

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA	:	Crim. No. 15-
	:	
v.	:	18 U.S.C. § 1349
	:	18 U.S.C. § 1343
JUDY TULL and	:	18 U.S.C. § 1344
KAY ELLISON	:	18 U.S.C. § 2

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark,
charges:

COUNT ONE

(Conspiracy to Commit Wire Fraud and Bank Fraud)

1. At all times relevant to this Indictment:

Relevant Individuals and Entities

a. Southern Sky Air & Tours d/b/a "Myrtle Beach Direct Air & Tours" ("Direct Air") was a privately-held public charter company founded in or about 2006 headquartered in Myrtle Beach, South Carolina. In or about 2007, Direct Air commenced operations as a public charter operator, booking airline reservations and arranging for charter flights to be flown by contracted airline carriers. Direct Air offered airline services in a number of cities, including Newark, New Jersey. In or about March 2012, Direct Air ceased operations and filed for bankruptcy.

b. Defendant JUDY TULL co-founded Direct Air, served as its Chief Executive Officer, handled Direct Air's flight operations, and had frequent communications with Direct Air's credit card processors and corporate bank.

c. Defendant KAY ELLISON co-founded Direct Air and served as its Managing Partner. Defendant ELLISON was involved in Direct Air's customer reservations.

d. Defendant TULL and defendant ELLISON owned equity shares in Direct Air and received salaries and bonuses from Direct Air.

e. The U.S. Department of Transportation ("DOT") was the department of the U.S. Government charged with ensuring a safe, efficient, accessible, and convenient transportation system. DOT regulated public charter operators such as Direct Air and its regulations were designed to ensure that flying passengers were protected both personally and financially. Among other things, DOT regulations required charter operators to protect passengers financially either by posting a security or by keeping passenger payments for future flights in a designated depository or escrow account with an approved bank. DOT regulations further protected flying passengers by not allowing charter operators like Direct Air to receive a flight payment, or "ticket price" from the escrow account until the flight is completed.

f. "Bank #1" was a regional bank headquartered in Wayne, New Jersey, and was a financial institution, as that term is defined in Title 18, United States Code, Section 20. Bank #1 was approved by the DOT to maintain depository or escrow accounts. Direct Air maintained a depository

account at Bank #1 (the "Bank #1 Depository Account") and caused passenger payments for future flights to be deposited into the Bank #1 Depository Account. Direct Air and Bank #1 agreed that these payments for future flights would not be released to Direct Air until completion of the flights. Upon completion of flights, defendant TULL, defendant ELLISON, or a Direct Air employee acting at the direction of either defendant TULL or defendant ELLISON either facsimiled or e-mailed from Direct Air's office in South Carolina to Bank #1 in New Jersey requests for payment from the Bank #1 Depository Account ("Bank #1 Release Requests"). The Bank #1 Release Requests were supported by summary reports detailing the flights purportedly flown by Direct Air.

g. "Merchant #1" was a credit card processor located in Carrollton, Texas. Merchant #1 processed credit card payments made to Direct Air in connection with flight reservations. When airline customers paid for reservations to fly on Direct Air using credit cards, Merchant #1 deposited the monies into the Bank #1 Depository Account.

h. "Bank #2" was a bank located in South Jordan, Utah that served as an acquiring bank for Merchant #1 in connection with the processing of certain credit card purchases. As Merchant #1's acquiring bank, Bank #2 transmitted millions of dollars into the Bank #1 Depository Account in connection with reservations made by Direct Air passengers for future flights.

i. "Merchant #2" was a credit card company headquartered in New York. Some Direct Air passengers paid for future flights on Direct Air using

credit cards issued by Merchant #2. Merchant #2 thereby extended millions of dollars in credit to Direct Air.

j. Direct Air offered a discount promotion called the "Family Ties" program. As part of the program, Direct Air divided a passenger's total payment into a "membership fee" and a separate "ticket price."

k. Direct Air ceased operations in or around March 2012. At the time it ceased operations, passengers had purchased tens of thousands of tickets for future travel. Pursuant to DOT regulations, money associated with these tickets should have been held in the Bank #1 Depository Account and should have totaled over \$30 million. In reality, however, the Bank #1 Depository Account contained only approximately \$1 million at the time Direct Air ceased operations.

The Conspiracy

2. Between in or about October 2007 through in or about March 2012, in Passaic County, in the District of New Jersey and elsewhere, defendants

**JUDY TULL and
KAY ELLISON**

did knowingly and intentionally conspire and agree with each other, and others known and unknown:

a. to devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice would

affect a financial institution, to wit, Bank #1, and, for the purpose of affecting such scheme and artifice, to transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, and sounds, contrary to Title 18, United States Code, Section 1343; and

b. to knowingly execute a scheme and artifice to obtain moneys, funds, credits, assets, securities, and other property under the custody or control of a financial institution, to wit, Bank #1, by means of materially false and fraudulent pretenses, representations, and promises, contrary to Title 18, United States Code, Section 1344.

Object of the Conspiracy

3. The object of the conspiracy was for defendant TULL, defendant ELLISON, and others to conceal Direct Air's financial condition and to obtain money by fraudulently withdrawing millions of dollars from the Bank #1 Depository Account.

Manner and Means of the Conspiracy

4. It was part of the conspiracy that, in order to withdraw funds from the Bank #1 Depository Account, defendant TULL, defendant ELLISON, and others employed a variety of techniques designed to overstate the revenues associated with recently completed Direct Air flights.

5. It was further part of the conspiracy that, on various occasions between 2008 through 2010, defendant TULL, defendant ELLISON, and others

made and directed others to: (a) make “ghost” reservations for fictitious passengers in Direct Air’s reservation system to make it seem as if there were more passengers on a given flight and hence more revenue generated for that flight, than was the actual case; (b) submit fraudulent Bank #1 Release Requests to Bank #1 with summary reports reflecting these “ghost” reservations and resulting fraudulently inflated revenue figures; and (c) cancel the “ghost” reservations in Direct Air’s reservation system. In total, defendant TULL and defendant ELLISON caused more than \$8 million in fraudulent transfers by causing ghost passengers to be created in the manner described above.

6. It was further part of the conspiracy that defendant TULL, defendant ELLISON, and others employed a “double-dipping” scheme whereby they fraudulently obtained more than \$12 million dollars from the Bank # 1 Depository Account by submitting by facsimile or e-mail from South Carolina to Bank #1 in New Jersey, Bank #1 Release Requests to Bank #1 for passenger payments designated as “membership fees” prior to the completion of flights, and then after the completion of the flights, submitting Bank #1 Release Requests for the same funds.

7. It was further part of the conspiracy that defendant TULL, defendant ELLISON, and others concealed the shortfall in the Bank #1 Depository Account caused by their schemes by sending fraudulent financial statements to creditors, including Merchant #1 and Merchant #2, and to investors.

8. It was further part of the conspiracy that, after a shortfall in the Bank #1 Depository Account of approximately \$30 million was discovered by creditors in or about March 2012, defendant TULL and defendant ELLISON made false statements to representatives of Merchant #1 to conceal their involvement in the conspiracy.

All in violation of Title 18, United States Code, Section 1349.

COUNTS TWO THROUGH EIGHT
(Wire Fraud)

1. Paragraphs 1 and 3 through 8 of Count One of this Indictment are re-alleged and incorporated by reference as though set forth fully herein.

2. On or about the dates set forth below, in Passaic County, in the District of New Jersey and elsewhere, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice would affect a financial institution, to wit, Bank #1, defendants

**JUDY TULL and
KAY ELLISON**

for the purpose of executing and attempting to execute such scheme and artifice, did knowingly transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, namely, the facsimiles of fraudulent Bank #1 Release Requests described below, each such transmission constituting a separate count of this Indictment:

Count	Approximate Date	Description of Wire Communication
2	January 14, 2009	Facsimile of fraudulent Bank #1 Release Request from Direct Air in South Carolina, signed by defendant TULL, to Bank #1 in New Jersey
3	January 22, 2010	Facsimile of fraudulent Bank #1 Release Request from Direct Air in South Carolina, signed by defendant ELLISON, to Bank #1 in New Jersey
4	April 29, 2010	Facsimile of fraudulent Bank #1 Release Request from Direct Air in South Carolina, signed by defendant ELLISON, to Bank #1 in New Jersey
5	May 21, 2010	Facsimile of fraudulent Bank #1 Release Request from Direct Air in South Carolina, signed by defendant TULL, to Bank #1 in New Jersey
6	May 28, 2010	Facsimile of fraudulent Bank #1 Release Request from Direct Air in South Carolina, signed by defendant ELLISON, to Bank #1 in New Jersey
7	September 9, 2010	Facsimile of fraudulent Bank #1 Release Request from Direct Air in South Carolina, signed by defendant TULL, to Bank #1 in New Jersey
8	September 23, 2010	Facsimile of fraudulent Bank #1 Release Request from Direct Air in South Carolina, signed by defendant TULL, to Bank #1 in New Jersey

All in violation of Title 18, United States Code, Section 1343 and
Section 2.

COUNTS NINE THROUGH FIFTEEN
(Bank Fraud)

1. Paragraphs 1 and 3 through 8 of Count One of this Indictment are re-alleged and incorporated by reference as though set forth fully herein.

2. On or about the dates set forth below, in Passaic County, in the District of New Jersey and elsewhere, defendants

**JUDY TULL and
KAY ELLISON**

did knowingly execute and attempt to execute a scheme and artifice to defraud and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of Bank #1 by means of materially false and fraudulent pretenses, representations, and promises, namely, by submitting and causing to be submitted the fraudulent Bank #1 Release Requests set forth below, each such transaction constituting a separate count of this Indictment:

Count	Approximate Date	Description
9	January 14, 2009	Obtained approximately \$314,000 through the submission of a fraudulent Bank #1 Release Request
10	January 22, 2010	Obtained approximately \$280,000 through the submission of a fraudulent Bank #1 Release Request
11	April 29, 2010	Obtained approximately \$122,000 through the submission of a fraudulent Bank #1 Release Request
12	May 21, 2010	Obtained approximately \$118,000 through the submission of a fraudulent Bank #1

		Release Request
13	May 28, 2010	Obtained approximately \$200,000 through the submission of a fraudulent Bank #1 Release Request
14	September 9, 2010	Obtained approximately \$130,000 through the submission of a fraudulent Bank #1 Release Request
15	September 23, 2010	Obtained approximately \$100,000 through the submission of a fraudulent Bank #1 Release Request

All in violation of Title 18, United States Code, Section 1344 and
Section 2.

FORFEITURE ALLEGATION

1. The allegations contained in Counts One through Fifteen of this Indictment are incorporated by reference as though set forth in full herein for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and 982(a)(2), and Title 28, United States Code, Section 2461.

2. Upon conviction of one or more of the offenses charged in Counts One through Fifteen of this Indictment, defendant TULL and defendant ELLISON shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and 982(a)(2), and Title 28, United States Code, Section 2461(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of to such conviction, and all property traceable to such property.

3. If by any act or omission of defendant TULL or defendant ELLISON any of the property subject to forfeiture herein:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty, the United States shall be entitled to forfeiture of

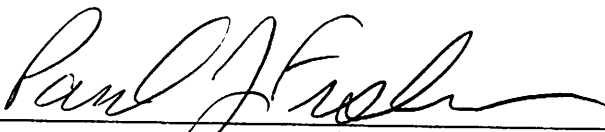
substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(a)(2) and Title 28, United States Code, Section 2461(c).

All pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(b)(2), and Title 28, United States Code, Section 2461(c).


A TRUE BILL

FOREPERSON

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PAUL J. FISHMAN
UNITED STATES ATTORNEY



ANDREW WEISSMANN
SECTION CHIEF
FRAUD SECTION, CRIMINAL DIVISION
UNITED STATES DEPARTMENT OF JUSTICE