

Madoff Accountant Avoids Prison Term

By Matthew Goldstein

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By his own admission, David G. Friehling was not much of an auditor for Bernard L. Madoff — pretty much rubber-stamping financial statements for the man who masterminded an enormous Ponzi scheme.

As a cooperating witness, however, Mr. Friehling won plaudits from federal prosecutors, and because of that he will not serve any time in prison for his role in the financial fraud, which lasted more than two decades.

A federal judge on Thursday sentenced Mr. Friehling, 55, to a year of home detention and another year of supervised release. Judge Laura Taylor Swain of Federal District Court in Manhattan noted that Mr. Friehling had cooperated extensively with federal prosecutors, including testifying for several days during a lengthy trial last year that resulted in the convictions of five former employees of Mr. Madoff's securities firm.

Mr. Friehling could have been sentenced to more than 100 years in prison for his part in the Ponzi scheme that authorities estimate caused investors to lose \$17.5 billion in principal and tens of billions more in paper wealth.

To some degree, ignorance worked in Mr. Friehling's favor when it came to sentencing.

Federal prosecutors, in arguing for a lenient sentence for Mr. Friehling, who also served as a personal accountant for Mr. Madoff and his sons, said he had been unaware of the full extent of Mr. Madoff's long-running scheme. But that was only because Mr. Friehling had "abdicated" his responsibilities as the firm's auditor and approved the financial statements Mr. Madoff gave him without asking any questions.

"His crime came down to his failure to do his job," said Randall W. Jackson, an assistant federal prosecutor under Preet Bharara, the United States attorney for Manhattan.

Mr. Friehling, addressing the court before Judge Swain handed down her sentence, apologized to the thousands of victims of Mr. Madoff's scheme and said he had never had any indication that anything was amiss at the firm.

“I would rather be regarded as dumb than crooked,” Mr. Friehling said, commenting on a statement in which Mr. Madoff was said to have referred to him as a “dumb auditor.” Mr. Friehling added, “I did not question what I should have questioned.”

In 2009, almost a year after Mr. Madoff surrendered to the federal authorities, Mr. Friehling, who operated out of a storefront office in New City, N.Y., pleaded guilty to one count of securities fraud and three federal tax violations. He began working for Mr. Madoff in 1988, largely inheriting the job from his father-in-law, Jerome Horowitz, who retired from the small auditing firm Friehling & Horowitz in 1991.

The investigation of Mr. Madoff and his firm has proceeded like many other white-collar crime cases, with those who pleaded guilty and agreed to cooperate getting much lighter sentences than those who went to trial.

The five former employees of Mr. Madoff convicted last year in a trial before Judge Swain were sentenced to prison terms ranging from two and a half to 10 years. So far, four other people who worked for Mr. Madoff and cooperated in the investigation have avoided prison time. Two more await sentencing.

One of the former employees who did not get any prison time is Craig Kugel, 41, who worked in human resources for the firm. Judge Swain sentenced him to a two-year probationary sentence a few hours after Mr. Friehling’s sentencing. On Wednesday, Judge Swain sentenced Mr. Kugel’s father, David, who helped create fake securities trading records, to serve a sentence of 10 months of house detention. Both father and son cooperated with the authorities after pleading guilty.

Mr. Madoff, sentenced in June 2009 to 150 years, is serving his term in a federal prison in Butner, N.C.

Beyond his cooperation with the investigation, Mr. Friehling had shown considerable remorse for his actions and taken steps to give back to the community, Judge Swain said. She noted that he had gone to nursing school and that the main reason he could not get a nurse’s license was his criminal conviction.

The judge also said that Mr. Friehling had been active in volunteer work and that part of his sentence would include several hundred hours of community service.

Judge Swain also said that leniency was appropriate, given that Mr. Friehling and his family had suffered as well because of the collapse of Mr. Madoff’s firm. Mr. Friehling and several family members lost money they had invested with the firm. “He lost everything he had saved for his children,” Judge Swain said.

In 2012, one of Mr. Friehling’s three children, his son, Jeremy, who was 23, committed suicide.

When Mr. Friehling began talking about his son's death during his statement to the court, his voice began to quaver for the first time, and it appeared that he was fighting back tears. He said that since his son's death, he had been volunteering some of his time with a suicide support group.

The only issue Judge Swain took with the prosecution's request for leniency came on the matter of how much money Mr. Friehling would have to forfeit for his role in the scheme. Prosecutors said a fair amount was the roughly \$3.18 million that could be traced to his work for Mr. Madoff and his family.

But Judge Swain said Mr. Friehling, like other defendants in the case, should be on the hook for a portion of the \$130 billion forfeiture penalty arising from the fraud. The forfeiture figure is based in part on the investor money taken in and profits theoretically generated by the firm since 1988, when Mr. Friehling began working for Mr. Madoff.

It is an enormous sum that no one expects to be paid in full, but Judge Swain said it was a way to hold Mr. Friehling and the other defendants accountable for their actions.

"He wasn't doing his accounting in a vacuum," the judge said. "It seems to me all of this activity is interrelated."

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