obtained this consent, and the Chinese Official further helped MSRE to obtain governmental approvals. In exchange for this assistance, Peterson conspired to circumvent Morgan Stanley's internal controls to transfer a multi-million dollar interest in the Shanghai tower to compensate the Chinese Official. Peterson falsely represented to Morgan Stanley that Yongye was purchasing a real estate interest in the tower, when in fact the interest would be conveyed to a shell company controlled by him, the Chinese Official, and a Canadian lawyer. After Peterson and his co-conspirators falsely represented to Morgan Stanley that Yongye owned the shell company, Morgan Stanley sold the real estate interest in 2006 to the shell company at a discount. In 2006, the real estate interest appreciated significantly, and, as a result, the Chinese Official realized an immediate paper profit of approximately \$2.8 million.

### Enforcement.

On April 25, 2012, Peterson pleaded guilty to a one-count criminal information charging him with conspiring to evade Morgan Stanley's internal controls. Peterson's employer, Morgan Stanley, was not subject to civil or criminal charges. The DOJ noted in its information Morgan Stanley's strong compliance program and the lengths to which Morgan Stanley went to train and remind Peterson of FCPA compliance.

On August 16, 2012, Peterson was sentenced to nine months of incarceration and three-years of supervised release. This sentence was significantly shorter than the 57-71 month range recommended by the Sentencing Guidelines and the 57 months sought by the prosecutors. A civil fine was not imposed because, in a separate civil action, Peterson was ordered to disgorge approximately \$3.82 million. In a separately filed statement, Judge Jack B. Weinstein explained that the sentence reflected the seriousness of the crime and was sufficient, but not greater than necessary, to comply with the purposes of sentencing. Judge Weinstein took into account Peterson's harsh upbringing and then opined that white collar criminals are more easily deterred because they are more likely to weigh the risks against the probability of any gain. Lastly, Judge Weinstein noted that the sentence would send a message that any bribery of foreign officials will result in a substantial prison sentence and significant financial penalties.

### Key Facts

**Citation.** *United States v. Peterson*, No. 12-cr-00224 (E.D.N.Y. 2012).

**Date Filed.** October 15, 2013.

**Country.** China.

**Date of Conduct.** 2004 – 2007.

**Amount of the Value.** Approximately \$2.8 million.

**Amount of Business Related to the Payment.** Not Stated.

**Intermediary.** Shell Entity.

**Foreign Official.** Executive at Shanghai Yongye Enterprise (Group) Co. Ltd. ("Yongye"), a state-owned, limited liability corporation incorporated by the Luwan District government, to operate as the Luwan District government's real estate development arm.

**FCPA Statutory Provision.** Internal Controls.

**Other Statutory Provision.** None.

**Disposition.** Plea Agreement.

**Defendant Jurisdictional Basis.** Employee of Issuer.

**Defendant's Citizenship.** United States.

**Total Sanction.** 9-months Imprisonment; \$3.82 million in Disgorgement.

**Related Enforcement Actions.** None.