

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-2775

UNITED STATES OF AMERICA

v.

DONNA FALLON,
Appellant

No. 19-2788

UNITED STATES OF AMERICA

v.

DEAN VOLKES,
Appellant

No. 19-2792

UNITED STATES OF AMERICA

v.

DEVOS LTD LLC d/b/a GUARANTEED RETURNS,
Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(District Court Nos. 2-14-cr-00574-003, 2-14-cr-00574-002,
& 2-14-cr-00574-001)
District Judge: Petrese B. Tucker

Argued: March 16, 2021

Before: KRAUSE, PHIPPS, and FUENTES, *Circuit Judges*.

(Filed: September 30, 2022)

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OPINION OF THE COURT

FUENTES, *Circuit Judge*.

The three Appellants—Devos LTD LLC, which trades under the name “Guaranteed Returns”; Dean Volkes, the company’s owner and Chief Executive Officer; and Donna Fallon, the company’s Chief Financial Officer and Volkes’s sister—appeal their convictions arising from multiple schemes to defraud their clients, including the United States

Government. For the reasons explained herein, we will vacate Appellants' conviction for conspiracy to launder money, vacate the sentences, and remand for resentencing, including a recalculation of the forfeiture award. For all other convictions, we will affirm.

I. Background

A. Factual Background

Guaranteed Returns was a “reverse distributor” of pharmaceutical products. It provided inventory management services to healthcare providers (such as hospitals, pharmacies, long-term care facilities, and doctors' offices) by returning unused or expired pharmaceutical drugs to the drug manufacturers, for which the provider can normally receive a refund. Because healthcare providers need multiple pharmaceuticals from a variety of manufacturers, each with different return policies for their products, reverse distributors perform this service for their clients in exchange for a fee, which is typically a percentage of the return value of the drugs.

To obtain a refund, the provider must either physically return the pharmaceutical to the manufacturer, or certify that it has been destroyed. The manufacturer then issues the refund, either in the form of a credit to the healthcare provider's account at the relevant wholesaler,¹ or as a money refund by a wire transfer or check. Reverse distributors like Guaranteed

¹ Most healthcare providers purchase their pharmaceutical products through wholesale distributors rather than through individual manufacturers. A healthcare provider therefore may have an account with a wholesaler of a drug, not with the manufacturer of the drug.

Returns manage this process for their clients: a provider sends its pharmaceuticals to the reverse distributor who returns the drugs on the provider's behalf. As a consequence, both the drugs and the funds that reverse distributors receive from manufacturers for returning those drugs are the property of the healthcare-provider clients.

Providers will also send non-returnable pharmaceuticals to reverse distributors. These include unexpired pharmaceuticals that the providers no longer need but that may become eligible for a refund upon expiration. These are commonly known as "indates."² Reverse distributors can keep track of these indates, "age" them until they are returnable, and then submit them for a refund when the time comes.

To run their operations efficiently, reverse distributors return all pharmaceuticals eligible for a refund to a single manufacturer in one "batch." These batches can be comprised of different drugs submitted on behalf of different healthcare providers. The manufacturer, in accordance with its policy, will then either credit the individual healthcare provider's account at the relevant wholesaler, or remit a lump-sum payment to the reverse distributor who then issues refunds—less a service fee—to its healthcare-provider clients whose drugs were in the batch. For Guaranteed Returns, the lump-sum refunds were wired directly to the company's general operating account, and the company then issued refund checks from that account to the relevant clients, less a service fee.³

² These products are still "in date," meaning that they are not yet expired.

³ The operating account was used to receive and distribute money relating to the operation of the business, including to make vendor payments and to pay operating expenses such as

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