

Jailed Bankest executives Hector and Eduardo Orlansky seek restitution reduction

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Hector Orlansky



Bruce Lehr

Elderly brothers serving a 20-year federal prison stint for ripping off Miami-based Espirito Santo Bank want their \$165 million in court-ordered [restitution reduced](#) because of a confidential civil settlement reached in a civil case.

South Florida attorneys familiar with federal criminal restitution law say Hector and Eduardo Orlansky, who co-founded the Miami factoring business E.S. Bankest, have a good argument. But their success will depend on how the secret settlement was structured.

The attorney for Hector Orlansky, Bankest's former president, wants to see settlement documents and has even invoked the First Amendment. His brother's attorney has adopted the same motion.

E.S. Bankest, as a factoring company, purchased accounts receivable at a discount. Bankest was half-owned by Espirito Santo Bank and received funding from the Miami bank, which in turn used the accounts receivable as collateral.

The Orlanskys and two other E.S. Bankest officers — R. Peter Stanham and Ariadna Puerto — were convicted in 2006 of inflating the value of collateral used to obtain loans through the bank, inflating the company's value from \$5 million to \$225 million with falsified financial statements and fake invoices and checks from 1994 to 2003.

The brothers got 20-year sentences, while Stanham and Puerto and received nine- and seven-year terms, respectively. The amount of restitution for the four was determined collectively after subtracting property and other assets turned over by the defendants. In a separate action, the Portuguese-owned bank sued BDO Seidman in Miami-Dade Circuit Court, alleging the national accounting firm rubber-stamped financial reports and failed to catch the fraud. An appellate court discarded a record \$522??million award against BDO Seidman, and the two sides reached a confidential settlement that was approved by a federal bankruptcy judge in April.

Hector Orlansky's attorney, Bruce Lehr, a partner at Lehr Fischer & Feldman in Miami, filed a motion Aug. 16 asking U.S. District Judge Adalberto Jordan to reduce his client's restitution order.

"The law as I see it doesn't allow for a double recovery: one through a civil judgment and one through court-ordered restitution," Lehr said. "We are just making sure there is no double recovery."

The seven-page motion that even though the settlement remains under seal, it appears to compensate the bank "for the same loss incurred as a result of Mr. Orlansky and his co-defendants' wrongdoing."

Eduardo Orlansky's attorney, Ed Shohat, a partner at Miami's Shohat Loewy & Shohat, was not available for comment by deadline.

Restitution Offsets

To determine whether the restitution can be lowered, Lehr said his client "will need access to all documents pertaining to the settlement agreement."

The attorney told the Daily Business Review that Jordan could review the documents himself and make a determination, but the amount of the settlement should come out if it is determined the bank was compensated for the fraud.

He also cites the First Amendment in his motion, saying there is no "articulated government interest in denying the public access to the terms of the settlement agreement."

Steven Thomas, a partner of Thomas Alexander & Forrester in Venice, California, who was the lead attorney for the bank in litigation against BDO Seidman, had no comment on Orlansky's motion.

The accounting firm also had no comment.

Andrew Levi, a former federal prosecutor who heads the Miami office of the investigative firm Nardello & Co., said Lehr appears to be on solid ground.

"It's true that the restitution amount is offset by any settlement recovered by the victims," Levi said.

"The victims can never profit or make more than they lost as a result of restitution. If a victim recovers money civilly, that should reduce the restitution amount."

Another former federal prosecutor, David Weinstein, who heads the white collar defense section at Clarke Silvergate in Miami, suggested there could be a wrinkle if Bankest's insurance company paid into the settlement.

"The insurance company will say, 'Don't pay them, pay us because we are now the victim,' " he said.

Weinstein said large amounts of restitution in big fraud cases often are "funny money," and repayment is not a realistic goal when defendants are making pennies at their prison jobs. But reducing restitution for the Orlanskys could help them get on with their lives after prison, he added.

Eduardo Orlansky is 73, and his brother is 66.

"There may come a point in time when they are no longer incarcerated and they are earning money again and they have this judgment hanging over their head," Weinstein said.

Criminal defense attorney Richard Sharpstein, a partner at Jordan Burt in Miami who is not involved in the cases, said insurers almost never step up and pay on a liability policy covering company directors and officers if criminal activity is involved.

He also wondered where the government stands in this scenario.

"Weren't they notified of this restitution? Were they knowledgeable of it?" Sharpstein asked. "This is kind of a rare situation."

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