

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	No. 10 CR 651
)	
v.)	Violations: Title 18, United States
)	Code, Section 1341
DANIEL SPITZER)	

COUNT ONE

The SPECIAL AUGUST 2009-2 GRAND JURY charges:

1. At all times material to this information:

a. Defendant DANIEL SPITZER, a resident of St. Thomas, U.S.

Virgin Islands, and Barrington, Illinois, was the principal officer and sole shareholder of Kenzie Financial Management, a U.S. Virgin Islands corporation; the sole manager and member of Kenzie Services, LLC ("Kenzie Services"), a corporation located in Charlestown, Nevis, West Indies; the president of Draseena Funds Group, Corp., an Illinois corporation; the manager of DN Management Company, LLC ("DN") , a Nevada limited liability company, and the manager of Nerium Management Company, an Illinois corporation.

b. Through these corporate entities, defendant DANIEL SPITZER controlled twelve investment funds: Arrow Fund, LLC; Arrow Fund II, LLC; Nerium Currency Fund, LP; Conservium Fund, LLC; Senior Strength Q Fund, LLC; Three Oaks Senior Strength Fund, LLC; Three Oaks Fund, LP; Three Oaks Currency Fund, LP; Three Oaks Advanced Fund, LLC; Three Oaks

Fund 25, LLC; US First Fund, LLC, and SSecurity Fund, LLC (collectively known as "the Kenzie Funds").

c. Defendant DANIEL SPITZER offered and sold to the public investments in the various Kenzie Funds in the form of membership interests and limited partnership interests.

d. Defendant DANIEL SPITZER, through sales agents and various marketing materials, informed investors and potential investors in the Kenzie Funds that their funds would be used to invest primarily in foreign currency trading, that the Kenzie Funds had never lost money, and that the Kenzie Funds had achieved profitable historical returns.

e. Defendant DANIEL SPITZER also informed investors and potential investors, through sales agents and various marketing materials, that after a minimum holding period, they could redeem their investments within a specified period of time, after prior written notice to the fund's administrative manager.

2. Beginning no later than in or around 2004, and continuing until in or around July, 2010, at Riverwoods, in the Northern District of Illinois, Eastern Division, and elsewhere,

DANIEL SPITZER,

defendant herein, and others, devised and participated in a scheme to defraud investors and prospective investors, and to obtain money by means of materially

false and fraudulent pretenses, representations, and promises, and by means of material omissions, which scheme is further described below.

3. It was part of the scheme that defendant DANIEL SPITZER engaged in and operated a form of “Ponzi” scheme. That is, the defendant had to continually raise funds through the solicitation of new investors in the Kenzie Funds to make payments on investments made by earlier investors, all of which the defendant concealed and intentionally failed to disclose to both new and earlier investors. As a part of this Ponzi scheme, the defendant fraudulently obtained over \$105 million from approximately 400 investors.

4. It was further part of the scheme that defendant DANIEL SPITZER fraudulently induced and caused to be induced prospective investors to invest approximately \$105 million in the Kenzie Funds by representing and causing to be represented that the investors’ funds would be used to invest in foreign currencies and other types of investments, when the defendant intended to and did misappropriate a significant portion of the investors’ funds, including approximately \$71 million to make Ponzi-type payments to earlier investors.

5. It was further part of the scheme that defendant DANIEL SPITZER falsely represented and caused to be falsely represented to prospective investors and investors that different Kenzie Funds had different levels of risk and different investment strategies, when the defendant intended to and did commingle the money invested in all twelve of the Kenzie Funds,

misappropriated a significant portion, and only invested less than one third of the approximately \$105 million raised from investors.

6. It was further part of the scheme that defendant DANIEL SPITZER falsely represented and caused to be falsely represented to prospective investors and investors the expected returns and returns on investments, including that the Kenzie Funds had rates of returns ranging from 4.52% to 13.54% over the last five years. The bank accounts for the Kenzie Funds reflect that the total gross return over the five year period on the approximately \$105 million investors contributed to all of the Kenzie Funds was less than 1% for the entire period.

7. It was further part of the scheme that defendant DANIEL SPITZER falsely represented and caused to be falsely represented to prospective investors that as of June 30, 2009, the Kenzie Funds were worth approximately \$250 million, at a time when the Kenzie Funds collectively had only approximately \$4 million in its bank accounts.

8. It was further part of the scheme that defendant DANIEL SPITZER caused to be created fraudulent account statements and Form K-1s (for use by investors in preparing their federal income tax returns) in which he fraudulently inflated the investors' account balances and rates of return.

9. It was further part of the scheme that defendant DANIEL SPITZER used and caused the use of the United States Postal Service to deliver the fraudulent account statements and Form K-1s to investors.

10. It was further part of the scheme that defendant DANIEL SPITZER made Ponzi-type payments to investors, made and caused to be made misrepresentations about the status of investments, and took other steps to lull investors into a false sense of security that their investments were safe and profitable.

Investor A

11. As an example of the scheme, in or about March, 2010, defendant DANIEL SPITZER fraudulently obtained \$100,000 from Investor A, by, among other things, falsely representing that the money would be invested in the SSecurity Fund in foreign currencies and that Investor A could redeem his investment after a 30-day hold period. Defendant DANIEL SPITZER did not invest or cause to be invested Investor A's money as represented. Instead, the defendant used \$9,492 to make Ponzi-type payments to four other investors, transferred \$27,102 to a bank account under the defendant's control, and \$26,257 was used for third party expenses. Moreover, even though Investor A requested in writing a redemption from the SSecurity Fund, he never received it.

Investor B

12. As another example of the scheme, on or about June 17, 2009, defendant DANIEL SPITZER fraudulently obtained \$1.5 million from Investor B for an investment in the SSecurity Fund, in part based on misrepresentations about an earlier investment in one of the Kenzie Funds by Investor B. Defendant DANIEL SPITZER never invested Investor B's \$1.5 million. Instead, defendant DANIEL SPITZER caused Investor B's \$1.5 million to be deposited into an account in the name of SSecurity Fund, LLC and thereafter transferred most of it into accounts for other Kenzie Funds. Defendant DANIEL SPITZER caused virtually all of the funds transferred into these accounts from the SSecurity account to be misappropriated to make Ponzi-type payments to other investors.

13. It was further part of the scheme that when Investor B sought to redeem his investment in the SSecurity Fund, defendant DANIEL SPITZER falsely represented that the redemption might take a little time in order to liquidate Investor B's funds out of the investment and into funds for reimbursement. Investor B never received a redemption of the \$1.5 million.

14. It was further part of the scheme that defendant DANIEL SPITZER 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.

15. As a result of the scheme, defendant DANIEL SPITZER fraudulently obtained over \$105,000,000 from over 400 investors, misappropriated a significant portion of the funds, including to make about \$71 million in Ponzi-type payments, and ultimately caused victims to suffer losses totaling approximately \$34 million.

16. On or about February 21, 2007, at Riverwoods, in the Northern District of Illinois, Eastern Division, and elsewhere,

DANIEL SPITZER,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be delivered by U.S. mail an application and private placement memorandum for the Three Oaks Senior Strength Funds, LLC, representing that Investor HG's funds would be invested in U.S. Treasuries, foreign currency forward contracts, cash currencies, stocks, bonds, funds, funds of funds, warrants, options, real estate, preferreds and convertibles to Investor HG at his address in Riverwoods, Illinois;

In violation of Title 18, United States Code, Section 1341.

COUNT TWO

The SPECIAL AUGUST 2009-2 GRAND JURY further charges:

1. Paragraphs 1 through 15 of Count One are realleged and incorporated as if fully set out in this count.

2. In or about the first quarter of 2009, at Riverwoods, in the Northern District of Illinois, Eastern Division, and elsewhere,

DANIEL SPITZER,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be delivered by U.S. mail a 2008 Schedule K-1 to Investor HG at his address in Riverwoods, Illinois, purporting to show that for the calendar year 2008, Investor HG's account in the Three Oaks Senior Strength Fund had an ending balance of \$299,521;

In violation of Title 18, United States Code, Section 1341.

COUNT THREE

The SPECIAL AUGUST 2009-2 GRAND JURY further charges:

1. Paragraphs 1 through 15 of Count One are realleged and incorporated as if fully set out in this count.

2. On or about December 31, 2008, at Riverwoods, in the Northern District of Illinois, Eastern Division, and elsewhere,

DANIEL SPITZER,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be delivered by U.S. mail a quarterly account statement to Investor HG at his address in Riverwoods, Illinois, purporting to show that Investor HG's account in the Three Oaks Senior Strength Fund had a balance of \$299,520.63 as of December 31, 2008;

In violation of Title 18, United States Code, Section 1341.

COUNT FOUR

The SPECIAL AUGUST 2009-2 GRAND JURY further charges:

1. Paragraphs 1 through 15 of Count One are realleged and incorporated as if fully set out in this count.

2. In or about the first quarter of 2010, at Riverwoods, in the Northern District of Illinois, Eastern Division, and elsewhere,

DANIEL SPITZER,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be delivered by U.S. mail a 2009 Schedule K-1 to Investor HG at his address in Riverwoods, Illinois, purporting to show that for the calendar year 2009, Investor HG's account in the Three Oaks Senior Strength Fund had an ending balance of \$312,886;

In violation of Title 18, United States Code, Section 1341.

COUNT FIVE

The SPECIAL AUGUST 2009-2 GRAND JURY further charges:

1. Paragraphs 1 through 15 of Count One are realleged and incorporated as if fully set out in this count.

2. On or about April 30, 2009, at Naperville, in the Northern District of Illinois, Eastern Division, and elsewhere,

DANIEL SPITZER,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be delivered by U.S. mail a quarterly account statement to Investor RO at his address in Naperville, Illinois, purporting to show that Investor RO's account in the Three Oaks Currency Fund account had a balance of \$143,099.74 as of March 31, 2009;

In violation of Title 18, United States Code, Section 1341.

COUNT SIX

The SPECIAL AUGUST 2009-2 GRAND JURY further charges:

1. Paragraphs 1 through 15 of Count One are realleged and incorporated as if fully set out in this count.

2. On or about July 20, 2009, at Naperville, in the Northern District of Illinois, Eastern Division, and elsewhere,

DANIEL SPITZER,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be delivered by U.S. mail a quarterly account statement to Investor RO at his address in Naperville, Illinois, purporting to show that Investor RO's account in the Three Oaks Currency Fund account had a balance of \$145,708.02 as of June 30, 2009;

In violation of Title 18, United States Code, Section 1341.

COUNT SEVEN

The SPECIAL AUGUST 2009-2 GRAND JURY further charges:

1. Paragraphs 1 through 15 of Count One are realleged and incorporated as if fully set out in this count.

2. On or about October 27, 2009, at Naperville, in the Northern District of Illinois, Eastern Division, and elsewhere,

DANIEL SPITZER,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be delivered by U.S. mail a quarterly account statement to Investor RO at his address in Naperville, Illinois, purporting to show that Investor E's account in the Three Oaks Currency Fund account had a balance of \$116, 165.21 as of September 30, 2009;

In violation of Title 18, United States Code, Section 1341.

COUNT EIGHT

The SPECIAL AUGUST 2009-2 GRAND JURY further charges:

1. Paragraphs 1 through 15 of Count One are realleged and incorporated as if fully set out in this count.

2. On or about February 4, 2010, at Naperville, in the Northern District of Illinois, Eastern Division, and elsewhere,

DANIEL SPITZER,

defendant herein, for the purpose of executing the scheme to defraud, and attempting to do so, knowingly caused to be delivered by U.S. mail a quarterly account statement to Investor RO at his address in Naperville, Illinois, purporting to show that Investor RO's account in the Three Oaks Currency Fund account had a balance of \$116, 865.21 as of December 31, 2009;

In violation of Title 18, United States Code, Section 1341.

FORFEITURE ALLEGATION

The SPECIAL AUGUST 2009-2 GRAND JURY alleges:

1. The allegations contained in Counts One through Eight of this information are realleged and incorporated herein by reference for the purpose of alleging that certain property is subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. As a result of his violations of Title 18, United States Code, Section 1341, as alleged in the foregoing information,

DANIEL SPITZER,

defendant herein, shall forfeit to the United States, pursuant to Title 18, United States Code, Section, 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any and all right, title and interest in property, real and personal, which constitutes and is derived from proceeds traceable to the charged offenses.

3. The interests of the defendant subject to forfeiture pursuant to Title 18, United States Code, Section, 981(a)(1)(C) and Title 28, United States Code, Section 2461(c) include but are not limited to the following property:

a. Funds in the amount of approximately \$34 million.

4. If any of the property subject to forfeiture and described above, as a result of any act or omission of the defendant:

a. Cannot be located upon the exercise of due diligence;

- b. Has been transferred or sold to, or deposited with, a third party;
- 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 divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property, under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c):

- a. the property located at 4017 Wyndwood, Crystal Lake, IL 60014, PIN 19-02-153-001;
- b. the property located at 32 Ketterling Ct., North Barrington, IL 60010, PIN 13-12-403-037; and
- c. the property located at 1686 Logan Creek Dr., Glenbrook, NV 89413, PIN 1418-22-610-002;

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

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY