

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **08-60169**

18 U.S.C. § 1349

18 U.S.C. § 1344

18 U.S.C. § 1343

18 U.S.C. § 2

OR-MARRA

UNITED STATES OF AMERICA

HOPKINS

vs.

**BRUCE HORNER and
ARTHUR BITTERMAN,**

Defendants.

FILED BY _____ D.C.
2008 JUN 24 PM 3:38
CLARENCE J. HOPKINS
CLERK U.S. DISTRICT COURT
S.D. OF FLA. - FT. L.

INFORMATION

The United States Attorney charges that:

COUNT 1
(CONSPIRACY: 18 U.S.C. § 1349)

1. From on or about March 14, 2007, and continuing through on or about February 14, 2008, in Broward County, in the Southern District of Florida and elsewhere, the defendants,

**BRUCE HORNER and
ARTHUR BITTERMAN,**

did knowingly and willfully combine, conspire, confederate, and agree with each other, and with others known and unknown to the United States Attorney, to commit an offense against the United States, that is,

(a) to knowingly execute and attempt to execute a scheme and artifice to defraud financial institutions, to wit: Bank of America, Bank Atlantic, Regions Bank, and Wachovia Bank, the deposits of which were insured by the Federal Deposit Insurance Corporation,

and to obtain monies, funds, credits, assets, securities, and other property owned by and under the custody and control of these financial institutions, by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

(b) to knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice and attempting to do so, to cause to transmit by means of wire communication in interstate commerce, any writings, signs, signals, pictures, and sounds for the purpose of executing the scheme and artifice to defraud, in violation of Title 18, United States Code, Section 1343.

GENERAL ALLEGATIONS

At times relevant to this Information:

2. Bank of America was a financial institution with offices located in Broward County, Florida, whose accounts were insured by the Federal Deposit Insurance Corporation.

3. Bank Atlantic was a financial institution with offices located in Broward County, Florida, whose accounts were insured by the Federal Deposit Insurance Corporation.

4. Citibank was a financial institution with offices located in Broward County, Florida, whose accounts were insured by the Federal Deposit Insurance Corporation.

5. Regions Bank was a financial institution with offices located in Broward

County, Florida, whose accounts were insured by the Federal Deposit Insurance Corporation.

6. Wachovia Bank was a financial institution with offices located in Broward County, Florida, whose accounts were insured by the Federal Deposit Insurance Corporation.

7. Smith Barney was a corporate subsidiary of Citibank with offices located in Broward County, Florida.

8. Sage Payment Solutions, Inc. ("Sage") was located in McLean, Virginia, and was a provider of Visa and MasterCard credit card and debit card processing services for small businesses.

9. To apply for a Sage Payment Solutions, Inc. ("Sage") merchant account, a potential customer could apply either via telephone or through a sales representative utilizing a short application process.

10. In order to establish a merchant account with Sage, a potential customer had to provide business information, such as the legal name of the business, tax identification number, physical mailing address, website, electronic mail address, and other proof of existence of the business; owner information, including contact and identifying information; account information, including bank account and funding information as well as a cancelled check, from the accounts where the funds would be deposited into; estimated credit card sales; and the current credit card terminal model number.

11. Once an application was approved and a merchant account established, credit card transactions were processed through an approved and properly programmed credit card terminal. Credit cards could be swiped through the card reader or, in the

alternative, the account numbers could be manually entered into a terminal's keypad without a credit card being present.

12. After the applicable credit card information was entered into the credit card terminal, the account information and corresponding transaction amount was relayed to TSYS Acquiring Solutions ("TSYS") in Tempe, Arizona and Columbus, Georgia an via electronic data stream sent over a telephone line for processing. TSYS then sent the approved transactions for settlement from Columbus, Georgia via electronic means Visa and MasterCard to the financial institution that issued the consumer's credit card in order for funds to be settled to Sage's sponsor bank, Harris Bank in Chicago, Illinois.

13. After deducting required transaction and other fees, Sage, through their sponsor bank in Illinois, Harris Bank, electronically transmitted funds to the merchant account holder's demand deposit bank account of choice.

OBJECT OF THE CONSPIRACY

14. The object of the conspiracy was: that the Defendants **BRUCE HORNER** and **ARTHUR BITTERMAN** would unjustly enrich themselves by: (a) fraudulently opening credit card merchant accounts and fraudulently charging credit cards and having the proceeds deposited into a Bank of America account and by (b) uttering and cashing checks at Citibank/Smith Barney that were drawn upon insufficiently funded or closed Bank of America, Bank Atlantic, Regions Bank, and Wachovia Bank accounts.

MANNER AND MEANS

The manner and means by which the defendants and co-conspirators sought to accomplish the objective of the conspiracy included, among others, the following:

15. Defendant **BRUCE HORNER**, a resident of Broward County, Florida, was the owner and operator of a restaurant in Broward County, Florida and recruited **ARTHUR BITTERMAN** and a person identified as T.B. to open business banking accounts at Bank of America, Bank Atlantic, Wachovia, and Regions Bank with fictitious business entities that never operated.

16. Defendant **ARTHUR BITTERMAN**, a former resident of Broward County, Florida, was recruited by **BRUCE HORNER** to open bank accounts at Bank of America, Bank Atlantic, Wachovia, and Regions Bank in the Southern District of Florida.

17. Defendant **BRUCE HORNER** stole the identity of an individual identified as A.E. in order to establish a fraudulent Sage Merchant Account.

18. Defendant **ARTHUR BITTERMAN** opened accounts at Bank of America (XXXX-XXXX-2782 and XXXX-XXXX-1619) and Bank Atlantic (XXX-XXX-2039) as a sole proprietorship in his own name, but with addresses and business names supplied to him by Defendant **BRUCE HORNER**. The business names chosen by Defendant **BRUCE HORNER** were fictitious entities that never operated.

19. Defendants **BRUCE HORNER** and **ARTHUR BITTERMAN** recruited T.B. to open a bank accounts at Regions Bank (XXX-XXXX-6996) and Wachovia Bank (XXX-XXX-2787) in Southern District of Florida. T.B. opened the bank accounts as sole proprietorships in his own name, but with addresses and business names supplied to him by the defendants. The business names chosen by the defendants were fictitious entities that never operated.

20. Defendant **BRUCE HORNER** thereafter filed a fraudulent Sage Merchant

Account application over the telephone using the stolen identity information of A.E., naming A.E. as the owner of the business. Additionally, Defendant **BRUCE HORNER** used the name of another business, without permission, that he did not own as the entity where customer's cards would be swiped. Defendant **BRUCE HORNER** thereafter provided and linked a demand deposit account number to Bank of America account number XXXX-XXXX-1619, which Defendant **BRUCE HORNER** instructed Defendant **ARTHUR BITTERMAN** to open and which Defendant **BRUCE HORNER** controlled.

21. Defendant **BRUCE HORNER**, purporting to be A.E., thereafter filled out Sage's Merchant Account application for a credit card terminal and used a facsimile machine in Florida to send Sage a merchant account application in Virginia that instructed Sage to send the payments to a Bank of America account that Defendant **ARTHUR BITTERMAN** previously opened.

22. After Defendant **ARTHUR BITTERMAN** and T.B. opened these accounts, Defendant **ARTHUR BITTERMAN** met with Defendant **BRUCE HORNER** after Defendant **BRUCE HORNER** received the checks from the accounts in the mail. Defendant **ARTHUR BITTERMAN** would then sign some of the checks and turn the signed checks over to Defendant **BRUCE HORNER**.

23. Defendant **BRUCE HORNER** then used unauthorized credit cards to make large charge amounts on the credit card terminal he obtained through Sage. Sage would then process the MasterCard and Visa transactions through TSYS, located in Tempe, Arizona and Columbus, Georgia.

24. The Defendants caused Sage and TSYS, through Harris Bank in Chicago,

Illinois, to deposit, through electronic funds transfer, the charged amounts, minus their fees, into Bank of America account XXXX-XXXX-1619, opened by Defendant **ARTHUR BITTERMAN** and controlled by Defendant **BRUCE HORNER**.

25. Defendant **BRUCE HORNER** then withdrew money from the Bank of America account for various personal and family expenses. Defendant **ARTHUR BITTERMAN** was paid by Defendant **BRUCE HORNER**, with money and various goods, for opening the bank accounts.

26. Defendant **BRUCE HORNER** opened an another bank account, in his own name, with Citibank/Smith Barney, in the Southern District of Florida.

27. After opening the Citibank/Smith Barney account, Defendant **BRUCE HORNER** wrote approximately fifty-nine checks using the checks from the closed or insufficiently funded Bank of America, Bank Atlantic, Regions Bank, and Wachovia Bank accounts for large amounts of money. These fifty-nine checks ranged in amounts from \$9,755 to \$270,000. These checks were then taken to various Citibank/Smith Barney branches in the Southern District of Florida and deposited. The fifty-nine checks totaled approximately \$4,631,334.

28. Defendant **BRUCE HORNER** then withdrew funds from the account at Citibank/Smith Barney after Citibank/Smith Barney made the funds available from the deposited checks, but before Citibank/Smith Barney learned from the other banks that the checks would not be honored.

29. Defendant **BRUCE HORNER** then used money gained from the checks cashed at Citibank/Smith Barney to pay for personal expenses and used the

Citibank/Smith Barney account to write large checks to various family members, employees, collection agencies, and others.

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

COUNTS 2 through 6
(ATTEMPTED BANK FRAUD: 18 U.S.C. § 1344 and 2)

30. The allegations in paragraphs 2 through 29 of this Information are re-alleged and incorporated as if fully set forth herein.

31. On or about the dates specified as to each count below, in Broward County, in the Southern District of Florida, and elsewhere, the defendants,

BRUCE HORNER and
ARTHUR BITTERMAN,

did knowingly and willfully execute and attempt to execute the above-described scheme and artifice to defraud the financial institutions specified as to each count below, and to obtain moneys and funds owned by, and under the custody and control of, those financial institutions, as described below:

Count	Date	Financial Institution	Account Number and Name	Description of Financial Transaction
2	1/18/08	Bank of America	XXXX-XXXX-2782 (Arthur J. Bitterman, Florida Finest Gormet)	Check no. 1116 drawn on Smith Barney account for \$97,104.37 uttered and passed
3	1/25/08	Bank Atlantic	XXX-XXX-2039 (Arthur James Bitterman DBA AJB Enterprises)	Check No. 1005 drawn on Smith Barney account for \$91,004.80 uttered and passed

Count	Date	Financial Institution	Account Number and Name	Description of Financial Transaction
4	02/04/08	Bank of America	XXXX-XXXX-1619 (Arthur J. Bitterman DBA Florida Finest Gourmet)	Bank of America Check No. 1598 drawn on Citibank/Smith Barney account for \$98,201.54 uttered and passed
5	2/11/08	Regions Bank	XXX-XXXX-6996 (T.B., Global Restaurant and Catering)	Regions Bank Check No. 1001 drawn on Citibank/Smith Barney account for \$195,000 uttered and passed
6	2/12/08	Wachovia Bank	XXX-XXX-2787 (T.B., Global Rest and Caterers)	Wachovia Bank Check No. 2048 drawn on Citibank/Smith Barney account for \$270,000 uttered and passed

In violation of Title 18, United States Code, Sections 1344 and 2.

COUNT 7

**Wire Fraud
(18 U.S.C. §1343)**

32. The allegations contained in paragraphs 2 through 29 of this Information are incorporated herein as though realleged in their entirety.

33. On about July 19, 2007, in Broward County in the Southern District of Florida and elsewhere, the defendant,

BRUCE HORNER,

did knowingly and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property from others by means of false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations and promises were false when made, and for the purpose of executing such scheme and artifice and attempting to do so, did knowingly transmit and cause to be transmitted, in

interstate commerce, certain writings, signs, signals, and sounds, to wit, a facsimile sent on June 19, 2007 from **BRUCE HORNER** in Florida to Sage Payment Solutions in Virginia, for the purpose of executing the scheme and artifice to defraud, in violation of Title 18, United States Code, Section 1343.



R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY



RANDALL D. KATZ
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

BRUCE HORNER
and
ARTHUR BITTERMAN,

Defendant.

_____ /

Superseding Case Information:

Court Division: (Select One)

X Miami FTL Key West WPB FTP

New Defendant(s) _____
Number of New Defendants _____
Total number of counts _____

Yes _____ No _____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 0 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)	(Check only one)
I 0 to 5 days <u>X</u>	Petty _____
II 6 to 10 days _____	Minor _____
III 11 to 20 days _____	Misdem. _____
IV 21 to 60 days _____	Felony <u>X</u>
V 61 days and over _____	

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:
Judge: _____ Case No. _____

(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) No

If yes:
Magistrate Case No. _____
Related Miscellaneous numbers: _____
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes X No

Randall D. Katz
RANDALL D. KATZ
ASSISTANT UNITED STATES ATTORNEY
Court No. A5500942

*Penalty Sheet(s) attached

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: BRUCE HORNER

Case No:

Count #1:

Title 18, United States Code, Section 1349

Conspiracy to Commit Bank Fraud and Wire Fraud

*** Max. Penalty:** 30 years' imprisonment, \$1,000,000 fine, and 5 years' supervised release

Counts #2 – 6:

Title 18, United States Code, Section 1344

Attempted Bank Fraud

***Max. Penalty:** 30 years' imprisonment, \$1,000,000 fine, and 5 years' supervised release

Count #7 :

Title 18, United States Code, Section 1343

Wire Fraud

***Max. Penalty:** 20 years' imprisonment, \$250,000 fine, and 3 years' supervised release

Count #:

***Max. Penalty:**

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ARTHUR BITTERMAN

Case No:

Count #1:

Title 18, United States Code, Section 1349

Conspiracy to Commit Bank Fraud and Wire Fraud

* Max. Penalty: 30 years' imprisonment, \$1,000,000 fine, and 5 years' supervised release

Counts #2 – 6:

Title 18, United States Code, Section 1344

Attempted Bank Fraud

*Max. Penalty: 30 years' imprisonment, \$1,000,000 fine, and 5 years' supervised release

Count #7 :

Title 18, United States Code, Section 1343

Wire Fraud

*Max. Penalty: 20 years' imprisonment, \$250,000 fine, and 3 years' supervised release

Count #:

*Max. Penalty:

*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms or forfeitures that may be applicable.

United States District Court

SOUTHERN DISTRICT OF FLORIDA

WAIVER OF INDICTMENT

UNITED STATES OF AMERICA

v.

CASE NUMBER:

BRUCE HORNER,

Defendant.

-----/

I, BRUCE HORNER, the above named defendant, who is accused of conspiracy to commit bank fraud and wire fraud, attempted bank fraud and wire fraud, in violation of Title 18, United States Code, Sections 1349, 1344 and 1343,

being advised of the nature of the charge(s), the proposed information, and of my rights, hereby waive in open court on _____ prosecution by indictment and consent that the proceeding may be by information rather than by indictment.

Date

BRUCE HORNER

Defendant

Robert I. Targ, Esq.

Counsel for Defendant

Before _____

Judicial Officer

United States District Court

SOUTHERN DISTRICT OF FLORIDA

WAIVER OF INDICTMENT

UNITED STATES OF AMERICA

v.

CASE NUMBER:

ARTHUR BITTERMAN,

Defendant.

-----/

I, ARTHUR BITTERMAN, the above named defendant, who is accused of conspiracy to commit bank fraud, wire fraud and attempted bank fraud, in violation of Title 18, United States Code, Sections 1349, and 1344,

being advised of the nature of the charge(s), the proposed information, and of my rights, hereby waive in open court on _____ prosecution by indictment and consent that the proceeding may be by information rather than by indictment.

Date

ARTHUR BITTERMAN

Defendant

Bruce Lehr
Counsel for Defendant

Bruce Lehr

Before _____

Judicial Officer