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20. ‘We are all going to be rich.’ A Case Study of the Dutch Real Estate Fraud Case

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Introduction

On 27 January 2012, the District Court of Haarlem, the Netherlands, convicted eleven defendants and four companies for their involvement in a case that became known as the biggest fraud trial in Dutch history. This case concerned a large and long-running fraud with offshoots that extended throughout the world of commercial real estate in the Netherlands. Because of these offshoots, the criminal investigation quickly became known as the ‘Klimop’ case (Ivy case). The fraud was committed by a group of employees who held leading positions in semi-public bodies and commercial enterprises in the real estate sector in the Netherlands.

The heart of the fraud consisted of these officials committing fraud during the execution of major construction projects by artificially increasing the invoices and by sending invoices for work which was never actually carried out. In addition, development projects and buildings were traded to investors at a price that was either too high or too low. The profits derived by the perpetrators in this way ended up in the private bank accounts of the perpetrators via intermediaries.

As a consequence, the public investment funds Bouwfonds Real Estate Development (*Bouwfonds Vastgoedontwikkeling*) and Philips Pension Fund (*Stichting Philips Pensioenfonds*) in particular were defrauded for tens of millions of euros.

The District Court of Haarlem sentenced the perpetrators for a range of serious criminal offences, including forgery, bribery, embezzlement, money laundering, and membership of a criminal organization. They were given prison sentences ranging from one to four years and community service orders ranging from 40 hours to 240 hours. Furthermore, several legal entities were sentenced to pay fines ranging between € 10,000 and € 200,000. The prime perpetrator, Mr. Van V. (director of Bouwfonds Real Estate Development), was sentenced to four years of imprisonment.[i] Furthermore, he agreed to a settlement of € 70 million in order to dismiss cases against several of his companies.[ii]

The real estate fraud case received a great deal of media attention. This led to considerable consternation amongst media commentators, politicians, and society in general, as well as within the commercial real estate sector itself, all of whom were incredulous about the size of the case. What amazed people the most was that such a widespread fraud, involving so many perpetrators, could be conducted over a period of almost ten years without anybody finding out about it. The real estate fraud had remained a very well-kept secret for a very long time.

This chapter first describes the nature of this extensive fraud, and the way in which the perpetrators worked together. Secondly, it discusses the circumstances under which the fraud could have continued over a period of almost

ten years. In doing so we will attempt to explain how the real estate fraud was undoubtedly a product of its time and place. In Western Europe, this era – the 1980s and 1990s – was characterized by rapid economic growth, a fervent belief in the blessings of privatization and the power of market forces, and (too) high optimism about the future of the economy. As has subsequently become apparent, the coincidence of these factors was the root cause of the numerous aberrations in international trade and industry that precipitated the credit crunch of 2008. However, the seeds of this crisis were sown during the lengthy period of prosperity that preceded this downturn. During this period, business men in many industries became much more risk tolerant: "we became greedy and this greed was spurred on by the profit motive, the intoxicating and anesthetic effects of success" (Reavis 2009: 5).

Methodology

In the description and analysis of this case, we have used an investigative report that was written about the Klimop case together with several colleagues (Van de Bunt et al. 2011) at the request of the Dutch Public Prosecution Service. We were given access to the complete investigation file. This file contains reports of eight large-scale investigations into fraud in the development and trade of commercial real estate. Due to the large size of this file, we decided to select three of the eight investigations that together provide a good illustration of the real estate fraud case as a whole. The police files were analyzed and summarized using a checklist that was previously used in the Dutch *Organized Crime Monitor* (Kleemans and Van

de Bunt 1999: 20-24). In addition, interviews were conducted with investigative authorities, such as the Public Prosecution Service, the Dutch Fiscal Information and Investigation Service (*Fiscale Inlichtingen- en Opsporingsdienst – FIOD*), the Dutch Tax and Customs Administration (*Belastingdienst*), and with regulatory authorities, such as the Dutch Central Bank *(De Nederlandsche Bank*), the Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*), and the Dutch Financial Supervision Office (*Bureau Financieel Toezicht*). Furthermore, we interviewed several real estate experts, property developers, and other commercial services providers, such as civil-law notaries and valuers. In total 26 respondents were interviewed.[iii]

The Dutch real estate fraud case in a nutshell

This real estate fraud case extended to numerous property development projects and involved a whole range of individuals and organizations. The total criminal investigation file comprised eight different commercial real estate projects and 125 natural persons and legal entities were identified as suspects.

The criminal offences were committed in two different criminal alliances, one related to Bouwfonds Real Estate Development and the other one to Philips Pension Fund. Both were led by Mr. Van V. and in both of the alliances his uncle by marriage, who by no means fulfilled any formal position within the companies involved, but who played a key facilitating role in the fraud. The participants in

the fraud made use of third parties, such as civil-law notaries and valuers, to channel money to private bank accounts or to act as front men.

In the three projects we analyzed, the modus operandi was as follows: On each occasion Bouwfonds Real Estate Development, in the person of Mr. Van V., concluded contracts with the same property developer to build one or more buildings, or to sell an option right on such. A private arrangement was then made with the property developer about the price for which the project would be carried out. The official price that was agreed upon – and thus that was shown in the administration – however, was much higher than the price that had been agreed upon privately. The surplus difference between the two prices was then eventually diverted, via manipulated invoices and an anonymous account of a civil-law notary, to the bank accounts of privately owned companies of the perpetrators involved. These privately owned companies existed in name only, and were simply shell corporations used to conceal the origin of the money and the name of the person who was the ultimate beneficiary of the money.

In several cases, the development of a real estate project was purely fictitious and only existed on paper. For example, Bouwfonds Real Estate Development developed a plan for the construction of an office building with a theatre, an underground car park and residential units in the center of Rotterdam. Bouwfonds, in the person of Mr. Van V. hired a property developer to realise the project and paid the development costs upfront. The plan was ultimately never realized, but the amount of money that was set aside for developing the project,

was still paid out via an intermediary to the fraudsters. They defrauded Bouwfonds, their employer, for roughly € 4,5 million.

In other cases, the perpetrators colluded with each other to either sell existing commercial property at a price that was too low or to purchase it for a price that was too high. These property bundles were then sold on or purchased at their real market value. By way of so-called ‘A-B-C-D transactions’ the 'surplus profit' eventually became part of the equity of the privately owned businesses of the perpetrators. For instance, in one case, Philips Pension Fund wanted to sell an entire property bundle consisting of several office buildings, residential properties, and commercial buildings (shops, leisure). The perpetrators colluded to sell this property bundle for a price unfavorable to Philips, because it was too low. Subsequently, the property bundle was sold on several times in a single day first to legal entities owned by the perpetrators and eventually to a third party. On each occasion the price of the property was increased dramatically, while the size of the property bundle got gradually smaller. Although it is not unusual – and not even illegal – for property to change hands several times in such a short period of time, these transactions were solely and purely conducted by the perpetrators in order to drive up the price of the properties and to sell them for an enormous profit. These transactions enabled the fraudsters to make a profit of around € 68 million at the expense of Philips Pension Fund.

Defining the Dutch Real Estate Fraud Case

How should the Dutch real estate fraud case be characterized? The perpetrators in the real estate fraud case match the definition formulated by Edwin Sutherland for white-collar criminals perfectly. According to Sutherland, white-collar criminals are people of high social standing who commit crimes *'in the course of their occupations'* (1983: 7). The perpetrators had been operating within the commercial real estate sector for many years in a perfectly legal and successful way. The perpetrators then used their position of trust to enrich themselves at the cost of the organizations they worked for.

Nonetheless, there are also certain similarities with the definition of organized crime: the criminal affiliations between the perpetrators were primarily aimed at achieving illegal profits, their 'conspiracy' resulted in serious social harm, and – as will become clear – they were relatively successful in concealing their illegal activities from the outside world by making use of corruption and by misusing legal entities. There is however a significant difference with the traditional forms of organized crime. Traditional organized crime is primarily aimed at illegal markets. The property fraudsters in this case, on the other hand, were active in a legal sector, and almost all of them also had normal, legal occupations. Furthermore, traditional organized crime often has 'symbiotic' relationships with legal sectors and markets (Kleemans, Van den Berg and Van de Bunt 1998: 61 et seq.). Yet, in the real estate fraud case, there was a closely interwoven relationship between their legal and illegal activities. In fact, the perpetrators were highly respected legal actors in the world of commercial real estate. They committed their crimes by making use of the powers, expertise, and

contacts they had acquired during the performance of their occupations. Their illegal activities were embedded in the social world of commercial real estate in the Netherlands (Kleemans and Van de Bunt 1999; Van de Bunt, Siegel and Zaitch 2014).

In summary, the Dutch real estate fraud case comprised various projects, in connection with which several actors from different organizations worked together to siphon off money from commercial transactions. Because of their positions within these organizations, they had the power to take decisions, set prices, and misuse the money of the companies they worked for, for their own private gain. On the face of it, they were working in a professional capacity in the interests of their respective organizations, but in reality they were participating in manipulated transactions with the aim of deriving personal profits for themselves or others.

In this chapter, we will discuss the three most notable circumstances that played a role in the inception and evolution of the real estate fraud case. In the following section we will first look at the rapid economic growth that many West European countries experienced in the 1980s and 1990s. This development created a fertile breeding ground so to speak for the fraud. Thereafter, we will look at the internal organization and the internal and external regulation of the two key businesses where the fraud took place: Bouwfonds Real Estate Development and Philips Pension Fund. Finally, we will look at the culture within the commercial real

estate sector and the social relationships between the perpetrators, and the way in which these relationships created an opportunity for the fraud to be committed.

Unrestrained pursuit of profit and belief in the power of market forces

According to Hansen and Mohavedi (2010: 367), one of the most popular explanations of the contemporary financial crisis is personal greed: 'a 'selfish' pursuit of 'self-interest' that has no recognition of others at its boundaries or limits and involves no connection between satisfaction and further pursuit of attainment.' We are doubtful that this pursuit of personal greed provides the key to understanding the full nature of the real estate fraud case. The perpetrators of the real estate fraud were undoubtedly greedy, but that alone is not sufficient for a complete understanding of how the real estate fraud could have become so extensive and lasted so long. Greed is nothing new, and normally it is counterbalanced by social norms, such as criminal codes, professional disciplinary codes, and codes of conduct.

The French sociologist Emile Durkheim, on the other hand, would probably characterize the real estate fraud case as an example of anomie. Anomie (literally: normlessness) occurs when existing, traditional ethics and legal standards lose their authority because they do not keep pace with major, rapid changes taking place in society. The traditional standards therefore no longer effectively regulate the behavior of people and organizations. According to Durkheim, people and organizations then engage in an unrestrained pursuit of

their ambitions or personal gain (Durkheim 1997 [1893]). Their greed becomes excessive because there are no longer any rules that set boundaries for the insatiable human desires. Durkheim therefore attaches a great deal of value to the reinforcement of ethical standards (professional disciplinary codes, codes of conduct, etc.) as a way of regulating deviant behaviour (Hendry 2001; Bernburg 2002).

The world of commercial real estate in the Netherlands was going through a major transformation when the real estate fraud took place. The developments in this sector can only be understood against the background of the major international economic developments of the preceding decades. The rapid economic growth of the 1980s and 1990s strengthened the belief in the positive influence of privatization and the power of market forces. It was at this time that in the Netherlands public utilities, such as energy companies, postal services, and water companies, were privatized based on the assumption that competition was the best way to guarantee high quality and low prices. There was great optimism about the future of the economy and economic prosperity in the European Union. Banks were eager to lend money to private individuals and businesses and to provide mortgages for property acquisitions (Kuiper 2014).

The commercial property sector in the Netherlands was right at the heart of these developments. Enormous sums of money were involved in the transactions between property developers, construction companies, contracting authorities, and investors. Nelen and Ritzen (2012: 225) show that the amount of money invested in the Dutch real estate market has more than doubled from € 27

billion in 1994 to € 58,3 billion in 2009. These numbers correspond to the increase in real estate investments on a global level, as Brounen indicates (2008: 11-12). Furthermore, the return on investment was also enormous. Basically, everything seemed to make a profit, and the sky was the limit. And then came the credit crunch, first in the USA and later in the EU, with all the associated negative consequences for trade and industry and for ordinary citizens.

Bouwfonds Real Estate Development had been able to ride on the waves of privatization, and had evolved from a public service into a privately owned and market orientated enterprise. Bouwfonds was set up, namely, as a public service to help Dutch municipalities develop and build homes for 'ordinary people'. The organization was founded in 1946 specifically for the purpose of increasing the level of home ownership amongst the Dutch population. Bouwfonds built family homes, which were then rented or sold at affordable prices. At the end of the 1980s, the executive board of Bouwfonds decided it was time for a radical change of direction. It decided to transform Bouwfonds from a public service into a commercial enterprise (Linker 2006: 88). As part of this process, Bouwfonds started buying and selling commercial property, such as office buildings and shopping malls. Bouwfonds shifted its focus away from low-cost residential housing towards the more lucrative sector of commercial real estate. The number of municipalities involved in Bouwfonds gradually declined, and the company formed an alliance with banks (Van Enk and Hentenaar 2000; De Wit 2001).

In an interview with the former CEO of Bouwfonds in a popular real estate trade magazine in 2001, he provides a very succinct explanation for how the emphasis had come to be placed on making profit instead of the fulfillment of the original social function:

> ‘All that nonsense about social commitment we had in the past… I am not saying social commitment is nonsense in itself, but the way in which this concept was applied for our business definitely was. (...). That is not the aim of any business. The aim of a business is to make money.’
> (Crone and Mulder 2001).

The people at the top were convinced that the commercialization of Bouwfonds would have a positive effect. Numerous articles appeared in various national newspapers which provide a clear picture of the ambitions of the Bouwfonds: Bouwfonds needed to make a profit, become the market leader in real estate in the Netherlands, and become a leading real estate developer in Europe (De Volkskrant 1999; Het Financieel Dagblad 1999; Rooijakkers 2003: 35). Because Bouwfonds thought it would not be possible for it to achieve this transformation with its existing personnel, an expert was brought in from outside: in September 1995 Bouwfonds took over the business of Mr. Van V, who would later become the central figure in the real estate fraud case. Mr. Van V. was appointed as the director of Bouwfonds’ newly-founded Real Estate Development department, and was assigned the task of developing commercial real estate. There were very high

expectations for this new department, and Van V. was given a mandate to achieve the commercial ambitions of Bouwfonds.

The tone of the advertisements of Bouwfonds provides a good characterization of the prevailing *Zeitgeist*. These advertisements contained very few words, but they were very evocative. For example, one advertisement has a photograph of a tall building with the logo and the name of Bouwfonds on it, followed by just three words: *room for pioneers*. Ironically, this particular building was never actually built, but the message was clear nonetheless: Bouwfonds was aiming to put itself on the map in the commercial real estate market in a big way. In another advertisement placed by Bouwfonds in newspapers and magazines, there was a subtle abandonment of the traditional, social principles of the company:

> New philosophies. New theories. New standards. New values. This calls for vision. For an understanding of those changes. And room for success.

Although these words are very vague, it was a clear statement of intent by Bouwfonds that it was planning to seize the opportunities that were there for the taking in this 'new' age. No effort or expense was spared when it came to announcing this new mentality to the outside world. For example, Bouwfonds invested considerably in customer relation management, which involved amongst other things the acquisition of a pleasure cruiser and a hot air balloon for the entertainment of business partners (Van der Boon and Van der Marel 2009: 181).

Deficient oversight and internal control: room for the pursuit of (personal) ambition

In order to achieve these lofty ambitions, the executive management felt it was necessary to dispense with the numerous, outdated rules and traditional forms of oversight and control**.** This was just another feature of the prevailing *Zeitgeist*. A lack of internal control gradually became to be seen as 'normal' in the 1980s and 1990s. The discussion about corporate governance was mainly centered around the question of what type of relationship should exist between organizations and businesses on the one side, and the regulatory authorities on the other. The question of how integrity had to be monitored and how regulatory supervision had to be carried out *within* an organization was overshadowed by the predominantly ideological nature of the discussion concerning the regulatory supervision of commercial enterprises by the government. During this economic boom, wherever possible, regulation was placed in the hands of the private sector. 'Deregulation' and 'self-regulation' were supposed to take the place of 'command and control' by the government (Shover 2008; Shover and Cullen 2008). Consequently, people working for real estate companies and investment funds often had a great deal of discretionary freedom. The infamous cases of so-called 'rogue traders', such as Nick Leeson (Barings Bank) and Jérôme Kerviel (Société Générale), show just how much independence and autonomy individual employees had and just how inadequate the internal, organizational supervision was of such individuals

(Grener, 2006; Krawiec 2009; Wexler 2010; Gilligan 2011; Canac and Dykman 2011). Despite the fact such practices put the continued existence of the companies they worked for in jeopardy, these traders were hardly bound by any instructions and rules in relation to accountability.

There was also very little regulation and control of the practices of the fraudsters in the real estate fraud case. Our analysis showed that the former business of Van V. was never actually integrated within Bouwfonds after it was taken over by Bouwfonds. Instead it continued to function as a separate business unit. This unit had an autonomous role within Bouwfonds, and in practice Van V. behaved as if he was still running an independent enterprise. A forensic investigation carried out by PricewaterhouseCoopers after the full extent of the real estate fraud became known, revealed the following:

> 'The impression that is formed now, afterwards, is that nothing changed for the business of Van V. The integration of this type of external organization (...) requires a robust executive board that wants to integrate that organization, and an organization that will allow itself to be integrated. There was no convincing evidence of either in this case.'

(PricewaterhouseCoopers 2008: 7)[iv]

For all intents and purposes, the business of Van V. remained intact, and in practice Bouwfonds' Executive Board had very little influence over its new business unit.

The new Real Estate Development department also had a mysterious reputation within Bouwfonds. The department was jokingly referred to by insiders as the 'Villa Van V'. When Van V. joined Bouwfonds, he took several of his former employees with him, who were installed in key positions. The other employees of the Real Estate Development department were then recruited by the Van V. clique. This created a closed circle within the department itself. For example, Van V. generally discussed matters one-on-one, instead of with the whole department, so he was able to control which information was disclosed to whom.

In addition, there were insufficient checks and balances within both Bouwfonds and Philips Pension Fund to control and regulate the behavior of the people involved. As an executive director, Van V. had considerable discretionary powers. For example, for a long time he was able to, more or less independently, sell real estate via obscure, private procedures. Only in 2006 was a limit set for private sales and tendering procedures made compulsory for transactions that exceeded € 50 million. The principal perpetrators in the real estate fraud case held executive positions within Bouwfonds and Philips Pension Fund. This gave them a decisive vote when it came to making decisions about the purchase or sale of (bundles of) real estate. In practice, they generally conducted the crucial discussions and negotiations with business partners on their own.

The influence and control of the Executive Board of Bouwfonds was also relatively weak in practice. The CEO of Bouwfonds, who was responsible for the supervision within Bouwfonds Real Estate Development, had personally

appointed Mr. Van V. and consequently gave him a great deal of operational freedom. A witness testified, for example, that the Executive Board had never refused a proposal made by Van V. There were also dual positions within the organization, so that some directors – such as the aforementioned CEO – were also members of the Supervisory Board, which in effect meant that they were charged with the supervision of their own conduct. The members of the Executive Board were moreover found to have insufficient expertise in the field of commercial real estate to be able to offer adequate resistance. Consequently, the CEO of Bouwfonds, who was eventually sentenced to serve 240 hours of community service, had a free hand when it came to taking decisions about real estate transactions.

Furthermore, Van V. and his staff were known within Bouwfonds as the experts in the field of commercial real estate, and they thus had considerable freedom in the planning and execution of their work. At the end of the day, Van V. had been given the task of elevating the status of the entire organization. Other employees who had to sign documents and contracts, such as the other directors and controllers, relied heavily on the judgment and expertise of the aforementioned key figures. The situation was exactly the same within Philips Pension Fund. The people who were given responsibility for investments in real estate were trusted implicitly by the other Philips employees:

> ‘I trusted the knowledge and expertise of those people, and I had no reason whatsoever to doubt their reliability and integrity.’

(Van de Bunt et al. 2011: 38)

It is precisely this trust that was placed in these new arrivals that illustrates the incompetency of the 'old' guard. The investigation of PricewaterhouseCoopers cited above found that Bouwfonds had very little executive control over the new department of Van V. due to its limited knowledge of commercial real estate business practices:

> 'Looking back, the organization of Bouwfonds that existed at that time didn't know what hit them. When they took over Van V. Vastgoed BV, they took on board an organization that developed projects of an enormous size, that operated extremely autonomously, and which moreover appeared at face value to be very profitable. (...) The sums of money, the scale of the operations, the markets, and the business practices were totally alien to the existing Bouwfonds setup.'
>
> (PricewaterhouseCoopers 2008: 8)

The above report describes a situation where the traditional Bouwfonds organization lost oversight and control over the new department. The people involved in the fraud were therefore able to operate in an informal and unorthodox way in relative freedom. This was possible because there were either very few or only vague guidelines for their work, and because there were only very general parameters set for the approval of real estate transactions, the limits for buying

and selling, the delineation of tasks and responsibilities, and the requirement of accountability.

At the same time, there was a lack of any effective internal platform for criticism by employees within these organizations. In some cases, when employees expressed a critical viewpoint about the state of affairs surrounding the development and trading of commercial real estate, this criticism was either ignored or they were maneuvered out of the way. This situation was allowed to continue because one of the perpetrators actually held the position of compliance officer for a long period of time. No critical questions were asked, which would have gone against the prevailing *Zeitgeist* and the ambition of achieving growth. As a result of this freedom, Van V. and his clique thought they were untouchable: '*anything goes'* (Van de Bunt et al. 2011: 36).

Sometimes the perpetrators used bribes to silence any criticism or to circumvent control. For example, the criminal investigation discovered that the CEO of Bouwfonds readily accepted the expensive gifts that were offered by Van V. This effectively placed the CEO in the hands of Van V. Several other executive directors turned a blind eye in exchange for a share in the 'surplus profits' or for expensive gifts.

In conclusion, although Bouwfonds had set itself very high ambitions, it paid very little attention to the question of how these ambitions were to be achieved in practice, or the ethical standards and practices that needed to be introduced to replace the old ones. The CEO of Bouwfonds played a significant role in the creation of a situation of anomie because he failed to explicitly define

the ethical standards and practices that Van V. and his staff had to comply with during the realization of their ambitions. In other words, he allowed the organization to accelerate to top speed without bothering to check if the brakes worked first.

Big ambitions, but very little transparency and accountability

The performance of effective regulation in the commercial real estate sector is impeded by the fact that the valuation of property and the reporting of financial transactions are relatively poorly developed. The business practices in some areas of the real estate sector appear to be very informal and are difficult to reconstruct. For example, it is evident that crucial decisions concerning the purchase or sale of real estate were only set out on paper or accounted for in a very summary way. Reference was made several times in our interviews to the proverbial 'beer mat' in order to illustrate how decisions and agreements were put down on paper or accounted for in a very sketchy way. Systems have naturally been developed in order to measure the value of commercial property and to measure the return on investment in real estate. For example, one of our respondents formulated an international benchmark for institutional investors. This enabled these investors to make quarterly comparisons between the return on investment for different projects, and to make sure that market-conform prices were being applied when property objects were being bought or sold (IVBN 2008). Nonetheless, the valuers and property developers we interviewed made it clear in a variety of ways that any

attempt to make property valuations more transparent has very little chance of success. One property developer made the following point:

> ‘An inherent characteristic of the property market is that prices are so difficult to quantify. It's not an objective process: it’s not something you can work out with a calculator; the price depends on so many different variables.’
>
> (Van de Bunt et al. 2011: 54)

The value of property can therefore change from one moment to the next depending on a range of different factors and circumstances. In the literature (Unger et al. 2010) and in the interviews, constant reference was made to the ‘heterogeneity', and even the 'unicity', of commercial real estate and thus the value of such.

One respondent put it this way:

> ‘Every single building or piece of land is different, which makes a meaningful price comparison very difficult. You never really know exactly what factors have influenced the setting of the different prices.’
>
> (Van de Bunt et al. 2011: 54)

This process becomes even less transparent when several unique buildings are clustered together in large property portfolios. However, within the world of commercial real estate in the Netherlands this type of complication is not seen as much of a problem. It is this lack of hard criteria for the setting of property prices that allows the parties involved to negotiate 'a good price'. And it is precisely this lack of transparency about the calculation of 'the right price' that enables insiders to make a profit on property transactions. One valuer who was interviewed acknowledged that the valuation of commercial property is not based on mathematical formulas alone:

> ‘Every firm of valuers has its own calculation model, but the fact is that these do not determine the ultimate price; you set the price yourself.’
> (Van de Bunt et al. 2011: 55)

The real estate fraud case has shown that the lack of transparency in property valuation also creates opportunities for fraudulent practices: how can you prove, namely, that Philips Pension Fund sold real estate at a price that was too low?

The role of facilitators

In addition to the deficient organization of internal supervision within Bouwfonds and Philips Pension Fund, business services providers also played a facilitating role in the real estate fraud, in particular civil-law notaries. Civil-law notaries are closely involved in real estate transactions on account of their statutory task, and

they form an essential link in the chain of property sales and transactions. They consequently play both an important supporting and controlling role (Nelen and Lankhorst 2008).

In the real estate fraud case, one civil-law notary in particular played a major facilitating role in the perpetration of the fraud. He made a numbered account available for the holding and concealment of the 'surplus profits', and participated in A-B-C-D transactions to significantly manipulate the value of the property. This civil-law notary was eventually sentenced to 5 months imprisonment for his part in the real estate fraud case. He was also struck off the register of civil-law notaries by the disciplinary court. Another civil-law notary, who was acting on behalf of the party acquiring the property, failed to exercise the necessary diligence when executing the highly unusual A-B-C-D transaction.

Although the valuers were not found guilty of complicity with the criminal activities, the control possibilities offered by them, such as an annual property price benchmark, were insufficiently utilized by Bouwfonds and Philips Pension Fund. This made it possible for fraudulent real estate transactions to take place based on relatively low internal valuations. Furthermore, the prices were calculated based on outdated valuations in a market where the prices were shooting up all the time. This meant, for example, that a price that had been fixed in 2004 was used as a benchmark to set the price for a transaction that took place in 2006. If external valuers had been consulted on a more regular basis, this manipulation could probably have been prevented (Hordijk 2008).

In summary, none of the facilitators acted as a barrier to prevent the fraud taking place, for example by adopting a critical and challenging approach. The real estate fraud was ultimately uncovered by the alertness of a tax inspector who was carrying out a tax audit.

Culture within the commercial real estate sector: little competition, lots of trust, and a great deal of reciprocity

When the real estate fraud took place, there was a firm belief in the Netherlands in the power of market forces. Market competition was believed to exert a much greater regulatory effect than government regulation via command and control. This belief in the power of market forces was accompanied by a call for less government intervention. However, the slimming down of government regulation was not compensated for by self-regulation and disciplinary procedures within the market itself.

Generally speaking, the commercial real estate market is not an arena where property traders are engaged in fierce competition and negotiations with each other. The commercial real estate market is more like a collaborative network than a market with competing enterprises. There (still) seems to be a relative lack of competition between the various actors within the property market: there are relatively few conflicts and very few legal disputes. On the contrary, the different players rely heavily on each other in order to achieve the realization of projects, often in partnership with each other. An extensive network

is therefore essential in order to be successful in the real estate business. A central characteristic of this sector is that all the parties are continuously looking for relevant information that influences the setting of prices (Nelen 2009: 78). It is therefore only possible to do business in the commercial real estate world if you have a network of close contacts to help identify the opportunities and developments within the market. The commercial real estate world is very much an ‘old boys’ network (Berkhout & Jeurissen 2009). This does not have to be a problem in itself, but a closed network in which tips are exchanged and everybody does everyone else a favor is susceptible to abuse.

It is normal for information to be shared and parties to be put in touch with each other in such networks; and this is often accompanied by inducements and incentives. These types of inducements and incentives are sometimes referred to as ‘gentlemen's agreements’, and are frequently non-specific and not put down on paper. It is also common for the activities associated with such agreements to be described very generally in invoices, with such words as ‘consultancy’ or ‘for services rendered’. These types of business transactions are therefore largely based on trust: ‘a man's word is his bond’. The mutual relationships therefore appear to be based on reciprocity: ‘you scratch my back, and I'll scratch yours’, and are not characterized by rivalry and competition. In this sense, the commercial real estate sector as a whole exhibits many similarities to the property development companies that were at the center of the Dutch construction fraud case. The construction industry is also characterized by a sophisticated system of mutual price and work agreements (Van de Bunt 2010). In such a culture of

mutual interdependency and reciprocity, there is always a risk that the boundaries between mutual favors and bribery and corruption will become blurred.

The commercial real estate sector is a separate niche within the property market. This sector therefore consists of a relatively small group of property developers, construction companies, architects, valuers, and civil-law notaries who regularly come into contact with each other during business transactions. Everyone knows everyone else in this social world. The real estate fraudsters were able to exploit these characteristics for their own purposes.

A major factor that made this fraud possible was the network that Van V. had managed to build up in order to perpetrate the fraud. He was very adept at developing relationships based on trust and he had known most of the people in his network for many years. This network was made of people he knew both privately, for example at the hockey club, and old business acquaintances he had kept in touch with years after deals had taken place.

Every person in the network had their own specific role, based on their expertise, capabilities, tasks, and responsibilities. Van V. was able to gain their affiliation by letting them share in the 'surplus profits' or by persuading them with gifts, business favors or inducements. One witness put it this way:

> ‘He [Van V., Eds.] always used to say: "We've got a great project here, and there is enough to go round for everyone. Bouwfonds will make a good profit and we are going to get a share of that profit.’
>
> (Van de Bunt et al. 2011: 27)

During the trial, Van V. explained that his approach was centered around making sure that everyone was always happy; he often used to say “We are all going to be rich.” In this way he managed to gain the complicity of other people and persuaded them to play an active role in the fraudulent transactions.

These business associates were not only motivated by the immediate financial gain, but also by the promise of more lucrative business in the future. One of these business associates said during police questioning:

> ‘I thought to myself, this is your first time, so you've got no choice. I wanted to have a successful business. They [Van V. and his uncle, Eds.] gave me the impression that there would be many more and much larger projects for us in the future.’
>
> (Van de Bunt et al. 2011: 46)

Once they had fallen into the trap, there was no way out. But why did the business associates of Van V. allow themselves to be corrupted so easily? Our analysis has found that being part of a good network was very important for many of the people involved in the fraud: ‘*(...) to keep friends with everyone in order to get business. And also in order not to lose any business (...).’* (Van de Bunt et al. 2011: 44). By helping to facilitate a shady deal in one project, this would increase the likelihood of getting business in another project.

Several of the defendants answered questions about the allegations made against them both inside and outside the courtroom. Their statements provide an insight into the motives and neutralization techniques adopted by them in order to justify their behavior (Sykes and Matza 1957). A frequently used justification for the corruption and bribery and illicit earnings was that it was normal practice within the commercial real estate sector to entice prospective business partners with expensive watches and all-expenses-paid business trips. In an interview with a Dutch national newspaper, *NRC Handelsblad*, Van V. said (Kreling 2011: 4): '*I became so steeped in the culture of the property sector that I lost my sense of perspective.'* He knew in the back of his mind that offering bribes was a criminal offence, but it was just an everyday part of doing business in the commercial real estate world. It was necessary in order to '*win people for your cause.*' This example makes it clear that in a period of anomie, people are quick to justify their behavior with clichés, precisely because there is so little clarity about the acceptable ethical standards (Passas 1990: 166). In the opinion of Van V. this is why it would be totally wrong to depict him as an ordinary criminal. In an interview with a popular Dutch magazine, Elsevier, Mr. Van V. described how devastated he was when the Dutch Fiscal Information and Investigation Service raided his home, his personal possessions were seized, and how unpleasant his time in detention was (De Winter and Van Rijckevorsel 2011: 70 et seq.). He was locked up '*in total confinement, just like a dangerous terrorist, even though he always paid his taxes on time.'* This was completely unjustified according to him

because: *‘the Treasury had made tens of millions out of him from income tax and corporation tax.’*

As a consequence of these mutual interdependencies it is very difficult for outsiders to get an insight into the workings of the sector. Regulatory bodies, both internal and external, are still finding it difficult to get the sector and its practices under control even today. On the other hand, once they had got involved in the fraudulent practices and shared in the 'surplus profits', the people that took part in the fraud did not make any attempt to break free from the network or to break the silence. This was another contributory factor that enabled the real estate fraud to continue for such a prolonged period.

Conclusion

The initial response to the real estate fraud case was amazement: how could this happen, on such a big scale, and for such a long time? Was it a case of a proverbial ‘rotten apple’, or was the whole orchard infected? The unique character of this case makes it ideal for a case study into the factors and circumstances that contributed to the perpetration of the fraud.

Our analysis has shown that the real estate fraud was undoubtedly a product of its time. Briefly summarized, the fraud can be attributed to the major developments that took place in the 1980s and 1990s, which were characterized by a belief in economic growth, unbridled ambition and a move towards self-regulation by the private sector. During this period, Bouwfonds went through a

radical transformation and was vulnerable in the face of the sophisticated approach of Van V. and the other key figures in his network combined with the lack of adequate internal supervision within Bouwfonds and Philips Pension Fund. All of these developments should be seen against the background of the relatively non-transparent business practices within the sector, and the closed culture that was normal at that time within certain segments of the property sector. Furthermore, facilitators, such as the civil-law notary, played an important role in maintaining silence. At the same time, the external regulatory authorities also failed to detect the fraud. The convergence and interrelationship between these factors makes it very difficult to argue that there were only one or two 'rotten apples'.

The analysis in this chapter shows that any belief in the self-regulating capacity of the market becomes meaningless if there are no preconditions within the sector itself for competition to have a beneficial effect. This applies all the more in this case since there was virtually no market competition whatsoever in the world of commercial real estate. Instead of competition acting as a corrective mechanism, there was a network that brought together people who supposedly represented different interests, but who in practice engaged in mutually beneficial transactions. The nature of this network opened up the possibility for the pursuit of personal wealth to become an important factor in the decision-making process. This ultimately led to the pursuit of personal profit becoming more important for the people involved than serving the interests of the organizations they were working for. Furthermore, because all the participants received a share of the

enormous profits, this motivated the network to continue with the highly lucrative fraudulent practices over an extended period of time.

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[ii] These companies were mostly shell corporations that only existed on paper.

[iii] Due to the fact that criminal investigations were still ongoing during the time of our research, we were not able to interview any of the perpetrators in this case or any representatives of the companies involved. Therefore, the interviewees in this case study are by no means involved in the fraud. Nonetheless, these respondents have a lot of expertise in the real estate sector in the Netherlands and were therefore the most knowledgeable persons to reflect on this fraud case.

[iv] This report was the result of an internal investigation carried out by PricewaterhouseCoopers at the request of Bouwfonds. This report was part of the investigation file and was never made public.

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