

WHISTLEBLOWER LAWYER TO COMPANIES: OBEY DOJ

DALLAS ATTORNEY STEVE KARDELL, OF THE KARDELL LAW GROUP, has a unique perspective on two of the three companies that breached their deferred prosecution agreements in 2018. He has represented two former in-house attorneys who separately blew the whistle on the companies.

Kardell says one thing he's learned in general about company misconduct is "they'll do it if they can get away with it. Companies can be pretty bold in just ignoring what's required in a deferred prosecution agreement. It's a risky strategy."

In 2012, Kardell represented Ashley Yablon, then general counsel of the Dallas-area telecommunications company ZTE USA Inc., a subsidiary of China's ZTE Corp. Yablon cooperated with an investigation by the U.S. justice and commerce departments into ZTE Corp. for illegally shipping communications and surveillance equipment to Iran. The company fought the allegations for four years before finally admitting them and entering the deferred prosecution agreement. During that time, ZTE put Yablon on leave and then reached a confidential settlement with him. He eventually became general counsel of marketing firm Moroch Holdings Inc. for three years, and is now an attorney with Axiom Law, a corporate legal services company in Dallas. He was the subject of a Corporate Counsel cover story in May 2017 [Risky Business: GC Risked Everything to Expose Company's Illegal Activity].

Yablon was not at the company when ZTE entered the agreement in 2016 and breached it in 2018, eventually agreeing to tough new terms and extended monitoring.

By coincidence, and because both involve Dallas area cases, Kardell also represents another whistleblower, lawyer Juan Lozada, a former compliance officer at Dallas-based MoneyGram International Inc. Kardell, on Lozada's behalf, filed a retaliation and wrongful termination suit against MoneyGram on Jan. 23. The suit claims Lozada was fired in 2017 after six months on the job after he repeatedly brought up compliance failures that violated the company's 2012 deferred prosecution agreement with the Department of Justice and a 2009 order by the Federal Trade Commission. The DOJ agreement included criminal charges that MoneyGram knowingly aided and abetted wire fraud and willfully failed to implement an effective anti-money laundering program.

Kardell credits Lozada with providing the information that eventually led to DOJ's finding that MoneyGram had breached its agreement. The company's outside counsel John Barcus, of counsel in the Dallas office of Ogletree, Deakins, Nash, Smoak & Stewart, says, "MoneyGram denies the allegations in the [Lozada] complaint, all of which are false and easily disproven. MoneyGram is confident that it will prevail."

Barcus says Lozada "worked in MoneyGram's compliance department for less than one year before he was terminated for poor job performance. His termination had nothing to do with the activities he claims to have engaged in."

Barcus also says Lozada was bringing "the same baseless allegations" in yet another forum. Lozada first filed a retaliation

complaint on March 5, 2018, with the U.S. Department of Labor. After a dismissal and an appeal, a hearing on the complaint was scheduled this month before an administrative law judge.

Kardell said he decided to terminate the hearing in favor of filing the suit in U.S. District Court in Texarkana alleging the same basic facts. Kardell explained that after Lozada's original complaint was filed with the Labor Department in March, federal prosecutors on Nov. 8 found that MoneyGram had violated the FTC order and the deferred prosecution agreement, just as Lozada had claimed. DOJ then reached an extended deferred prosecution agreement and the company was ordered to pay a \$125 million penalty.

"A lot of things Juan identified to his supervisors and then in his complaint were later cited when prosecutors extended MoneyGram's deferred prosecution agreement and fined the company," Kardell said.

The lawsuit specifically accuses MoneyGram of violating the retaliation provisions of the Sarbanes-Oxley Act of 2002.

The suit also names as defendants Lozada's supervisor, Juan Manuel Gonzales, and Christopher Ponder, head of human resources for the compliance department. Lozada worked in the compliance unit, and was not a member of MoneyGram's legal department. Kardell says the DPA, which included the law firm



Steve Kardell, Kardell Law Group

Freshfields Bruckhaus Deringer as a monitor scrutinizing MoneyGram, was close to expiring in mid-2017 when Lozada was complaining about the compliance failures. "The atmosphere was 'don't make any waves,'" Kardell said.

As a result, Kardell said, the company did not react positively to Lozada's complaints about compliance violations. So Lozada put his complaints in writing to the monitor. Then he was fired.

"MoneyGram got good at pretending they were fixing things, when in fact they were not," Lozada told Corporate Counsel in an interview last November. The suit accuses the company of "willful violation"

of compliance provisions in the government agreements. It seeks back pay for Lozada, reinstatement to his job or pay in lieu of reinstatement, special damages for noneconomic harm such as impairment of reputation, plus attorney fees and costs. If he wins, it will be an additional cost to MoneyGram for breaching its DPA.

Kardell says in-house counsel should take note of all three corporate breaches in 2018: "The lesson is if you are dealing with a monitor, you want to deal with them openly in the way Juan [Lozada] was urging. Don't hide the ball from the monitor."

He also advises to "do what DOJ tells you to do in the agreement. You better take them [prosecutors] seriously, and you better not be guilty of what you got put on probation for." ■