

Hispanic Latino Team Blog

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[Second Circuit Affirms Conviction for Unlicensed Money Transmitting Based on Chilean Company's Use of U.S. Bank Accounts](#)

By [Kevin R. Puvalowski](#)

On September 22, 2010, the Court of Appeals for the Second Circuit affirmed the conviction and 42-month sentence of Mauricio Alfonso Mazza-Alaluf (“Mazza-Alaluf”), a Chilean national, for conspiring to operate and actually operating an unlicensed money transmitting business based upon his company's use of bank accounts in the United States. United States v. Mazza-Alaluf, 09-3940-cr, 2010 WL 3666717 (2d Cir. Sept. 22, 2010). Mazza-Alaluf was convicted after a two-day bench trial in November 2008 in Manhattan federal court. See United States v. Mazza-Alaluf, 607 F. Supp. 2d 484 (S.D.N.Y. 2009) (trial court's findings of fact and conclusions of law).

Mazza-Alaluf was one of the owners and operators of Turismo Costa Bravo S.A. (“Turismo”), a financial services business based in Santiago, Chile, that, among other things, transferred funds to third parties on behalf of its customers. Turismo made such transfers on behalf of customers making or receiving payments from outside of Chile and also exchanged currency, including dollars, on behalf of tourists in Chile and currency exchange houses in Chile and neighboring countries. At the time of Mazza-Alaluf's arrest in March 2007, Turismo operated three storefront businesses in Santiago. Significantly, Turismo had no offices or employees in the United States, nor did it solicit customers in the United States.

Turismo would transfer money on behalf of its clients through bank accounts that it maintained at U.S. banks. Those accounts would generally be funded through a process whereby Turismo's representatives, including Mazza-Alaluf himself, would carry bulk cash into the United States through Los Angeles International Airport, often denominated in Euros or other European currencies. After declaring the cash with customs officials, Turismo would deliver the cash to Associated Foreign Exchange, Inc., a foreign exchange house, which would then wire transfer the cash's dollar equivalent to Turismo's U.S. accounts. Turismo would then initiate wire transfers from those accounts as instructed by their customers. Turismo also accepted on behalf of its customers third-party wire transfers and checks directly into its U.S. accounts. Over several years, Turismo facilitated in this fashion thousands of transactions involving hundreds of millions of dollars.

At various times, Turismo maintained accounts in New York, Illinois and Michigan, three states in which it is unlawful to operate a money transmitting business without a license. Section 1960 of Title 18 of the United States Code, in turn, makes it a federal crime to conduct, control, manage, supervise, direct or own “an unlicensed money transmitting business,” which is defined, in Section 1960(b)(1), as a money transmitting business that affects interstate or foreign commerce and: (A) is operated in a state in which such operation is a crime (the “state licensing prong”), (B) fails to comply with the money transmitting business registration requirements contained in 31 U.S.C. § 5330 or the regulations prescribed under that section (the “federal registration prong”), or (C) involves the transmission of funds that the defendant knows have been derived from a criminal offense or are intended to be used to promote unlawful activity.

At trial, the government contended that Mazza-Alaluf violated both the state licensing and the federal registration prongs of Section 1960. Mazza-Alaluf contended that Turismo, as a business operating in Chile, was not subject to registration and that Turismo's mere use of bank accounts was not sufficient to bring him within the boundaries of Section 1960. The trial judge found Mazza-Alaluf guilty of both conspiracy and substantive counts with respect to the state licensing prong as a result of Turismo's use of accounts in each of New York, Illinois and Michigan, see United States v. Mazza-Alaluf, 607 F. Supp. 2d at 490-93, and sentenced Mazza-Alaluf to a 42-month prison term. Mazza-Alaluf appealed.

On appeal, Mazza-Alaluf challenged the verdict primarily on two grounds. He first contended that the evidence was insufficient to show that Turismo was a money transmitting business as that term is defined in 31 U.S.C. § 5330(d)(1)(B). That section, which is specifically referenced in the federal registration prong of Section 1960, defines a money transmitting business as any business required to file reports under 31 U.S.C. § 5313, which in turn applies only to “domestic financial institution[s].” Second, he argued that Turismo was not required to be licensed in any of the three states because Turismo “was, in every sense, Chilean to its core.”

The Second Circuit rejected Mazza-Alaluf's arguments and affirmed his conviction and sentence. The court first rejected Mazza-Alaluf's argument that the government had to prove that Turismo was a “domestic financial institution,” holding that the definition in 31 U.S.C. § 5330(d)(1)(B) — which is expressly applicable to Section 1960(b)(1)(B), the federal registration prong — is not applicable to the state licensing prong contained in Section 1960(b)(1)(A). Moreover, the court opined that, even if it were applicable, Turismo would qualify as a domestic financial institution because it was a “financial institution” (see 31 U.S.C. § 5312(a)(2)(R) (defining “financial institution” as, among other things, “a licensed sender of money or any other person who engages as a business in the transmission of funds”)) that engaged in “action[s] in the United States” (see 31 U.S.C. § 5312(b)(1) (providing that the term “domestic financial institution” applies to “an action in the United States of a . . . financial institution”)).

The Second Circuit then turned to Mazza-Alaluf's argument that Turismo was not required to be licensed in any of the three states because its principal place of business was in Chile and it had neither offices nor employees in the United States. The court rejected this argument —recounting the activities that Turismo engaged in with respect to its accounts in each state: New York (using “New York banking facilities to transmit enormous sums of money in the state”), Illinois

(transmitted funds, received tens of millions of dollars via wire transfers and accepted hundreds of checks) and Michigan (taking in and sending out approximately \$42 million). The court concluded that such activity was sufficient to support the trial court's finding that the state licensing requirements had been triggered in each jurisdiction.

Finally, the court upheld the 42-month prison sentence, finding it procedurally and substantively reasonable in light of the scope of Mazza-Alaluf's activities, which involved the unlicensed transmittal of more than \$200 million.

For further information, contact [Kevin R. Puvalowski](#) at (212) 634-3033.