

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK**

IN THE MATTER OF:)
)
) **Number 2011-11**
FRANK E. MENDOZA)
GARDEN GROVE, CALIFORNIA)

ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

Under the authority of the Bank Secrecy Act (“BSA” or the “Act”) and regulations issued pursuant to that Act, the Financial Crimes Enforcement Network (“FinCEN”) has determined that grounds exist to assess a civil money penalty against Frank E. Mendoza (“Mendoza”).¹ FinCEN is executing this ASSESSMENT OF CIVIL MONEY PENALTY (“ASSESSMENT”) without the consent of Mendoza.

II. JURISDICTION

FinCEN’s authority empowers it to investigate and enforce compliance with the BSA.² The Act and its implementing regulations require certain domestic financial institutions to report to FinCEN suspicious financial transactions, using a suspicious activity report (“SAR”).³ The BSA and its implementing regulations prohibit any bank or other financial institution, director, officer, employee, or agent of any bank or other financial institution from disclosing the existence of a SAR to any person involved in the transaction.⁴ A prohibition against SAR disclosure extends to officers and employees of the federal government, or of any state, local, tribal or territorial government in the United States, other than as necessary for such officer or employee to fulfill their official

¹ 31 U.S.C. § 5311 *et seq.* and 31 C.F.R. Part 103 (31 C.F.R. Chapter X).

On March 1, 2011, a transfer and reorganization of BSA regulations from 31 C.F.R. Part 103 to 31 C.F.R. Chapter X became effective. Throughout this document we refer to the Part 103 citations in effect at the time of the violations, followed by the corresponding Chapter X citations in parenthesis.

² 31 C.F.R. § 103.56(a) (§ 1010.810(a)).

³ 31 U.S.C. § 5318(g)(1). FinCEN has implemented regulations for suspicious activity reporting at 31 C.F.R. § 103.15 (§ 1024.320) (reports by mutual funds); 31 C.F.R. § 103.16 (§ 1025.320) (reports by insurance companies); 31 C.F.R. § 103.17 (§ 1026.320) (reports by futures commission merchants and introducing brokers in commodities); 31 C.F.R. § 103.18 (§ 1020.320) (reports by banks); 31 C.F.R. § 103.19 (§ 1023.320) (reports by brokers or dealers in securities); 31 C.F.R. § 103.20 (§ 1022.320) (reports by money services businesses); and 31 C.F.R. § 103.21 (§ 1021.320) (reports by casinos).

⁴ 31 U.S.C. § 5318(g)(2)(A)(i); 31 C.F.R. §§ 103.15(d) (§ 1024.320(d)), 103.16(f) (§ 1025.320(e)), 103.17(e) (§ 1026.320(e)), 103.18(e) (§ 1020.320(e)), 103.19(e) (§ 1023.320(e)), 103.20(d) (§ 1022.320(d)), and 103.21(e) (§ 1021.320(e)).

duties.⁵ The unauthorized disclosure of a SAR is a violation of federal law.⁶ Penalties for each violation may be either civil—fines up to \$100,000⁷—or criminal—fines up to \$250,000 and up to five years imprisonment.⁸

III. DETERMINATIONS

A. Summary

FinCEN has determined that Mendoza, then a bank employee, willfully violated the BSA and its implementing regulations by disclosing the existence of a SAR to a person involved in the reported transaction. Specifically, Mendoza disclosed to the subject of a SAR that the report had been filed, and later solicited and accepted a bribe from the subject, in return for which Mendoza represented he would assist the subject with any ensuing bank proceedings or federal criminal investigation.

FinCEN and the Federal Bureau of Investigation (“FBI”), in collaboration with the United States Attorney’s Office for the Central District of California, investigated Mendoza with respect to the BSA violations described in this ASSESSMENT.

A federal jury found Mendoza guilty of solicitation of a bribe and the unauthorized disclosure of a SAR.⁹ Mendoza was sentenced to six months imprisonment in a federal corrections institution.

B. Use and Confidentiality of SARs

Since 1996 the BSA and its implementing regulations have required certain domestic financial institutions to file SARs with FinCEN.¹⁰ Each SAR contains critical information that law enforcement and other authorities use to initiate and conduct investigations into suspected money laundering, terrorist financing or other financial crimes. Consequently, SARs are an essential weapon in the U.S. Government’s battle against financial crimes and terrorism.

The unauthorized disclosure of a SAR can undermine ongoing and future investigations by, for example, alerting suspects that their activity has been reported. Such “tipping off” can, in turn, threaten the safety and security of the institutions and individuals who file such reports, potentially deterring them from fulfilling their reporting obligations in the first place. Even the occasional unauthorized SAR disclosure can have a chilling effect. Accordingly, the role of SARs in

⁵ 31 U.S.C. § 5318(g)(2)(A)(ii).

⁶ 31 U.S.C. §§ 5318(g)(2)(A).

⁷ 31 U.S.C. § 5321(a); 31 C.F.R. § 103.57(f) (§ 1010.820(f)).

⁸ 31 U.S.C. § 5322; 31 C.F.R. § 103.59 (§ 1010.840).

⁹ See Press Release, U.S. Attorney’s Office for the Central District of California, Former Chase Bank Official Convicted of Taking Bribes and Disclosing Existence of a Suspicious Activity Report (January 11, 2011), *available at* <http://www.justice.gov/usao/cac/pressroom/pr2011/005.html>, or from the FBI at <http://www.fbi.gov/losangeles/press-releases/2011/la011111.htm/>.

¹⁰ The Annunzio-Wylie Anti-Money Laundering Act of 1992 amended the BSA and authorized the Secretary of the Treasury to require financial institutions to report suspicious transactions relevant to a possible violation of law or regulation. See Public Law 102-550, Title XV, Sec. 1517(b), 106 Stat. 4055, 4058-9 (1992); 31 U.S.C. § 5318(g)(1).

protecting our financial system depends on the financial sector's (and the government's) confidence that SAR confidentiality is maintained.

FinCEN maintains that governmental and non-governmental organizations and authorities must be vigilant with respect to maintaining SAR confidentiality.¹¹ All employees, agents and individuals who are privy to the information contained in a SAR should be aware of—and held to—the obligation to maintain confidentiality with respect to such information.¹² This obligation extends beyond the SAR itself, to any information that would reveal the SAR's existence. FinCEN also urges that such persons subject to SAR confidentiality must be aware of the civil and criminal penalties for unauthorized disclosure of a SAR.¹³

Law enforcement and regulatory authorities similarly must maintain appropriate programs to protect the confidentiality of SARs and information that, if disclosed, would reveal the existence of a SAR. The programs should, at a minimum, educate personnel with lawful access to SAR data with respect to the importance of confidentiality and establish safeguards against the inappropriate use of, or access to, SAR data.

C. Violation of BSA Prohibition Against Disclosing the Existence of a SAR

On January 10, 2011, following a one-week trial, a federal jury in California found Mendoza guilty of three counts of bribery and one count of unauthorized disclosure of a SAR.¹⁴

The evidence at trial established that Mendoza, a loss-mitigation specialist with a bank during the relevant time period, conducted an investigation of a delinquent borrower related to mortgage loans that the bank made with respect to several properties in southern California. In the fall of 2008, Mendoza reported to the bank that he suspected the borrower was engaged in mortgage fraud.

In May 2009, Mendoza approached the borrower and solicited a \$25,000 bribe in exchange for Mendoza's assistance with the bank and a possible federal criminal investigation relating to the loans. In these conversations, Mendoza disclosed to the borrower that the bank had filed a SAR and that a federal criminal investigation was imminent.

Mendoza's bribery solicitation prompted the borrower to contact the FBI, which then conducted a sting operation. After the borrower delayed paying any bribe money, Mendoza agreed to accept \$10,000 in cash. Over two meetings in the borrower's car in Victor Valley, California, the borrower made two \$5,000 payments to Mendoza.

On June 29, 2009, following the second payment, FBI Special Agents arrested Mendoza. At the time of the arrest, the FBI recovered the second \$5,000 payment, as well as two \$100-bills from Mendoza's wallet that were part of the first bribe payment.

¹¹ See FinCEN, *Maintaining the Confidentiality of Suspicious Activity Reports* (November 23, 2010), available at http://www.fincen.gov/statutes_regs/guidance/html/FIN-2010-A014.html.

¹² See FinCEN; *Confidentiality of Suspicious Activity Reports*, 75 FR 75593 (December 3, 2010).

¹³ See *supra* notes 11 and 12.

¹⁴ See *supra* note 9.

IV. CIVIL MONEY PENALTY

As administrator of the BSA, FinCEN may impose against any person willfully disclosing the existence of a SAR a civil money penalty of not more than the greater of the amount involved in the transaction (up to \$100,000) or \$25,000.¹⁵ FinCEN has determined that a civil money penalty is due from Mendoza for the willful violation of the BSA and the regulations issued pursuant to that Act, as described in this ASSESSMENT.

After considering the evidence available to FinCEN, the seriousness of Mendoza's violations, the financial resources available to him, and the criminal actions taken against Mendoza by the United States Department of Justice, FinCEN has determined that the appropriate civil money penalty in this matter is \$25,000. This civil money penalty shall be satisfied by a single \$25,000 payment to the United States Department of the Treasury.

V. ASSESSMENT

To resolve this matter, and only for that purpose, Mendoza shall pay the amount of \$25,000 within 90 calendar days of the date of this ASSESSMENT. By compliance with the terms of this ASSESSMENT, Mendoza will not admit or deny either the facts or determinations described in Sections III and IV above, except as to jurisdiction in Section II, which is admitted.

FinCEN makes no express or implied promises, representations, or agreements with Mendoza other than those expressly set forth or referred to in this document and that nothing in this ASSESSMENT is binding on any other agency of government, whether Federal, State, or local.

VI. RELEASE

Compliance with the terms of this ASSESSMENT will constitute a complete settlement and release of Mendoza's civil liability for the violations of the BSA and regulations issued pursuant to that Act as described in this ASSESSMENT.

By:

/s/

James H. Freis, Jr., Director
FINANCIAL CRIMES ENFORCEMENT NETWORK
United States Department of the Treasury

Date:

December 15, 2011

¹⁵ See *supra* note 7.