

## From the Courts: Justice Watch

### Two defense lawyers can keep fees Feds claimed were tainted

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By: Julie Kay

Miami attorneys Ed Shohat and Bruce Lehr got their best holiday present from federal prosecutors. The government decided to let them keep \$757,000 in legal fees from their clients, convicted businessmen Eduardo and Hector Orlansky, which the government had previously argued were tainted.

The deal, which was approved by the Department of Justice last week, also gives the government a gift. The Orlansky brothers agreed to forfeit to the government another \$750,000 from the sale of a luxury Manhattan condominium.

“We are pleased that the government decided not to take back money that had been released from the court to attorneys,” Shohat said.

Said Lehr: “I think the resolution was a fair one.”

Both attorneys still are proceeding with appeals of their clients’ convictions.

Legal experts said the prosecutors’ attempt to recoup attorney fees in a nondrug case was highly unusual. David O. Markus, president of the Miami chapter of the Florida Association of Criminal Defense Lawyers, said he was pleased that the government did not stick by its original claim to the fees. “That could have set a very bad precedent,” he said.

Last August, the Orlanskys were convicted of fraud in their operation of E.S. Bankest, a Miami factoring company. The company was a joint venture of Portugal’s Espirito Santo Bank and Bankest Capital, which was formed by the Orlanskys.

The Orlanskys created fictitious checks, invoices and companies to inflate the value of account receivables by hundreds of dollars to support the fraud targeting Espirito Santo Bank. The nine-year scam allowed the Orlanskys to illegally obtain \$167 million from the bank and its clients.

Shohat represented Eduardo Orlansky for three years, while Lehr worked for Hector Orlansky for 18 months. Both attorneys labored through a nearly five-month trial and four weeks of jury deliberations. They also paid for several medical experts to testify about the health of their clients.

#### Fees from condo sale

The Manhattan condo — which defense attorneys claim was virtually the Orlanskys’ only asset — was sold for \$3 million in 2004 after the brothers were charged with fraud. After commissions,



Bruce Lehr

closing costs and the repayment of loans, the remaining \$1.6 million was placed in the court registry.

U.S. District Judge Adalberto Jordan agreed to allow Shohat to remove \$757,000 from the registry for legal fees, with the warning that the money might have to be returned if found to be tainted.

Late last year, the government informed Shohat and Lehr that it intended to seek reimbursement of the legal fees because they were tainted. The condo purchase was part of the fraud, prosecutors claimed in court papers. In a Sept. 8, 2006, memo, prosecutors stated that the Orlanskys used checks from an E.S. Bankest bank account to remodel the condo.

Shohat and Lehr denied this, saying the condo was separate from the business and purchased with funds from South America.

Negotiations between Shohat and Lehr and federal prosecutors went on for several months. The consent order approving the deal was signed by Assistant U.S. Attorney Matthew Menchel and Shohat Dec. 28 and by the Orlanskys Dec. 29.

Meanwhile, Lehr has filed papers seeking a downward departure in sentencing for Hector Orlansky, based on, among other things, his client's health. Orlansky, 61, has had cancer in his shoulders, colon and vocal chords; suffers from an inner ear disorder called Meniere's disease; has high blood pressure and cholesterol; and suffers from depression and anxiety.

In addition, Lehr argued, Hector Orlansky should get a lesser sentence because he had no criminal history prior to the fraud charges and was "well-respected in the fields of banking and finance."

If the pretrial probation office investigation is adopted by the court, Orlansky would spend a minimum of 151 to 188 months in prison, which would probably amount to the rest of his life.

Shohat said he will file a downward departure request for Eduardo Orlansky soon.

Judge Jordan has not set a sentencing date. Denied bond requests, the brothers are being held at Miami's Federal Detention Center.

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