

FILED IN OPEN COURT
U.S.D.C. - Atlanta

ORIGINAL

SEP 25 2019

JAMES N. HATTEN, Clerk
By:  Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

JAMES TORCHIA

UNDER SEAL

Criminal Indictment

No. **1 19-CR-377**

THE GRAND JURY CHARGES THAT:

Count One

Conspiracy to Commit Mail and Wire Fraud
(18 U.S.C. § 1349)

1. Beginning in or about September 2013 and continuing until in or about January 2016, the exact dates unknown to the Grand Jury, the defendant, JAMES TORCHIA, did knowingly and willfully combine, conspire, confederate, agree and have a tacit understanding with others, both known and unknown to the Grand Jury, 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, and by the omission of material facts, well knowing and having reason to know that said pretenses, representations, and promises were and would be false and fraudulent when made and caused to be made and that said omissions were and would be material, and, in so doing, with the intent to defraud, caused the United States Postal Service and other interstate carriers to be used, and interstate wire communications to be made, in

furtherance of the scheme and artifice to defraud, in violation of Title 18, United States Code, Sections 1341 and 1343.

Background

2. The defendant, JAMES TORCHIA, was the Chief Executive Officer of Credit Nation Capital, a Georgia company, with its principal place of business in Woodstock, Georgia, within the Northern District of Georgia. TORCHIA also operated a number of affiliated companies based in Georgia, including Credit Nation Acceptance, Credit Nation Auto Sales, and American Motor Credit (hereinafter collectively referred to as "Credit Nation"), a Georgia restaurant named Sixes Tavern, and Spaghetti Junction, a Nevada corporation with its principal place of business in the state of Georgia.

3. Credit Nation purchased life insurance policies and subprime automobile loans and offered investors the opportunity to purchase promissory notes for those policies and loans.

4. Life insurance policy owners paid premiums to life insurance companies in exchange for payouts upon their deaths. Life insurance policy owners (also known as "viators") could also sell their policies to third parties for an immediate cash benefit. In those situations, the purchasers became the new policy owners and were entitled to the death benefits when the viators died.

5. Subprime automobile loans were loans that were typically offered to individuals who had low credit scores or limited credit histories. Typically, individuals receiving subprime automobile loans paid higher interest rates than those receiving traditional automobile loans. In most situations, the vehicle

served as the collateral for the subprime automobile loan and would be repossessed if the borrower failed to make payments.

6. Credit Nation offered investors the opportunity to purchase promissory notes through the company's "Blended Asset Offering," which was pitched as "The Perfect Blend." Credit Nation's marketing materials stated that the promissory notes paid 9% interest per year, which was "derived from short-term and long-term income generated by the automobile loans and viatical and life settlements. The opportunity for short-term gains will be achieved through periodic income derived from the payments generated by the subprime automobile loans. Long-term returns will be generated upon the sale of viatical or life settlement contracts or the receipt of a maturity benefit on settlements."

7. TORCHIA approved marketing materials stating that Credit Nation's promissory notes were "100% asset-backed" and "backed by hard asset dollar for dollar." Credit Nation's marketing materials further stated that the company "will use the proceeds of the Offering to invest mostly in subprime automobile loans and viatical and life settlements procured in the United States. Credit Nation may also purchase business-related real estate."

8. From 2013 through late 2015, investors spent over \$40 million purchasing Credit Nation promissory notes.

9. The Securities and Exchange Commission (hereinafter "SEC") was an independent federal agency with responsibility for enforcing the federal securities laws. Through its enforcement mechanisms, the SEC could seek

injunctive relief against businesses engaged in deceptive or misleading securities practices.

Manner and Means

10. During the time period of the conspiracy, the defendant, JAMES TORCHIA, along with others known and unknown to the Grand Jury, causing mails to be used and interstate wire communications to be made, engaged in a scheme to defraud investors by distributing false information about the use of Credit Nation's investor funds and the security of the company's promissory notes.

11. TORCHIA knew that while Credit Nation's marketing materials claimed that investor funds were primarily used to invest in subprime auto loans and viatical and life settlements, the funds were also diverted for undisclosed purposes. At times, TORCHIA used new investor funds to pay Credit Nation's operating expenses, such as rent and payroll. At other points, TORCHIA used newly obtained funds to make payments to earlier promissory note investors to encourage them to invest more money with Credit Nation. Furthermore, even though Credit Nation had financial difficulties, TORCHIA continued to take monetary distributions, which he funneled through Spaghetti Junction, claiming that he was entitled to these funds as repayment for money he had initially invested in Credit Nation. TORCHIA created or otherwise approved marketing materials that failed to disclose these types of payments and that falsely claimed investor funds would primarily be used to purchase life insurance or automobile policies.

12. TORCHIA also falsely told investors that the company had sufficient funds or other assets, namely life insurance policies and subprime automobile policies, to cover all outstanding promissory notes. However, TORCHIA knew when making these representations that Credit Nation was operating at a significant financial loss and had significant financial difficulties. As of late 2014, Credit Nation had roughly \$9 million in assets while investors had pledged roughly \$30 million in promissory notes. In other words, even though Credit Nation told investors that its promissory notes were "100% asset-backed," the company's liabilities dwarfed its assets by more than \$20 million. Furthermore, Credit Nation's corporate income tax returns showed the company operated at a net loss of \$6 million in 2014. At various times, Credit Nation employees conveyed to TORCHIA that the company had difficulty paying for ordinary business expenses. TORCHIA hid these financial difficulties from investors and continued to falsely claim that the promissory notes were "backed by hard assets dollar for dollar."

13. Beginning at least as early as 2014, TORCHIA learned that the SEC had begun investigating certain aspects of Credit Nation's operations. By mid-2014, TORCHIA learned that the SEC investigation had expanded into Credit Nation's marketing materials. After learning of the SEC's expanded investigation, TORCHIA authorized employees to purchase "high-risk" life insurance policies with a face value of tens of millions of dollars. However, TORCHIA knew that Credit Nation still could not pay back all of its investors even after purchasing these policies.

14. In 2015, TORCHIA hired a forensic accountant to defend against the SEC's investigation. The forensic accountant provided TORCHIA with an accounting report showing that Credit Nation's liabilities dwarfed its assets. In fact, the accounting report stated that, as of December 30, 2014, even if every viator died simultaneously – which would mean Credit Nation would receive all of the death benefits at once – the company still did not have sufficient funds or assets to cover all outstanding promissory notes. Despite learning of the SEC's investigation and reviewing their own forensic accountant's report, TORCHIA continued to provide false information about the use of investors' funds and the security of the promissory notes.

15. TORCHIA then learned in early November 2015 that the SEC had filed a federal civil complaint alleging that investors had been defrauded out of millions of dollars. In response to this civil action, TORCHIA prepared a letter to investors refuting the SEC's allegations. The letter also referenced steps that the company had taken during the SEC investigation, which included "hir[ing] a forensic accountant to assist the SEC with its understanding of our business operations and assets. All of this was to no avail." However, the letter to investors failed to disclose that the forensic accountant's report confirmed that Credit Nation could not pay back all its investors. In sending this letter, TORCHIA intended to lull investors into believing the previously issued promissory notes were secure.

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

Counts Two Through Eight

Mail Fraud

(18 U.S.C. § 1341 and § 2)

16. The Grand Jury re-alleges and incorporates by reference the factual allegations contained in paragraphs 1 through 15 of this Indictment as if fully set forth herein.

17. Beginning in or about 2013 and continuing until in or about January 2016, the exact dates unknown to the Grand Jury, in the Northern District of Georgia and elsewhere, the defendant, JAMES TORCHIA, aided and abetted by others known and unknown to the Grand Jury, knowingly devised and intended to devise a scheme and artifice to defraud, and to obtain money by means of materially false and fraudulent pretenses, representations, promises, and by omission of material facts, well knowing and having reason to know that said pretenses, representations, and promises, were false and fraudulent when made and caused to be made and that said omissions were and would be material.

18. On or about the dates listed below for each count, in the Northern District of Georgia and elsewhere, TORCHIA, aided and abetted by others known and unknown to the Grand Jury, with the intent to defraud, for the purpose of executing and attempting to execute the aforementioned scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, promises, and omissions, caused third parties to send the following checks by mail and by private and commercial interstate carrier for purposes of investing in Credit Nation's promissory notes:

Count	Date (On or about)	Check
2	1/27/2015	Mailing of check in the amount of \$200,000 for "B.T."
3	3/5/2015	Mailing of check in the amount of \$200,000 for "L.O."
4	4/14/2015	Mailing of check in the amount of \$50,000 for "J.N."
5	6/4/2015	Mailing of check in the amount of \$88,671.40 for "D.R."
6	6/4/2015	Mailing of check in the amount of \$63,281.49 for "K.R."
7	7/21/2015	Mailing of check in the amount of \$350,854 for "L.A."
8	9/25/2015	Mailing of check in the amount of \$281,268.11 for "R.W."

All in violation of Title 18, United States Code, Section 1341 and Section 2.

Forfeiture

19. The Grand Jury re-alleges and incorporates by reference the factual allegations contained in paragraphs 1 through 18 of this Indictment as if fully set forth herein.

20. Upon conviction for one or more of the offenses alleged in Counts 1 through 8 of this Indictment, the defendant, JAMES TORCHIA, 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 property constituting or derived from proceeds obtained directly or indirectly as a result of said violations.

21. If, as a result of any act or omission of TORCHIA, any property subject to forfeiture:

- 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 intends, pursuant to Title 18, United States Code, Section 982(b) and Title 21, United States Code, Section 853(p), and Title 28, United States Code, Section 2461(c) to seek forfeiture of any property of the defendant

up to the value of the forfeitable property.

A *Deve* BILL
 [Signature]
FOREPERSON

BYUNG J. PAK
United States Attorney

[Signature]

THOMAS J. KREPP
Assistant United States Attorney
Georgia Bar No. 346781

[Signature]

LEANNE M. MAREK
Assistant United States Attorney
Georgia Bar No. 270935

600 U.S. Courthouse
75 Ted Turner Drive SW
Atlanta, GA 30303
404-581-6000; Fax: 404-581-6181