

DAILY BUSINESS REVIEW

FEDERAL COURT UPS worker wrongly accused in \$1.1 million embezzlement

ID theft victim who was 'just a number' sues Wells Fargo



J. ALBERT DIAZ

by John Pacenti
jpacenti@alm.com

When Carlos Gomez's identity was stolen, his bank account wasn't drained. But the Miami man went to jail and nearly ended up in prison for a crime organized by an employee at his former bank.

An employee at Wachovia Bank, which was bought by Wells Fargo, admitted stealing Gomez's personal information from an account he closed in 2002 and using it to open up another account in a \$1.1 million embezzlement.

Wells Fargo & Co. discovered the fraud and implicated Gomez, among other suspects. Gomez was arrested at gunpoint in his home in front of his three young daughters, jailed without bond for two weeks and spent another seven months on house arrest.

Now that charges have been dropped, the UPS driver

Attorneys Eric Hernandez and Jermaine Lee say they haven't heard of a more horrifying identity theft story than the one of their client, Carlos Gomez.

IDENTITY: Wells Fargo said facts don't support suit

wants the bank to pay for destroying his life. His federal lawsuit recently withstood a motion to dismiss by the bank.

"I want to let the world know my story, to see how these banks can be," Gomez said. "At the end of the day, they don't care about you. You are just a number. They didn't care if I rotted in jail for 20 years."

Gomez was arrested April 5, 2011, and charged with various crimes, including conspiracy to commit money laundering that carries a 20-year prison sentence.

Prosecutors accused Gomez of selling his identity to the thieves, but he passed a lie detector test, and none of the identity theft defendants knew Gomez.

His mother came to the rescue when she came across a box of items her son left at her home when he enlisted in the Marines. Old bank statements showed the account number was different from what Wells Fargo gave to federal prosecutors.

UPS records, weeks away from being destroyed as part of a routine purge, also showed Gomez was delivering packages across town when key withdrawals were made. The charges were dropped by the U.S. attorney's office in November 2011.

U.S. District Judge William Dimitrouleas in Fort Lauderdale, in his Jan. 7 order denying Wells Fargo's motion to dismiss, wrote, "As a customer of the bank, defendant had a duty, premised on 'a relation of trust and confidence,' to keep plaintiff's account information private, confidential and from being misused by others, including its employees."

Gomez's civil suit against



Carlos Gomez said he was arrested in front of Bianca and his other two daughters.

his former bank lists claims of malicious prosecution, false arrest, breach of fiduciary duty and negligent supervision.

Wells Fargo spokeswoman Michelle Palomino said neither the facts nor law support Gomez's claims. "We intend to continue to vigorously defend ourselves against these allegations," she said.

BROKEN DOWN

It's not unusual for Gomez to get choked up recalling his ordeal. He had a hard time getting anybody to believe him after his arrest.

"I was broken down for a whole year. I didn't know what to do," he said. "Who does this to someone's life, and then they just want to wipe their hands of it like they didn't do anything? This could have been anybody."

Gomez is represented by

attorneys Eric Hernandez and Jermaine Lee, partners at Hernandez Lee in Miami. They're hard-pressed to find an identity theft story more horrifying.

"It's intentional and reckless because if Wells Fargo would have bothered to look at their own records, they would realize his account was stolen," Hernandez said.

Lee added Gomez, a delivery driver for UPS of North America Inc., averaged a balance of about \$500 in his account. He opened the account when the bank was named First Union, which was bought by Wachovia in 2001 and Wells Fargo in 2008.

Tracking suspicious account activity was not Wachovia's strong suit. The bank entered into a federal deferred prosecution agreement in 2010 and agreed to pay a \$160 million penalty

for lax monitoring, which allowed Mexican cartels to launder their profits.

Hernandez and Lee plan to use the deferred prosecution agreement to show there was an almost Wild West attitude at Wachovia on checks and balances. They maintain that's why a group of employees led by Noel Abraham Mendez was able to embezzle \$1.1 million.

Mendez created an account in Gomez's name and deposited \$135,000 from other people's accounts for his crooked grandmother to withdraw. An alert teller noted the signature on the first check drawn on account did not match Gomez's signature and refused to honor the check. Yet the bank allowed subsequent checks with bad signatures, including checks to Mendez's grandmother, to be drawn on the fraud account, Lee said.

Mendez provided information to federal authorities against his grandmother and pleaded out. He is serving less than a 2½-year prison sentence. His grandmother, Emma Grismalda Casanova, is serving more than seven years, a term that was upheld on appeal.

'REALLY SCARED'

With information from Wells Fargo, federal authorities arrested more than a dozen people. They banged loudly on Gomez's door at 6 a.m. His wife answered. Agents pushed her out of the way, guns drawn, and ordered Gomez to get on his living room floor. He was arrested in front of his daughters.

Gomez said he asked what was going on, but officers were

SEE IDENTITY, PAGE A6

IDENTITY: Victim couldn't come up with money to post bond

fused to tell him. They transported him to a warehouse near the Dolphin Mall in Miami. "I was really scared," he said.

About an hour later, an agent walked into the warehouse and showed him a withdrawal slip, asking Gomez if that was his signature on the document. Gomez said it wasn't.

"He told me it would be easier to confess," Gomez said. "They were trying to intimidate me. I kept on telling the guy I didn't know what's going on."

Gomez was sure he'd be released when agents focused on the forgery. Instead, he was transferred to the Federal Detention Center in downtown Miami.

"I'm trying to tell people I'm innocent, but in jail everybody's innocent. No one wants to hear you out," he said.

Because of his meager salary, Gomez could not pay the \$100,000 bond. He had to get three family members to put up their houses, and it took two weeks.

Gomez said the hardest part was when he told his eldest daughter, who was 11 at the time, to have faith in him, that he was not a criminal.

Hernandez said, "Carlos' life has been left in shambles after this nightmare that has not yet ended."

TOO BIG TO FAIL

Attorneys with pending litigation

against Wells Fargo say the bank is not disposed to settle lawsuits filed against it.

They predict Wells Fargo will claim in the Gomez case that the inadequacies in anti-money laundering policies related only to Mexican currency exchange houses. Mendez was a rogue employee and the bank turned over all pertinent information to federal prosecutors for them to sort out.

"The problem with Wells Fargo settling this case is that they don't want to start a trend that they are willing to settle a case based upon what they would claim is routine banking procedures," said attorney Stuart Davidson, a partner with Robbins Geller Rudman & Dowd in Boca Raton.

He is suing Wells Fargo in the Middle District of Florida for allegedly aiding and abetting a \$100 million Ponzi run by German businessman Ulrich Engler.

"Thomas Jefferson once said he believed banking establishments are more dangerous to our liberties than standing armies," Davidson said. "For Mr. Gomez and my clients, that statement proved very true as a result of Wells Fargo's unique ability to cover up fraud, Ponzi schemes and other bad conduct."

John Pacenti can be reached at (305) 347-6638.



HERNANDEZ LEE, LLC
ATTORNEYS AT LAW