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Clayton Smart sentencing deal to include guilty pleas in Mich., Tenn., federal court

By Daniel Connolly

Posted April 5, 2010 at 11:10 a.m. , updated April 5, 2010 at 11:21 p.m.

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Clayton Smart, one of the men accused of stealing millions of dollars from trust funds at the Forest Hill funeral businesses, is 70 years old, and has been in jail for nearly three years.

His defense attorneys say he's tired of it.

"By working out a plea deal, he's got a light at the end of the tunnel," defense attorney Lee Gerald said in an interview.



PHOTO BY JIM WEBER
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Clayton Smart is pursuing a plea agreement on fraud charges tied to Forest Hill funeral businesses.

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At the same time, lawyers for another man charged in the case, former Smith Barney investment adviser Mark Singer, said they want to go to trial, and jury selection started Monday before Criminal Court Judge W. Otis Higgs Jr. The trial is expected to take about six weeks.

Singer, a resident of a Philadelphia suburb, and Smart, from eastern Oklahoma, are part of a group of people accused of using fraudulent means to buy funeral businesses around the country, then moving quickly to loot trust funds used to back prepaid funerals and cemetery maintenance.

Authorities have said the damage at the Forest Hill funeral businesses in the Memphis area was as much as \$22 million, but defense attorneys have disputed the amount.

Smart is likely to plead guilty to federal charges as well as to state charges in Michigan and Tennessee, said Gerald and co-defense lawyer Michael Scholl.



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They wouldn't say exactly what charges Smart will plead guilty to. But they did say more prison time is likely.

"Mr. Smart, based on current negotiations, is not going to walk out of prison when he enters a guilty plea," Gerald said.

Smart and Singer made a sharp contrast in court Monday. Singer, 44, who is free on bond, was dressed in a dark suit and surrounded by a team of legal advisers, at least two of whom are from New York. The balding, graying Smart was dressed in a blue jail uniform and disappeared back into jail after a few moments in the courtroom. He has been unable to make the \$500,000 bond set in the case.

Absent was another person charged, Stephen W. Smith, a 63-year-old from Muskogee, Okla., who is Smart's former business partner. Attorney James Thomas didn't say what Smith's plans are.

Smart's comprehensive plea deal would mean he can avoid going through three trials: one in Memphis, one in Michigan, and one in the federal system, his lawyers said.

Smart has not been charged in federal court, though the federal government seized properties associated with him years ago. Smart's lawyers have been negotiating with federal officials in Oklahoma.

Smart has also been ordered jailed by Shelby County Chancellor Arnold Goldin for contempt of court for failing to turn in a list of his assets in a state civil lawsuit to recover missing money. Smart's lawyers said they'll work with the judge as part of the plea package.

Both Smart and Smith are expected back in court on April 20.

The announcement of Smart's plan to plead guilty is one of the most significant developments in the case since the summer of 2006, when Smart said that the Forest Hill funeral businesses wouldn't honor more than 13,000 prepaid funeral contracts in full. Some families had to pay thousands of dollars extra when loved ones died.

In 2007, Tennessee brought civil and criminal charges in the case and began honoring the contracts again.

The state has paid \$817,000 to 336 people who paid extra when loved ones died or who had other claims against the funeral home, said Max Shelton, the court-appointed receiver.

On March 9, Goldin, the civil court judge, ruled that Singer and Smart, as well as Smart's wife, Nancy Smart, and his son, Christopher Smart, are liable for the losses at Forest Hill.

The court hasn't yet set an amount for them to repay.

Efforts to reach Nancy and Christopher Smart were unsuccessful Monday.

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April 5, 2010
12:52 p.m.

nsites writes:

The story says that Clayton Smart is 70 years old, has been in custody -- jail -- since April of 2007, and is now cooperating with prosecutors in a plea deal.

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Sounds like he's one stubborn fellow, has a tremendous motivation due to a fortune he's embezzled, or some combination of the two.

This is why we have government: To protect the little man -- families that worked hard to pre-pay for their funeral arrangements and were defrauded by guys like Clayton Smart.

I know this is a time of anxiety and fear, but this belief that government is the enemy -- which we hear from the Tea Party folks -- is not the solution to that anxiety and fear. The Clayton Smarts of the world would be all too happy to encourage us to think that way though, seeing as how it would free them up to take advantage of the average person and make it unlikely they would ever be prevented from doing so.

I don't especially like taxes. But I especially dislike guys like Clayton Smart and corporations that take advantage of people like you and me.

April 5, 2010
1:02 p.m.

new2you writes:

nsites, you are so right on with your thoughts. Those that usually cry the most, offer the least.

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April 5, 2010
2:24 p.m.

cat_eyes1123 writes:

I hope part of the plea deal is that he returns the fortune he stole from these people. There's a special place in Hell for anyone who robs grieving families at the worst time of their lives.

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April 5, 2010
2:51 p.m.

reflection writes:

nsites with a gem of a post. Good grok, sir/madam.

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April 5, 2010
3:03 p.m.

mtiger writes:

We agree that it's a good thing to put a swindler in jail for attempting to steal money from 13,000 people, my Mom being one, who bought prepaid burial plans. But you think it's bad when a few taxpayers -- part of a few hundred million who have paid trillions into a Social Security "fund" that never existed -- complain about the government spending their retirement money and leaving IOU's in the "fund" for their children to pay? On that, we disagree. I think free speech is one of the most basic tenants of a free people.

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You say we have the government to protect the little man, and that's true up to a point. But most Americans who were around a couple of hundred years ago were more worried that a power-grabbing federal government could become the biggest threat a little man would ever have to face. That's why we started out

with a Constitution which restrains that federal government. Now, if we could just get back to it . . .

April 5, 2010
3:22 p.m.

Grandmotherof6 writes:

Hang them and get on with life.

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April 5, 2010
3:37 p.m.

mark.hussey#221357 writes:

I wish the article had gone more into details on what happened to the money and if the cemetery will get any of it back. My whole family has pre-paid arrangements with FH and my mother died in early 2007 when they were only paying for what you put in. My mother paid \$900 for a pre-paid funeral in 1980, then when she died in 2007, they would only give us a \$900 credit toward a funeral, not the entire one the contract promised. Since we had no money to pay for all the extras like she wanted, we had to just cut corners and have her cremated and buried in a simple small box that held her urn. We already had the plots, so we just had to bury her ashes there. We had to pay about \$1300 in addition to the \$900 credit they gave us. If we had the full funeral the contract called for, we would have had to pay about \$5000 extra which we just couldn't afford. My mother wanted a nice funeral and thought she had paid for one, but didn't get it. I'm sure she'll have a lot to say to Mr. Smart and his cronies in the afterlife if she sees him then.

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April 5, 2010
3:50 p.m.

memsintrble writes:

"By working out a plea deal, he's got a light at the end of the tunnel," Gerald said.

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Who cares if he got light at the end of the tunnel. He needs to stay in that tunnel a long long time.

April 5, 2010
4:05 p.m.

gigger writes:

the love of money...

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April 5, 2010
5:28 p.m.

MoleHunt writes:

I hope they bury his arse under the jail and never let him out again. They should find the money he stole and make him pay every dime back to the people he stole it from. I think 25/30 years should fit the bill pretty good without parole.

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April 5, 2010
6:08 p.m.

rattlebone writes:

Sounds to me like everyone here is bashing Smart, when it seems completely obvious that Singer got away with the money. Singer made bond, hired a bunch of Manhattan attorneys, and jetted in with a crisp designer suit. Smart can't make bond, has local counsel, and shuffles around in a jail jumpsuit, and probably smells like hell.

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Is it just me, or did any of the other posters even read this article? And nobody's getting 30 years in any financial swindle - not Ivan Boesky, and bernie Madoff will be dead before 30 years hits.

Sounds like the guy with the money to fight this thing with high dollar lawyers is the real culprit.

April 5, 2010
7:25 p.m.

memphonative writes:

I worked for about one week at Forest Hill funeral homes training to sell pre-need policies many moons ago. I quit when I discovered what a rip off it was, and that I could never work in that business and have a good conscience. I hope that potential customers will realize what a rip off the pre-need industry is, and will act accordingly. It is awful enough to loss a loved one, and then have to find out the thousands of dollars they spent to have a funeral has disappeared.

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April 5, 2010

7:27 p.m.

nsites writes:

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in response to [rattlebone](#):

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rattlebone,

Yes, I read this article -- and many before that since Clayton Smart first started denying pre-paid funeral benefits, beginning in 2006.

Mark Singer appears to be guilty of serious charges. He's a co-conspirator with Clayton Smart in this fraud. And Singer, until now, may have done a better job than Smart in keeping investigators at a distance, seeing, as you point out, that he's looking at his charges in comfortable suits and with the support of attorneys. But Singer's good fortune may be about to change, as Smart plans to plea bargain.

While Clayton Smart may be co-equal with Singer in this conspiracy, he does not appear subordinate to Singer in guilt. Smart was the person who purchased the several cemeteries in Michigan and Tennessee. Smart was the person who defrauded people who had pre-paid for funeral services at those cemeteries. In addition, Smart stubbornly claimed for more than three years that he didn't know what happened to the pre-paid trust funds for funeral services at those cemeteries. Smart's denial is as plausible as that of a banker who buys several banks and only afterwards discovers that all the deposits happen to be gone for each of the banks in different states. That Clayton Smart has been the victim of so unusual a fraud at multiple cemeteries in two different states and only afterwards discovered it seems very unlikely.

While Mark Singer may have lived the good life up until now, I would not want to be him for the rest of the year now that Clayton Smart has, after three years, decided to enter a plea bargain and spill the beans on this pathetic swindle.

As someone suggested above, a special place should be reserved in Hades for people like Clayton Smart and Mark Singer who prey on the bereaved. But until their transitions to Hades, we ought to go out of our way to reserve a special place for them here on earth -- like prison.

April 5, 2010
7:44 p.m.

HUH2009 writes:

He's a white-color THUG. No less.

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They got money out of me and my family and probably never see it again. I've made other arrangements.

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Part of his punishment should be that he can't get a pre-needs funeral deal anywhere. Make him cough up the whole nine yards.

April 5, 2010
9:12 p.m.

MrJoe writes:

He should receive time in prison for this theft. Part of his time should be to hand dig a grave very neatly and precisely for each family that has been defrauded.

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April 5, 2010
11:13 p.m.

CitizenUS writes:

How much time will he get, how much money will be returned and how helpful will he be in getting the other crooks in jail?

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April 6, 2010
2:43 a.m.

ty9098#273066 writes:

Throw him under the jail, seize everything he has, sell it and give the money to all of those people he swindled.

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April 6, 2010
8:27 a.m.

qdog writes:

in response to [nsites](#):

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I don't especially like taxes. But I especially dislike guys like Clayton Smart and corporations that take advantage of people like you and me.

WOW, DO you not understand that the Federal Government has been runing the Largest and most devastating PONZI SCHEME EVER CREATED it's called SOCIAL SECURITY, and NOBODY is going to JAIL!!!

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April 6, 2010
10:08 a.m.

william writes:

Put him and his co-horts in crime on permanent grave digging duty at Forrest Hill for 12 hrs. a day then back to jail... They deserve much worse but absolutely no freedom ! The financial and emotional stress they caused is inexcusable..Families are still suffering the effects of their greediness.

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