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Accountant gets big 'reward' for blowing whistle

Claim is first private action under state false claims act

BY PETER VIETH

An accountant who spotted a \$155,000 discrepancy in the books at the credit union where he worked will pocket almost that much from the recent \$640,000 settlement of his state whistleblower lawsuit.

Fairfax attorney Zachary A. Kitts, who represented plaintiff Nisar Siddiqui, said the case represents the first Virginia Fraud Against Taxpayers Act case allowed to proceed without intervention by the state attorney general's office.

The settlement with defendant Navy Federal Credit Union calls for payment of \$535,000 to the Virginia treasury, according to a settlement order entered Oct. 29 by Fairfax Circuit Judge Michael P. McWeeny. The state, in turn, will pay nearly \$150,000 to Siddiqui as his "reward" for successfully collecting treble damages and civil penalties for the state.

Siddiqui claimed to have uncovered improper handling of accounts for uncashed checks. Money for uncashed checks becomes "unclaimed property" after a year, Kitts explained. It is supposed to be turned over to the state. In his lawsuit, Siddiqui accused the Vienna-based Navy Federal Credit Union, said to be the largest credit union in the world, of diverting

\$155,000 in "unclaimed property" to reduce the balance of bad debts.

As an enthusiastic promoter of the "qui tam" laws that make such settlements possible, Kitts was eager to talk about the settlement agreement in a case that was initially seen by state lawyers as having a low potential for recovery.

The Virginia Fraud Against Taxpayers Act, which mirrors the Federal False Claims Act, provides for stiff penalties against those individuals and organizations that make false claims in order to receive government money. The act creates rewards and incentives to encourage individuals with knowledge of false claims to come forward.

Companies or individuals may be held liable for up to three times the total dollar amount of the fraud, plus an additional penalty of \$5,500 to \$11,000 for each false claim submitted to the government, plus payment of all attorney's fees and litigation costs.

Whistleblowers that expose fraud on the government through such "qui tam" cases are eligible to receive between 15 and 30 percent of the total recovery. In this case, Siddiqui will pocket just over 28 percent of the recovery to the state. Siddiqui also will receive another \$5,000 for his alleged constructive discharge from Navy Federal and \$100,000 for attorneys' fees and costs.

When a whistleblower, or "relator," files a state false claims lawsuit, the papers are sealed and the attorney general's office gets a chance to review the claim. The attorney general's office has three options: it can decide to intervene and prosecute the case, it can kill the case by rejecting it, or it can step back and allow the relator's attorney to take the lead.

The Siddiqui case marks the first

time that the Virginia attorney general's office has determined not to intervene. Guy W. Horsley Jr., special assistant attorney general, explained that his office took a pass on the case because it did not seem to offer much chance of recovery.

"Zach did a great job," Horsley said.

Despite the decision not to intervene, the attorney general's office worked closely with Kitts on the case, according to Horsley.

"We took sort of a middle course. While we did not intervene, we cooperated fully. He had full access to our folks and the people with the treasury."

The state may get even more out of the case. Part of the settlement allows the state to conduct a compliance review of other accounts at the credit union. The credit union agreed to pay any amounts that may be due with respect to the accounts under review. In exchange, the state agreed to limit the penalties it could seek for any wrongdoing.

Kitts argued that lawyers and the attorney general's office ought to pay more attention to the opportunities presented by the federal and state false claims acts. Those opportunities include both protection of public money and – for private lawyers – a source of fees.

Horsley notes that, under Attorney General Robert F. McDonnell, his office has received accolades for its use of the False Claims Act to prosecute Medicaid fraud.

Virginia received national recognition for recovering more than \$650 million in Medicaid fraud cases in fiscal 2007.

Although the Act is primarily geared to encourage citizens to report cases of suspected fraud, the law also allows the state to act on its own to seek treble damages and civil penalties for government rip-offs. "We may see some of that," said Horsley.



KITTS