

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA

v.

MICHAEL A. LIBERTY,
PAUL E. HESS,

Defendants.

2019 FEB 27 P 12:43 Crim. No. 2:19cr30-JAW

VIOLATIONS: Title 18, U.S.C.,
Sections 1349, 1343, 1956(h), 1957 & 2

Title 15, U.S.C., Sections 78j(b) &
78ff(a)

INDICTMENT

The Grand Jury charges that at all times relevant to this Indictment:

GENERAL ALLEGATIONS

The Defendants and Related Individuals

1. Defendant MICHAEL A. LIBERTY was a citizen and resident of the United States. LIBERTY maintained residences in Florida and Maine and purported to be an independently-wealthy businessman. LIBERTY, with the help of others, solicited individuals to invest in various shell companies that he controlled (the "Liberty Pass-Through Companies") on the basis that their investments would be passed on to fund the business operations of a company named Mozido.

2. Defendant PAUL E. HESS was a citizen and resident of the United States. HESS was a Certified Financial Planner ("CFP") and resided in Massachusetts. HESS was friends and business associates with LIBERTY. HESS solicited groups of individuals, including his friends and family, to invest in Mozido.

3. INDIVIDUAL-1 was a citizen and resident of the United States. INDIVIDUAL-1 resided in Maine and was an attorney at a law firm based in Portland, Maine. As an attorney, INDIVIDUAL-1 represented LIBERTY and various entities controlled by LIBERTY, including,

but not limited to, the Liberty Pass-Through Companies.

Relevant Entities

4. Mozido, LLC was a limited liability company based in Austin, Texas that was founded in 2008 by LIBERTY and others under a different name and took the name Mozido, LLC in 2009. Mozido, LLC was a financial technology start-up company whose business involved developing mobile payment platforms that would allow individuals without regular access to the banking system to conduct financial transactions using their mobile phone. Mozido, Inc. was formed in 2013 and in November 2013 acquired substantially all of Mozido, LLC's assets representing its core business in exchange for Mozido, Inc. stock. In March 2015, Mozido LLC was renamed MDO, LLC. In this Indictment, unless a specific reference is made to Mozido, LLC, Mozido, Inc., or MDO, LLC, the reference to "Mozido" refers to the entity owning the assets representing the core business at the relevant point in time.

5. The Liberty Pass-Through Companies were shell companies that LIBERTY established and controlled. As relevant to this Indictment, the Liberty Pass-Through Companies issued convertible promissory notes in exchange for investor funds which were then diverted for LIBERTY's personal use. Investors were told by LIBERTY and HESS that they had the right to convert their notes into an ownership interest in Mozido. The Liberty Pass-Through Companies included, but were not limited to, Mozido Investments, LLC; Mozido Invesco, LLC; Brentwood Financial, LLC; Brentwood Investments, LLC (which was later renamed BRTMDO, LLC); and Family Mobile LLC.

THE SCHEME TO DEFRAUD

Purpose of the Conspiracy

6. The purpose of the conspiracy was for LIBERTY, HESS, and their co-conspirators to enrich themselves by making material misrepresentations to investors and potential investors in

the Liberty Pass-Through Companies including, among other things, misrepresentations regarding how investors' funds would be used.

Manner and Means of the Conspiracy

7. In furtherance of this conspiracy, and to accomplish its object, beginning in about July 2010 and continuing until about 2017 (the "Relevant Period"), LIBERTY, HESS, and their co-conspirators deceived and induced investors to invest in the Liberty Pass-Through Companies by making material misrepresentations including, among other things, misrepresentations regarding the manner in which investors' money would be used.

8. Beginning in about 2010, LIBERTY and HESS began to identify and solicit individuals to make investments that purportedly would fund Mozido's business operations. LIBERTY and HESS instructed the investors not to send their money directly to Mozido, however, but rather to purchase convertible promissory notes issued by the Liberty Pass-Through Companies.

9. A "convertible promissory note" is a debt instrument that an investor receives in exchange for loaning money to the entity issuing the note. After a set amount of time passes, the convertible promissory note gives the investor an option either to receive repayment on the loan plus interest, or to convert debt into equity in the underlying entity. "Equity" refers generally to stock or other instruments that give an investor an ownership interest in the entity itself.

10. In obtaining convertible promissory notes issued by the Liberty Pass-Through Companies, investors did not receive a direct interest in Mozido, but instead received the opportunity to obtain equity in Mozido through a conversion.

11. LIBERTY and HESS made a series of material misstatements when they solicited investors and potential investors in the Liberty Pass-Through Companies, including (1) that the money investors paid to purchase convertible promissory notes issued by the Liberty Pass-Through

Companies would be used by Mozido to fund its business operations; and (2) that HESS received no commissions based on the amount of convertible promissory notes issued by the Liberty Pass-Through Companies that the investors purchased.

12. Less than half of funds received from investors were ever transferred to Mozido. LIBERTY and his associates, to include his wife, used a majority of investor funds for, among other things, personal expenses and business expenses unrelated to Mozido. Such personal expenses included payments to LIBERTY's ex-wife, interior decorating, and payment of a disgorgement amount that had been levied against LIBERTY in a securities fraud lawsuit in Philadelphia. Such business expenses included payments to cash-strapped businesses, other than Mozido, that were owned and/or controlled by LIBERTY. In addition, LIBERTY used the investors' funds to make payments to HESS, to include commissions on convertible promissory notes sold to investors solicited by HESS.

13. When sending money to invest in the Liberty Pass-Through Companies, most investors wired the money to an account held at Norway Savings Bank and the Interest on Lawyers Trust Account ("IOLTA") for the law firm where INDIVIDUAL-1 worked as a partner and that served as counsel for the Liberty Pass-Through Companies. From there, INDIVIDUAL-1 caused a substantial portion of these investor funds to be paid to LIBERTY's friends and family or deposited into accounts controlled by LIBERTY. Once deposited into LIBERTY-controlled accounts, LIBERTY and his associates used a substantial portion of these investments for, among other things, personal expenses.

14. LIBERTY and HESS also made misrepresentations to investors and potential investors regarding, among other things, the general financial condition of Mozido. Further, investors were misled into believing that they were protected by a "personal guaranty" from

LIBERTY promising that he would reimburse their investments if they lost money. In truth and in fact, LIBERTY was in dire financial straits and unable to honor said guaranties.

15. In about 2011, LIBERTY, HESS, and their co-conspirators disclosed to investors that they were concerned that the offering of Mozido Invesco convertible promissory notes potentially was in violation of securities laws. To that end, LIBERTY, HESS, and their co-conspirators offered around 66 investors with convertible promissory notes totaling approximately \$6,430,000 the opportunity to rescind their investments. In about 2012, LIBERTY, HESS, and their co-conspirators sent a second, similar so-called “rescission offer” to around 95 investors who owned Mozido Invesco and Mozido Investments convertible promissory notes totaling approximately \$17,563,520.55. The representations regarding the rescission offers were fraudulent and misleading for various reasons, including because they failed to state that, among other things, LIBERTY had used proceeds of the offerings to pay personal expenses and that HESS was being paid a commission. Few, if any, investors rescinded.

16. On about May 16, 2012, LIBERTY, HESS, and their co-conspirators circulated, or caused to be circulated, exchange offers that purportedly allowed investors in Mozido Invesco and Mozido Investments to convert their convertible promissory notes to equity interests in Mozido. Any investor who converted lost any purported benefit from LIBERTY’s personal guaranty of their investments. The representations regarding the exchange offer were fraudulent and misleading for various reasons, including because they failed to state that, among other things, LIBERTY had used proceeds of the offerings to pay personal expenses and that HESS was being paid a commission. Most investors who received the 2012 exchange offer converted. As part of this “exchange offer,” investors received Class B non-voting membership units in Mozido that represented only a fraction of their initial investments.

17. On about April 27, 2016, LIBERTY and HESS circulated, or caused to be circulated, another exchange offer that allowed investors in Brentwood Investments and Brentwood Financial to convert their over \$31 million of convertible promissory notes to equity interests in MDO, LLC. Again, any investor who converted lost any purported benefit from LIBERTY's personal guaranty of their investment. The representations regarding the exchange offer were fraudulent and misleading for various reasons, including because they failed to state that, among other things, LIBERTY had used proceeds of the offerings to pay personal expenses and that HESS was being paid a commission. Most of the investors who received the 2016 exchange offer converted. However, these investors did not receive a direct equity interest in the entity that then held the core business assets as they had been promised. Rather, the investors received equity interests in MDO, LLC, which no longer held the core business assets, but now held stock in Mozido, Inc. and other debts that MDO, LLC had acquired.

18. In 2016 and 2017, numerous investors contacted HESS questioning the validity of the investment in light of negative news items about LIBERTY and Mozido. Despite investors having yet to receive any returns on their investments since the beginning of the conspiracy, HESS reassured investors that they could expect returns on their investment in the near future.

COUNT ONE

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

19. Paragraphs 1 through 18 of this Indictment are incorporated by reference as if fully set forth herein.

20. Beginning in about July 2010 and continuing thereafter until about 2017, the exact dates being unknown to the Grand Jury, in the District of Maine and elsewhere,

MICHAEL A. LIBERTY,
and

PAUL E. HESS,

the defendants, INDIVIDUAL-1, and others known and unknown to the Grand Jury, did knowingly combine, conspire, confederate, and agree to commit wire fraud, that is, with the intent to further the objects of the conspiracy, knowingly and willfully, and with the intent to defraud, having devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, promises, omissions, and knowing concealment concerning a material fact or matter, to transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals, pictures and sounds for the purpose of executing the scheme to defraud, in violation of Title 18, United States Code, Section 1343.

Purpose of the Conspiracy

21. The allegations set forth in paragraph 6 of this Indictment are incorporated by reference as if fully set forth herein as a description of the purpose of the conspiracy.

Manner and Means of the Conspiracy

22. The allegations set forth in paragraphs 7 through 18 of this Indictment are incorporated by reference as if fully set forth herein as a description of the manner and means of the conspiracy.

Overt Acts

23. In furtherance of the conspiracy and to effect the objects of the conspiracy, the following overt acts, among others, were committed in the District of Maine and elsewhere:

- a. On about October 5, 2010, HESS sent an email to prospective investors representing “Mozido is about to launch with several major customers but ran low on cash at the one-yard line” and “there are no fees or commissions paid.”

- b. On about March 13, 2012, HESS sent an email to investors representing “The money raised in Mozido Invesco was nearly all used for Mozido,” and, “[o]f the \$18+ million raised, he subtracted my fees/salary and other direct expenses (of his holding company and not of Mozido) totaling about \$1 million and said that still something like \$15 million+ went to Mozido.” In fact, LIBERTY diverted to his personal use almost \$16 million of the \$18 million raised through the Mozido Invesco offering.
- c. On about January 11, 2012, LIBERTY filed, or caused to be filed, a Form D on behalf of Mozido Invesco, LLC.
- d. On about May 16, 2012, LIBERTY, HESS, and their co-conspirators circulated, or caused to be circulated, an exchange offer that purportedly allowed investors in Mozido Invesco and Mozido Investments to convert their convertible promissory notes to equity interests in Mozido.
- e. On about April 27, 2016, LIBERTY and HESS caused to be circulated an exchange offer that purportedly allowed investors in Brentwood Investments and Brentwood Financial to convert their convertible promissory notes to equity interests in Mozido.
- f. On about August 3, 2016, LIBERTY filed, or caused to be filed, a Form D on behalf of Mozido Investments, LLC.

All in violation of 18 U.S.C. § 1349.

COUNTS TWO THROUGH FIVE

Wire Fraud (18 U.S.C. § 1343)

24. The allegations set forth in paragraphs 1 through 18 and 23 of this Indictment are incorporated by reference as if fully set forth herein.

25. Beginning in about July 2010 and continuing thereafter until on about 2017, the exact dates begin unknown to the Grand Jury, in the District of Maine and elsewhere,

MICHAEL A. LIBERTY
and
PAUL E. HESS,

the defendants, knowingly and willfully, and with the intent to defraud, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, promises, omissions, and knowing concealment concerning a material fact or matter, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for executing the scheme to defraud.

Purposes of the Scheme and Artifice

26. The allegations set forth in paragraph 6 of this Indictment are incorporated by reference as if fully set forth herein as a description of the purposes of the scheme and artifice to defraud.

The Scheme and Artifice

27. The allegations set forth in paragraphs 7 through 18 of this Indictment are incorporated by reference as if fully set forth herein as a description of the scheme and artifice to defraud.

Use of the Wires

28. On about the dates set forth below, LIBERTY and HESS, in the District of Maine

and elsewhere, for the purpose of executing the scheme and artifice to defraud, and attempting to do so, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, as more particularly described below:

Counts	Date	Description
Two	February 10, 2014	Electronic funds transfer of \$99,950 from North Carolina and routed through Maine
Three	February 12, 2014	Electronic funds transfer of \$20,000 from Maine and routed through Massachusetts
Four	April 27, 2016	Email from Maine to investors, including some located outside of Maine, regarding Brentwood Financial and Brentwood Investments Exchange Offer
Five	April 28, 2016	Email from Massachusetts to investors, including some located in Maine, regarding Brentwood Financial and Brentwood Investments Exchange Offer

All in violation of 18 U.S.C. §§ 1343 and 2.

COUNT SIX

**Securities Fraud (15 U.S.C. §§ 78j(b) and 78ff(a),
Title 17, Code of Federal Regulations, Section 240.10b-5)**

29. The allegations set forth in paragraphs 1 through 18 and 23 of this Indictment are incorporated by reference as if fully set forth herein.

30. Beginning in about July 2010 and continuing thereafter until about 2017, the exact dates being unknown to the Grand Jury, within the District of Maine and elsewhere,

MICHAEL A. LIBERTY
and
PAUL E. HESS,

the defendants, did willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, in connection with the purchase and sale of securities, use and employ manipulative and deceptive devices and contrivances 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 the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon purchasers of securities sold through the Liberty Pass-Through Companies, to wit, LIBERTY and HESS made false and misleading representations to investors in the Liberty Pass-Through Companies about the value and health of their investments and the manner in which their invested money was used.

All in violation of 15 U.S.C. §§ 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.10b-5.

COUNT SEVEN

Money Laundering Conspiracy (18 U.S.C. § 1956(h))

31. The allegations set forth in paragraphs 1 through 18 and 23 of this Indictment are incorporated by reference as if full set forth herein.

32. Beginning in about July 2010 and continuing thereafter until about 2017, the exact dates begin unknown to the Grand Jury, in the District of Maine and elsewhere,

MICHAEL A. LIBERTY,

the defendant, did knowingly combine, conspire, and agree with other persons known and unknown to the Grand Jury, including INDIVIDUAL-1, to commit offenses against the United States in violation of Title 18, United States Code, Section 1957, to wit, to knowingly engage and attempt to engage in monetary transactions by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, that is, wire fraud, in violation of Title 18, United States Code, Section 1343, and fraud in the sale of securities.

All in violation of 18 U.S.C. § 1956(h).

COUNTS EIGHT THROUGH TEN

**Monetary Transactions in Property Derived
from Specified Unlawful Activity (18 U.S.C. § 1957)**

33. The allegations set forth in paragraphs 1 through 18 and 23 of this Indictment are incorporated by reference as if full set forth herein.

34. On about the dates specified as to each count below, within the District of Maine and elsewhere,

MICHAEL A. LIBERTY,

the defendant, did knowingly engage and attempt to engage in monetary transactions by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, such property having been derived from specified unlawful activity, that is, wire fraud, in violation of Title 18, United States Code, Section 1343, and fraud in the sale of securities.

Count	Date	Description
Eight	November 12, 2013	Electronic funds transfer of \$30,000 from INDIVIDUAL-1's IOLTA Account to Maine for payment to LIBERTY's ex-wife
Nine	February 10, 2014	Electronic Funds Transfer of \$75,000 from INDIVIDUAL-1's IOLTA account to Maine for payment to LIBERTY's ex-wife
Ten	February 11, 2014	Electronic Funds Transfer of \$25,000 from INDIVIDUAL-1's IOLTA account to Maine for payment to a LIBERTY-owned company

All in violation of 18 U.S.C. §§ 1957 and 2.

FORFEITURE ALLEGATIONS (Conspiracy and Wire Fraud)

35. For the purpose of alleging forfeiture to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, the United States hereby re-alleges and incorporates the factual allegations contained in paragraphs 1 through 18 and 23.

36. Upon conviction of the offenses alleged in Counts One through Five, the defendants,

MICHAEL A. LIBERTY,
and
PAUL E. HESS,

shall forfeit to the United States any and all property, real or personal, which constitutes or is derived from proceeds traceable to the aforementioned offenses, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c). The property to be forfeited shall include, but is not limited to, the following:

a. Money Judgment

- i. Judgment in favor of the United States of America equal to the value of any property, real or personal, which constitutes or is derived from proceeds traceable to the violations alleged in Counts One through Five of this Indictment.

37. If any of the property described above, as a result of any act or omission of LIBERTY and HESS:

- 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 of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

FORFEITURE ALLEGATIONS (Money Laundering)

38. For the purpose of alleging forfeiture to the United States pursuant to Title 18, United States Code, Section 982(a)(1) and Title 28, United States Code, Section 2461, the United States hereby re-alleges and incorporates the factual allegations contained in paragraphs 1 through 18 and 23.

39. Upon conviction of the offenses alleged in Counts Seven through Ten, the defendant,

MICHAEL A. LIBERTY,

shall forfeit to the United States any and all property, real or personal, involved in such offenses, and any property traceable to such property, pursuant to Title 18, United States Code, Section 982(a)(1).

40. If any of the property described above, as a result of any act or omission of LIBERTY:

- 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 of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL:

Signature redacted. Original on file.

~~FOR~~PERSON

UNITED STATES OF AMERICA

ROBERT A. ZINK
Acting Chief, Fraud Section

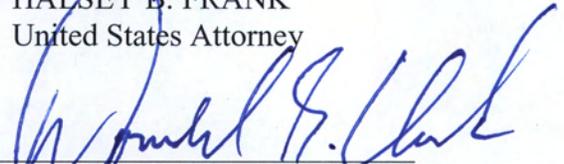
By:



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