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Robert C. Schwab

Andrews University, schwab@andrews.edu

Susan M. Taylor

Andrews University, tsusan@andrews.edu

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DISGRUNTLED EMPLOYEE RETALIATION: DOES THE EMPLOYER HAVE RESPONSIBILITY?

Robert C. Schwab, Andrews University
Susan M. Taylor, Andrews University

CASE DESCRIPTION

This short case focuses on harassment and intimidation problems faced by a manager and his family shortly after an employee has been terminated. Whether the departed employee is the intimidator, whether the employer is obligated to investigate and get involved in the matter, and which options or possible actions the manager and his family can take are the key issues in the case.

The case has a difficulty level of four, and is best-suited for use in junior or senior undergraduate-level courses in human resource management or employment law. This case can be presented and discussed in about one and a half hours, and is expected to require about two hours of outside preparation by each student.

CASE SYNOPSIS

This is a case about a disgruntled employee at a software development company that was being downsized. The employee became upset when he was terminated, claimed he was fired because of his Iranian background, and had to be escorted from the premises by a security guard. A few weeks later, his former manager started receiving bills for hundreds of dollars of purchases that neither he nor his wife had ordered, such as magazine subscriptions, life insurance policies, and gifts. The manager thought the terminated employee was probably doing this, but he only had a few forged signatures on some order cards as evidence. The company HR Director was informed about these harassment incidents and shown the signature cards, but didn't offer to get involved to resolve the situation. As more magazines, pornographic pictures, suggestive notes, and even a note with a veiled threat to the wife and baby arrived in the daily mail, the manager realized that his family was being intimidated and threatened in a criminal way. This was no longer just a prank. The police were called and an investigation was begun, but there still seemed to be little support from the company and the HR Director.

Does the employer have a responsibility to protect its managers and their families from work-related harassment? What should the manager do now? Should the family move to a safer place? Should they wait for the police to do something? Should the manager leave his job at the company? Should they retain a lawyer and sue the company?

DISGRUNTLED EMPLOYEE RETALIATION

Mark Sargent is a programming manager at McAlister Systems Incorporated, a software development company that produces and markets various firewall and virus-removal products. In early 2010, the company went through a modest company-wide layoff in which a number of low performing employees were terminated. Corporate reviews had determined that a software engineer in Mark's group, Mohamed Aziz, had a history of marginal productivity reviews, and he was the logical one to lay off. Mark's manager, Bob Bryan, told him that since he was the group programming manager, it was his responsibility to inform Mohamed Aziz of the termination. This was Mark's first experience in laying off anyone, and he was rather anxious about the whole process.

On the designated day, Mark called Mohamed into his office where he delivered the news. Mohamed did not take the layoff well, and started shouting at Mark, saying that he was being singled out unfairly because he was Iranian. When Mark's secretary heard the shouting (and swearing), she called security, and an officer and the Human Resources Director, Esther Coles, quickly arrived to assist. Mohamed was eventually escorted from the premises while threatening legal action. This incident left Mark a bit shaken, but thankful that Ms. Coles and the security officer had been able to intervene. Neither Mark nor the company had any direct contact or communication with Mohamed Aziz after this incident.

About four weeks later, the Sargents started receiving unexpected magazines in the mail along with bills demanding payment for the initial subscriptions. Bills also began to appear for various gifts, CDs, and even an insurance policy, most of which were supposedly ordered by Lisa Sargent, Mark's wife. In a very short time, invoices for over \$1000 of various purchases had been received (see Exhibit 1). Mark and Lisa did not have any idea who might be doing this, until they received confirmation of a gift subscription that Lisa had supposedly sent to Mark's boss, Bob Bryan. They suspected that this harassment must be work-related when they discovered that a second gift subscription had been sent to Cory Mosier, another manager at McAlister Systems. As Lisa called, pretty much on a daily basis, to cancel orders, she also asked for copies of the documents confirming these orders. While many of these were submitted as internet orders, a few were mailed-in order cards, and all had opted for the "bill me" option. After seeing the handwriting on three or four of these cards, Mark thought the large, flowery handwriting was that of Mohamed Aziz. Still, Mark and Lisa were puzzled since Mohamed had never met Lisa, so why would he focus his attention on her?

Mark sent an e-mail to Esther Coles, the Human Resources Director, asking for an appointment to discuss the situation and get some advice on how to proceed (see Exhibit 2). When Mark and Esther got together a few days later, Mark explained in more detail what had been happening over the last several weeks and his suspicions about Mohamed. In just the past few days, he and Lisa had received three more subscriptions...and some were now for

pornographic magazines like Hustler and Raunch. Mark produced some samples of Mohamed's handwriting on some old company documents, and then compared them to the signatures on the order cards that had been retrieved. He reminded Esther of the trouble they had with Mohamed's termination, and asked what should be done next about this matter. Ms. Coles made copies of the information provided by Mark, but didn't offer to intervene with Mohamed or get involved. She did say that Mark was definitely dealing with a mail fraud situation and possibly an identity theft attempt, and that perhaps the postal authorities should be notified, but the information provided wasn't sufficient to accuse Mohamed of anything. Mark left the office feeling unsatisfied with Ms. Coles lack of help, but not sure what his next move should be.

On two successive days in the following week, Lisa received two unsigned hand-written letters in the mail that each contained an explicit pornographic photo, along with some suggestive sexual comments. This was no longer just a case of fraudulent charges for unwanted goods; Lisa was clearly being harassed! The Sargents immediately called the police. Officer Park soon arrived at their home, listened to their complaint, gathered the evidence they had accumulated, and told them to be patient as he moved forward with the investigation. One of the things Officer Park wanted to do was talk to McAlister Systems about Mohamed's background and work performance. Unfortunately, after several days of attempting to set up an appointment with Ms. Coles at McAlister Systems, Officer Park had still not received a reply. Since the police did not have the background information they needed, no attempt had yet been made to approach Mr. Aziz. It seemed to the Sargents that McAlister Systems was responsible for the harassment they were experiencing from Mohamed, and yet the company, and specifically the HR Director, Esther Coles, were reluctant to get involved with this investigation. Why?

A third unsigned hand-written note was received in the mail a few days later that said simply, "I'm watching you, and I know where your babysitter lives!" Lisa and Mark were feeling quite intimidated at this point and started considering what they should do. Would Lisa and the baby feel safer if they left town? Should they hire a private security firm to monitor their home? Would the harassment stop if Mark quit his job at the company? Why wasn't Esther Coles cooperating with the police on this investigation? They called Officer Park, and he again came to their house, gathered the new evidence, and encouraged them to be patient. Lisa wrote an impassioned e-mail to Esther Coles, the HR Director, pleading with her to cooperate with the legal investigation that Officer Park was trying to conduct (see Exhibit 3). Mark and Lisa want the nightmare to stop right now! What else can they do?

DISCUSSION QUESTIONS

1. Does McAlister Systems have an obligation to protect its employees and their families from harassment, particularly if it stems from a work-related incident?
2. Is there any proof that Mohamed Aziz is the perpetrator of this harassment?
3. What actions can Mark and Lisa take to stop this intimidation? What are their options?

4. Given your responses above, what would you recommend that Mark and Lisa do? Justify your recommendation.
5. What do you think the company could have done or should have done to protect Mark and Lisa Sargent from incidents like this? Are these legal or ethical responsibilities?

EXHIBIT 1: APRIL INVOICES FOR GOODS CHARGED TO THE SARGENTS				
<u>Date</u>	<u>Item Ordered</u>	<u>Description</u>	<u>Amount</u>	<u>Ordered by</u>
4-12	Business Week	51 issue subscr	\$45.97	Mark Sargent
4-13	Psychology Today	18 issue subscr	34.97	Lisa Sargent
4-14	PC Magazine	22 issue subscr	39.97	Lisa Sargent *
4-14	Bicycling	11 issue subscr	19.94	Lisa Sargent
4-14	American Baby	12 issue subscr	13.97	Lisa Sargent
4-14	Parents Magazine	24 issue subscr	15.98	Lisa Sargent
4-16	Hamilton Authenticated	Elvis '68 special	45.90	Lisa Sargent
4-16	Hamilton Authenticated	End of a Perfect Day	66.85	Lisa Sargent
4-18	Lenox Collections	Song of Friendship	44.88	Lisa Sargent
4-18	Lenox Collections	Kinkade Beach/S&P	34.88	Lisa Sargent
4-18	Lenox Collections	Jewels of Christmas	30.98	Lisa Sargent
4-19	Good Housekeeping	12 issue subscr	13.03	Lisa Sargent
4-19	Redbook	12 issue subscr	8.91	Lisa Sargent
4-20	Bicycling	11 issue subscr	19.94	Mark Sargent
4-20	China Imports	8 pc Tea Set	95.40	Lisa Sargent *
4-21	Sunset - 12 issue subscr	Gift to Cory Mosier	29.00	Lisa Sargent
4-21	Outside Magazine-24 issues	Gift to Bob Bryan	60.00	Lisa Sargent
4-22	Gerber Life Insurance Co	1 yr Term insurance	299.90	Lisa A. Sargent *
4-23	The Bradford Exchange	Three Kings	55.94	Lisa A. Sargent *
4-25	People Magazine	52 issue subscr	49.91	Lisa Sargent
4-26	Vegetarian Times	24 issue subscr	37.95	Lisa Sargent
4-26	Stock Car Racing	12 issue subscr	18.00	Lisa Sargent
4-27	ESPN	26 issue subscr	26.00	Mark Sargent
4-27	Better Homes & Gardens	12 issue subscr	14.97	Lisa Sargent
4-27	Playboy – 12 issue subscr	Gift to Mark Sargent	28.00	Lisa Sargent
4-28	Hustler Magazine	24 issue subscr	36.00	Lisa Sargent
4-29	AdultWorld – sex toys	Gift to Mark Sargent	45.00	Lisa Sargent
4-30	Raunch Magazine	12 issue subscr	39.95	Lisa Sargent
TOTAL CHARGES FOR APRIL 2010			<u>\$.1272.19</u>	
* Obtained a copy of the order card from the company. In each case the signature was forged, and seemed to be the same “flowery” signature				

EXHIBIT 2

E-MAIL TO ESTHER COLES, HR DIRECTOR AT MCALISTER SYSTEMS INC.

April 27, 2010

To: Esther Coles, HR Director, McAlister System Inc.

Cc: Bob Bryan, VP Program Development

Subject: Mail Fraud

Hello,

My wife and I have been the victims of mail fraud harassment since about April 10 of this year. Many magazine subscriptions, collectibles and even some life insurance forms have been ordered in our name and with our address - including some with forged signatures. We did not order any of them. We have been busy calling each vendor and telling them to cancel our order, take our name off their mailing list, don't sell our address and yes, please send us a copy of the order submission card for evidence. We have received several samples of the guilty party's handwriting. We really didn't have any suspects until last Friday when we received a bill for a gift subscription from my wife to Bob Bryan. We are now quite sure that Mohamed Aziz is the person behind these unauthorized purchases.

As you all know, mail fraud is a federal offense and forging my wife's signature is a crime as well. In any case, our company is definitely involved in this and I wanted to consult with you before we contact the post office and finger Mohamed as a prime suspect. Also, I have some safety concerns since he seems to be quite obsessive about all this, he has my home address, knows my wife's name and middle initial, as well as Bob Bryan's home address. Finally, remember the threats and the ugly scene Mohamed made when we terminated him two months ago. My wife and I are both very concerned about what he might do next.

I've attached a list of the merchandise that has been ordered in our name thus far, and I'd like to meet with you to get your advice on all of this.

Thanks in advance,

Mark Sargent
Development Programming Manager

EXHIBIT 3

SECOND E-MAIL TO ESTHER COLES, HR DIRECTOR AT MCALISTER SYSTEMS

May 10, 2010

To: Esther Coles, HR Director, McAlister System Inc.

Subject: Personal Harassment and Fraud by Mohamed Aziz

Hi Esther:

I'm not sure that Mark has communicated to you exactly how far this situation with Mohamed Aziz has escalated, so I thought I'd lay it out for you. As you know, he has been fraudulently using my name to order magazines, memorabilia, life insurance, etc. To date he has spent over \$1200 in my name.

About a week ago, we received direct correspondence from Mohamed. The letters were addressed to me and contained explicit pornographic images along with sexual threats. We immediately called the police. I believe this is far more serious than a prank - it is direct communication of a threat from a third party. We have provided our police contact (Officer Park) with all the requested information that we can, but there is some additional information that he needs from the company before he can proceed. Just today we received another threatening letter. I want this to stop and I want him to be arrested this week! I have never met this individual and I have no idea what he is capable of. I don't want to wait around to find out. I believe that as a woman, you can appreciate the urgency of this situation. It needs to stop!

Officer Park really needs to make contact with you. He works Wednesday through Sunday. Please call him today and provide him with the information that he needs to proceed with this criminal case. He says he needs verification of birth date, home address, and work permits, and he'd like copies of Mohamed's performance reviews, disciplinary record, and all documentation related to the termination. Officer Park cannot proceed until he has this information. I would like this to be resolved as quickly as possible and would prefer that we not wait until next week or even longer to move forward. This is no longer just a case of Mohamed just irritating us. This is a criminal investigation where we will be pressing charges against someone who is breaking the law.

Please let Mark or me know if you have any questions. I'd like to get this resolved as quickly as possible.

Many thanks!

Lisa Sargent