ChinaLat Law

Posted at 12:32 AM on August 10, 2010 by Xiaomin (Samantha) Hu

Proving Money Laundering Just Got Tougher

August 3, 2010 by The Legal Pulse

Gerardo Rodriguez-Albizu*, *Diaz Reus & Targ, LLP*

Federal prosecutors now have a tougher road to plow when seeking to convict a white-collar defendant under the federal money laundering statute, 18 U.S.C. § 1956. In a recent decision, the Sixth Circuit Court of Appeals held that in order to convict the accused of money laundering, the government must prove that the accused intended to launder funds in the given transaction. Simply demonstrating that a defendant structured a given transaction to conceal illicit gains no longer suffices.

"[M]oney laundering is a different animal than fraud," said the Court in reversing the money laundering convictions against Roger Faulkenberry – one of the masterminds behind the $2.5 billion National Century Financial fraud that unraveled in 2002. At trial, the government proved that Faulkenberry structured certain transactions to conceal ill-gotten gains. But while Faulkenberry's case was pending on appeal, the U.S. Supreme Court rendered its decision in *Cuellar v. United States*, 128 S.Ct. 1994 (2008). There, the Court interpreted the term "designed," as utilized in the money laundering statute's provision which criminalizes the transportation (as opposed to a transaction), to require the government to prove that the *purpose* of the transportation was to conceal illicit funds. Thus, after *Cuellar*, "the ultimate question under the [money laundering] statute is one of purpose, not structure."

The Sixth Circuit sympathized with the government, noting that the convictions were earned under a different state of the law as it stood on appeal. But the fact remained that post-*Cuellar*, the government must prove that when Faulkenberry transferred new investor funds into an improper account, he intended to conceal the source of the money. The government failed to carry its burden of proof in this regard. Because "[m]oney in motion does not necessarily equal money laundering," Faulkenberry's convictions for money laundering were reversed.

---

[*] Gerardo Rodriguez-Albizu is an associate at Diaz Reus & Targ, LLP's Miami office where he concentrates his practice on international litigation, arbitration, and white-collar criminal defense. For more information about the author visit http://www.diazreus.com.