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The Feds Destroyed His Client's Company— And for What?

There was “no warning, no charge, no arrest. They simply announced ‘You are on the list’ and our world fell apart.”

By Jenna Greene | October 27, 2017



A. Jeff Ifrah,

founding member of Ifrah law.

There was “no warning, no charge, no arrest. They simply announced ‘You are on the list’ and our world fell apart.”

That’s how Paul Davis, general counsel of Canada-based payment processing service PacNet, described what happened last year when the Treasury Department’s Office of Foreign Assets Control designated his company a “significant transnational criminal organization.”

It was the first time such a designation had been applied to an actual business, as opposed to a terrorist or organized crime entity like MS-13 or the Yakuza syndicate.

Individual PacNet employees were targeted too—Davis and 11 colleagues were put on the “Specially Designated Nationals and Blocked Persons List.” That meant their assets were blocked, and U.S. people were prohibited from dealing with them.

Cut off from the international banking system, the company collapsed, its employees left reeling.

In retrospect, the government’s draconian actions seem seriously misplaced. On Thursday, the feds rescinded PacNet’s transnational criminal organization designation, a move which followed removal of the individual employees from the Specially Designated Nationals list.

“Treasury got it wrong,” said PacNet’s lawyer A. Jeff Ifrah, a former litigation partner at Greenberg Traurig who founded Ifrah Law in 2009. “Implicit in the speed that we received the de-listing is recognition that they screwed up.”

On one hand, the feds can say they took the company off the hit list because it’s now defunct—the changed circumstances mean there’s no need to retain the designation.

Maybe. But digging into the case from PacNet’s side, the facts look a lot different.

Until now, they’ve had scant chance to tell their story. There’s not much due process when you’re declared a significant transnational criminal organization.

Instead, then-Attorney General Loretta Lynch held a [press conference \(https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-press-conference-announcing-law-0\)](https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-press-conference-announcing-law-0), where she said PacNet laundered money and acted with “malicious intent, to take advantage of elderly individuals and other vulnerable citizens.”

In a [press release \(https://www.treasury.gov/press-center/press-releases/Pages/jl5055.aspx\)](https://www.treasury.gov/press-center/press-releases/Pages/jl5055.aspx), OFAC Acting Director John E. Smith added, “PacNet has knowingly facilitated the fraudulent activities of its customers for many years.”

While we’re at it, perhaps we should also quote the Queen from Alice in Wonderland. “Sentence first, verdict afterwards.” Because this wasn’t the usual prosecutorial swagger. At this point, the penalty was already imposed.

PacNet’s transgression? It allegedly processed check and credit card payments for scammers, the kind who claim you’ve won a big sweepstakes prize but you have to send in \$20 to claim it.

The feds figured PacNet must be in on the cons, and that the best way to shut down the bad guys was to cut off their access to money by taking PacNet out.

There’s a definite logic to that. But in this case, was it fair?

In an Oct. 16 [court filing \(http://www.almcms.com/contrib/content/uploads/documents/292/PacNet-Complaint-in-Interpleader-FINAL.pdf\)](http://www.almcms.com/contrib/content/uploads/documents/292/PacNet-Complaint-in-Interpleader-FINAL.pdf) in the Eastern District of New York to transfer remaining client funds pending formal dissolution of its business, PacNet defended itself. It’s almost irrelevant now—the company is shuttered and Ifrah, who worked with Steven Pelak of Holland & Hart on the case, said sovereign immunity means PacNet doesn’t have much recourse against the government.

Still, it’s scary to see what the government was willing to disregard (or never knew) when it decided that PacNet “presented an unusual and extraordinary threat to the national economy”—the standard for being deemed a significant transnational criminal organization.

The company, which had been in business for more than 20 years, had more than 700 clients, including Bloomberg Business Week, MasterCard Payment Gateway Services Client Finance, the Catholic Archdiocese of Durban and Special Olympics British Columbia Society. If someone wanted a subscription to Business Week, for example, PacNet

would process the payment.

Yes, it serviced a few bad apples too, but PacNet said it did everything it could to identify them and weed them out.

The company said it filed hundreds of Suspicious Transactions Reports and Large Cash Transaction Reports to the Financial Transactions and Reports Analysis Centre of Canada, or FINTRAC, to report questionable transactions. Among those it tattled on? Some of the same scammers that OFAC claimed it was shielding from law enforcement.

“None of those reports were apparently examined by OFAC,” Ifrah wrote.

Moreover, it wasn't as if PacNet was operating without oversight. FINTRAC compliance officers routinely visited PacNet's offices and conducted compliance examinations. So did PacNet client MasterCard, to make sure it adhered to MasterCard's rules and regulations—and found that it did.

PacNet itself hired Deloitte Canada Forensic & Investigative Services Inc. to conduct compliance reviews.

It also “required direct mail clients to furnish copies of the promotions for which PacNet would process payments” to make sure they were legitimate. “PacNet often further required clients to furnish legal opinions concerning the legality of the promotions submitted to PacNet,” Ifrah and Pelak wrote.

Still, sometimes it got fooled. That might sound like a convenient excuse, but even DOJ said so in separate case in 2015.

In that case, a direct-mail scammer in Florida testified that he hid his scheme from PacNet, giving the company “sanitized versions of fraudulent direct-mail pieces” so they would agree to do business with him. The plea agreement actually specifies that he “hid the fraudulent nature of the scheme” from PacNet.

So look, maybe PacNet could have done better, been more vigilant to make sure it wasn't aiding fraudsters. But to find that PacNet poses a threat to the U.S. national security, foreign policy and the economy? To put it in same category as The Camorra in Italy, Los Zetas in Mexico, The Brothers' Circle in Eurasia? Really?

Funny how you don't see those guys hiring Deloitte for an audit or filing reports with FINTRAC.

This designation—transnational criminal organization—is a new one, created by an executive order in 2011. The PacNet case shows an ominous willingness by the feds to use this new tool in a way that seems to take it far beyond the original intent, with devastating consequences for the target.

“Tragically, OFAC gravely injured the reputations and lives of numerous innocent persons and ended a respected and long-established Canadian financial services business whose employees provided outstanding services for more than 20 years to more than 500 commercial businesses and charitable organizations,” Pelak said.

Congress, he added, should act up on recommendations by the Judicial Review Commission on Foreign Asset Control to “enact legislation to establish a system of administrative review with strict time schedules, neutral arbiters, and a meaningful, on-the-record review of OFAC designations and actions.”

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