



Judge Weighs In on DOJ ‘Side Agreement’ With Bank

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In a rare occurrence, a so-called deferred prosecution agreement entered into by the U.S. Department of Justice with a target of a criminal investigation has been subject to scrutiny by a federal judge, and the result wasn't favorable to the government.

In fact, a judicial ruling in the case of a fired Miami bank executive appears to be a signal from the bench to the department that it needs to watch what actions it takes in connection with deferred prosecution agreements. These agreements are hardly ever reviewed by judges in the normal course, so U.S. District Judge William Dimitrouleas's opinion is particularly telling.

The judge ruled that the department will have to defend against a constitutional claim made by Sergio Masvidal, the former banker, arising from a side agreement that was part of a deferred prosecution arrangement.

Masvidal was ousted as chairman of American Express Bank International in the wake of a 2007 deferred prosecution agreement entered into by the bank and the Justice Department, which had been looking into compliance by banks with laws aimed at finding bank accounts connected with drug trafficking. The bank paid \$65 million as part of the settlement – and the day before the agreement, it entered into a side agreement with the department, in the form of a letter, not filed in court, that required Masvidal's dismissal after the bank was sold.

Masvidal later found out about what he called a “secret letter” and claimed that it had destroyed his career in the banking industry and that he had had no



chance to respond to it. He sued the Justice Department, seeking an apology that would remove the stigma caused by the letter. The department told his attorneys that it had voided and withdrawn the letter, but it stopped short of a formal apology.

Judge Dimitrouleas ruled that Masvidal had a right to proceed with his case against the department because he had been denied his Fifth Amendment right to due process. The case is continuing.

No doubt, the Justice Department will settle this case rather than allow its policies and procedures in deferred prosecution agreements to be aired in a public trial. And no doubt, it will eventually give Masvidal the formal apology that he wants. But in the meantime, an apparently innocent man's career has been put into jeopardy, and a judge has weighed in on a dubious prosecutorial technique.

Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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