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SEALED

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

DEC 07 2011

BY D. MARK JONES, CLERK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

| | |
|-----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>UNITED STATES OF AMERICA, Plaintiff, v. ROBERT J. ANDRES, Defendant.</p> | <p>Case: 2:11-cr-00985 Assigned To : Stewart, Ted Assign. Date : 12/07/2011 Description: USA v. INDICTMENT Vio. 18 U.S.C. § 1343 (Wire Fraud)</p> |
|-----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

The Grand Jury charges:

Relevant Entities

At all times relevant to this indictment:

1. Winsome Investment Trust ("Winsome") was an unincorporated entity with its principal place of business in Houston, Texas. Winsome purported to manage investments on behalf of clients. Winsome was not registered at any time with the United States Securities and Exchange Commission ("SEC") or the United States Commodities Futures Trading Commission.

2. Defendant ROBERT J. ANDRES was the sole manager, attorney, and trustee of Winsome.

The Scheme and Artifice to Defraud

Statutory Allegation

3. Beginning in at least in or about October 2005 and until in or about January 2011, in the Central Division of the District of Utah and elsewhere, Defendant ANDRES devised and intended to devise a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretenses, representations, and promises. In execution of the scheme to defraud, Defendant ANDRES used the United States mails, interstate wire transmissions, and the facilities and means of interstate commerce.

Overview of the Scheme

4. From between in or about October 2005 through in or about January 2011, Defendant ANDRES fraudulently obtained in excess of \$72 million from investors in Winsome by, among other false and materially misleading statements: (1) misrepresenting the assets and asset allocation of Winsome; and (2) misrepresenting the types of investments into which ANDRES would place investors' funds. As a result of his scheme, Defendant ANDRES defrauded investors out of approximately \$35 million.

The Scheme

A. The Pre-April 2007 Scheme

5. Beginning in at least October 2005 and until in or about April 2007, an individual (the "Trading Firm Manager") operated an investment operation (the "Trading Firm") which lost approximately \$10 million in trading commodities and in which old investors were paid with new investors' money to create the false impression that the Trading Firm was profitable.

6. It was a part of the scheme and artifice to defraud that beginning in or about October 2005 until in or about April 2007, in the Central Division of the District of Utah and elsewhere, Defendant ANDRES recruited investors, both directly and indirectly, for the Trading Firm. In order to solicit investors, Defendant ANDRES, among other things:

- a. disseminated to investors purported Winsome "balance sheets," which falsely represented that Winsome had approximately \$2.6 billion in total assets and falsely represented the nature and allocation of these assets; and
- b. represented to investors and potential investors that ANDRES would invest all of their funds in a "trading program" or "mostly automated trading business."

7. It was further a part of the scheme and artifice to defraud that between in or about October 2005 and in or about April 2007, Winsome, by means of Defendant ANDRES' misrepresentations and omissions, obtained more than \$39 million from investors (the "Pre-April 2007 Winsome Investors"). Approximately \$24.7 million of these proceeds was then transferred to the Trading Firm.

8. Between in or about October 2005 and in or about April 2007, the Trading Firm and the Trading Firm Manager generated reports distributed to individual investors (the "Investor Reports"). The Investor Reports purported to disclose the Trading Firm's trading performance and returns. In the case of individual investors who had invested through Winsome, the Trading Firm Manager would distribute or cause to be distributed the Investor Reports to Defendant ANDRES, who then distributed the Investor Reports to individual Winsome investors. The Investor Reports purported "daily returns" of between 0.0% to 1.15%, and never disclosed a single loss. These daily return figures were fabricated.

9. It was further a part of the scheme and artifice to defraud that contrary to Defendant ANDRES' representations that he would invest all Pre-April 2007 Winsome Investors' funds in a "trading program" or "mostly automated trading business," between in or about October 2005 and in or about April 2007, Defendant ANDRES instead diverted approximately \$850,000 of the Pre-April 2007 Winsome Investors' funds for personal use, and more than \$1.1 million into unauthorized investments and investment schemes, including legal fees to secure the release of a purported inheritance. Altogether Defendant ANDRES misappropriated more than approximately \$2 million of Pre-April 2007 Winsome Investors' funds.

10. In or about April 2007, the Trading Firm was named as a relief defendant in an SEC enforcement action. The bank and brokerage accounts belonging to the Trading Firm were frozen at that time. The Trading Firm ceased to operate at the time of the freeze. According to the fabricated Investor Reports, the Trading Firm owed the Pre-April 2007 Winsome Investors approximately \$30 million in principal and "profit" payments at the time of the Trading Firm's closure.

11. After April 2007, Defendant ANDRES represented to the Pre-April 2007 Winsome Investors that all of their investment funds had been "frozen" by the SEC and that Defendant ANDRES was working for the return of their funds. ANDRES failed to disclose his misappropriation of approximately \$2 million in investors' funds.

B. The Post-April 2007 Scheme

12. It was further a part of the scheme and artifice to defraud that between in or about April 2007 and in or about January 2011, in the Central Division of the District of Utah and elsewhere, Defendant ANDRES recruited additional investors (the "Post-April 2007 Winsome

Investors”), both directly and indirectly, for Winsome. To solicit these investors, Defendant ANDRES, among other things:

- a. disseminated to investors purported Winsome “balance sheets,” which falsely represented that Winsome had approximately \$2.6 billion in total assets and falsely represented the nature and allocation of these assets;
- b. falsely represented that investors’ funds would be invested in “mostly automated trading utilizing past experiences which have been successful...”; and
- c. failed to disclose that new investors’ funds would be used to make distributions to the Pre-April 2007 Winsome Investors.

13. It was further a part of the scheme and artifice to defraud that between in or about April 2007 and in or about January 2011, Defendant ANDRES and Winsome obtained at least \$32 million from the Post-April 2007 Winsome Investors.

14. It was further a part of the scheme and artifice to defraud that to convince Post-April 2007 Winsome Investors and potential investors that Winsome was profitable, Defendant ANDRES made payments to certain investors – including Pre-April 2007 Winsome Investors – which he falsely represented were investment profits. In fact, these “profits” consisted of proceeds from new investors. In this way, Defendant ANDRES created the false impression that Winsome was profitable and that returns were being paid on investors’ principal.

15. It was further a part of the scheme and artifice to defraud that Defendant ANDRES used investor funds for purposes not disclosed to the investors and potential investors of Winsome, including diverting approximately \$2.2 million for State Bar of Texas dues, hotel bills, living expenses, and other personal uses.

Counts 1 through 5
18 U.S.C. § 1343
(Wire Fraud)

16. The allegations of Paragraphs 1-15 are incorporated by this reference as though fully set forth herein.

17. On or about the dates listed below, in the Central District of Utah and elsewhere,

ROBERT J. ANDRES,

Defendant herein, having devised and intended to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing said scheme and artifice to defraud, did cause to be transmitted by means of wire communication certain writings, signs and signals, each such use of wire communication being a separate count of this Indictment:

| COUNT | DATE | INTERSTATE USE OF WIRES | DESCRIPTION |
|--------------|-------------------|--------------------------------|----------------------------------------------------------------------------------------------------------|
| 1 | February 23, 2007 | \$25,000 wire transfer | Wire transfer to Winsome banking account in Texas from banking account in Utah controlled by an investor |
| 2 | February 26, 2007 | \$50,000 wire transfer | Wire transfer to Winsome banking account in Texas from banking account in Utah controlled by an investor |
| 3 | March 2, 2007 | \$50,000 wire transfer | Wire transfer to Winsome banking account in Texas from banking account in Utah controlled by an investor |

| | | | |
|---|---------------|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| 4 | April 2, 2009 | Electronic mail communication | Electronic mail communication from Defendant ANDRES in Texas to investors in Utah via Nevada asking for updated bank account information |
| 5 | April 6, 2009 | Electronic mail communication | Electronic mail communication from Defendant ANDRES in Texas to investors in Utah via Nevada stating that "my matters were Approved and Completed" |

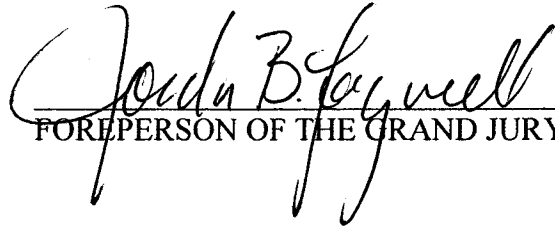
all in violation of 18 U.S.C. § 1343 and 18 U.S.C. § 2(b).


NOTICE OF INTENTION TO SEEK CRIMINAL FORFEITURE

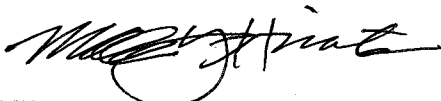
As a result of committing the felony offense alleged in Counts 1 through 5 of this Indictment, which is punishable by imprisonment for more than one year, the above-named defendant shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(c) any and all property constituting or derived from any proceeds the defendant obtained directly or indirectly as a result of the felony offenses and any and all property, real and personal, used or intended to be used in any manner or part to commit and to facilitate the commission of the violations of 18 U.S.C. § 1343, as alleged in the counts listed in this Notice, and any property traceable thereto, including but not limited to:

- MONEY JUDGMENT in an amount over one million dollars (\$1,000,000.00), representing the approximate value of proceeds obtained by the defendant in connection with the above-referenced offense.

A TRUE BILL:


FOREPERSON OF THE GRAND JURY


THOMAS B.W. HALL
Trial Attorney


MARK Y. HIRATA
Assistant United States Attorney

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION – IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT

Name of District Court, and/or Judge/Magistrate Location (City)

CENTRAL- DISTRICT OF UTAH

OFFENSE CHARGED
WIRE FRAUD

- Petty
- Minor
- Misdemeanor
- Felony

Place of offense
Salt Lake County
Central Division
District of Utah

U.S.C. Citation
18: 1343

DEFENDANT – U.S. vs.

ROBERT J. ANDRES

Address {

Birth Date {

- Male Alien
- Female (if applicable)

(Optional unless a juvenile)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Steve Whittle, FBI

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:
 U.S. Att'y Defense

this prosecution relates to a pending case involving this same defendant

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

Name and Office of Person Furnishing Information on THIS FORM

David B. Barlow

U.S. Att'y Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned)

Thomas Hall, SAUSA

DEFENDANT

IS NOT IN CUSTODY

- 1) Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
- 2) Is a Fugitive
- 3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
- 5) On another conviction } Fed'l State
- 6) Awaiting trial on other charges }
If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No

If "Yes" give date filed

Mo. Day Year

DATE OF ARREST

Or... if Arresting Agency & Warrant were not Federal

DATE TRANSFERRED TO U.S. CUSTODY

Mo. Day Year

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

Please issue a Warrant.

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

DEC 07 2011

D. MARK JONES, CLERK
BY DEPUTY CLERK

SEALED