

Texting Scam Exec Knew But Avoided Paper Trail, Jury Hears

By **Shayna Posses**

Law360, New York (August 23, 2017, 11:19 PM EDT) -- A former mobile technology company executive told a New York federal jury Wednesday that an ex-colleague was a knowing participant in a scheme that reaped millions by signing up unwitting consumers for messaging services, standing firm while the attorney for the accused harped on the lack of a paper trail linking his client to the alleged crimes.

Erdolo Eromo, Mobile Messenger's one-time senior vice president for sales and client services, again took the stand as **the retrial** of two of his fellow former executives, Darcy Wedd and Fraser Thompson, continued into a second week. An earlier trial on wire fraud- and money laundering-related charges ended in a hung jury in April.

The day was dominated by cross-examination conducted by Thompson's attorney Marc S. Nurik, who drilled Eromo about his client's involvement in the auto-subscribing the pair allegedly facilitated with Wedd and others. The purported scheme involved signing up millions of cellphone users for "premium SMS services" — monthly horoscopes, celebrity gossip news and anonymous "love crush" messages, among other things — without their knowledge or consent, causing them to incur \$9.99 in monthly fees.

A large portion of Nurik's questioning stemmed from Eromo's testimony about an auto-subscribing scheme conducted through digital content providers CF Enterprises Pty Ltd. and DigiMobi Pty Ltd., which were run by Eugeni Tsvetnenko, a long-time Mobile Messenger customer.

In early 2012, Wedd and Thompson worked with Eromo and Michael Pajaczkowski — Mobile Messenger's former vice president of compliance and customer care, who is also a cooperating witness — to help Tsvetnenko, who goes by Zhenya, auto-subscribe slews of consumers in exchange for a share of his profits, according to trial testimony.

Under Nurik's inquiries, Eromo maintained Thompson's involvement, noting that he participated in numerous conversations with the other executives about the auto-subscribing scheme, as well as other questionable acts they committed, and sent invoices requesting payment for his work.

Nurik repeatedly asked Eromo where the documents connecting Thompson to the alleged misdeeds were, inquiring, for instance, whether in the two years Eromo went over the facts with the government in preparation for his testimony, he saw a document reflecting that he sent Thompson certain financial accounting breakdowns related to the auto-subscribing.

Eromo admitted that he hadn't, saying Thompson didn't want anything that could link him to their questionable acts emailed to him.

Thompson said, "Call me, text me, Skype me — but don't send me anything," according to Eromo.

Nurik also took jabs at Eromo's character on Wednesday, forcing him to acknowledge several times that he cheated the other Mobile Messenger executives out of money and accusing him of throwing his colleagues under the bus in the hope of securing a lower sentence.

“It was in your interest to bring the government something they didn’t have, right?” Nurik demanded.

But Eromo balked at the accusation, saying, “It was in my interest to tell the truth and nothing but the truth.”

The former executive gave similar answers to Wedd’s attorney Maurice H. Sercarz, who kicked off Wednesday’s proceedings by wrapping up his cross-examination of Eromo. Sercarz pressed Eromo about his cooperation agreement with the government, which promises a letter urging the court to give him a lighter sentence in exchange for him providing “substantial assistance” in the case.

The attorney asked the former executive whether it was his understanding that the prosecutors wouldn’t go to bat for him if he told the truth, but didn’t provide information they deemed sufficiently helpful. Eromo, however, refused to take the bait, insisting that he understood the document to mean he had one job — to tell the truth.

Sercarz had subjected Pajczkowski to a similar line of questioning during **his cross-examination** last week, asking about the former executive’s cooperation agreement as part of his efforts to paint the man as a gifted liar who should give the jury pause.

Pajczkowski was one of the first witnesses to take the stand during the second go-round of proceedings against Wedd, the Australian company’s one-time chief operating officer, and Thompson, the former executive vice president of operations, **who were charged** in 2015 and 2016, respectively, alongside a handful of others.

Several of their alleged co-conspirators have since pled guilty and are cooperating with the government, including Pajczkowski and Eromo.

Prosecutors **called upon** Pajczkowski to discuss the ins and outs of the premium SMS industry and the role of an “aggregator” like Mobile Messenger, which worked with hundreds of content providers to help them place ads for their services and send carriers like Verizon or AT&T a single consolidated bill.

Once cellphone users signed up for these services, they were billed by their carrier through their cellphone bills, with the carrier and aggregators taking a cut before the rest of the money flowed back to the content providers.

Wedd, Thompson and their alleged co-conspirators at Mobile Messenger stand accused of bypassing that process, scheming to sign up users without their knowledge and collect part of the fees that would be added to consumers’ phone bills as a result.

In addition to discussing the Zhenya scheme, Pajczkowski testified about other ways Mobile Messenger executives plotted to bring in extra money, including by helping a content provider named Tatto Inc. with auto-subscribing — which Thompson isn’t accused of participating in — and by running their own content provider companies through shell corporations.

Eromo is expected to take the stand again Thursday for follow-up questioning by the government. Wedd’s testimony is slated to begin before the week’s end.

Another group of defendants have also pled not guilty and a separate trial has been scheduled for them, set to begin in January 2018.

Eromo is represented by Michael J. Proctor of Boies Schiller Flexner LLP.

Wedd is represented by Maurice H. Sercarz and Robert Caliendo of Sercarz & Riopelle LLP.

Thompson is represented by Jonathan T. Savella of the Law Office of Jonathan Savella, and Marc S. Nurik and K.C. Maxwell of Browne George Ross LLP.

The government is represented by Assistant U.S. Attorneys Jennifer L. Beidel, Sarah Elizabeth Paul, Christian R. Everdell and Richard Alan Cooper.

The case is U.S. v. Wedd et al., case number 1:15-cr-00616, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Ryan Boysen. Editing by Pamela Wilkinson.

Update: This story has been updated to include additional counsel information.