

Gardner Haas Wins Major Fraud Sanctions in Delaware Chancery Court

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By Natalie Posgate

(Sept. 13) – Lying may have become fashionable in some corners of the social and political climate, but this week a Delaware Chancery Court judge said the fabrications of an executive seeking employment at Trascent Management Consulting amounted to both perjury and fraud.

Vice Chancellor Tamika Montgomery-Reeves ruled that former Trascent director George Bouri had induced the real estate and facilities management firm into hiring him with a breath-taking string of falsehoods and rationalizations about everything from his personal finances to his reasons for leaving his former job at Time Warner Inc.

Montgomery-Reeves ruled that Bouri not only failed to tell the truth to Trascent when their employment agreement was created, but that he perjured himself repeatedly throughout the litigation.

“It is understandable that Bouri would be hesitant to share the true details of his departure from Time Warner, but I find that his lack of candor in discovery and during trial endangered the legitimacy of the litigation process and, thus, is deserving of sanctions,” wrote the judge in an elegantly narrated opinion.

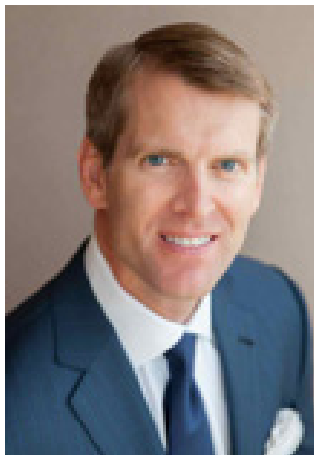
Bouri was ordered to pay, within 10 days, 40 percent of Trascent’s litigation costs and attorney’s fees as well as all such fees associated with Trascent’s separate motion for sanctions – approximately \$500,000 when totaled. The sanctions are believed to be some of the largest for perjury ever recorded in Delaware.

The judgment was a major victory for the Dallas firm Gardner Haas, which handled the fraud case on behalf of Trascent Management Consulting.

New Jersey employment attorney Damian Christian Shammass, lead counsel for Bouri, did not immediately respond to a request for comment.

Michael Gardner, the lead attorney for Trascent, said the opinion rendered a broader significance beyond the “substantial monetary award” to his client:

“It sends a strong message designed to protect the legitimacy of the litigation process itself,” he said. “When you take that oath and you swear or affirm that you’re going to tell the truth, you have the duty to do so. When a litigant takes that oath and then proceeds to lie, deceive and obfuscate, it’s important that a court is not allowing them to do that without



Michael Gardner

consequence.

“This type of sanction award hopefully will have the deterrent effect that it’s designed to have,” he added.

Trascent’s legal team also included Gardner Haas of counsel Jeremy Wilson.

According to the opinion, Bouri began talks with leadership at Trascent’s predecessor company, UMS Advisory, in the summer of 2011, after he left his role as a global real estate and facilities executive at Time Warner.

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UMS Advisory owner, Rakesh Kishan, was interested in bringing Bouri on board to tend to his firm's U.S. business, since he was too busy managing the affairs of the firm's European portfolio.

During their initial talks, Bouri told Kishan that he had voluntarily resigned from Time Warner because he "was being micromanaged." For example, the opinion says, Bouri told Kishan that his supervisor was annoyed that Bouri "drove his Bentley into the office at 10:30 a.m. because it 'set a bad example for other employees.'"

Kishan testified that Bouri also "represented himself was a man of substantial financial means" while they were in negotiation talks, the opinion says, often talking about his Aston Martins, his home in Atherton, California (where property values average \$5 million) and his family wealth. He also told Kishan he made \$2.5 million a year while at Time Warner, showing him an employment agreement, which became apparent during the litigation that it was forged, according to the opinion.

"This wealth was important to Kishan because Kishan was looking for a partner who could be able to invest capital in the business in exchange for equity," the opinion says.

As their courtship continued, Bouri made it clear that he would only come on board if Kishan made him an equity partner and if Kishan formed "a different corporate structure," the opinion says. Kishan did so by forming an LLC (UMS Advisory, LLC), which later changed its name to Trascient. Bouri joined Trascient in early 2014 as the firm's managing principle of the Americas in charge of finance, human resources, IT and operations.

Documents produced by Time Warner in the litigation later revealed that the company terminated Bouri without cause after receiving

numerous complaints about his management style, as well as allegations of sexual harassment.

Bouri's management style was described as aggressive and disrespectful toward employees and other managers. He was accused of touching and kissing female employees, disparaging the perceived sexuality of some, as well as bragging and describing in detail his past conquests.



Tamika Montgomery-Reeves

When confronted with the charges by an in-house attorney, Bouri denied everything – at one point describing himself as "a Libra, so well-balanced" – according to notes of the meeting produced during litigation.

According to Time Warner records, Bouri agreed to resign on May 16, 2011, after receiving a notice of termination 10 days earlier. He was told by Time Warner CEO John Martin that the company had reviewed the complaints and "no longer had

confidence in [Bouri's] business judgment.

According to court testimony, Bouri's hiring was a qualified success until he began to exhibit some of the same management style that had troubled Time Warner. Revenues at Trascient sagged, expenses soared and although Bouri had signed a promissory note as his investment in the company created for his benefit, he refused to pay it at key moments of company need. Instead, he began asking for advances on his paychecks, for reasons that later proved untrue.

Moreover, as Trascient's parent company, UMS Advisory, was forced to cover company debts, bookkeepers began tracking Bouri's seemingly extravagant expenses: dinners and theater tickets with no customer or client named; a personal cigar club membership; coat check charges of \$1,045; expenses for recruitment meetings when no jobs were available; large expenses for fundraising and personal events.

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But in January 2015, unknown to Kishan, it was Bouri who initiated an investigation of Kishan through the company's outside HR services provider. In doing so, according to later testimony, he actively recruited complainants among his employees.

He also initiated what was intended to be a forensic audit through an outside accounting firm, alleging that Kishan was using Trascient funds "as his own personal 'piggybank.'" Bouri confided to others that his aim was to oust Kishan from Trascient.

Kishan was essentially cleared in both investigations. Several complainants recanted, saying they were pressured to collude with Bouri, some under threat of termination.

When, after several months, Kishan was made aware of Bouri's actions, he removed Bouri and another party as directors of Trascient. Then, as majority shareholder and lone director, he voted

to rescind his employment agreement with Bouri.

Following a five-day bench trial in February, Vice Chancellor Montgomery-Reeves determined that "the business records and Bouri's own testimony both show that Bouri lied under oath" throughout the litigation.

In addition to the sanctions and attorneys' fees award, the judge granted Trascient's request to rescind its employment agreement with Bouri and request for a declaratory judgment that the LLC is unenforceable.

"I agree that every litigant has a right to present his or her side of the story, but that does not allow for the submission of false statements," the opinion says. "Bouri's consistent assertion that he voluntarily resigned is not consistent with the independent facts. Moreover, his side of the story is not consistent with his eventual testimony that he did not resign."