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EBay Stalking Victims Ask Why Feds Didn't 'Dig Deeper'

By **Brian Dowling**

Law360 (September 28, 2022, 6:43 PM EDT) -- The husband and wife targeted by a cyberstalking and harassment scheme hatched by eBay Inc. security workers said in victim statements filed Wednesday that they still question why federal prosecutors stopped short of charging the e-commerce giant's top executives who allegedly ordered the ploy.

The letters to the court from David and Ina Steiner came on the eve of sentencing for the two highest-ranking former eBay employees out of seven charged with attempting to silence the couple's reporting on the company through their blog EcommerceBytes.

David Steiner's victim statement questioned why the U.S. attorney's office in Massachusetts decided not to charge the upper echelon of the e-commerce corporation, including then-CEO Devin Wenig. The question led him to root for defense motions seeking additional discovery that could shed light on the decision or even result in more charges, he said.

"As the defendant's motions for discovery during his defense mounted, we were in the unusual position of supporting them, hoping that more discovery might bring answers to the questions we sought for closure and to encourage the U.S. attorney's office to dig deeper," David Steiner wrote.

"How high into the C-suite of eBay had this gone?" the letter continued. "Unfortunately, this is not closure for us. [The] discovery shows there were unindicted co-conspirators, yet eBay was allowed to essentially investigate themselves, and later give a PowerPoint presentation to the government to lobby against prosecution."

The presentation mentioned was given by eBay's lawyers from Morgan Lewis & Bockius LLP who investigated the incident for the e-commerce company. The company said Wenig used an "improper tone" in text message exchanges about the blog, but the internal probe didn't "find evidence that he directed or knew that criminal acts would occur."

Wenig and former communications chief Steven Wymer were not criminally charged, though the Steiners have named them as defendants in a civil suit, alongside eBay Inc. and others.

The former CEO's attorney, Martin G. Weinberg, told Law360 on Wednesday that his client had no knowledge about the actions in the case.

"Mr. Wenig never knew, counseled nor approved any of the conduct that is the subject of the criminal case," Weinberg said. "Had he known, he would have immediately taken steps to stop it."

The letters came the day before sentencing hearings for David Harville, eBay's former director of global resiliency, and his boss Jim Baugh. The government is seeking 41 months for Harville and 71 months for Baugh, while Harville has asked for home confinement and Baugh urged the court to consider a 30- to 36-month term.

Baugh, in his sentencing memo filed Tuesday, said top eBay leaders including Wenig put "intense, relentless pressure" on him to address what they thought was a threat that "could not be solved through ordinary 'lawyer' tools."

In her statement, Ina Steiner said the lack of answers about the incident is "a very real form of mental torture."

"As much as I'm grateful we were spared a trial, I feel deprived of the answers that a trial would have provided," she wrote. "We are still in the dark about much of what was behind what happened to us."

Both journalists said they remain angry about the ordeal.

"I've been told that to begin to heal, I need to get past my anger. I'm not there yet," David Steiner wrote. "I've held on to this anger, afraid that if I let it go, no one will make eBay fully accountable for their actions. If they are not, what is there to deter corporations from mobilizing security agencies and their [own security] department from repeating eBay's actions?"

Representatives for Harville were not immediately available for comment on Wednesday. Counsel for Baugh and the Steiners declined to comment. A spokeswoman for the U.S. attorney's office declined to comment.

The government is represented by Seth B. Kosto.

Baugh is represented by William W. Fick and Daniel Marx of Fick & Marx LLP.

Harville is represented by Peter K. Levitt of Donnelly Conroy & Gelhaar LLP.

The case is U.S. v. Baugh et al., case number 1:20-cr-10263, in the U.S. District Court for the District of Massachusetts.

--Editing by Kelly Duncan.