

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA

: INDICTMENT

- v. -

15 CRIM 193

JOHN EARVIN,

:

Defendant.

:

- - - - - x

COUNT ONE

The Grand Jury charges:

Background

1. The United Federation of Law Enforcement Officers, Inc. ("UFLEO" or the "Union") is a labor union that represents, among others, Special Inspectors who are employed by the Metropolitan Transportation Authority ("MTA") of New York. Special Inspectors perform various functions for the MTA, including issuing summonses for fare evasion and assisting in the prevention and detection of vandalism.

2. From in or about February 2007 through in or about April 2010, JOHN EARVIN, the defendant, was the Union's President. As Union President and in accordance with the Union's Constitution and Bylaws, it was EARVIN'S duty to supervise all the affairs of the Union. EARVIN also controlled and managed the Union's finances.

JUDGE ENGELMAYER

3. Pursuant to the Union's Constitution and Bylaws, the Union President could be paid a salary (and reimbursement of expenses) but only as set and approved by the Union's Executive Board, which consisted of the President, Vice President, Recording Secretary, and Secretary-Treasurer. No salary ever was set or approved for JOHN EARVIN, the defendant, (and no expenses ever were approved) and the immediate past president as well as the individual who succeeded EARVIN as president also did not receive a salary.

4. From in or about 2007 until in or about 2010, the membership of the UFLEO fluctuated between 12 and 30 members, each of whom paid dues to the Union bi-weekly. The MTA, which is headquartered in New York, New York, deducted UFLEO members' dues directly from the members' paychecks (the "Union Dues"). The MTA then mailed checks to the UFLEO's president in the amount that had been deducted from the members as dues (the "Dues Checks"). The Union president then deposited the Dues Checks into the Union's bank account.

5. On or about February 24, 2007, shortly after becoming President of the Union, JOHN EARVIN, the defendant, opened a checking account in the name of the UFLEO at a bank branch located in New Rochelle, New York (the "Account"). During the entire period of EARVIN's presidency, EARVIN was the sole signatory on the Account

and possessed the only debit card issued on the Account (the "Debit Card").

The Scheme

6. From in or about February 2007 until in or about April 2010, JOHN EARVIN, the defendant, perpetrated a scheme to defraud the Union by using the Union's funds for his own benefit. In furtherance of the scheme, EARVIN accepted Dues Checks and deposited them into the Account under the false pretense that, in accordance with his duty as President, he would use such funds for Union business when, in truth and in fact, EARVIN used the Union's funds for his own benefit. In furtherance of the fraudulent scheme, and to prevent its discovery, EARVIN also made materially false promises and misrepresentations to Union members and officers as well as material omissions, including but not limited to false promises to provide access to and information about the Account, false statements and omissions about the Account and its status, and false statements about the Union's finances, including repeated false statements to the effect that an independent auditor was reviewing the Union's finances.

7. In or about early 2007, the immediate past president of the UFLEO provided to JOHN EARVIN, the defendant, a check from the Union's previous bank account in the amount of approximately \$23,800, representing the total amount of the Union's funds at that

time. In or about February 2007, EARVIN deposited this check into the Account. Subsequently, from in or about March 2007 until in or about March 2010, EARVIN deposited approximately 106 Dues Checks totaling approximately \$41,582 into the Account and wrote checks totaling approximately \$8,900 from the Account for legitimate Union business.

8. During his first six months as President, JOHN EARVIN, the defendant, withdrew all the funds in the Account and used the money for his own benefit. Specifically, EARVIN used the Debit Card on 18 separate occasions to withdraw funds from Automated Teller Machines ("ATMs") located at off-track betting facilities in the State of New York. Thereafter and continuing through in or about April 2010, EARVIN continued to use the Debit Card at ATMs located in New York and New Jersey to withdraw funds for his personal use. In total, from in or about March 2007 through in or about April 2010, EARVIN used the Debit Card to make approximately 607 ATM withdrawals of varying amounts from the Account totaling approximately \$151,794 including ATM and bank fees. From in or about October 2007 through in or about March 2010, EARVIN deposited into the Account approximately thirty checks that had been made out to EARVIN personally (his pension and social security checks) totaling approximately \$108,145.

9. Beginning in or about 2008, Union members requested financial information, including but not limited to a Union financial statement, from JOHN EARVIN, the defendant. EARVIN repeatedly responded that he was working on it and promised to provide the requested financial information but he failed to do so.

10. In or about late 2009 or early 2010, additional Union members were elected to serve as officers of the Union. The newly-elected treasurer, along with other members of the Union's Executive Board, met with EARVIN at that time. During the meeting, the new Union officers asked EARVIN, among other things, to add the newly-elected treasurer as a signatory on the Account. EARVIN promised to do so. Despite such promise and the officers' repeated follow-up requests, EARVIN never added the newly-selected treasurer as a signatory to the Account and failed to even disclose the name of the bank where the Account was held.

11. As a result of the failure of JOHN EARVIN, the defendant, to fulfill his promises to provide financial information to the new officers and to add the newly-elected treasurer as a signatory on the Union's bank account, beginning in or about 2009 and continuing throughout that year, the new officers repeatedly asked EARVIN about the Union's finances and holding an election for president. EARVIN gave evasive responses and eventually sent a letter to the new officers in which, among other things, he falsely

represented that an independent auditor was reviewing the Union's finances.

12. In or about March-April 2010, the Union held elections for the positions of President and Vice President. While EARVIN sought re-election, he lost the election and was replaced by a successor president (the "Incoming President").

13. In or about April 2010, EARVIN sent the Incoming President two Dues Checks and a bank check that was not drawn on the Account in the amount of approximately \$8,199. At a subsequent meeting, EARVIN claimed that the bank check represented the balance of the Union's bank account and that he had closed such account when, in truth and in fact, the Account remained open. At that meeting, EARVIN also provided the Incoming President with documents that EARVIN represented were all the Union documents in his possession, and claimed that he had no general ledger because of an alleged ongoing audit. The documents provided by EARVIN did not include any of the previously promised financial records and EARVIN never provided the Union's new officers with any ledger, financial records, or findings from or proof of any audit of the Union's finances.

14. The ATM withdrawals from the Account by JOHN EARVIN, the defendant, including a withdrawal by EARVIN on or about April 5, 2010 from the Account at an ATM located in New York, caused interstate wires to be used because the wire communications went

through servers of the bank where the Account was held, which were located in states other than New York and New Jersey.

15. As a result of the conduct described above, JOHN EARVIN, the defendant, defrauded the Union and its members of approximately \$48,012 that he used for his personal benefit.

Statutory Allegation

16. From in or about February 2007 through in or about April 2010, in the Southern District of New York and elsewhere, JOHN EARVIN, the defendant, did willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmit and cause to be transmitted by means of wire and radio communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, EARVIN engaged in a fraudulent scheme that used interstate wire communications to convert Union funds to his own use and in furtherance of the scheme made false promises and misrepresentations to Union members and officers and material omissions to avoid detection of his continued misuse of Union funds.

(Title 18, United States Code, Sections 1343 and 2.)

Forfeiture Allegation

17. As the result of committing the wire fraud offense in violation of Title 18, United States Code, Section 1343, as alleged in Count One of this Indictment, JOHN EARVIN, the defendant, 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, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offense, including, but not limited to, the following:

a. At least \$48,012 in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the charged wire fraud offense.

Substitute Asset Provision

18. If any of the above described forfeitable property, 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 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;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981(a)(1)(C);
Title 21, United States Code, Section 853(p);
and Title 28, United States Code, Section 2461.)



FOREPERSON


PREET BHARARA
United States Attorney

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JOHN EARVIN,

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SEALED INDICTMENT

15 Cr.

(18 U.S.C. §§ 1343 and 2.)

PREET BHARARA

United States Attorney.

A TRUE BILL

Foreperson.

3/30/15 FILED INDICTMENT, WARRANT ISSUED.
ASSIGNED TO J. ENGELMANN

COTJUSMT