

## Helicopter Co., Ex-Army Col Cleared In FCA Contract Suit

By **Patrick Boyle**

*Law360, Washington (April 1, 2016, 2:17 PM ET)* -- An Alabama federal judge on Thursday tossed a False Claims Act suit accusing MD Helicopters Inc. of exploiting an unethical relationship with a U.S. Army project manager to overcharge for choppers the Army purchased for foreign governments.

U.S. District Judge Abdul K. Kallon said the suit by two former MD employees failed to show that the Army's payment of the contracts was conditioned on the company's compliance with a section of the Federal Acquisition Regulation about reporting unethical conduct.

"To establish that compliance with a statute or regulation is a 'condition of payment,' relators are required to plead that the government ... would have necessarily terminated the contract [or withheld payment] based on [MD's] violations of FAR," the judge wrote.

Former MD employees Philip Marsteller and Robert Swisher alleged that CEO Lynn Tilton promised then-Col. Norbert Vergez a high-paying job at MD or her other company, Patriarch Partners LLC, after he retired from the Army. In return, they said, Vergez leaked Tilton sensitive information about solicitations and Tilton inflated the price of helicopters the Army provided to Afghanistan, El Salvador, Costa Rica and Saudi Arabia.

But Judge Kallon said that to meet the requirements of an FCA claim, Marsteller and Swisher had to show that the contracts to supply the helicopters came with an "implied certification" that compliance with a law or regulation was a prerequisite for payment, and that the contractor knowingly violated a law. The relevant law, the judge said, was a section of FAR that sets standards for requiring contractors to "exercise due diligence to prevent and detect criminal conduct" and promote an organizational culture that "encourages ethical conduct and a commitment to compliance with the law."

The judge agreed with MD that even if the company failed to disclose the allegedly unethical conduct, compliance with that section of FAR is not expressly required for the Army to pay the contracts.

"Having carefully reviewed [the contracts]," the judge said, "the court notes that there is no provision in any of them that prohibits payment in the event of noncompliance" with that section of FAR.

For similar reasons, the judge dismissed the former employees' claims that MD violated the Truth in Negotiations Act by failing to give the Army accurate pricing data for the helicopters, saying they did not show that compliance with TINA was a prerequisite for payment.

The plaintiffs first filed suit in May 2013. A judge unsealed the complaint in September 2014 after the government declined to intervene.

In April 2015 Vergez signed a plea agreement admitting to making false statements and having a conflict of influence by negotiating employment with Tilton, and failing to disclose a \$30,000 relocation check he received in November 2012.

“Lynn Tilton, Patriarch Partners and MD Helicopters are pleased with the court's decision dismissing these meritless claims in their entirety,” Richard White, executive director of communications and media relations at Patriarch Partners, told Law360.

Attorneys for the former employees and Vergez did not respond to requests for comment.

The plaintiffs are represented by Phil Benson and Gerald Robinson of Warren Benson Law Group.

Tilton, Patriarch Partners and MD Helicopters are represented by Christopher N. Manning, Alexis A. Lien, Edward C. Reddington and Kristin A. Shapiro of Williams & Connolly LLP and Anthony A. Joseph and Ralph Harrison Smith III of Maynard Cooper & Gale PC.

Vergez is represented by Lee D. Stein and Stephanie Fleischman Cherny of Mitchell Stein Carey PC and William C. Athanas of Waller Lansden Dortch & Davis LLP.

The case is Marsteller et al. v. Tilton et al., case number 5:13-cv-00830, in the U.S. District Court for the Northern District of Alabama.

--Additional reporting by Margaret Harding McGill and Erica Teichert. Editing by Rebecca Flanagan.

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