

Greed Is Good : Not Anymore

I live and work in Manhattan, which can at times make for an unusually uncomfortable, although intellectually stimulating, commute. Unusually uncomfortable because this morning during rush hour I spent the lengthy ride down the east side of Manhattan pressed rather unfortunately against two short, overweight, sweating bald men in expensive looking suits. I have no idea who they are or where they work – but I do know their opinions on the Tyco case. As does everyone else on the same subway car.

The unwritten rule of New York City subways is that you don't talk. You can read a newspaper, listen to your iPod, sleep, stare studiously at your shoes as if they were suddenly the most interesting thing imaginable, but everyone just knows that you generally avoid conversations with strangers. That's why the rest of the subway car was packed with people standing around silently ignoring one another, which is precisely what I was doing. That is, everyone was quiet except for the two men I was sharing three square feet of space with. From the minute they got on at the Grand Central stop, they were loudly and brashly declaring how it was "about time that Kozlowski got what was coming to him."

For those of you that somehow missed it, L. Dennis Kozlowski, the former chief executive of Tyco International, was just sentenced to 8 1/3 to 25 years in prison and approximately \$170 million in fines and restitution. Although my seemingly hot and bothered subway companions didn't mention this, Mark H. Swartz, Tyco's former chief financial officer, also received a similar prison term and was ordered to pay \$72 million in fines and restitution. By the time we were at the Union Square stop the two men had made it clear to the whole subway car that this was another Enron, and we were lucky that Eliot Spitzer was cleaning up Wall Street.

When that happened I stopped staring at my shoes and shot one of the men my best quizzical look – attempting to explain (with a few well placed creases on my forehead and a "you gotta' be kidding me" smirk) that the Tyco case bears little to no resemblance to Enron, and Kozlowski was prosecuted by the Manhattan D.A.'s office, not Eliot Spitzer. My quizzical look apparently failed to convey this information, which is why I'm taking the opportunity to do so now.

The Tyco case is significantly different from other cases against recent high-profile corporate executives, such as Worldcom, or yes, Enron. Worldcom and Enron are about many things, but focus on accounting fraud. Enron in particular wove a complex series of layered corporations and used these various shells to better avoid any true accounting of their financial house of cards. Enron and Worldcom went bankrupt, leaving retirees short on money with which to buy food and medicine in their old age.

Tyco, by way of contrast, is not about accounting fraud at all. It is about statues that urinate vodka and preposterously overpriced shower curtains (if you don't catch those references, suffice it to say that these guys certainly didn't spare company expenses when throwing a party). Nonetheless, Tyco is still in business. It is still trading at somewhere between 25 and 35 dollars per share, and has been doing so for close to two years now. It wasn't the best investment one could have made, but the market itself hasn't been particularly kind to investors generally during the same period – and lest we forget, Kozlowski and Swartz are collectively paying about \$240 million in fines and restitution.

So we know that the Tyco case, unlike Enron and its progeny, isn't about punishing rich, powerful corporate executives for hurting the investing public. Rather, it reflects the prevailing view of today's society on Gordon Gekko's creed. It is about whether greed – for lack of a better word – is good. (If you didn't see that one coming, go rent "Wall Street" immediately). The prosecutors in the Tyco case didn't focus on the damage to the shareholders, because there wasn't any really dramatic evidence of shareholder suffering for the prosecutors to exploit. The most notable theme of the Tyco case remains the \$6,000 shower curtain. As absurd as it sounds, it amounts to an example of – at most – making unfair use of company funds to pay for lavish personal effects. This case isn't about the crimes charged. It is about greed in a post-Enron world.

A world where Ahmed Rasan (the so-called Millennium bomber, named for his failed attempt to blow up Los Angeles International Airport on January 1, 2000) is sentenced to 22 years; a world where many rapists and murderers receive comparable sentences. We have seemingly become so angry at corporate executives who exhibit "greed" that we now dole out the same punishment for executives with expensive bathrooms as we do for terrorists with bombs. Yet the guys on the subway with me didn't think it was enough. "Yeah, but it'll be easy time, just like Martha at that Camp Cupcake place," one said as we stopped at the City Hall subway station, ironically, just underneath the courthouses.

My patience wearing thin, I looked knowingly at a woman seated near us reading a newspaper. This time my knowing look was intended to explain that unlike Martha Stewart, or for that matter Ken Lay or Bernie Ebbers, the Tyco executives were charged in New York State court – not federal court. They aren't going to a "Club Fed." Based on the length of their sentences, they will likely end up spending the time in a New York State maximum security facility like Attica or Sing Sing, with a cellmate who is likely a rapist or murderer, maybe both.

My knowing look failed, as the woman never made eye contact with me. She got out at the Wall Street stop, as did the two sweaty men. I followed them all slowly out the exit, thinking to myself that these guys likely grew up emulating Gordon Gekko. But that was back in 1987, well before the tech bubble burst and before Enron. Back then greed was good. Back then Ivan Boesky and Michael Milken each were convicted – and served 22 months each. Now we have all become so angry at disappointing stock market returns and our own portfolios that we sentence greedy executives to what may amount to life sentences in maximum security facilities.

As I headed towards the elevator in my office building I realized that the woman with the newspaper was holding the elevator door open for me. She smiled politely at me and went back to reading...an article about the Tyco case. I smiled back, and then stared down at my shoes, very intently, as the elevator doors closed.