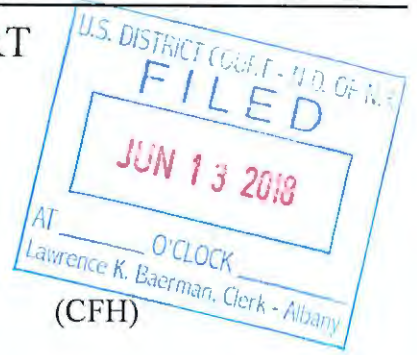


UNITED STATES DISTRICT COURT
for the
Northern District of New York



UNITED STATES OF AMERICA)

v.)

ALBERT M. HESSBERG III,)

Defendant.)

Case No. 18-MJ-331 (CFH)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief. Between on or about June 12, 2017 and June 30, 2017, in the county of Albany in the Northern District of New York, the defendant violated:

Table with 2 columns: Code Section, Offense Description. Rows: 18 U.S.C. § 1343 (Wire fraud), 18 U.S.C. § 1341 (Mail fraud)

This criminal complaint is based on these facts: Please see attached affidavit.

[X] Continued on the attached sheet.

[Handwritten signature of Vinesh M. Manglavil]

Complainant's signature

FBI Special Agent Vinesh M. Manglavil

Printed name and title

Sworn to before me and signed in my presence.

Date: June 13, 2018

[Handwritten signature of Christian F. Hummel]

Judge's signature

City and State: Albany, New York

Hon. Christian F. Hummel, U.S. Magistrate Judge

Printed name and title

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

Affidavit in Support of a Criminal Complaint

Special Agent **VINESH M. MANGLAVIL**, of the Federal Bureau of Investigation (FBI),
being duly sworn, deposes and states:

Agent Background and Introduction

1. I respectfully make this affidavit in support of a criminal complaint charging ALBERT M. HESSBERG III (“Hessberg”) with wire fraud committed in violation of 18 U.S.C. § 1343 and mail fraud committed in violation of 18 U.S.C. § 1341.

2. I am an FBI Special Agent, assigned to the Albany Field Office since 2012. As a Special Agent, I am authorized to investigate violations of the laws of the United States, with authority to execute arrest and search warrants issued under the authority of the United States.

3. I have been employed by the FBI for more than 13 years. As a Special Agent I have primarily investigated public corruption and financial crimes. I have developed extensive experience that has provided me with insight into the methods commonly used to commit financial crimes. In the course of conducting criminal investigations, I have been involved in interviewing and debriefing witnesses and informants; conducting physical surveillance; analyzing bank records and other financial documents; analyzing telephone records; collecting and analyzing other evidence; and preparing and executing search and arrest warrants.

4. The facts in this affidavit come from my personal observations, interviews of witnesses, my training and experience, and my and others’ analysis of various records and information. The information contained in this affidavit is not an exhaustive account of everything I know about Hessberg and this investigation. Rather, it contains only the facts that I

believe are necessary to establish probable cause in support of a criminal complaint. Where statements of others are related in this affidavit, they are related in substance and in part.

Basis for a Finding of Probable Cause – Wire Fraud

5. Hessberg is an attorney. From September 1981 until his termination on March 23, 2018, Hessberg worked at the Albany office of Barclay Damon LLP and a predecessor firm, Hiscock & Barclay LLP (collectively, “Barclay”). On March 23, 2018, Barclay terminated Hessberg for cause, upon discovering some of the conduct summarized below, as well as other, related conduct.

6. Hessberg practiced in the area of trusts and estates. As part of his practice, he served as a trustee for various trusts, and as an executor of numerous estates.

7. Among Hessberg’s clients was a couple, whom I will refer to by their initials: A.R. and his wife C.R., of Albany County, New York.

8. A.R. died in 2007, and was survived by C.R. and their three (3) adult children. According to an inventory of assets that Hessberg filled out, A.R.’s probate estate was worth approximately \$555,000. By will, A.R.’s estate assets passed to his wife and specifically into a trust for her benefit. Hessberg served as the executor of A.R.’s estate and trustee of the trust for C.R.’s benefit. Only income was to be paid to C.R., and no principal was to be distributed during her lifetime. Upon C.R.’s death, the remaining trust assets were to be divided into further trusts for the benefit of C.R.’s 3 children and grandchildren. Trust assets would be distributed to the children when each reached the age of 65, and to grandchildren when each reached the age of 40.

9. C.R. died in 2010. Hessberg served as the executor of her estate, which he valued at approximately \$314,000, according to an inventory of assets form that he filled out. Neither

Hessberg's records at Barclay, nor bank records I have reviewed, indicate that Hessberg established trusts for C.R.'s children and grandchildren upon C.R.'s death.

10. Hessberg was the sole signatory to a KeyBank account ending in account number 4591 and titled "Estate of [A.R.] Albert Hessberg Executor/TRIX" (hereinafter, "A.R. Estate Account"). Between January 1, 2013 and May 11, 2015, Hessberg deposited approximately \$328,507.21 belonging to other Barclay clients into the A.R. Estate Account. Thereafter, Hessberg transferred the majority of these misappropriated client funds, from the A.R. Estate Account into a KeyBank account ending in account number 2284 and standing in his name and a family member's name. Most of this money was then transferred to another KeyBank account standing in his name and a family member's name, ending in account number 8023, and then spent to cover Hessberg's personal and lifestyle expenses.

11. The following are examples of client funds improperly deposited into the A.R. Estate Account:

- a. On or about September 15, 2014, Hessberg deposited into the A.R. Estate Account a check in the amount of \$22,500, made payable to himself as trustee for the assets of another client.
- b. On or about October 6, 2014, Hessberg deposited into the A.R. Estate Account a check in the amount of \$16,000, made payable to himself as trustee for the assets of another client.
- c. On or about October 27, 2014, Hessberg deposited into the A.R. Estate Account a check in the amount of \$17,000, made payable to himself as trustee for the assets of another client.

- d. On or about November 24, 2014, Hessberg deposited into the A.R. Estate Account checks totaling \$14,694.71, made payable to himself as trustee for the assets of another client.
- e. On or about December 11, 2014, Hessberg deposited into the A.R. Estate Account a check in the amount of \$4,674.50, made payable to himself as trustee for the assets of another client.
- f. On or about December 29, 2014, Hessberg deposited into the A.R. Estate Account a check in the amount of \$12,000, made payable to himself as trustee for the assets of another client.
- g. On or about January 13, 2015, Hessberg deposited into the A.R. Estate Account a check in the amount of \$22,500, made payable to himself as trustee for the assets of another client.

Based on my training, experience and investigation to date, I believe that Hessberg deposited other clients' funds into the A.R. Estate Account in order to both conceal his theft of these monies and to replenish monies he previously transferred out of the A.R. Estate Account for his personal benefit. KeyBank records demonstrate that the A.R. Estate Account had a balance of \$21.12 on April 11, 2018.

12. I have reviewed copies of emails exchanged between Hessberg and S.R., one of C.R.'s children. S.R. turned 65 in January 2017, entitling him to his inheritance under the terms of A.R.'s will. Throughout 2017, S.R. inquired about a distribution of assets. In response, in sum and substance, Hessberg explained in emails, voicemails and phone calls to S.R. that distributing the assets was complicated and that he needed more time.

13. By emails dated June 12, 2017 and June 28, 2017, Hessberg told S.R. that he was

working with a “CPA” (Certified Public Accountant) to ensure proper distributions of assets. Based on my investigation to date, I believe these statements to have been false, and that Hessberg made them in order to falsely assure S.R. that substantial trust assets would soon be distributed to S.R. and his siblings. In 2017, Hessberg transferred a total of \$10,500 from the A.R. Estate Account to C.R.’s children, including S.R. Based on my training, experience and investigation to date, I believe Hessberg provided these relatively small payments to S.R. and his siblings in an effort to further conceal and delay the discovery of his thefts.

14. Hessberg used his Barclay email account to communicate with S.R., including to send the emails dated June 12 and June 28, mentioned in the previous paragraph. Barclay has informed me that its email servers are all located outside of the State of New York.

Basis for a Finding of Probable Cause – Mail Fraud

15. I am also investigating allegations that Hessberg misappropriated legal services payments that should have been made to his law firm, Barclay. In one instance, Hessberg was retained by a woman with the initials J.L., to represent her in her role as a Trustee. In Barclay billing paperwork, J.L. is listed as a client assigned to Hessberg.

16. I have reviewed email correspondence between Hessberg and J.L., which demonstrates that on or about June 26, 2017, Hessberg asked J.L. to send two (2) checks to him, including one (1) in the amount of \$25,000 and addressed to “Albert Hessberg III, as attorney.” On June 27, J.L. informed Hessberg that she would “put the checks in the mail to you today,” and that the checks would be post-dated by a few days to ensure they would be honored by the bank. On June 30, Hessberg emailed J.L. to say he had “received your packet today.” Hessberg’s files at Barclay include the cover letter that accompanied the \$25,000 check.

17. I have reviewed the deposits into Hessberg's personal bank accounts during the June 2017 time period. One such deposit, on or about June 30, was of a check for \$25,000, dated June 30, and payable to "Albert Hessberg III" and signed by J.L. The memo line of the check reads: "retainer." Hessberg deposited this check into a personal account at KeyBank, ending in account number 8023, and then used the \$25,000 for personal expenses.

18. I have interviewed J.L., who told me that in June 2017, she mailed Hessberg a \$25,000 check, believing it to be for legal services provided by Hessberg in his capacity as a partner at Barclay.

19. Barclay's attorneys have advised that any payment for legal services should have been negotiated by the firm (and not an individual attorney), and that the firm has no record of a \$25,000 payment from J.L. for legal services.

Conclusion

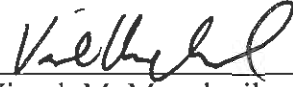
20. Based on the foregoing, there is probable cause to conclude that ALBERT M. HESSBERG III has committed wire fraud, in violation of 18 U.S.C. §1343, and mail fraud, in violation of 18 U.S.C. §1341. Specifically, there is probable cause to conclude that Hessberg has perpetrated a scheme to defraud, in which he breached his fiduciary duties to his clients and his law firm, by making material misrepresentations to them, and concealing material facts from them, all with fraudulent intent; that the object of this scheme was money; and that the scheme involved use of interstate wires, and the United States mail and/or a commercial interstate carrier.

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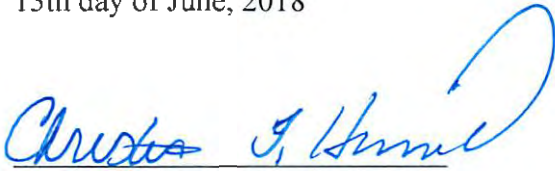
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Vinesh M. Manglavi
Special Agent
Federal Bureau of Investigation

Sworn to before me this
13th day of June, 2018



Hon. Christian F. Hummel
United States Magistrate Judge