

Client Alert.

October 28, 2011

Telecom Exec Sentenced to Record Breaking FCPA Prison Term: 15 years

By Paul T. Friedman and Ruti Smithline

This week, Joel Esquenazi, the former president of Terra Telecommunications Corp., received the longest sentence ever handed down in a Foreign Corrupt Practices Act prosecution: fifteen years in prison. His co-defendant, Carlos Rodriguez, the former Terra executive vice president, was sentenced to seven years in prison. The Judge also ordered the defendants to forfeit over \$3 million.

Esquenazi and Rodriguez were convicted in August—after a two-and-a-half week trial and five hours of jury deliberations—of all counts for their roles in the scheme to pay bribes to Haitian government officials at Telecommunications D'Haiti S.A.M. (Haiti Teleco).¹

According to the Department of Justice, from 2001 through 2005, Terra paid more than \$890,000 to shell companies to be used for bribes to Haiti Teleco officials. The company allegedly hid these payments through false records claiming that the payments were for “consulting services,” which were never intended or actually performed. The DOJ alleged that the purpose of the bribes was to obtain various business advantages from the Haitian officials for Terra.²

Commenting on the sentence, Assistant Attorney General Lanny A. Breuer said:

This sentence—the longest sentence ever imposed in an FCPA case—is a stark reminder to executives that bribing government officials to secure business advantages is a serious crime with serious consequences As today's sentence shows, we will continue to hold accountable individuals and companies who engage in such corruption.³

LENIENT PRISON SENTENCES?

With a fifteen-year prison sentence, it is unlikely that District Judge Jose E. Martinez could ever be criticized for being lenient on Mr. Esquenazi. Nonetheless, it is worth noting that the Judge did grant defendant's motion for a downward departure from the sentencing guidelines range.⁴ According to the Presentence Investigation Report, Mr. Esquenazi's base offense level was 40—translating to a 24 to 30 year prison sentence.⁵ Among other arguments, defendant asked the Judge to consider the fact that there was “NO CASE within the FCPA in which the sentence imposed was a sentence

¹ See prior Client Alert, “[Another Successful FCPA Prosecution Against Individuals—More Terra Telecom Execs Appear Headed for Prison for Haiti Bribes.](#)”

² *Id.*

³ DOJ Release No. 11-1407, Executive Sentenced to 15 Years in Prison for Scheme to Bribe Officials at State-Owned Telecommunications Company in Haiti (October 25, 2011), available at <http://www.justice.gov/opa/pr/2011/October/11-crm-1407.html>.

⁴ [United States v. Joel Esquenazi](#), No. 1:09-cr-21010, Judgment and Re-sentence (S.D. Fla. Oct. 25, 2011) (Docket No. 625).

⁵ *Id.*, Motion for Variance/Downward Departure from the Sentencing Guidelines (Docket No. 620).

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that fit the recommended sentence guideline – everyone was lower.⁶

Prison sentences for FCPA violations have historically have been relatively short, but have been ramping up as the DOJ has become more aggressive (and successful) in its prosecutions. Prior to Mr. Esquenazi's sentence, the previous record for longest sentence in an FCPA case was in April 2010, when Charles Jumet was sentenced to 7.25 years—almost half of Mr. Esquenazi's sentence.

But most sentences have been much shorter.

Even after a conviction for FCPA violations with a maximum five year prison term, Frederic Bourke was sentenced to a year and a day for his alleged role in a conspiracy to pay Azerbaijan government officials.⁷

Most notably, Gerald and Patricia Green were convicted by a jury in 2009 of FCPA and money laundering offenses. At trial the government alleged that the Greens paid \$1.8 million in bribes to a Thai government official in exchange for contracts to produce the Bangkok film festival.⁸ The government had originally requested the couple be sentenced to “a significant number of years,” but later lowered its request to ten years. The Judge gave the Greens six-month prison sentences. The government initially appealed the Judge's sentence as being too lenient, but in August, the government voluntarily dismissed the appeal.

CONCLUSION

As in the Haiti Teleco cases, the DOJ is aggressively prosecuting individuals for FCPA violations and obtaining stiff prison sentences. The Esquenazi sentence underscores Mr. Breuer's promise made in 2009 that the prosecution of individuals is a “cornerstone” of the DOJ's FCPA “enforcement strategy.”⁹

⁶ *Id.* at 8 (emphasis in the original).

⁷ DOJ Release No. 09-1217, Connecticut Investor Frederic Bourke Sentenced to Prison for Scheme to Bribe Government Officials in Azerbaijan (Nov. 11, 2009), available at <http://www.justice.gov/opa/pr/2009/November/09-crm-1217.html>.

⁸ DOJ Release No. 09-112, Film Executive and Spouse Found Guilty of Paying Bribes to Thai Tourism Official to Obtain Lucrative Contracts (Sept. 14, 2009), available at <http://www.justice.gov/usao/cac/pressroom/pr2009/112.html>.

⁹ See DOJ, Lanny A. Breuer, *Prepared Address to the 22nd National Forum on the Foreign Corrupt Practices Act* (Nov. 17, 2009), available at <http://www.justice.gov/criminal/pr/speeches-testimony/documents/11-17-09aagbreuer-remarks-fcpa.pdf>.

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