

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60182-CR-COHN

UNITED STATES OF AMERICA

vs.

JEFFREY P. CHERNICK,

Defendant.

STATEMENT OF FACTS

The United States Attorneys Office for the Southern District of Florida, the United States Department of Justice, Tax Division, and the defendant, Jeffrey Chernick, stipulate to and agree not to contest the following facts, and stipulate that such facts, in accordance with Rule 11(b)(3) of the Federal Rules of Criminal Procedure, provide a sufficient factual basis for the plea of guilty in this case:

OBLIGATION TO REPORT WORLDWIDE INCOME AND FOREIGN BANK
ACCOUNTS

United States citizens who have income in excess of a certain amount are obligated to file a federal income tax return with the United States Internal Revenue Service ("IRS"). On said return, United States citizens are obligated to report their worldwide income. Additionally, United States citizens who have an interest in or a signature or other authority over a financial account in a foreign country with assets in excess of \$10,000 are required to disclose the existence of such account on Schedule B, Part III of their individual income tax return.

BACKGROUND

The defendant owns and operates Jeff Chernick, Inc., a corporation that represents Hong Kong and Chinese toy manufacturing companies. In approximately 1981, the defendant established JCHERN, a Hong Kong corporation, and opened offshore bank accounts in the name of the Hong Kong corporation for the purpose of, among other things, concealing from the IRS commissions paid to the defendant by the Hong Kong and Chinese toy manufacturers for toy sales in the United States.

As the defendant needed money in the United States, he obtained bank checks drawn on these offshore accounts made out to his United States corporation. The defendant would hand carry these bank checks from Hong Kong to the United States. Typically, the defendant would hand carry approximately twelve checks back to the United States per year; ten checks each January, each for approximately \$25,000, one check each July for \$10,000 to \$15,000, and one check each October for \$25,000 to \$30,000.

Over time, the defendant opened additional offshore accounts in the Caribbean, including at UBS in the Cayman Islands. In approximately 2002, the defendant established offshore accounts in the name of the offshore entities at UBS AG in Switzerland (“UBS”). By 2005, the total value of the assets at UBS was approximately \$8 million.

UBS ACCOUNT RECORDS

According to records obtained from UBS AG in Switzerland, there were UBS accounts in the name of Simba International Limited, (“Simba”), a Hong Kong corporation. According to internal UBS Form A, Verification of the Beneficial Owner’s Identity, dated April 19, 2002, the defendant, listed as a resident of Greenwich, Connecticut, represented that he was the beneficial owner of the UBS account in the name of Simba.

From at least 1998 through 2008, the defendant corresponded from the United States with UBS managers and bankers, along with Swiss financial service providers via telephone, fax, mail and email to discuss his UBS bank accounts and offshore entities. Utilizing these forms of correspondence, the defendant directed investment activities and the payment of fees for banking and other services rendered by Hong Kong and Swiss financial service providers.

SWISS BANK EXECUTIVE was a former UBS manager in the United States cross-border business and left UBS because of concerns over UBS’s entry into a Qualified Intermediary Agreement with the IRS. In or about approximately 2003, SWISS BANK EXECUTIVE convinced the defendant to invest a portion of his offshore assets with a smaller Swiss bank located in Zurich, SWISS BANK. SWISS BANK EXECUTIVE told the defendant that since SWISS BANK had no presence in the United States and had not entered into a Qualified Intermediary Agreement with the IRS, it was not subject to United States scrutiny and therefore could not be pressured by the United States government to disclose his identity and account information to United States authorities.

From approximately 1998 through 2008, the defendant personally met with SWISS BANK EXECUTIVE, UBS SWISS CLIENT ADVISOR #1, UBS SWISS CLIENT ADVISOR #2, and SWISS LAWYER, located in Zurich, to discuss his Swiss bank accounts and offshore entities that were maintained at UBS and SWISS BANK. These meetings predominantly took place when these individuals were in the United States at various locations, including hotels in New York City.

When traveling to the United States, SWISS BANK EXECUTIVE and SWISS ATTORNEY would dress as tourists to avoid detection. SWISS BANK EXECUTIVE would falsely report to United States customs that he was coming to the United States to visit his brother. During meetings in the United States, the defendant discussed with SWISS BANK EXECUTIVE, UBS SWISS CLIENT ADVISOR #1, UBS SWISS CLIENT ADVISOR #2, and SWISS ATTORNEY the investments held in his offshore accounts and the payment of fees for banking services rendered by Hong Kong and Swiss financial service providers. SWISS BANK EXECUTIVE mailed the defendant's bank statements from Switzerland to an address in the United States instead of hand carrying them for fear that the bank statements would be seized by United States customs agents. Before providing the defendant with his statements, SWISS BANK EXECUTIVE, and UBS SWISS CLIENT ADVISORS #1 and #2 would physically cut the defendant's name and account number from the statements so that they could not be tied to the defendant and his accounts.

From approximately 2002 through 2008, the defendant had a credit card linked to his UBS bank accounts so that he could access the funds in his UBS account while traveling abroad. UBS SWISS CLIENT ADVISOR #2 advised the defendant never to use this credit card in the United States because the card could be traced back to the defendant's Swiss accounts. In May of 2008, UBS SWISS CLIENT ADVISOR #1 advised him to stop using the credit card because of the publicity surrounding a criminal investigation into UBS's United States cross-border business.

In approximately 2004, the defendant contacted SWISS ATTORNEY regarding the purchase of a 30 acre parcel of land adjacent to his home in New York. On SWISS ATTORNEY's advice, the defendant created a second Hong Kong entity. The defendant set up a sham loan transaction for \$700,000 between Simba, and the second Hong Kong entity. Then, the defendant purported to borrow the \$700,000 from the second Hong Kong entity. The defendant used these funds to purchase the land. While the defendant knew that this transaction was a sham, he instructed his United States tax return preparer to deduct the "loan interest" he paid on his income tax returns.

In July 2008, the defendant visited with SWISS ATTORNEY to voice his concerns that, based upon press coverage of the United States Department of Justice's investigation of UBS, UBS would disclose his account information to United States authorities. The defendant told SWISS ATTORNEY that he wanted to repatriate his money to the United States and voluntarily disclose his UBS account to the United States IRS, file amended tax returns, and pay taxes that were due and owing.

SWISS ATTORNEY convinced the defendant not to take any action with respect to his undeclared Swiss bank accounts, including his accounts at UBS. SWISS BANK EXECUTIVE and SWISS ATTORNEY told the defendant that SWISS BANK EXECUTIVE had a connection who was a high-ranking Swiss government official who could learn the identities of the UBS account holders whose accounts would be turned over to United States authorities. SWISS

BANK EXECUTIVE soon thereafter told the defendant that, while two of his other clients' accounts were being disclosed to the United States authorities, the defendant's accounts were not designated to be turned over to United States authorities. Afterwards, SWISS ATTORNEY told the defendant that SWISS BANK EXECUTIVE paid the government official \$45,000 for this information, and the defendant authorized SWISS ATTORNEY to withdraw \$45,000 from his UBS account to cover the payment.

TAX RETURN INFORMATION

For tax years 2002 through 2007, the defendant was required to file a United States tax return, to report his worldwide income, and to declare the existence of any foreign based financial account in which he had an interest or over which he had signature or other authority that contained assets in excess of \$10,000.

The defendant filed an individual tax return with the IRS for tax years 2002 through 2007. Each year, the defendant willfully failed to report on these tax returns any income earned on his UBS bank accounts. Additionally, each year, the defendant failed to disclose that he had an interest in or a signature or other authority over a financial account in a foreign country.

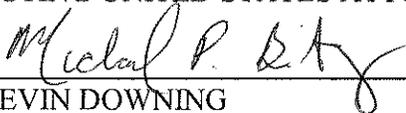
Specifically, on October 14, 2008, the defendant electronically filed a U.S. Individual Income Tax Return Form 1040 for tax year 2007, listing an address in New York. The return was electronically filed with a declaration page that states that all of the information contained on the return and accompanying schedules was furnished by the defendant and that the return and accompanying schedules and statements were examined by the defendant and that to the best of the defendant's knowledge and belief, the return and accompanying schedules and statements were true, correct, and complete.

On Schedule B, Part III of the 2007 tax return, the defendant failed to report that he had an interest in or a signature authority over a financial account at UBS in Switzerland and he failed to report income earned on his UBS Swiss bank account. The defendant willfully failed to tell the accountant who prepared his 2007 tax return about the existence of the UBS Swiss bank account.

When the defendant filed his U.S. Individual Income Tax Return Form 1040 for tax years 2002 through 2007, he knew he was obligated to report the income earned on his UBS bank accounts on line 22 of said tax return and that he should have disclosed the existence of the UBS account on Schedule B, Part III.

Respectfully submitted,

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