

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No.
)
) Violations: Title 18, United States
JOHN A. ORECCHIO) Code, Sections 664 and 1343

COUNT ONE

The UNITED STATES ATTORNEY charges:

1. At times material to this information:

a. AA Capital Partners, located at 10 S. LaSalle Street, Chicago, Illinois, was incorporated by defendant JOHN A. ORECCHIO as a Delaware corporation in approximately February 2002. AA Capital was registered with the SEC as an investment adviser under the Investment Advisers Act of 1940.

ORECCHIO was the co-owner, director, president, and secretary of AA Capital. As the president of AA Capital, ORECCHIO exercised day-to-day management and control of the affairs of AA Capital.

b. AA Capital was the “investment manager” for five union pension funds, each of which was an employee benefit plan as defined in §3(2) of the Employee Retirement Income Security Act of 1974 (“ERISA”), as further described below:

i. Carpenters' Pension Trust Fund – Detroit & Vicinity (the “Carpenters' Fund”), which placed approximately \$75 million for investment under its Investment Management Agreement with AA Capital;

ii. Operating Engineers Local No. 324 Pension Fund (the “Operators' Fund”), which placed approximately \$60 million for investment under its Investment Management Agreement with AA Capital;

iii. Michigan Teamsters Joint Council No. 43 Pension Fund (the “Teamsters' Fund”), which placed approximately \$100,000 for investment under its Investment Management Agreement with AA Capital;

iv. Millwrights' Local No. 1102 Supplemental Pension Fund (the “Millwrights' Fund”), which placed approximately \$13 million for investment under its Investment Management Agreement with AA Capital;

v. Michigan Regional Council of Carpenters Annuity Fund (the “MRCC Fund”), which placed approximately \$21 million for investment under its Investment Management Agreement with AA Capital; and

vi. Arkansas/Oklahoma Regional Council of Carpenters (the “AR/OK Fund”), which placed approximately \$529,000 for investment under its Investment Management Agreement with AA Capital.

(referred to hereinafter as the “ERISA Plan Investors”).

c. The Investment Management Agreements that AA Capital entered into with each of the ERISA Plan Investors delegated to AA Capital full discretion over the investment and re-investment of funds provided by the ERISA Plan Investors to AA Capital. When each of the investors became a client of AA Capital, it deposited the total amount of its investment commitment with AA Capital, and delegated to AA Capital full discretion over the investment and re-investment of all money provided to AA Capital. AA Capital established and

maintained bank trust accounts (the “Investor Trust Accounts”) for each ERISA Plan Investor to hold the funds until such time as when AA Capital was supposed to use the money to make investments on behalf of the Investor.

d. Rather than making direct investments of investors’ money into securities and debt instruments of non-affiliated parties, AA Capital and its principals created a series of separate funds, each formed as a limited partnership (the “Funds”), in which AA Capital placed the ERISA Plan Investors as limited partners and into which AA Capital invested the monies of the ERISA Plan Investors. Each of the Funds in turn used the money to purchase direct investments in non-affiliated parties. Under the governing documents of each of the Funds, a Fund could call capital from the Investor Trust Accounts for three primary purposes: (i) investments by the Funds; (ii) management fees of the Funds; or (iii) overhead expenses attributable to the Funds. AA Capital had complete control over the Investor money held in the Investor Trust Accounts.

e. The structure of each of the Funds was essentially the same. The general partner of each Fund (which was in each case a limited liability company composed of senior employees of AA Capital) received a one percent economic interest in the Fund, for which it made no payment, and the balance of ownership interests in the Funds were held by one or more of the ERISA Plan Investors (as limited partners in the Funds). Defendant JOHN A. ORECCHIO, on behalf of AA Capital, managed the investment assets of each Fund (which consisted of “private equity” investments, loans to real estate developers, and investments in other large, non-affiliated funds) under a written Management Agreement (“Fund

Management Agreements”) in which (i) AA Capital acknowledged that it was a fiduciary within the meaning of ERISA with respect to the assets of the Fund and (ii) AA Capital was granted full discretion over the investments and, if applicable, re-investments of the Fund's assets.

f. AA Capital's services under the Investment Management Agreements included ensuring that the money of each Fund's limited partners was properly maintained, monitored, segregated, and accounted for, was not commingled into the accounts of AA Capital or other funds under AA Capital management, and was used only for authorized purposes, which purposes were limited to funding the investments in each such Fund and paying legitimate expenses and management fees of each such Fund. As such, AA Capital and defendant JOHN A. ORECCHIO were fiduciaries within the meaning of ERISA.

2. Between approximately 2002 and continuing until approximately September 13, 2006, in the Northern District of Illinois, Eastern Division, and elsewhere,

JOHN A. ORECCHIO,

defendant herein, devised and participated in a scheme to defraud the ERISA Plan Investors and AA Capital, and to obtain money by means of materially false and fraudulent pretenses, representations, and promises, which scheme is further described below.

3. It was part of the scheme that defendant JOHN A. ORECCHIO misappropriated and misapplied approximately \$24,000,000 of funds owned by the ERISA Plan Investors.

4. It was further part of the scheme that defendant JOHN A. ORECCHIO falsely and fraudulently caused AA Capital to make capital calls on the Investor Trust Accounts, knowing the funds that he was causing to be withdrawn were not going to be directed toward (i) investments by the Funds; (ii) legitimate management fees of the Funds; or (iii) overhead expenses attributable to the Funds. Rather, defendant ORECCHIO caused the capital calls to occur in order to obtain funds that he could convert for his own use and benefit.

5. It was further part of the scheme that defendant JOHN A. ORECCHIO falsely and fraudulently caused funds owned by the ERISA Plan Investors to be used to pay his own personal expenses, or expenses of AA Capital that were not appropriately allocated to management of the Funds.

6. It was further part of the scheme that at various times between approximately August 31, 2005, and July 31, 2006, defendant JOHN A. ORECCHIO directed AA Capital to make seven capital calls from one of the Funds in amounts totaling approximately \$8,700,000, purportedly to fund investment in AART Development LLC, a real estate development in Michigan. Defendant ORECCHIO misappropriated approximately \$6,930,000 of these funds for his own personal use and benefit, principally to pay for personal business and real estate interests with no connection to the ERISA Plan Investors.

7. It was further part of the scheme that at various times in 2004 and 2005, defendant JOHN A. ORECCHIO directed that AA Capital withdraw by capital calls approximately \$5,721,000 from the Investor Trust Accounts for personal "tax payments" which ORECCHIO purported represented payment for a

personal tax liability that accrued to ORECCHIO personally while acting as the manager of AA Capital. No such tax liability in fact existed. Rather, ORECCHIO misappropriated the funds characterized as "tax payments" for his own personal use and benefit.

8. It was further part of the scheme that at various times between 2003 and 2006, defendant JOHN A. ORECCHIO directed that AA Capital pay, with funds withdrawn from the Investor Trust Accounts, approximately \$4,387,000 to J&R Ventures, an entity whose bank account ORECCHIO controlled. ORECCHIO then converted the substantial majority of these funds for his own personal use and benefit.

9. It was further part of the scheme that between approximately 2003 and September 2006, defendant JOHN A. ORECCHIO submitted to AA Capital false and fraudulent requests for reimbursement and payment of "business expenses" totaling approximately \$7,167,000 that purportedly were incurred by defendant ORECCHIO. In truth, as defendant ORECCHIO well knew, these expenditures of funds were not legitimate business expenses related to his management of the Funds or of AA Capital.

10. It was further part of the scheme that defendant JOHN A. ORECCHIO concealed, misrepresented, and hid and caused to be concealed, misrepresented, and hidden, the existence and purpose of the scheme and the acts done in furtherance of the scheme.

11. On or about April 20, 2005, in the Northern District of Illinois, Eastern Division, and elsewhere,

JOHN A. ORECCHIO,

defendant herein, for the purpose of executing the scheme to defraud, knowingly caused to be transmitted in interstate commerce certain writings, signs, signals, and sounds, namely a wire transfer of approximately \$2,295,000 from an account (no. xxxxxx0578) at Standard Federal Bank maintained in the name of AA Capital Equity Fund LP, to an account (no. xxx-xxx0254) at Wells Fargo Bank maintained in the name of J and R Ventures LLC, in Las Vegas, Nevada.

In violation of Title 18, United States Code, Sections 1343.

COUNT TWO

The UNITED STATES ATTORNEY further charges:

1. The allegations in paragraph 1 of Count One of this information are realleged and incorporated by reference as if fully set forth herein.

2. On or about November 7, 2005, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

JOHN A. ORECCHIO,

defendant herein, did embezzle, steal and willfully abstract or convert to his own use, and to the use of others, moneys, credits, property, and other assets of an employee welfare benefit plan or employee pension benefit plan, subject to Title I of ERISA, and of a fund connected therewith, namely \$5,000,000 belonging to the MRCC Fund.

In violation of Title 18, United States Code, Section 664.

UNITED STATES ATTORNEY