

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
)
 v.)
)
ROBERT ALLEN WALKER,)
)
)
 Defendant.)

INDICTMENT

(18 U.S.C. § 371)

THE UNITED STATES GRAND JURY CHARGES:

1. Defendant ROBERT ALLEN WALKER (hereinafter "WALKER"), a Minnesota resident, was the founder of Bixby Energy Systems, Inc. (hereinafter "Bixby"), and from in or about 2001 until in or about May 2011, WALKER was the President, chief executive officer, and chairman of the board of directors of Bixby.

2. At all times relevant to this Indictment, Bixby was a privately-held company, located in Ramsey, Minnesota, involved in the development of alternative energy projects, including a coal gasification venture.

3. From in or about 2001 through in or about May 2011, Dennis Desender was, among other things, Chief Operating Officer, Chief Financial Officer, and acting Chief Financial Officer of Bixby. Desender, along with WALKER, was primarily charged with raising funds for Bixby and its business projects, including the coal gasification energy project.

SCHEME AND ARTIFICE TO DEFRAUD

4. From at least 2001 to 2011, WALKER executed a scheme and artifice to defraud investors. WALKER raised more than \$43 million from approximately 1800 investors by means of offering materials and investor solicitations from WALKER, or others acting in concert with him, that contained false and misleading statements or omissions regarding: (i) the payment of salaries and commissions to Bixby officers and directors; (ii) the operational capability of Bixby's core product - a coal gasification machine; and (iii) Bixby's prospects for conducting an initial public offering.

5. It was part of the scheme to defraud that:

a. WALKER, or others acting in concert with him, provided written materials to Bixby investors which falsely stated that company officers and directors would not be compensated for their sale of Bixby securities, when, in fact, during that period, WALKER directed payments to an officer of Bixby of at least \$3 million in commissions for bringing in investors, out of which the officer kicked back more than \$600,000 to WALKER, who was also an officer and director of Bixby, in a commission-sharing arrangement that was concealed from investors and other members of the Bixby board of directors;

b. WALKER, and others acting in concert with him, both verbally and in written materials, made repeated misstatements regarding the operational capability and functionality of Bixby's coal gasification and liquefaction technologies and its coal gasification machines, falsely characterizing these products as "proven, operating systems" and "proven, fully functional, and ready for market," when, in truth and in fact, the liquefaction technology had never worked and the coal gasification machine had substantial technological defects and did not function properly;

c. WALKER, and others acting in concert with him, repeatedly falsely told investors that Bixby was going to conduct an initial public offering of its stock in the near future, when, in truth and in fact, WALKER knew that Bixby could not conduct an initial public offering because, among other things, Bixby could not obtain audited financial statements; and

d. WALKER concealed from investors that new investor money was being used to make payments to existing investors, that investor money would be used for projects other than what was represented to the investor, and that investor money was being fraudulently diverted by WALKER for his own use and benefit, including to fund WALKER's lavish lifestyle, and not for the advancement of the various Bixby projects.

6. The Bixby investments offered and sold by WALKER, either directly or through others acting in concert with him, were securities, as that term is defined by Section 2(1) of the Securities Act of 1933; Title 15, United States Code, Section 77b(a)(1); and Section 3(a)(10) of the Securities Exchange Act of 1934; Title 15, United States Code, Section 77c(a)(10). WALKER knew the Bixby investments were securities.

7. In furtherance of the scheme and artifice to defraud Bixby investors, WALKER, and others acting in concert with him or at his direction, used the United States mails, commercial interstate carriers, and interstate wire communications.

COUNT 1
Conspiracy
(18 U.S.C. § 371)

8. The Grand Jury realleges all the allegations contained in paragraphs 1 through 7 above as if set forth in full herein.

9. From in or about 2001 and continuing until in or about May 2011, in the State and District of Minnesota and elsewhere, defendant,

ROBERT ALLEN WALKER,

did knowingly combine, conspire, and agree with Dennis Desender, and other persons known and unknown to the grand jury, to commit offenses against the United States, that is:

a. To use and employ manipulative and deceptive devices and contrivances through the means and instrumentalities of interstate commerce, and the mails, in connection with the purchase and sale of securities, by: (a) employing a device, scheme and artifice to defraud, (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstance under which they were made, not misleading, and (c) engaging in acts, practices and a course of business which would and did operate as a fraud and deceit upon persons, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5;

b. To devise and intend to devise a scheme and artifice to defraud and to obtain money and property through material false statements and misrepresentations, and for the purpose of executing the scheme and artifice, to knowingly transmit and cause to be transmitted in interstate commerce, by means of wire communications, certain signals and sounds, in violation of Title 18, United States Code, Section 1343; and

c. To devise and intend to devise a scheme and artifice to defraud and to obtain money and property through material false statements and misrepresentations, and for the purpose of executing the scheme and artifice, to knowingly cause to be sent, delivered, and moved by the United States Postal Service and interstate commercial carrier various mailings, in violation of Title 18, United States Code, Section 1341.

MANNER AND MEANS

10. The manner and means of the conspiracy include the misrepresentations and omissions described in paragraphs 1 through 6 above.

OVERT ACTS

11. In order to effect the objects of the conspiracy and in furtherance of the conspiracy, WALKER, and others acting in concert with him, committed and caused to be committed the following overt acts in the District of Minnesota and elsewhere, that is, they:

a. Provided investors and potential investors with Bixby offering materials (including Bixby's "Private Placement Memorandum"), which contained material misrepresentations regarding the use of investor funds, which were intended to induce investors into providing funds or to lull investors into believing that their funds were being used as represented;

b. Mailed investors shareholder newsletters ("The Bixby Blaze"), which contained false information regarding the functionality of the Bixby gasification and liquefaction technologies;

c. Made misrepresentations and omissions regarding the use of investor funds both verbally and in written communications with investors; and

d. Caused to be received by mail, by wire transfer, and by personal delivery, investment funds totaling more than \$43 million.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATIONS

12. The Grand Jury realleges and incorporates paragraphs 1 through 11 of the Indictment, and makes it a part of these forfeiture allegations.

As the result of the offenses alleged in Count 1 of this Indictment, the defendant,

ROBERT ALLEN WALKER,

shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), all his rights, title and interest in any property constituting, or derived from, proceeds traceable to the violations of Title 18, United States Code, Section 371.

A TRUE BILL

UNITED STATES ATTORNEY

FOREPERSON