

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.
NOV 08 2017

BY *As*
DEPUTY CLERK

UNITED STATES OF AMERICA)

v.)

JAY COSTA KELTER,)

f/k/a Ignatius J. Costa, III)

No. 3:17-00208

15 U.S.C. § 78j(b)

15 U.S.C. § 78ff

17 C.F.R. § 240.10b-5

18 U.S.C. § 2

18 U.S.C. § 1341

18 U.S.C. § 1343

INDICTMENT

COUNTS ONE THROUGH FIVE

THE GRAND JURY CHARGES:

At all times material to this Indictment:

I. Background

1. Defendant **JAY COSTA KELTER**, formerly known as Ignatius J. Costa, III, was previously registered as an investment advisor representative from approximately 1997 through 2013.

2. BEK Consulting Partners, LLC (“BEK Consulting”) was an insurance and investment company with a principal place of business at West Palm Beach, Florida. Defendant **JAY COSTA KELTER** was a member and agent of BEK Consulting.

3. A person known to the Grand Jury as “Individual 1” was an elderly resident of Brentwood, Tennessee, and an investment client of defendant **JAY COSTA KELTER**.

II. The Scheme to Defraud

4. Beginning in or around September 2013 and continuing until in or around

September 2, 2016, defendant **JAY COSTA KELTER** devised and intended to devise a scheme and artifice to defraud and to obtain money from Individual 1 by means of false and fraudulent pretenses, representations and promises; including failing to invest and manage Individual 1's funds as promised; and converting those monies and funds to his own benefit and the benefit of others without the knowledge and authorization of Individual 1.

5. It was part of the scheme that defendant **JAY COSTA KELTER** falsely held himself out to Individual 1 as an employee of a discount brokerage company, ("Company A").

6. It was further part of the scheme that defendant **JAY COSTA KELTER** induced Individual 1 to transfer her funds from an investment company at which **KELTER** was previously employed to Company A.

7. It was further part of the scheme that defendant **JAY COSTA KELTER** assisted Individual 1 with opening two brokerage accounts at Company A. It was further a part of the scheme that Individual 1 began receiving brokerage statements from Company A. **KELTER** subsequently advised Individual 1 to disregard the brokerage statements.

8. It was further part of the scheme that defendant **JAY COSTA KELTER** knowingly misrepresented to Individual 1 the activities and performance of those brokerage accounts and failed to tell Individual 1 about the unauthorized transfers.

9. It was further part of the scheme that defendant **JAY COSTA KELTER** conducted certain trade transactions from those brokerage accounts, without the knowledge and permission of Individual 1. For example, on or about August 29, 2016, a person posing as Individual 1 called Company A to place a brokerage transaction. Individual 1 did not authorize the transaction.

10. It was further part of the scheme that defendant **JAY COSTA KELTER**

unlawfully and without authorization transferred from Individual 1's brokerage accounts more than \$1.4 million. The funds were subsequently deposited into bank accounts belonging to and associated with BEK Consulting.

11. It was further part of the scheme that defendant **JAY COSTA KELTER** used portions of the stolen and embezzled monies for the personal benefit of himself and others, including:

- a. the purchase of a Bentley for \$101,400;
- b. payments totaling \$30,000 to a Mercedes dealership;
- c. a \$10,000 payment to a Lamborghini dealership;
- d. transfers and payments totaling \$541,030 to accounts belonging to **KELTER's** close relative and former investment client;
- e. transfers and payments totaling \$55,000 to accounts belonging to **KELTER's** former investment client;
- f. purchases and payments totaling \$21,060 for custom jewelry; and
- g. other transfers and payments into bank accounts owned, controlled or accessed by **KELTER.**

12. It was further part of the scheme that defendant **JAY COSTA KELTER** took numerous steps to conceal his scheme to defraud from detection, including: (a) unlawfully using Individual 1's name and signature on withdrawal request forms and letters; (b) providing Individual 1 with false and incomplete information concerning her investments; (c) falsely telling Individual 1 that her funds were tied up in an illiquid investment; and (d) promising to repay the embezzled and stolen funds. Steps taken by **KELTER** to execute his scheme to defraud include:

- a. On August 31, 2016, defendant **JAY COSTA KELTER** told Individual 1 during

a phone call that he was unable to speak with BEK Consulting representatives about the unauthorized withdrawals because of the Labor Day holiday weekend. In truth and in fact, **KELTER** was an agent and employee of BEK Consulting, and routinely transferred monies from Individual 1's brokerage accounts to BEK Consulting;

b. On August 31, 2016, defendant **JAY COSTA KELTER** told Individual 1 during a phone call that the brokerage funds were invested in BEK for the purchase of bonds, and that an immediate sale of the bonds would result in a 30 percent loss. In truth and in fact, **KELTER** used the brokerage funds for his own personal benefit and the benefit of others, as described herein;

c. On August 31, 2016, defendant **JAY COSTA KELTER** told Individual 1 during a phone call that he used the brokerage funds for personal and business expenses. **KELTER** promised to repay Individual 1. In truth and in fact, **KELTER** did not repay Individual 1;

d. On September 1, 2016, defendant **JAY COSTA KELTER** told Individual 1 during a phone call that he would mail documents acknowledging his liability to Individual 1. In that same phone call **KELTER** promised to repay to Individual 1 the monies stolen and embezzled from the brokerage accounts. In truth and in fact, **KELTER** never repaid Individual 1;

e. Defendant **JAY COSTA KELTER** mailed to Individual 1 on or about September 1, 2016, a letter promising to repay to Individual 1 \$1.4 million if Individual 1 agreed to take no further action against **KELTER**. In truth and in fact, **KELTER** never repaid Individual 1; and

f. Defendant **JAY COSTA KELTER** sent on September 2, 2016, an email promising to immediately return a portion of the funds embezzled and stolen from Individual 1, specifically \$10,000. In truth and in fact, **KELTER** never made the promised payment.

III. Wire Fraud

13. On or about the dates set forth below, in the Middle District of Tennessee and elsewhere, defendant **JAY COSTA KELTER**, for the purpose of executing the aforementioned scheme and artifice to defraud, and to obtain money by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, did knowingly cause to be transmitted by means of wire communication in interstate commerce, writings, signs, signals, and pictures, namely:

Count	Date of Wire	Description of Interstate Wire
1	On or about August 31, 2016	Call from telephone utilized by defendant JAY COSTA KELTER in Georgia to telephone utilized by Individual 1 in Tennessee
2	On or about August 31, 2016	Call from telephone utilized by defendant JAY COSTA KELTER in Georgia to telephone utilized by Individual 1 in Tennessee
3	On or about August 31, 2016	Call from telephone utilized by defendant JAY COSTA KELTER in Georgia to telephone utilized by Individual 1 in Tennessee
4	On or about September 1, 2016	Call from telephone utilized by defendant JAY COSTA KELTER in Georgia to telephone utilized by Individual 1 in Tennessee
5	On or about September 2, 2016	Email from JAY COSTA KELTER to representative for Individual 1 promising to repay stolen and embezzled money

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS SIX THROUGH TWENTY-ONE

THE GRAND JURY FURTHER CHARGES:

1. The allegations contained in Paragraphs 1 through 12 of COUNTS ONE THROUGH FIVE are incorporated and re-alleged as if fully set forth herein.

2. On or about the dates set forth below, in the Middle District of Tennessee and elsewhere, defendant **JAY COSTA KELTER**, for the purpose of executing the aforementioned scheme and artifice to defraud, and to obtain money by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, did knowingly mail and cause the following mailings to be sent and delivered by U.S. mail and by private and commercial interstate carrier:

Count	Date of Mailing	Description of Mailing
6	On or about March 31, 2014	Brokerage account statement mailed to Individual A
7	On or about July 31, 2014	Brokerage account statement mailed to Individual A
8	On or about March 31, 2015	Brokerage account statement mailed to Individual A
9	On or about May 31, 2015	Brokerage account statement mailed to Individual A
10	On or about July 31, 2015	Brokerage account statement mailed to Individual A
11	On or about October 31, 2015	Brokerage account statement mailed to Individual A
12	On or about December 31, 2015	Brokerage account statement mailed to Individual A
13	On or about January 31, 2016	Brokerage account statement mailed to Individual A
14	On or about February 29, 2016	Brokerage account statement mailed to Individual A

Count	Date of Mailing	Description of Mailing
15	On or about March 31, 2016	Brokerage account statement mailed to Individual A
16	On or about April 30, 2016	Brokerage account statement mailed to Individual A
17	On or about May 31, 2016	Brokerage account statement mailed to Individual A
18	On or about June 30, 2016	Brokerage account statement mailed to Individual A
19	On or about July 31, 2016	Brokerage account statement mailed to Individual A
20	On or about August 31, 2016	Brokerage account statement mailed to Individual A
21	On or about September 1, 2016	Lulling letter sent to Individual A promising repayment of monies stolen and embezzled from brokerage accounts held at Company A

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

COUNT TWENTY-TWO

THE GRAND JURY FURTHER CHARGES:

1. The allegations contained in Paragraphs 1 through 12 of COUNTS ONE THROUGH FIVE are incorporated and re-alleged as if fully set forth herein.
2. Beginning in or about September 2013 and continuing until in or about September 2016, in the Middle District of Tennessee and elsewhere, defendant **JAY COSTA KELTER**, did unlawfully, knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and facilities of national securities exchanges, would and did use and employ manipulative and deceptive devices and contrivances, in connection with the purchase and sale of securities and investments, in contravention of Title

17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which would and did operate as a fraud and deceit upon persons in connection with the purchase and sale of investments through Company A.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

FORFEITURE ALLEGATION

THE GRAND JURY FURTHER CHARGES:

1. The allegations contained in this Indictment are re-alleged and incorporated by reference as if fully set forth in support of this forfeiture.

2. Upon conviction of any of Counts One through Twenty-Two of the Indictment, defendant **JAY COSTA KELTER** shall forfeit to the United States of America, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure and Title 18, United States Code, Section 981(a)(1)(C):

- A. any property, real or personal, constituting or derived from or traceable to the gross proceeds obtained directly or indirectly as a result of the offense of conviction; and
- B. a money judgment in an amount to be determined, representing the amount of gross proceeds obtained directly or indirectly as a result of the offense of conviction.

3. If any of the property described above, as a result of any act or omission of defendant **JAY COSTA KELTER**:

- 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 that cannot be divided without difficulty,

the United States shall be entitled to forfeiture of substitute property, and 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 defendant **JAY COSTA KELTER**, up to the value of said property listed above as subject to forfeiture, including but not limited to a money judgment representing the value of said property.

A TRUE BILL



FOREPERSON

Mary Jane Stewart, Tausa, Acting for

DONALD Q. COCHRAN
UNITED STATES ATTORNEY

Stephanie N. Toussaint

STEPHANIE N. TOUSSAINT
ASSISTANT UNITED STATES ATTORNEY

CRIMINAL COVER SHEET
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Petty Offense ()
Misdemeanor ()
Felony (x)
Juvenile ()

County of Offense: **Williamson County**
AUSA's NAME: **Stephanie N. Toussaint**

Jay Costa Kelter
Defendant's Full Name

4041 N. Stratford Road NE,
Atlanta, GA 30342
Defendant's Address

Interpreter Needed? Yes X No

If Yes, what language? _____

Jim Todd
Defendant's Attorney

COUNT(S)	TITLE/SECTION	OFFENSE CHARGED	MAX. PRISON	MAX. FINE
1-5	18 U.S.C. § 1343	Wire Fraud	20 years	\$250,000
6-21	18 U.S.C. § 1341	Mail Fraud	20 years	\$250,000
22	15 U.S.C. §§ 78j(b), 78ff 17 CFR § 240.10b-5	Securities Fraud	20 years	\$5,000,000

If the defendant is charged with conspiracy but not with the primary offense, list the primary offense below:

TITLE/SECTION	OFFENSE	MAX. PRISON	MAX. FINE

Is the defendant currently in custody? Yes () No (x) If yes, State or Federal? _____

Has a complaint been filed? Yes () No (x)
If Yes: Name of the Magistrate Judge _____ Case No.: _____
Was the defendant arrested on the complaint? Yes () No ()

Has a search warrant been issued? Yes () No (x)
If Yes: Name of the Magistrate Judge _____ Case No.: _____

Was bond set by Magistrate/District Judge? Yes () No (x) Amount of bond: _____

Is this a Rule 20? Yes () No (x) To/from what district? _____
Is this a Rule 40? Yes () No (x) To/from what district? _____

Is this case related to a pending or previously filed case: Yes () No (x)
What is the related case number? _____
Who is the Magistrate Judge? _____

Estimated trial time: 3 days

The Clerk will issue a Summons/**Warrant** (circle one)

Bond Recommendation: _____