

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.  
 :  
 : Criminal No. 09-  
 v. :  
 :  
 : 18 U.S.C. § 1344 and § 2  
 JEFFREY E. MICHELSON :

**INFORMATION**

The defendant having waived in open court prosecution by Indictment, the Acting United States Attorney for the District of New Jersey charges that:

**BANK FRAUD**

1. At times relevant to this Information:

a. Defendant JEFFREY E. MICHELSON was a resident of Ledgewood, New Jersey and chief executive officer ("CEO") of a distributor of tobacco, candy and other sundries in Newark, New Jersey (hereinafter "the Distributor"). Defendant MICHELSON also was an attorney in the State of New Jersey. In his capacity as CEO, defendant MICHELSON managed all daily financial operations of the Distributor, including, but not limited to, all banking, payment processing and account reconciliation activity on behalf of the Distributor.

b. Defendant MICHELSON maintained supervisory control and authority of bank accounts, loans and lines of credit, held by the Distributor, at Commerce Bank and Provident

Bank. In or about March 2008, Commerce Bank was acquired by TD Bank. Likewise, in or about May 2009, Provident Bank was acquired by M&T Bank.

c. Commerce Bank offered business clientele the use of a remote deposit capture system (hereinafter "RDC"), which allowed clients to deposit checks remotely by scanning the checks and transmitting the check image to the bank for posting. This practice caused checks to clear at a faster rate and caused funds to be available upon receipt of check images by Commerce Bank.

d. Both Commerce Bank and Provident Bank were financial institutions, as defined in Title 18, United States Code, Section 20, whose deposits were insured by the Federal Deposit Insurance Corporation.

#### **The Scheme and Artifice to Defraud**

2. From in or about July 2005 to in or about November 2008, in Essex County, in the District of New Jersey and elsewhere, defendant

JEFFREY E. MICHELSON

did knowingly execute and attempt to execute a scheme and artifice with intent to defraud financial institutions, including Commerce Bank, Provident Bank and others, to obtain monies, funds, and assets owned by and under the custody and control of these financial institutions, by means of materially false and fraudulent pretenses, representations, and promises.

A. Altering and Depositing Checks via the Commerce Bank RDC System

3. Defendant MICHELSON received numerous checks issued by companies that purchased and distributed products obtained from the Distributor. Prior to depositing these checks with Commerce Bank at various locations within the District of New Jersey via RDC, defendant MICHELSON altered and caused to be altered the amount of the checks to reflect a much greater amount than originally intended by the payor. Defendant MICHELSON's actions caused the Distributor to fraudulently obtain larger deposits, and created an instant credit to the Distributor's operating accounts. Examples include, but are not limited to, the following:

Date	Bank From Which Checks Were Drawn	Altered Check Amount	Original Check Amount
11/21/07	Sovereign Bank	\$ <u>74,866.80</u>	\$ <u>14,866.80</u>
11/28/07	Sovereign Bank	\$ <u>66,619.20</u>	\$ <u>1,619.20</u>
12/06/07	Sovereign Bank	\$ <u>19,310.00</u>	\$ <u>9,310.00</u>
12/06/07	Citibank, N.A.	\$ <u>51,000.00</u>	\$ <u>51.00</u>
12/06/07	Dept. Stores Nat'l Bank	\$ <u>90,000.35</u>	\$ <u>90.35</u>

4. Defendant MICHELSON repeatedly deposited checks in the aforementioned manner, via the Commerce Bank RDC system, with checks issued from numerous companies that did business with the Distributor. In total, defendant MICHELSON's scheme resulted in fraudulent deposits in excess of \$537,000 to Distributor bank

accounts controlled by defendant MICHELSON, at Commerce Bank and Provident Bank locations in the District of New Jersey.

*B. Check Kiting Scheme*

5. From in or about May 2007 to in or about July 2008, defendant MICHELSON repeatedly presented worthless checks, drawn from various bank accounts, to be deposited into the Distributor bank accounts at Commerce Bank and Provident bank in the District of New Jersey, totaling approximately \$3.25 million. The deposits of purportedly legitimate checks created an instant credit to the Distributor's operating accounts in the amount of each worthless check deposit. Defendant MICHELSON then issued, and caused to be issued, payments to third parties in the ordinary course of the Distributor's business operation. Additionally, defendant MICHELSON's conduct allowed defendant MICHELSON to falsely represent to Provident Bank the financial solvency of the Distributor, as more fully set forth in Subsection C below. Examples of defendant MICHELSON's activity include, but are not limited, to the following:

Date	Bank From Which Checks Were Drawn	Banks Where Checks Were Deposited Into Distributor's Bank Account	Total Deposit
05/24/07	Greater Community Bank	Commerce Bank	\$39,481
07/11/07	Greater Community Bank	Commerce Bank	\$49,000
08/02/07	World Savings Bank	Commerce Bank	\$84,481

Date	Bank From Which Checks Were Drawn	Banks Where Checks Were Deposited Into Distributor's Bank Account	Total Deposit
11/05/07	Morgan Stanley	Commerce Bank	\$98,481
06/26/08	Valley National Bank	Commerce Bank	\$48,914
07/15/08	Morgan Stanley	Commerce Bank	\$62,400.77

C. Fraudulent Inflation of Business Assets and Certification to the Commerce Bank

6. On or about March 27, 2008, defendant MICHELSON successfully applied for a Provident Bank small business loan on behalf of the Distributor. The loan terms provided that Provident Bank would loan the Distributor \$1.75 million, with an additional \$2.5 million line of credit, totaling \$4.2 million (hereinafter the "Provident Bank Loan"). Concurrently, defendant MICHELSON submitted what purported to be an independent Attorney Opinion Letter to Provident Bank that falsely represented, in substance and in part, that the Distributor had the necessary assets and accounts receivable to support Provident Bank's issuance of the Provident Bank Loan.

7. To ensure its continued credit worthiness, The Distributor was required to submit monthly borrowing base certificates ("BBC") during the term of the Provident Bank Loan that detailed the company's eligible accounts receivables and inventory. In order to create the appearance that the Distributor was a financially sound company worthy of the

continued extension of credit, defendant MICHELSON, on various occasions, submitted fictitious BBCs to Provident Bank, in the District of New Jersey, that grossly inflated the accounts receivable balance and available company inventory. Many of the invoices submitted by defendant MICHELSON in support of the accounts receivable balance were from defunct vendors and disclosed no details of any purchase transaction. Similarly, the on-hand inventory levels listed by defendant MICHELSON grossly overstated the true available company inventory by at least 300%. As a result, Provident Bank continued to extend the loan and line of credit to the Distributor, believing the Distributor's business assets to be the amounts fictitiously represented by defendant MICHELSON.

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

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RALPH J. MARRA, JR.  
Acting United States Attorney