

**The Florida Bar: Real Property, Probate and Trust Law Section
Construction Law Committee**

Small Business Sub-Committee

December 14, 2015

Subcommittee Chair: Lisa Colon Heron
Smith Currie & Hancock, LLP

I. H.R. 1694 - Fairness to Veterans for Infrastructure Investment Act of 2015.

On November 17 the House passed H.R. 1694, the Fairness to Veterans for Infrastructure Investment Act 2015 which seeks to include Veteran–Owned Small Business Concerns (“VOSBs”) to the Department of Transportation’s definition of Disadvantaged Business Enterprises. If the Bill becomes law VOSBs will be given preference on projects funded through the DOT and will contribute to DBE hiring goals on DOT projects.

II. U.S. v. Gorski, ---- F.3d ---- (2015), 2015 WL 8285086 (1st Cir. December 9, 2015)

Federal Prosecutors allege that for five years Gorski orchestrated an ongoing scheme for which he certified that his company Legion was a Service-Disabled Veteran Owned Small Business Entity (SDVOSB) in order to qualify for and obtain government contracts.

To qualify to be a SDVOSB, an entity must be at least fifty-one percent owned by one or more service-disabled veterans. The entity must also be controlled by one or more service-disabled veterans.

It is alleged that Gorski approached a service disabled veteran to start a construction business targeting SDVOSB contracts. Initially, the service disabled veteran was a fifty five percent owner. In 2007 the company underwent a corporate restructuring where Gorski became a forty nine percent owner and two service disabled veterans owned eleven and forty percent respectively. There was no payment to the service disabled veteran who relinquished his stock. At this time Gorski was in control of the company and he demanded that the veterans on

demand notes payable to Gorski and employment agreements that provided Gorski could terminate them at any time. Throughout this time, the company was awarded SDVOSB contracts.

In 2009 the company hired the law firm of Mintz Levin to perform another corporate restructure necessitated by amendments to the SDVOSB regulations. Mintz Levin performed a corporate restructuring under which one veteran purchased the other veteran's remaining stock and Gorski continued to own forty nine percent. The attorneys back dated the sale of the stock to occur before the date of the regulatory amendments.

Subsequently the company was involved in a bid protest which, with the assistance of Mintz, it filed a response and included as proof the new corporate back dated documents.

Eventually Gorski was indicted for one count of conspiracy to defraud the United States and four counts of wire fraud. The prosecution issued subpoenas to Mintz which required production of documents concerning the corporate restructuring. Mintz withheld certain documents based on the attorney-client privilege.

The trial court ordered the documents produced under the crime-fraud exception. The appellate court upheld that decision holding that a reasonable basis existed to believe that attorney-client communications were intended by Gorski to facilitate or conceal criminal or fraudulent activity. The court found that Gorski intended to continue the fraudulent scheme even after achieving outward compliance with the new SDVOSB regulations may be inferred from the allegations that he was in discussions with the company's account to provide him with hidden additional compensation. Further there was evidence that Gorski exercised ownership and control over the company after the restructuring in excess of what was reported to the SBA and that there is reasonable basis to believe that with the intent of continuing the scheme that Gorski sought the legal services of Mintz to restructure and maintain the outward appearance of compliance with the SDVOSB regulations.

NEXT MEETING

January 27, 2015 @ 12 PM EST.

Call-in number and password: 712 770-4010 Access code 994-627