

Former In-Houser Faces up to Life in Prison if Convicted

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Anthony Chiofalo, a former in-house lawyer in Houston who was charged along with his wife with stealing \$9.3 million from his company, is in custody in Harris County facing the prospect of life in prison if convicted.

That's not the only legal problem facing Chiofalo and his wife, Susan Cardenas Chiofalo. His former employer, Tadano America Corp. (TAC) of Houston, filed a state court civil suit against him and a federal court civil suit against his wife. Both suits seek damages consisting of the money the Chiofalos allegedly stole.

On June 7, 2012, the Harris County District Attorney's office filed probable-cause complaints against Chiofalo and Susan Chiofalo, charging both with "theft-aggregate." Susan Chiofalo is out on \$100,000 bond. On Jan. 7, 339th District Judge Maria Jackson denied bond to Anthony Chiofalo, who turned himself in to authorities in December 2012, seven months after the Harris County DA's office issued an arrest warrant for him.

Paul Doyle, a criminal-defense attorney in Houston who represents Anthony Chiofalo, told reporters on Jan. 7 his client was living undetected in a garage apartment in Rhode Island but turned himself in because he is ready to "take responsibility for what he did."

"He also wants to cooperate with the company," Doyle told reporters after his client's court appearance on Jan. 7.

Doyle also told reporters Susan Chiofalo is "totally and completely innocent."

Susan Chiofalo's criminal-defense attorney, Houston solo Luci Davidson, did not return two telephone messages left at her office.

However, in a motion to dismiss the federal civil suit against her,

Paul Doyle, a criminal-defense attorney in Houston who represents Anthony Chiofalo, says his client turned himself in because he is ready to "take responsibility for what he did."

Susan Chiofalo alleges she is not the "wrongdoer."

"She is a victim of Anthony Chiofalo's crimes, just like TAC alleges that it is a victim," she alleges in the motion to dismiss.

Philip Hilder, an attorney representing TAC, says the company filed the civil suits to recover as much of the money as possible. Hilder, who TAC hired in 2012 to conduct an internal investigation into what he described in June 2012 as an "uncharacteristic spike in litigation," says the company has recovered assets, including collectibles, which potentially are worth millions of dollars. But Hilder says he's not confident the company can recover all of the \$9.3 million.

Hilder says TAC filed the state court petition against Anthony Chiofalo seeking a temporary restraining order "to prevent the dissipation of the assets...."

In that June 2012 petition, TAC

brought fraud, conversion and breach of fiduciary duty causes of action against Anthony Chiofalo and alleged he violated the Texas Theft Liability Act. He has not filed an answer. The company seeks more than \$8 million in actual damages and unspecified punitive damages from him.

In June 2012, 281st District Judge Sylvia A. Matthews signed a TRO, and in July 2012, she signed a temporary injunction.

On Nov. 9, 2012, she signed an order granting an interlocutory default judgment against Anthony Chiofalo on liability in *Tadano America Corp. v. Anthony Chiofalo*, but she wrote in her order that TAC may request a hearing on damages.

The complaints the DA's office filed against Chiofalo and his wife allege Anthony Chiofalo started work at TAC in Houston on Jan. 20, 2009, as head of legal affairs and human resources and in that role he was responsible for managing TAC's litigation. In April 2011, the complaints allege, he created a "fictitious law firm" called Maio & Cardenas LLC and filed documents with the Texas secretary of state that listed him as the registered agent and managing member. [See: "Internal Probe Prompts Criminal Charge Against In-Houser," *Texas Lawyer*, June 18, 2012, page 1.]

The complaints allege that from May 6, 2011, through May 11, 2012, Anthony Chiofalo "caused a series of checks made payable to Maio & Cardenas LLC to be issued by TAC" and those "unauthorized checks" totaled \$9,329,546.81.

According to the complaints, he used \$1,888,777.94 of the money to buy several items from Heritage Auctions from Feb. 7, 2012, to April 5, 2012, including "numerous paintings, sculptures, artwork, photographs, collectibles, comic books, [and] memorabilia." Those purchases were delivered to him at a storage unit facility in Spring on April 27, 2012, the complaints allege.

On Aug. 27, 2012, Jackson signed an order authoring the seizure of items from several storage units the order describes as controlled by Chiofalo and his wife and awarded the items to TAC as "partial restitution." The order includes an 84-page exhibit list of items to be seized.

"We're still pursuing leads," says Hilder, of Hilder & Associates of Houston.

Martina Longoria, an assistant DA in Harris County who is prosecuting the Chiofalos, says she cannot put an estimate on the value of the items that have been recovered.

"We are going to have to determine the current market value and sell at auction. . ." she says. "Unfortunately, a lot of the collectibles are worth what someone is willing to pay for them."

When asked whether Anthony Chiofalo told Doyle why he did this, Doyle says it was like an "obsessive-compulsive" thing: "It started small. It got easier and got bigger," he says.

Doyle, of Paul Doyle & Associates,

told reporters that Anthony Chiofalo wants to cooperate with TAC to recover the assets.

Federal Civil Suit

On Dec. 5, 2012, TAC filed a complaint in federal court against Susan Cardenas Chiofalo and against Maio & Cardenas LLC, a fictitious firm allegedly used by the Chiofalos in their theft.

In the complaint in *Tadano America Corp. v. Susan Cardenas Chiofalo, et al.*, TAC alleges that Susan Cardenas Chiofalo participated with her husband in the theft and that she "routinely withdrew money from Maio's accounts."

"For example, while Chiofalo would sign checks, Cardenas [Chiofalo] would hand-write the payees, dates, payment amounts and even presented her Texas driver's license as identification when she presented Maio checks for payment," TAC alleges in the complaint.

The couple used the money to purchase a house in Spring and "items such as airline tickets, luxury hotel rooms, premier event and sport tickets, designer clothing, collectibles, artwork, one-of-a-kind sport memorabilia, vintage comic books and movie posters," TAC continues in the complaint, further alleging that the couple stored the items at their house and at several storage lockers.

TAC brings civil conspiracy; avoidance and recovery of fraudulent transfers; conversion, misappropriation, constructive trust and unjust enrichment; and fraud causes of action against Susan Cardenas Chiofalo and Maio & Cardenas, and TAC alleges they violated the Texas Theft Liability Act.

TAC seeks a temporary injunction to prevent Cardenas Chiofalo from spending the "misappropriated funds." TAC alleges she moved to New Mexico in August 2012.

TAC further alleges in the complaint that, even though Matthews issued a TRO and then a temporary injunction to prevent Anthony Chiofalo or any of his agents from using or disposing of assets pending a trial in state court, Susan Cardenas Chiofalo "continued to spend, dispose of, and move money traceable to TAC's checks."

On Dec. 28, 2012, Cardenas Chiofalo filed a motion to dismiss TAC's federal civil complaint for failure to join Anthony Chiofalo, "who is a necessary party to this litigation because he is alleged to be a co-conspirator and most of the allegations in the Petition relate only to actions taken by him" and also because TAC already has a default judgment against him in state court.


Cardenas Chiofalo's defense attorney in the federal suit, Delilah Banks, an associate with Locke Lord in Houston, said she would return a telephone call seeking comment but did not.

In July 2012, in Harris County, Susan Cardenas filed for divorce from Anthony Chiofalo.

She is scheduled to be arraigned on Feb. 8, and Anthony Chiofalo's arraignment is set for Feb. 14, according to online court records. ■

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