

Personal liability for compliance officers: recent government enforcement and lessons learned



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On December 2014, a [57-page complaint](#) filed by the U.S. Attorney in Manhattan sought to impose personal liability on the former compliance officer for MoneyGram International, Thomas Haider. It alleges that he willfully or recklessly failed to stop money laundering activities. The complaint seeks a fine of \$1 million and would bar Haider from working in financial services. The case is unusual because, in 2012, the government negotiated a deferred prosecution agreement with MoneyGram. Actions against compliance officers are relatively rare, although prosecutions against the “responsible corporate officer” for illegal activity of a corporation are clearly part of a prosecutor’s enforcement toolbox. See, e.g., *United States v. Park*, 421 U.S. 658 (1975).

Regardless if the case represents a new trend in government enforcement, it does contain important lessons for all compliance officers:

- Compliance officers who actively participate in schemes to violate the law face liability. This often includes cover-up activities by the compliance officers. This is no surprise in any area.
- If you are a compliance officer, you have an obligation to ensure that your company is following the compliance program. You cannot passively allow the compliance program to be ignored. See, e.g., *United States v. Caputo*, 456 F.S.2d 970 (N.D. Ill. 2006), where the compliance officer was chosen

based on the CEO's ability to dominate him.

- The government may be learning that one of the most powerful deterrent tools is prosecution of individuals. The people who commit the violation must be convinced that they will personally pay the price for violations for which they are responsible. Violators should be subject to fines, jail, loss of industry employment, and public shaming. If corporations just pay a fine and make promises to be good, the individuals who were behind the violation have little incentive not to do it again.

What does this all say to compliance officers? If you are responsible for a compliance program, make sure it is working. The program design must be effective, and not just look good on paper to the uninitiated. If the program design is good, it must be implemented by the company, and not frustrated by inadequate resources or management evasion.

If you cannot design or implement an effective program, it is not enough to stay in the job as compliance officer just to "fight the good fight." If the company won't comply, and you know about it, it is time to leave. And for a lawyer, that may mean a "noisy withdrawal."