

Ex-American Express exec sues firm, Justice Department

BY JAY WEAVER

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Sergio Masvidal, the successful scion of a once-penniless Cuban exile family, says he just wants the Justice Department to give him back his name.

Masvidal says he also wants his former employer, American Express, to pay him more than \$7.5 million for ruining his career as a top global banker based in Miami.

The former chairman of American Express Bank International claims he's a "scapegoat" in a lawsuit filed Friday that depicts the Justice Department and his ex-employer as partners in an illegal conspiracy plotted at the same time that American Express was prosecuted for violating anti-money-laundering reporting laws.

"It's important to me that my name is cleared," said Masvidal, 63, who came to this country in the early 1960s under the Catholic Church's "Pedro Pan" relocation program. "It's important that I don't end my career with this event defining my life."

American Express and Justice Department officials said they could not comment because they had not seen Masvidal's suit.

The August 2007 prosecution agreement between American Express Bank International and the Justice Department has caused Masvidal many sleepless nights -- but not because of the costly terms of that deal.

Masvidal has obtained evidence of what he describes as a "secret termination agreement" between his ex-employer and the Justice Department. It says that Masvidal and American Express Bank International's president, Simon E. Amich, would be fired after the sale of the bank, implying wrongdoing on their part. The side agreement -- an August 2007 letter signed by American Express and Justice Department lawyers -- was never disclosed to Masvidal, Amich or to U.S. District Judge William Zloch in Fort Lauderdale, who approved the so-called "deferred" prosecution agreement.

Under that settlement, American Express had to pay the government \$65 million for its lax enforcement of compliance laws aimed at catching drug-trafficking and other tainted bank deposits. It was one of the largest fines imposed on a U.S. bank. Under the terms, the Justice Department filed criminal charges against the bank but agreed to dismiss them in one year if the international bank subsidiary strengthened its safeguards against money laundering.

In an interview, Masvidal says that the "secret" letter, filed with his lawsuit, made him look like an unindicted co-conspirator in the Justice Department's case against American Express Bank International -- a characterization that he says is especially disturbing because he asserts he was not in charge of the bank's compliance office.

Masvidal's suit asserts that the general counsel's office at New York-based American Express was responsible for the international bank's compliance with anti-money laundering reporting laws under the Bank Secrecy Act. Masvidal says that, as head of private banking for American Express, he devoted almost all his time to meeting wealthy clients overseas during the past decade -- not monitoring compliance reports.

Masvidal found out about the "secret" letter in September 2007 while he was talking with an American Express lawyer in the company's human resources department about his separate "noncompete"

agreement. He wanted to know whether his "noncompete" would prevent him from joining a British bank that was about to acquire American Express Bank International that month.

Masvidal was told he couldn't make the move because American Express -- concerned about being prosecuted and selling the international bank -- gave veto power in the "secret" agreement to the Justice Department over his future with the bank.

"While it was the Justice Department that insisted on the termination of Mr. Masvidal as a condition of the global settlement," the suit says, "American Express made its own independent decision to agree to this demand, to save itself from more serious consequences if a settlement agreement could not be reached."

Masvidal's lawyer, Joseph DeMaria of Tew Cardenas in Miami, says the Justice Department violated his client's due process rights under the Constitution. DeMaria also says that American Express committed fraud, defamed Masvidal and interfered with his employment prospects with the British company, Standard Chartered, which bought American Express Bank International for \$823 million in September 2007.

"We're not seeking money from the government -- we're only seeking to have his constitutional rights restored by having his name cleared," said DeMaria. "From American Express, we want damages -- including punitive damages -- to deter the company from ever doing this again."

"Their conduct is reprehensible," DeMaria said. "This lawsuit shows the danger to an individual's rights when the Justice Department and a major American company resolve criminal charges."

Masvidal's suit doesn't identify American Express' general counsel, Louise M. Parent, or the firm's outside law firm, Debevoise & Plimpton of New York.

The Aug. 3, 2007, deferred prosecution agreement between American Express Bank International and the Justice Department was signed by its former president and CEO, Amich, and by outside lawyers Mary Jo White, Bruce E. Yannett and Andrew J. Ceresney. It was also signed by Justice Department lawyer John W. Sellers, among others.

The "secret" Aug. 2, 2007, letter, which was not part of that agreement filed in the federal court record, was signed by Ceresney and Sellers.

According to Masvidal's suit, the banker tried in vain to have the Justice Department clear his name. The suit says the department informed the Federal Reserve Bank of the "secret" letter identifying Masvidal and Amich. Standard Chartered, which would buy American Express Bank International, was also aware of the letter.

Sellers informed Masvidal's Washington lawyers that the department voided and withdrew the "secret" letter -- that its "terms no longer had any force or effect" regarding the deferred prosecution agreement or any banking institutions.

But Masvidal's lawyers demanded that the Justice Department issue a formal response to remove the "stigma" of the "secret" letter.

Sellers refused to issue such an official statement -- unless Masvidal released the Justice Department, American Express and its subsidiaries from "all liability" related to the "secret" letter, according to the suit. Masvidal's Washington lawyers rejected that demand as an "improper bargaining chip."

Masvidal, who made an average of \$1 million a year, says the "secret" letter damaged his prospects of finding another top banking job.

In late 2007, Masvidal shared his frustration with American Express Chairman and CEO Kenneth I. Chenault. Masvidal said that he was advised that as long as that "secret" letter was out there, he could not

``get a job as a teller."`

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