

Outcome Ex-Growth Chief Says Bad Business Was 'Pervasive'

By **Lauraann Wood**

Law360 (February 21, 2023, 11:18 PM EST) -- A former sales and growth chief for Outcome Health testified Tuesday that bad business practices were "pervasive" throughout the company and that he participated in them because even though Outcome was overselling its inventory, he always thought it was "going to get there."

During his first day of direct testimony in the criminal fraud trial against ex-Outcome executives in Illinois federal court, former sales and growth chief Ashik Desai testified that he learned within his first month that the company was lying to clients about available inventory and concealing information about contract underdelivery.

However, despite those significant issues, Desai testified that he continued Outcome's bad business practices and even taught them to newer employees because he believed in the health education company's vision, as well as founders Rishi Shah and Shradha Agarwal, "and I had always thought we were going to get there."

"I believed that the idea of selling the future, and these words like 'fixing the engine while the plane's in the air,' these were all things that were common at all startups," Desai testified. "I believed that it was all going to kind of work itself out."

Desai's testimony kicked off the fourth week of evidence in the government's \$1 billion criminal fraud trial against Shah, Agarwal and former operational and finance chief Brad Purdy, who each face wire fraud, mail fraud and bank fraud charges on allegations of growing Outcome into a company worth billions **by lying** to clients, customers and investors. Shah also faces a charge of money laundering, while Purdy is additionally charged with making a false statement to a bank.

During opening statements, counsel for the trio pointed to Desai as the true mastermind.

Desai was initially **charged alongside** his former colleagues, but he **pled guilty** to wire fraud within about three weeks of the government naming him in a criminal information filed in November 2019.

He began working in a supportive role for Outcome's sponsorship sales team directly after college in August 2013. He had responsibility over the "list matches" that weighed company inventory against pharmaceutical clients' advertising targets, developing sales presentations for those clients and creating performance reports regarding clients' advertising campaigns.

Desai testified Tuesday he quickly learned it was "very common" to silo information about inventory and revenue and keep those discussions just among Outcome's senior leadership. He also quickly learned about misrepresenting client list matches through his supervisor's instruction and being included on email communications with Agarwal and others discussing the practice, he testified.

Misrepresenting list matches generally involved lying about which of the clients' desired doctors' offices were in Outcome's advertising network and which of those offices had equipment installed and ready to air the client's advertisement, Desai testified. He passed that practice onto other employees, including former analyst David Ma, because "this was a normal practice that I had observed and learned at outcome when I first started," he said. Ma testified last week that **he regularly** created false analytical records for clients and eventually told a Wall Street Journal reporter about the company's deceptive practices because he wanted others to know "it was all built on a lie."

Outcome often underdelivered on the number of screens it would have airing a client's advertisement, Desai testified. But common practice at Outcome was to conceal the underdelivery while continuing to bill the client as though its campaign was airing as contracted, he said.

Desai also testified that he cherry-picked which data to send third-party research companies when Outcome needed to compile return-on-investment reports for clients. He said he often based clients' performance reports on the select-few best performing offices in their advertising campaign and projected their stats as though it was common among every office airing the advertisement. But those doctored reports would then get shared with clients, and that was misleading because the clients wanted to understand every aspect of their campaign, including areas that might have issues, he said.

"If you're instead choosing the offices you know to be performing the best way ... you're concealing the fact that there [were] offices with issues, and if there [were] any issues with underdelivery, you're concealing that as well," Desai testified.

Desai is expected to continue his direct examination Wednesday.

The government claims Outcome lied to clients about the number of doctors they could advertise to, charged them for advertising that never ran because of lack of equipment and fabricated return on investment studies to cover their tracks. The company's former executives hid their conduct by sending clients false proof that the company has satisfied its end of the deal, according to the government.

Former analysts Kathryn Choi and Oliver Han, who were eventually hired to fill Ma's sales analyst role, were also charged and **pled guilty** in a separate criminal case over the alleged fraud.

As a result of its former employees' conduct, Outcome overcharged clients \$6 million in 2015 and more than \$25 million in 2016, the company admitted in a **nonprosecution agreement** it entered with the government. The company has already paid out \$65.4 million to victims of the fraud but set aside \$4.5 million more for other victims pursuant to the nonprosecution agreement.

The government is represented by Kyle Hankey and William Johnston of the DOJ's Criminal Division, and Matthew Madden and Saurish Appleby-Bhattacharjee of the U.S. Attorney's Office for the Northern District of Illinois.

Shah is represented by John Hueston, Karen Ding, Michael Hayes Todisco, Spencer M. Schmider and Vicki Chou of Hueston Hennigan LLP, and Christopher Grohman of Benesch Friedlander Coplan & Aronoff.

Agarwal is represented by Koren Bell, A. Alexander Lowder and Stephen Larson of Larson LLP, and Patrick W. Blegen of Blegen & Garvey.

Purdy is represented by Theodore Poulos, Eric Pruitt, John Pavletic Jr. and Terence Campbell of Cotsirilos Tighe Streicker Poulos & Campbell Ltd.

The case is U.S.v. Shah, case number 1:19-cr-00864, in the U.S. District Court for the Northern District of Illinois.

--Editing by Michael Watanabe.