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Founder, attorney for Idaho real estate firm DBSI sentenced to prison

A judge says they deceived investors and withheld crucial financial information.

By JOHN SOWELL

jsowell@idahostatesman.com August 21, 2014 Updated 24 hours ago

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Douglas L. Swenson KYLE GREEN — kgreen@idahostatesman.com | [Buy Photo](#)





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Former DBSI president Douglas Swenson, 66, was sentenced Wednesday afternoon to 20 years in federal prison for his role in defrauding investors in the defunct Meridian property management company.

Mark Ellison, also 66, the company's former general counsel, was sentenced later in the afternoon to five years.

Chief District Judge B. Lynn Winmill told the courtroom audience that the case - the largest federal fraud case in Idaho history - was the toughest he's presided over in nearly three decades on the bench.

Winmill said he tried to balance the harm to investors, who in some instances lost hundreds of thousands of dollars, with descriptions of Swenson and Ellison as family men who served their church and communities and had never been in legal trouble before.

Winmill said he doesn't believe that the defendants set out to defraud investors. However, he said, they concealed DBSI's financial problems from investors and their own employees, and continued to accept new investments when they knew there was not enough money being earned to keep paying off investors.

"I felt the sentence I imposed was the only fair and just sentence in this case," Winmill said as he announced Swenson's prison term.

Federal sentencing guidelines call for life in prison for what the men did, but Winmill said that was not appropriate in either case.

Federal prosecutors sought a 25-year sentence for Swenson and 15 years for Ellison. Defense attorneys asked for probation for Swenson and three years of home detention for Ellison.

No restitution order was issued Wednesday. Winmill said he would issue a separate ruling within three months.

A jury in April convicted Swenson of 44 counts of securities fraud and 34 counts of wire fraud, after a 10-week trial. Ellison was convicted of just the 44 counts of securities fraud.

Jeremy Swenson and David Swenson, Douglas Swenson's sons and former company secretaries, are scheduled to be sentenced Thursday morning. Jurors also convicted them of securities fraud.

Both Douglas Swenson and Ellison will be allowed to remain free until the Federal Bureau of Prisons assigns them to a particular facility. That typically takes six to eight weeks. Winmill said he would recommend that Swenson and Ellison serve their time at a federal prison in Sheridan, Ore., the closest one to Idaho.

Neither defendant addressed the court before sentencing. Their attorneys recommended that they remain silent, as they plan to appeal the convictions.

"We are very disappointed in the jury's verdict and the court's sentencing decision," said Angelo Calfo, Douglas Swenson's attorney. "Doug is an innocent man. He had and has an enormous commitment to DBSI and its investors, his family, his community and his church. This is a good man who has effectively been given a life sentence."

Wendy Olson, the U.S. attorney for Idaho, said the sentences send a warning to investment companies.

"Today's significant sentences for Douglas Swenson and Mark Ellison send the clear message that those who induce investors to trust them with their money, in some instances with their life savings, have a solemn and legal obligation to be honest and truthful," Olson said in a written statement.

COMPANY HISTORY

Before its 2008 bankruptcy, the company originally named Diversified Business Services and Investments managed 280 shopping centers, office buildings and other commercial buildings in Idaho and 33 other states. The holdings were worth \$2.7 billion; many of them were owned by groups of investors to whom DBSI sold fractional shares.

The company claimed it had a net worth of more than \$105 million. In reality, it sustained losses of \$170 million total in 2007 and 2008.

The company, founded in 1979, was once one of Idaho's largest employers, with hundreds of employees. At the time of the bankruptcy, it had more than 1,300 investors from across the country.

Assistant U.S. Attorney Mark Williams said Douglas Swenson continued to paint the company's finances as rosy when it was sinking in debt. Investors were never given an accurate picture, he said.

"We now know what Doug Swenson knew, that DBSI was built on lies, deceit and new investor funds," Williams said. "Although he portrayed himself as honest, he lied and deceived employees and investors alike."

Calso said he believes jurors were bothered that no one stopped sales to new investors in the months before the company's November 2008 bankruptcy filing, and that resulted in the convictions.

Ellison's attorney, Jeff Robinson, likewise said that his client did not commit any crimes. He noted that several lawyers, a retired Idaho Supreme Court justice and others all submitted letters attesting to Ellison's honesty and integrity.

"This is not a mask or a charade. This is who he is," Robinson said.

THE VICTIMS

Before sentencing, several investors who lost money when DBSI collapsed addressed Winmill. Some said they lost their life savings and others said they understood the risk.

Federal regulations required investors in DBSI to have minimum yearly incomes of \$200,000 or net worths of more than \$1 million. Investors had to sign a document saying that there was no guarantee of a return on investment and that they could afford to lose their investment.

Jeffrey Mitchell, a professor at the University of Maryland, said he invested \$113,000 in DBSI 70 days before the company collapsed. Company representatives gave no indication that DBSI was in financial trouble and had laid off a number of employees, he said.

"They shouldn't have allowed my investment or anyone else's," said Mitchell, one of five investors to address the court from the prosecution side.

Donna Overley, one of three investors called by the defense, said her heart was touched by the tales told by the prosecution witnesses.

She said she and her late husband invested soon after DBSI formed as a Meridian property management company in 1979. All of the returns they received were put back into the company, she said.

She said she found Doug Swenson to be honest and interested in bettering his life and those of the investors.

"I'm sorry for our losses. I'm sorry for all the losses, but it is what it is," she said.

John Sowell: 377-6423, Twitter: @IDS_Sowell

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