

UNITED STATES DISTRICT COURT

for the

District of Massachusetts

United States of America

v.

RICHARD ELKINSON

Defendant(s)

Case No. M.J. # 09-909-HBB

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 10/07/2009 in the county of Middlesex in the District of Massachusetts, the defendant(s) violated:

Code Section
18 USC Sections 1341 and 2

Offense Description
Having devised a scheme and artifice to defraud and for obtaining money and property by means of material false and fraudulent pretenses, representations and promises, for the purpose of executing and attempting to execute such scheme and artifice, to place in a post office or authorized depository for mail matter, matter or things to be sent or delivered by the Postal Service or to deposit or cause to be deposited matter or things to be sent or delivered by a private or commercial interstate carrier.

This criminal complaint is based on these facts:

Please see attached Exhibit A (Affidavit of Leo T. Fila, Special Agent, FBI).

[X] Continued on the attached sheet.

[Handwritten signature]

Complainant's signature

Leo T. Fila, Special Agent, FBI

Printed name and title

Sworn to before me and signed in my presence.

Date: 12/24/2009

[Handwritten signature: Marianne B. Bowler USMJ]

Judge's signature

City and state: Brookline, Massachusetts

Hon. Marianne B. Bowler, U.S. Magistrate Judge

Printed name and title

EXHIBIT A

AFFIDAVIT OF LEO T. FILA

I, Leo T. Fila, being duly sworn, hereby depose and state as follows:

1. I am a Special Agent of the Federal Bureau of Investigation and have been employed as such since December 2003. I am currently assigned to investigate financial crimes as a member of the Boston Economic Crime Squad. My duties include the investigation of various criminal activities, including mail fraud, wire fraud, securities fraud, bank fraud, identity theft, insurance fraud, fraud against the government and embezzlement.

2. I am aware that Title 18 of the United States Code, Section 1341, makes it a crime for anyone who has devised or intends to devise a scheme or artifice to defraud, or to obtain money or property by means of false or fraudulent pretenses, representations, or promises, to send or receive items through the U.S. Postal Service or any private or commercial interstate carrier, for the purpose of executing or attempting to execute such scheme or artifice.

3. I make this affidavit in support of a criminal complaint charging Richard Elkinson (“ELKINSON”) with mail fraud in violation of Title 18, United States Code, Sections 1341 and 2.

4. The facts stated herein are based on my own personal involvement with this investigation, as well as from information provided to me by other law enforcement officers involved in the investigation. In submitting this affidavit, I have not included each and every fact known to me about this investigation. Rather, I have only submitted those facts which I believe are sufficient to establish probable cause.

SCHEME TO DEFRAUD

5. Based upon the facts set forth below, I believe that **ELKINSON** has perpetrated a large scale "Ponzi" type fraud scheme that has continued for as many as twenty years and that currently includes approximately 130 investors whose total anticipated payout (including both principal amounts invested and accumulated compound interest) exceeds \$29 million.

6. On December 22, 2009, I met with two individuals, Jay Fialkow and Jeff Ross, who are the principals of a financial consulting partnership, who provided the following information regarding their dealings with **ELKINSON**, who does business under the name North East Sales.

7. According to Fialkow, in approximately 1997 an individual named Richard Silverman, whom Fialkow had known for some years, suggested that Fialkow join in an investment opportunity that Silverman had been pursuing for approximately 8 years. As represented by Silverman – and later by **ELKINSON** himself, **ELKINSON** was in the business of brokering contracts for the purchase of uniforms (such as police uniforms, prison uniforms and the like). **ELKINSON** purportedly worked with a Japanese-based company that manufactured the garments. As described, **ELKINSON**'s business involved entering into contracts directly with large purchasers (such as government entities), whereupon **ELKINSON** reportedly had to pay 50% of the total contract amount as a down payment/deposit to the Japanese manufacturer, in order to initiate the manufacturing process. Upon completion and delivery of the uniforms, **ELKINSON** received payment from the purchasing entity. **ELKINSON** claimed that banks were unwilling to lend funds based upon unexecuted contracts, so he needed to borrow a portion of the funds required to pay the 50% down payments for the contracts. **ELKINSON** claimed

that he put his own money into each deal, but borrowed additional funds to finance each “contract.” The vehicles for **ELKINSON**’s borrowing were personal Promissory Notes, in varying amounts, with terms that generally required repayment within a term of 330 to 360 days. By their terms the notes paid interest at rates that ranged from 9% to 13% for the stated term (just under one year). Upon the maturity of the note, investor/lenders were given an option to take a return of their principal and interest, to take interest only, or to roll the principal and interest over into a new note.

8. Fialkow stated that he first loaned money to **ELKINSON** (i.e. purchased a Promissory Note) in approximately 1997 in an amount of \$25,000. Interest and principal were repaid promptly and he invested \$25,000 a second time. Thereafter he began “rolling-over” his investment with **ELKINSON** and investing additional monies with him.

9. In or about 2003 or 2004, Richard Silverman and **ELKINSON** approached Fialkow and Ross and stated that Silverman was retiring. **ELKINSON** and Silverman then asked Fialkow and Ross to take over Silverman’s role as “finders” of investors in **ELKINSON**’s business. Under the terms of the arrangement, Fialkow and Ross were offered 2% of the gross sums invested by individuals they referred to **ELKINSON**.

10. Fialkow and Ross report that, before agreeing to work with **ELKINSON** they performed “due diligence,” by visiting **ELKINSON**’s office – which **ELKINSON** kept in an upstairs bedroom at **ELKINSON**’s home – where they were shown a computer, lists of people (presumably investors), and contracts between New England Sales and various states, including Connecticut and Georgia. **ELKINSON** represented to Fialkow and Ross that the garment manufacturer was located in Japan, with an office in California (although the actual garment

making was purportedly performed off-shore). **ELKINSON** provided a copy of a putative letter, dated November 16, 1998, with the following letterhead: Peerless Uniform Mfg. Co., A Division of Imperial Trading Co., 21600 Lassen Street, Chatsworth, CA 91311 818/341-0700. The letter, which is signed by “Alan Shimuka,” appears to represent that the manufacturer would do business only with **ELKINSON** personally: “My honorable father, once again, requires me to state that we do business with Mr. Richard Elkinson of Northeast Sales.”

11. Fialkow and Ross state that **ELKINSON** emphasized to them that he (**ELKINSON**) personally retained control of the cash involved in the business arrangements, because the entities purchasing uniforms paid him directly. Therefore, **ELKINSON** represented, **ELKINSON** was in a position to ensure that investors were repaid before the contract balances were paid to the manufacturer.

12. In and after 2005, Fialkow and Ross referred numerous investors to **ELKINSON**. They estimate that they were paid an aggregate total of approximately \$200,000 in commissions/finders fees [a figure that suggests gross investments of approximately \$10,000,000]. During the ensuing years, **ELKINSON** reported to Fialkow and Ross that he had obtained various contracts, purportedly varying in size, but involving more and more money. At some point after 2004 **ELKINSON** began offering notes for a slightly longer period, a full year, offering 13% interest. Throughout this period, Fialkow and Ross understood that the specific promissory notes continued to be linked to purported contracts for various uniforms for state and local government entities and for special events such as the Pan American games and the Winter Olympics.

13. Documents provided by Fialkow and Ross reflect that they prepared brief (2-3 pages) summaries of the ELKINSON investment opportunity, which were apparently used to recruit new investors (and to dispel prospective investors' concerns). One such document (undated) includes answers to commonly asked questions including:

"Is this a pyramid scheme?"

This is absolutely not a pyramid scheme. Throughout the years many people have put money in, earned interest and taken their principal out.

14. Fialkow and Ross have also provided a copy of an email, dated August 16, 2006, in which ELKINSON ("rElkVip@aol.com"), describes the putative investment [grammatical/punctuation errors in original]:

4 uniform contracts yearly at 12% 300-330 days
Olympics contracts will be 2 per year at 13% 330-360 days
hat contract,s only arise when used for state fund raisers for disasters
9-11- catrina etc
sometimes once a year we get a state hat contract
hat contracts are 9% for 180-210 days (we ration these to our better customers)

upon receipt of contracts in example for 2 million dollars
our group purchases 50% or 1 million dollars

upon payment of the 2 million dollars at maturity by the number of states involved to me northeast sales. I then pay our investors 1 million dollars plus the 9 or 12 or 13% interest depending on the contract. I then send the balance of 1 million less the interest we have earned to our overseas manufacture,s

at that point we will be awarded another seasonal contract.. our investors have the choice rolling or adding to their investment - taking their interest and re-investing their pricipal, or upon 60 days notice informing us they will be takeing their entire investment back.

all investors will receive a personal promissary note to cover their investment.

investors will be notified 2 to 3 weeks as to payoff date and new contract date

total contracts on a yearly basis apprx 23 million.

sixteen years of operation with out a default of payments.

I make no mention of olympic flags deals as we for the most part pick and choose.

if I forgot something drop me an e.mail

on 2 year olympic flag and some uniform contracts a 2 year contract will be in effect taking interest on the first 11 months and contract closes after second go around.

15. According to Fialkow and Ross, while they introduced prospective investors to **ELKINSON**, they were not directly involved in the monetary transactions; investors paid their money directly to **ELKINSON** in amounts that were negotiated with **ELKINSON**. This is corroborated by information obtained from **ELKINSON**'s bank, which reports that between December 1, 2008 and May 1, 2009, approximately \$3,393,658 was transacted, in the form of personal checks to and from **ELKINSON**.

16. **ELKINSON** represented to Fialkow and Ross that the 2% commission/finders fee he provided to them came from his "own pocket," rather than from the investors. Fialkow and Ross state that they sometimes, but not always, disclosed their commission/finders fee to investors. This statement is corroborated by the documents Fialkow and Ross provided. Specifically, the "Northeast Sales Lending Opportunity Overview Deal Closing: August 10, 2005" which states, "as fundraisers and administrators we will earn a portion of the retainer" and which reflects a retainer of 2%.

17. Fialkow and Ross noted that it became a standing joke between them that **ELKINSON** would telephone them virtually every day to ask if they had any new referrals, even though, from Fialkow's and Ross's point of view **ELKINSON**'s activities were not a major focus of their business.

18. Fialkow reports that over time his own investments with **ELKINSON** grew to total somewhat less than \$1,000,000 (this is the amount currently owed to Fialkow on

outstanding promissory notes). In addition, he reports that immediate family members are owed an additional \$400,000. Ross reports that between he and his immediate family are owed approximately \$850,000.

19. In or about April or May of 2009, **ELKINSON** reported that there was a delay in payment on an outstanding promissory note. When Fialkow and Ross pressed for an explanation, **ELKINSON** reported that fiscal problems in state government had led to delays in payment terms, but that he expected payment soon and would offer an additional 1% per month compensation to the investors during the period of delay.

20. Subsequently, in the fall of 2009, additional Promissory Notes went unpaid and **ELKINSON** began offering a variety of excuses and representations regarding the ongoing delays, including claims that **ELKINSON**'s wife was ill (requiring **ELKINSON** to travel with her to Houston, Texas, for medical treatment) and a claim that the purchaser of the uniforms had paid the Japanese manufacturer directly but that manufacturer was about to receive a large cash investment that would be used to pay off the outstanding promissory notes.

21. During the fall of 2009, Fialkow pressed **ELKINSON** ever more forcefully to settle up all accounts with his investors and one investor initiated a civil action in Middlesex Superior Court (Civil Action No. 09-4418), for payment on his outstanding promissory note. **ELKINSON** reportedly appeared pro se at an initial hearing on the matter, but has subsequently failed to appear for a deposition in the case.

22. In response to Fialkow and Ross's urgings, **ELKINSON** agreed to mail a letter to investors, directing them to report to Fialkow and Ross the total outstanding amounts of the **ELKINSON** promissory notes they held, together with identifying information. A draft of the

proposed letter (I am unable to confirm whether any modifications were made before the letter was sent), states:

October 7, 2009

Dear Friends and Colleagues,

I have just returned from Seattle where I attended the negotiations between our Japanese manufacturer and an investor group. I am pleased to report that a final agreement has been reached providing for an investment of \$30 million to our manufacturer. The closing is scheduled to take place on or before November 30, 2009.

The good news is that all notes, irrespective of their due dates, will be paid in full directly after the closing. Moreover, all overdue notes will receive an additional interest of 1% per month for each month the note is overdue.

The bad news is that I am not certain that we will be unable [sic] to have any further involvement with the manufacturer. I will know for sure at the closing.

For those of you whose interest and/or principal are overdue, I am sorry. The fact that the states have their financial problems has created this problem. It is the first and only time in the more than the 18 years that we were ever late in making a payment. I sincerely thank you for your patience and understanding.

So that we can effect an orderly transition I have asked our advisors, Ross Fialkow Capital Partners LLP, to act as disbursing agent. To that end, please fill out the enclosed form and forward to them no later than October 30, 2009.

I would like to take this opportunity to express to each of you my heartfelt thanks and appreciation for the very meaningful relationship we have had. I especially appreciate your continued trust and confidence in me during this difficult time.

Sincerely, your friend,

Dick Elkinson

As discussed below, based upon my belief that **ELKINSON** was operating a Ponzi-type investment scam, this letter (and the responses), appears to be part of an effort to “lull” unpaid investors and forestall the uncovering of a fraud scheme, and thus both the letter and the solicited responses were sent in furtherance of the fraud scheme.

23. Approximately 130 investors responded (and copies of their responses have been provided to me). The information returned to Fialkow and Ross indicates that **ELKINSON's** currently outstanding promissory note obligations are approximately \$29,000,000.

24. At some time during the fall of 2009, Fialkow and Ross met **ELKINSON** at **ELKINSON's** home office where **ELKINSON** provided them with documents that purported to be contracts for the purchase/sale of uniforms to the State of Connecticut (order date 04/01/2008) and the State of Georgia (order date October 7, 2009).

25. On December 24, 2009 (today), I attempted to call telephone numbers found on the purported Connecticut and Georgia contracts. In each instance, I encountered "disconnected" messages. On December 24, 2009, a colleague telephoned the number found on the letterhead of Peerless Uniform Mfg. Co. The phone was answered "Acme Peerless Manufacturing." The person answering was a friendly woman with a heavy accent (possibly Hispanic) and there was a lot of noise in the background, consistent with a workroom or manufacturing plant.

26. Fialkow and Ross describe **ELKINSON's** home as a modest residence, located at 2 Ford Lane, Framingham, Massachusetts. They state that the office was "messy" with a pile of papers on a desk. They recall two desks plus a credenza with a computer and printer, a telephone and some photos of the **ELKINSON's** children. They recall seeing at least one laptop computer in the house, being used by **ELKINSON's** wife.

27. According to Fialkow, on Saturday, December 12, 2009, **ELKINSON** spoke by telephone with Fialkow and claimed that he was in San Francisco and that "the Japanese" had wired a substantial sum to him.

28. Fialkow and Ross report that on or about Monday, December 14, 2009, **ELKINSON** failed to meet with them, as they had requested, but that they spoke by telephone with **ELKINSON** who told them that he (**ELKINSON**) was on his way to visit a lawyer in Palmer, Massachusetts, and that he **ELKINSON**, had a check in hand from a Japanese company, but that he was bringing the check to his lawyer because the lawyer wanted to write a letter regarding the disposition of the funds. **ELKINSON** also reported that he had arranged to stop payment on the check, opting instead to receive funds by wire, due to the likely delay in negotiating a non-dollar (yen) check in such a large amount. Thereafter, Fialkow and Ross found that they were unable to reach **ELKINSON** at the cell phone number they had previously used.

29. On Thursday, December 17, 2009, Fialkow and Ross went to **ELKINSON**'s home. There they met **ELKINSON**'s wife, who reported that **ELKINSON** was not home and that she did not know where **ELKINSON** was. Fialkow and Ross told **ELKINSON**'s wife that they suspected that **ELKINSON** had conducted a Madoff-like scam. **ELKINSON**'s wife appeared shocked and upset and told Fialkow and Ross that she was unfamiliar with **ELKINSON**'s work and finances and that, due to her prior divorce, she and **ELKINSON** kept their respective finances entirely separate.

30. Telephone inquiries disclose that a Richard **ELKINSON** checked out of the Wynn Las Vegas hotel on December 22, 2009 and that a Richard **ELKINSON** cancelled a reservation at the Venetian hotel for December 23, 2009.

31. Fialkow and Ross report that, over the years, they have socialized on infrequent occasions with **ELKINSON** and his wife, including dinners with spouses approximately once a year and lunch meetings with **ELKINSON** alone on an irregular basis, approximately once a

month. In the course of such social occasions, **ELKINSON** informed them that he traveled on occasion to the Venetian casino in Las Vegas, where **ELKINSON** claimed a relative was a senior employee who arranged to “comp” him on his accommodations and meals. **ELKINSON** also mentioned that he had credit lines of \$25,000 at the Venetian and two other casinos, MGM Grand and Caesar’s.

32. Currency transaction reports filed by casinos reflect that from 1998 to the present, **ELKINSON** has conducted a total of \$3,749,955 in individual currency transactions over \$10,000 at casinos (i.e., purchasing or cashing chips, making and/or collecting currency wagers, depositing or withdrawing money for safekeeping, receiving advances on credit, etc.).

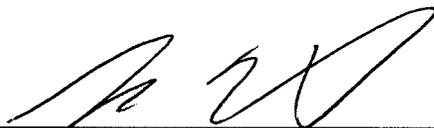
33. Based upon my training and experience, I believe that **ELKINSON** has been operating a Ponzi-type investment scheme. In particular, I note that the combination of interest payments at 11% to 13% plus commissions at 2% amounts to a 15% per annum return on investment. It is not commercially reasonable that a legitimate business person would accumulate nearly \$30 million in debt on such terms when there are other forms of financing that would be much cheaper. Nor does it appear commercially reasonable that supply contracts in the highly competitive and globalized garment manufacturing industry could consistently produce such returns, on top of the presumptive profit to be earned by the manufacturer. The fact that the telephone numbers reflected on “sample” contracts from state agencies are non-working numbers reinforces my belief that, whether there were ever any genuine garment contracts, a substantial portion of the putative contracts are fictitious. Additional indicia that this was a Ponzi-scheme include **ELKINSON**’s practice of calling Fialkow and Ross daily to inquire about new investments and his payment of a substantial finders’ fee for new investments. Such a constant

and steady growth of outstanding debts is consistent with a ballooning Ponzi-scheme, but is difficult to square with any plausible pattern of growth in any legitimate business of brokering garment contracts. Further indicia of fraud are **ELKINSON**'s contradictory, and implausible, explanations about the putative source of new funds to be used to pay off investors.

CONCLUSION

34. Based on the foregoing, I have probable cause to believe that **ELKINSON** has committed the offense of mail fraud in violation of Title 18, United States Code, Sections 1343 and 2.

I hereby certify that the foregoing is true and correct. Executed this 24th day of December, 2009.



LEO T. FILA, Special Agent
Federal Bureau of Investigation

SUBSCRIBED and SWORN to before me
this 24th day of December 2009



Honorable Marianne B. Bowler
UNITED STATES MAGISTRATE JUDGE

