

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.
: :
: Criminal No.
: :
v. : 15 U.S.C. §§ 78j(b) and
: 78ff; 17 C.F.R. § 240.10b-5
: 18 U.S.C. §§ 1349 and 2
VICTOR E. CILLI : 26 U.S.C. § 7201

INFORMATION

The defendant having waived in open court prosecution by Indictment, the United States Attorney for the District of New Jersey charges:

COUNT ONE

(Securities Fraud)

1. At all times relevant to this Information:

a. Defendant VICTOR E. CILLI ("CILLI") resided in or near Hackensack, New Jersey;

b. A commodity pool operator ("CPO") was a person or entity engaged in a business similar to an investment trust or a syndicate and who solicited or accepted funds, securities, or property for the purpose of trading commodity futures contracts;

c. A commodity pool was an investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity futures or options contracts;

d. A day trader was a trader who would rapidly buy and sell stocks throughout the day in the hope that the stocks would continue climbing or falling in value for the

seconds to minutes the day trader owned the stock, allowing him to lock in quick profits. Day traders usually bought on borrowed money, hoping that they will reap higher profits through leverage, but also running the risk of higher losses;

e. Progressive Investment Funds LLC ("PIF") was a CPO registered with the Commodity Futures Trading Commission ("CFTC") and the National Futures Association ("NFA"). PIF was the CPO and general partner of the commodity pool Progressive Managed Futures Fund LP ("PMFF"). PIF was a Delaware limited liability company formed in August 2006 with its last known business address located in Hackensack, New Jersey;

f. PMFF was a commodity pool and a Delaware limited partnership;

g. KeyBank was a publicly traded for-profit company incorporated in Ohio, with its principal place of business in Cleveland, Ohio. KeyBank's chief operations included banking, lending, and personal and commercial financing. KeyBank was a financial institution within the meaning of Title 18, United States Code, Section 20, whose deposits were insured by the Federal Deposit Insurance Corporation ("FDIC");

h. Tab Express International, Inc. ("Tab") was a private, closely held for-profit company incorporated in Delaware, with its principal place of business in DeLand, Florida. Tab administered and operated a pilot and flight crew training school in Florida;

i. Defendant CILLI was the sole owner and president of PIF. Defendant CILLI also was a day trader;

j. Defendant CILLI maintained a bank account in the name of Northeast Flight Training, Inc. ("NFT"), which was not a flight training school but was merely the name on an account that defendant CILLI used to perpetuate his frauds and to fund his personal expenditures; and

k. Defendant CILLI maintained a bank account in the name of United Charities of America, Inc. ("UCA"), which was not a charitable organization but was merely the name on an account that defendant CILLI used to perpetuate his frauds and fund his personal expenditures.

The Scheme to Defraud

2. From at least as early as in or about January 2007 through in or about September 2007, in Bergen County, in the District of New Jersey, and elsewhere, defendant

VICTOR E. CILLI,

by use of the means and instrumentalities of interstate commerce, the mails, and facilities of national securities exchanges, directly and indirectly, knowingly and willfully used manipulative and deceptive devices and contrivances in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5 (Rule "10b-5") in connection with the purchase and sale of securities by (i) employing devices, schemes, and artifices to defraud members of the investing public; (ii) making untrue

statements of material facts 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 (iii) engaging in acts, practices, and a course of business which operated and would operate as a fraud and deceit upon persons, in that he made untrue statements of material fact to investors in his commodity futures fund regarding the value of their investments and the performance of the fund.

Object of the Fraud

3. The object of the fraud was for defendant CILLI to misappropriate monies that investors gave to him to invest, and to use those monies to support his lavish lifestyle and to pay prior investors.

Manner and Means of the Fraud

4. From at least as early as in or about January 2007 through in or about September 2007, defendant CILLI engaged in a Ponzi scheme to defraud at least four commodity pool participants of approximately \$506,000. In furtherance of the fraud, defendant CILLI made false and misleading statements to the pool participants claiming that he had made money for them when, in fact, most of defendant CILLI's trading resulted in losses.

5. Specifically, beginning in or about August 2006, defendant CILLI registered PIF as a CPO with the CFTC and the NFA. In or about the same time, defendant CILLI formed PMFF as a commodity pool with PIF acting as the pool's CPO.

6. From in or about November 2006 through in or about July 2007, defendant CILLI solicited at least four individuals to become pool participants with a direct financial interest in PMFF. Each of these individuals wrote a check directly payable to PMFF for their respective investments or, pursuant to defendant CILLI's instructions, wired their funds directly into PMFF's bank account. The pool participants invested a total of approximately \$506,000 in PMFF. Defendant CILLI, as the owner and president of PIF, had sole trading authority over the PMFF account, which remained open until approximately February 2009.

7. From in or about January 2007 through in or about September 2007, the nine months during which defendant CILLI actively traded PMFF's account, defendant CILLI traded approximately \$263,000 out of the \$506,000 that the pool participants invested in PMFF, and had net trading losses of approximately \$200,168.

8. Defendant CILLI never disclosed to the PMFF pool participants that he had traded only about half of their invested funds or that most of his trading resulted in net losses, although defendant CILLI, as the sole owner and president of PIF, was required by CFTC regulations to maintain and send quarterly net asset value statements and annual reports to the pool participants. In the statements and other documents, defendant CILLI falsely stated to the pool participants that PMFF had made money.

9. Between in or about January and September 2007, defendant CILLI sent at least one pool participant false periodic statements claiming that the pool had made money, when in fact, the pool had lost money trading. These false periodic statements showed profits ranging from approximately 0.675% to 7.8%.

10. On or about April 6, 2007, defendant CILLI sent an email to another pool participant falsely claiming a 7.16% gain for March 2007 or "\$7,160 additional profit." On or about July 11, 2007, defendant CILLI sent another email to this pool participant attaching a fraudulent June 2007 monthly statement that falsely showed 1.624% profit on a \$200,000 investment. On or about August 13, 2007, defendant CILLI sent an email to this pool participant attaching a fraudulent July 2007 monthly statement that falsely showed 1.484% profit on a \$200,000 investment.

11. Defendant CILLI also issued false 1099s for 2007 to at least two pool participants, which showed profits on their investments. These 1099s were false because in 2007, PMFF had net losses in its trading account. For example, one pool participant received a fraudulent 1099 which showed a profit of \$22,619 when, in fact, her investment had lost money in 2007. Specifically, the 1099-B (proceeds from broker transactions) issued for PMFF's trading account showed approximately \$200,168 in net trading losses for 2007.

12. Defendant CILLI's representations regarding

profits in the pool were false because the pool's trading account resulted in net losses for the life of the trading account. In fact, out of the approximately nine months that defendant CILLI actively traded the pool's account, only two months had a net profit and seven months had a net loss.

13. Defendant CILLI also transferred thousands of dollars out of the PMFF bank account, which he then used, in part, to pay for personal expenses, including hair salon visits, skin care treatments, payments on his Harley Davidson, and other entertainment, meals, and travel expenses.

14. Finally, in order to convince pool participants that these profit statements were true, defendant CILLI returned some funds back to the pool participants in a manner known as a Ponzi scheme. Specifically, these payments were not from actual trading profits but were instead from funds of existing pool participants.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), Title 17, Code of Federal Regulations, Section 240-10b-5, and Title 18, United States Code, Section 2.

COUNT TWO

(Conspiracy to Commit Bank Fraud)

1. Paragraph 1 of Count One of this Information is hereby reincorporated and alleged as if set forth in full herein.

2. From at least as early as in or about 2002 through in or about September 2006, in Bergen County, in the District of New Jersey and elsewhere, defendant

VICTOR E. CILLI

did knowingly and intentionally conspire and agree with others to execute, and attempt to execute, a scheme and artifice to defraud a financial institution, namely KeyBank, and to obtain money, funds, credits, assets, securities, and other property owned by, and under the custody and control of that financial institution, by means of materially false and fraudulent pretenses, representations, and promises, contrary to Title 18, United States Code, Section 1344.

Object of the Conspiracy

3. It was the object of the conspiracy for defendant CILLI and approximately sixteen other individuals (collectively "the Coconspirators") to defraud KeyBank of more than \$1.5 million, and to enrich themselves, by falsely representing to KeyBank that the Coconspirators would use the proceeds of student loans obtained from KeyBank to attend Tab, when the Coconspirators actually had no intention to, and never did, enroll in or attend Tab.

Manner and Means of the Conspiracy

4. From in or about late 2002 through in or about early 2004, defendant CILLI and others told the approximately sixteen Coconspirators, almost all of whom resided in New Jersey, about an opportunity to obtain a student loan in the amount of approximately \$100,000 from KeyBank.

5. Defendant CILLI and others explained to the Coconspirators that, while the terms of the loan required them to use the loan proceeds for educational expenses at Tab, the Coconspirators did not have to, nor would they ever, attend Tab. Instead, defendant CILLI and the Coconspirators agreed that, if the Coconspirators signed up for the loan, defendant CILLI would either pay them an agreed-upon amount for doing so or enable them to invest the loan proceeds with defendant CILLI. They also agreed that the Coconspirators would not have to repay the principal or any interest on the loans to KeyBank.

6. As one example, in furtherance of the conspiracy, defendant CILLI and Coconspirator #1 ("CC-1") defrauded KeyBank of approximately \$99,999 as follows:

a. In or about late 2002 to early 2003, defendant CILLI, who was a friend of CC-1, told CC-1 about an opportunity to obtain a student loan in the amount of approximately \$100,000 from KeyBank. Defendant CILLI and CC-1 knew that the terms of the loan required CC-1 to attend Tab. CC-1, however, never intended to attend Tab, and defendant CILLI

knew that CC-1 never intended to attend Tab. Instead, defendant CILLI and CC-1 agreed that, if CC-1 signed up for the loan, defendant CILLI would pay him approximately \$20,000 after the loan was approved, and CC-1 would never have to repay to KeyBank the principal or any accrued interest on the loan.

b. On or about July 23, 2003, in or near Livingston, New Jersey, CC-1 executed a Master Student Loan Promissory Note (the "Loan Note") with KeyBank. The Loan Note that CC-1 signed falsely represented that CC-1 (1) "promises to pay to [KeyBank's] order . . . all principal sums disbursed under the terms of this Note and, in addition, any interest on such principal sums," and (2) "will use the proceeds of any Loan subject to the terms of this Note only for my educational expenses (i) at an eligible institution or (ii) relating to the Loan Program" (emphasis added).

c. On or about July 30, 2003, based on the materially false pretenses, representations, and promises made by CC-1, pursuant to defendant CILLI's instructions, KeyBank disbursed approximately \$99,999 to Tab.

d. From on or about May 4, 2004, through on or about March 23, 2005, defendant CILLI wrote six checks for a total of approximately \$35,000 to CC-1 from defendant CILLI's UCA and personal bank accounts.

e. On or about November 15, 2004, Tab issued a check to CC-1 in the amount of approximately \$80,525. On or

about December 13, 2004, this check was deposited into defendant CILLI's NBT bank account.

f. On or about September 19, 2006, again pursuant to defendant CILLI's instructions, CC-1, the Borrower, executed a Settlement and Release Agreement (the "Agreement") with KeyBank. In the Agreement, CC-1 stated that he had enrolled in Tab, paid tuition via the loan from KeyBank to Tab, but ultimately decided not to attend Tab and his tuition money was not returned to KeyBank. Based on these and other material misrepresentations, KeyBank forgave CC-1's loan in its entirety.

g. At no time from in or about July 2003 to the present did CC-1 intend to attend, or enroll in, Tab, nor did defendant CILLI, CC-1, or Tab repay any portion of the loan or the accrued interest to KeyBank.

7. As a result of their scheme, defendant CILLI and the Coconspirators caused KeyBank to disburse more than \$1.5 million in 16 loans to be used for the educational expenses of the Coconspirators at Tab, although none of the Coconspirators ever enrolled in, or attended, Tab.

8. Instead, of the more than \$1.5 million in loans that KeyBank disbursed to Tab as a result of the material misrepresentations made by the Coconspirators, pursuant to defendant CILLI's instructions: defendant CILLI caused approximately \$600,000 to be deposited into bank accounts that he alone owned and operated; defendant CILLI paid approximately

\$130,000 to the Coconspirators; and Tab retained approximately \$900,000 of the fraudulent loan proceeds. KeyBank was not repaid any of the principal or accrued interest on the loans.

In violation of Title 18, United States Code, Section 1349.

COUNT THREE

(Tax Evasion)

1. Paragraphs 1 of Count One and 3 through 8 of Count Two of this Information are hereby reincorporated and alleged as if set forth in full herein.

2. For calendar years 2003 and 2004, defendant CILLI intentionally failed to provide the IRS with any information regarding the proceeds that he received in connection with the fraudulent scheme described in Count Two, in the aggregate amount of approximately \$547,705.

3. On or about March 6, 2006, defendant CILLI filed U.S. individual income tax returns on Form 1040 for calendar years 2003 and 2004, in which he intentionally did not disclose to the IRS any information regarding the proceeds of his fraudulent scheme.

4. Defendant CILLI's willful attempt to evade his taxes and the payment thereof, and his intentional failure to provide the IRS with any information regarding the proceeds of his fraudulent scheme, resulted in a tax loss to the United States of approximately \$158,674.

5. On or about March 6, 2006, in Bergen County, in the District of New Jersey and elsewhere, defendant

VICTOR E. CILLI

did willfully attempt in any manner to evade and defeat any tax imposed by this title and the payment thereof for the years 2003

and 2004.

In violation of Title 26, United States Code, Section 7201, and Title 18, United States Code, Section 2.

FORFEITURE ALLEGATION

1. The allegations contained in Counts One and Two of this Information are incorporated by reference as though set forth in full herein for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461.

2. The United States hereby gives notice to defendant CILLI that, upon conviction of the offenses charged in Counts One and Two of this Information, the government will seek forfeiture, in accordance with Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 981(a)(1)(C), of any and all property, real or personal, that constitutes or is derived from proceeds traceable to the violations of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 1344, or a conspiracy to commit such offense, as alleged in this Information, including but not limited to the following:

a. A sum of money equal to approximately \$1,000,000 in United States currency.

3. If by any act or omission of defendant CILLI, any of the property subject to forfeiture described in paragraph 2 herein:

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 which cannot be subdivided without difficulty, the United States of America will be entitled to forfeiture of substitute property up to the value of the property described above in paragraph 2, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).



PAUL J. FISHMAN
UNITED STATES ATTORNEY

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17 C.F.R. § 240.10b-5
18 U.S.C. §§ 1349 and 2
26 U.S.C. § 7201

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