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Approved: *Amy Lester*  
AMY LESTER / A. DAMIAN WILLIAMS  
Assistant United States Attorneys

Before: HONORABLE FRANK MAAS  
Chief United States Magistrate Judge  
Southern District of New York

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UNITED STATES OF AMERICA	:	<u>SEALED COMPLAINT</u>
	:	
- v. -	:	Violations of 18 U.S.C.
	:	§§ 1343 and 2
	:	
OCTAVIO LOMBARDO,	:	COUNTY OF OFFENSE:
a/k/a "Otto Lombardo,"	:	NEW YORK
	:	
Defendant.	:	
	:	
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SOUTHERN DISTRICT OF NEW YORK, ss.:

PAUL F. ROBERTS, JR., being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation (the "FBI") and charges as follows:

COUNT ONE  
(Wire Fraud)

1. From at least in or about 2007 up to and including in or about 2013, in the Southern District of New York and elsewhere, OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, LOMBARDO solicited over \$1 million in fees from small business owners through the use of telephones, electronic communications, and wire transfers, including the transfer of funds from the victims into bank accounts in New York, New York, based on false and

misleading representations that LOMBARDO would use the money to conduct due diligence in connection with an offer to provide financing for the victims' businesses when, in fact, LOMBARDO used the victims' money substantially for his own personal benefit.

(Title 18, United States Code, Sections 1343 and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

2. I have been a Special Agent with the FBI for approximately six years. I am currently assigned to a squad within the FBI that is responsible for investigating violations of the federal securities laws, as well as wire, bank, and mail fraud laws and related offenses. I have participated in numerous investigations of these offenses, and I have made and participated in making arrests of numerous individuals for committing in such offenses.

3. The information contained in this affidavit is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including documents and information provided to me by witnesses who participated in conversations and written communications with OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, and a review of bank records and public records. Because this affidavit is prepared for limited purposes, I have not set forth each and every fact I have learned in connection with this investigation. Where conversations and events are referred to herein, they are related in substance and in part. Where dates, figures, and calculations are set forth herein, they are approximate.

#### Background

4. Based upon interviews of witnesses, a review of documents provided by witnesses, a review of public records, and a review of electronic communications between OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, and others, I have learned that:

a. LOMBARDO claims to be the managing director of Lombardo & Company ("Lombardo & Co."), a purported holding company offering financial and insurance services based in New York City.

b. Victim-1 is a former small business owner and entrepreneur who, at all times relevant to this Complaint, lived in Nassau County, New York.

c. Victim-2 is a professional in the financial services industry who, at all times relevant to this Complaint, lived in New York City.

5. Based upon my review of bank records from TD Bank, NA ("TD Bank"), I have learned the following:

a. On or about April 20, 2006, OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, opened a bank account ending in # 7313 in the name "Otto Lombardo" at a Commerce Bank<sup>1</sup> branch located in New York, New York (the "Lombardo Account").

b. On or about September 2, 2011, LOMBARDO opened a bank account ending in # 0041 in the name "Lombardo and Company Trust 88" at a TD Bank branch located in New York, New York (the "Lombardo & Co. Trust Account").

c. On or about October 3, 2012, LOMBARDO opened a bank account ending in # 4299 in his and his wife's name at a TD Bank branch located in New York, New York (the "Joint Account").

#### The Scheme to Defraud

6. Based upon interviews of witnesses, a review of documents provided by witnesses, a review of public records, a review of electronic communications between OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, and others, as well as my review of documents provided by banks and other financial institutions, I have learned that:

a. From in or about 2007 through in or about 2013, LOMBARDO held himself out to more than three dozen business owners as having the ability and expertise to structure investment loans for their businesses through LOMBARDO's exclusive relationships with small community banks across the United States. In truth and in fact, LOMBARDO had no ability to provide such financing, and none of the businesses at issue received a loan through LOMBARDO during this period of time.

b. In his pitch to the prospective borrowers, LOMBARDO made several false and misleading representations, including the following, among others:

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<sup>1</sup> On or about March 31, 2008, Commerce Bank merged with TD Bank.

i. That LOMBARDO could obtain interest-only loans in amounts ranging from \$1 million to \$75 million by consolidating the lending power of several small community banks into a trust, which he would manage through his holding company, Lombardo & Co.;

ii. That, in order to structure the loan appropriately, LOMBARDO needed to conduct due diligence of the businesses, including by obtaining corporate and financial documentation, and by conducting site visits;

iii. That LOMBARDO required a non-refundable upfront payment -- generally in the amount of \$25,000 -- to cover the expenses incurred during the due diligence process, including legal and other professional fees, taxes, appraisals, and the like; and

iv. That this fee would be incorporated into the final loan agreement, so that the business owners would ultimately "get back" the upfront payment once the financing was in place.

c. Typically, LOMBARDO also told the prospective borrowers that he and the banks were interested in obtaining an equity stake in the businesses. Accordingly, LOMBARDO would often structure the purported loan as a convertible note, which entitled the lender (Lombardo & Co.) to convert the remaining balance of the loan into an equity stake in the business during the term of the loan. For many business owners, this made the loan more attractive because it meant that they would not have to repay the principal of the loan.

d. LOMBARDO sent the prospective borrowers a document called an "Offer to Finance," which set forth the terms and conditions of the purported loan, including a provision setting forth "origination and broker fees" that would go to LOMBARDO, which were typically 10 percent of the total amount of the loan.

e. The "Offer to Finance" also required that the prospective borrower pay LOMBARDO the upfront "good faith non-refundable due diligence payment" in order to accept the offer.

f. LOMBARDO obtained over \$1 million in so-called due diligence payments from more than three dozen business owners, which payments were wired to the Lombardo Account and the Lombardo & Co. Trust Account at LOMBARDO's direction.

g. LOMBARDO spent the vast majority of the due diligence payments on his own personal expenses, including, among other things, rental payments, club dues, food, and other personal items.<sup>2</sup>

h. Once he received the due diligence payments, LOMBARDO made a variety of excuses to the prospective borrowers -- including, among others, that he (LOMBARDO) was having health problems and had been hospitalized, that he was traveling, and/or that he had a new grandchild -- in order to explain the delay in closing the loan.

i. Ultimately, LOMBARDO did not provide any of the loans to the prospective borrowers as promised.

#### Victim-1

7. Based upon interviews I conducted with Victim-1, a review of documents provided by Victim-1, a review of electronic communications between Victim-1 and OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, and others, I have learned the following:

a. From in or about 2004 through in or about 2012, Victim-1 owned a small business that sold fragrances to retail purchasers over the Internet. Over a period of approximately three years, Victim-1 developed a proprietary technology platform for the business. Victim-1 planned to scale the platform for use in other business settings, and for possible sale to third parties. At its height, Victim-1's business generated approximately \$7 million in annual revenue, and Victim-1 expected the business to continue to grow.

b. In or about December 2010, Victim-1 met LOMBARDO at a gathering for small business owners held in New York, New York, at which LOMBARDO told Victim-1 that he could assist him in obtaining an interest-only loan for his business.

c. On or about August 23, 2011, Victim-1 met with LOMBARDO at Lombardo & Co.'s offices at 110 Wall Street, New York, New York, in order to discuss further the possibility of

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<sup>2</sup> By contrast, LOMBARDO spent less than \$110,000 on expenses that could arguably be considered related to due diligence, as defined in the "Offer to Finance," including, for example, payments to a lawyer, a consulting company, and certain business-related expenses.

Victim-1 obtaining a loan through LOMBARDO.

d. On or about January 23, 2012, LOMBARDO sent Victim-1 an email attaching an "Offer to Finance" a loan in the amount of \$1.1 million for Victim-1's business. The "Offer to Finance" contained the following terms and conditions, among others:

i. Victim-1 was required to provide a "good faith non-refundable due diligence payment" in the amount of \$25,000 to LOMBARDO in order to accept the offer.

ii. The \$25,000 payment would be used for expenses such as "maintenance, insurance, taxes, appraisals, due diligence, documentation, lender, legal, trustee, lien search, title insurance, inspection, environmental audit, and all other expense items of a similar nature."

iii. "Exhibit A" to the "Offer to Finance" contained a "Due Diligence Checklist" which set forth the documents and information to be provided to LOMBARDO by Victim-1 as part of the due diligence process, including corporate documents and financial information about Victim-1's business.

e. On or about January 24, 2012, LOMBARDO sent Victim-1 an email with wire instructions for the \$25,000 payment and told Victim-1 that he would like to schedule a time to visit the office of Victim-1's business to begin the due diligence process.

f. On or about January 24, 2012, Victim-1 wired \$15,000 from a bank account located in New York, New York, to the Lombardo Account. On or about January 30, 2012, Victim-1 wired another \$10,000 from a bank account located in New York, New York, to the Lombardo Account, in satisfaction of the \$25,000 payment.<sup>3</sup>

g. On or about May 7, 2012, LOMBARDO sent an email to Victim-1 confirming LOMBARDO's same-day visit to the office of Victim-1's business in New Hyde Park, New York, in connection with the due diligence process. LOMBARDO visited Victim-1's business and Victim-1 provided the corporate and financial documentation that LOMBARDO requested.

h. Several months passed without the loan being

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<sup>3</sup> I have confirmed that these wire transfers cleared through the Federal Reserve Bank of New York via interstate wire.

finalized, during which time Victim-1 had difficulty contacting LOMBARDO. At different times during this period, LOMBARDO told Victim-1 that he was not able to finalize the loan because he was in Ohio with his daughter, who had just given birth, and that he had been having heart problems and was in the hospital.

i. In or about July 2012, Victim-1 spoke with LOMBARDO by telephone and insisted that LOMBARDO place the money to fund the loan in escrow, as an assurance to Victim-1 that the deal would go forward. LOMBARDO agreed to do so.

j. On or about September 5, 2012, LOMBARDO emailed Victim-1, stating, "[I']m going to the bank this afternoon. [T]hey will need to use their escrow form with some modifications. [I] will advise," indicating that he was going to place the money for the loan in escrow as he had agreed.

k. LOMBARDO and Lombardo & Co. never funded a loan for Victim-1's business. LOMBARDO did not return the \$25,000 payment to Victim-1.

#### Victim-2

8. Based on interviews I conducted with Victim-2, a review of documents provided by Victim-2, a review of electronic communications between Victim-2 and OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, and others, I have learned the following:

a. From in or about 2006 through in or about 2012, Victim-2 ran a high frequency trading firm with assets under management ranging from \$5 million to \$50 million. Victim-2 developed proprietary trading models for the exclusive use of his business.

b. In or about 2008, Victim-2 met LOMBARDO at a store located in New York, New York. At that time, LOMBARDO told Victim-2 that he was a private equity investor, and occasionally asked Victim-2 for investing advice. LOMBARDO offered to invest in Victim-2's business, but Victim-2 declined the offer at that time because Victim-2's business did not need any additional capital.

c. In or about 2012, Victim-2, who had become friendly with LOMBARDO, discussed with LOMBARDO the possibility of obtaining funding for the purpose of expanding Victim-2's business. LOMBARDO and Victim-2 agreed that LOMBARDO would arrange a loan in the amount of \$1.2 million for Victim-2's

business.

d. On or about May 2, 2012, Victim-2 executed an "Offer to Finance" that he had received via email from LOMBARDO for a loan in the amount of \$1.2 million. The "Offer to Finance" included the following terms and conditions, which were largely the same conditions as in the Offer to Finance provided to Victim-1, as described in Paragraph 7(d) above:

i. Victim-2 was required to provide a "good faith non-refundable due diligence payment" in the amount of \$25,000 to LOMBARDO in order to accept the offer.

ii. The \$25,000 payment would be used for expenses such as "maintenance, insurance, taxes, appraisals, due diligence, documentation, lender, legal, trustee, lien search, title insurance, inspection, environmental audit, and all other expense items of a similar nature."

iii. "Exhibit A" to the "Offer to Finance" contained a "Due Diligence Checklist" which set forth the documents and information to be provided to LOMBARDO by Victim-2 as part of the due diligence process, including corporate documents and financial information about Victim-2's business.

iv. "Exhibit B" to the "Offer to Finance" contained a "Due Diligence Fee Allocation and Performance Timeline," which set forth the hourly rates of the persons who would conduct the due diligence review, their travel expenses, and overall estimates of the costs of the due diligence process.

e. Also on or about May 2, 2012, Victim-2 wired \$25,000 from a bank account located in New York, New York, to the Lombardo Account, in satisfaction of the \$25,000 payment.<sup>4</sup>

f. That same day, LOMBARDO emailed Victim-2 to confirm the receipt of the \$25,000 payment and asked to meet with Victim-2 to review the due diligence checklist. LOMBARDO met with Victim-2 and Victim-2 provided the corporate and financial information LOMBARDO requested.

g. Over the next several months, LOMBARDO told Victim-2 that he had a series of problems that prevented the loan from closing. For example, LOMBARDO told Victim-2 that he had a new grandchild, that he had a wedding in the family, and that he had to travel, all of which purportedly prevented him

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<sup>4</sup> I have confirmed that this wire transfer was cleared by the Federal Reserve Bank of New York via interstate wire.

from finalizing the loan.

h. LOMBARDO and Lombardo & Co. never funded a loan for Victim-2's business. LOMBARDO did not return the \$25,000 payment to Victim-2.

#### Other Victims

9. In addition to Victim-1 and Victim-2, I have spoken with more than a dozen other business owners who each entered into agreements with OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, to obtain a loan for his or her businesses. Each of these business owners made upfront payments to LOMBARDO in amounts ranging from \$25,000 to \$100,000, but not a single one of these business owners ultimately obtained a loan through LOMBARDO.

10. I have also identified more than a dozen other business owners that each made payments to LOMBARDO in the amount of \$25,000.

#### Analysis of LOMBARDO's Bank Accounts

11. Based upon a review of bank records for the Lombardo Account, I have learned the following:

a. Between in or about July 2007 up to and including in or about May 2012, the Lombardo Account received wire transfers totaling \$700,000 in due diligence payments from small business owners.

b. During the period of time relevant to this Complaint, OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, spent hundreds of thousands of dollars from the Lombardo Account on personal expenses, including the following:

- i. More than \$52,000 in cash withdrawals;
- ii. More than \$306,000 in rental payments for his residence in Brooklyn, New York;
- iii. More than \$37,000 on restaurants located near his residence in Brooklyn;
- iv. More than \$96,000 on membership dues for a private gun club located in Manhattan;
- v. More than \$11,000 on purchases of wine and

liquor; and

vi. More than \$8,900 in connection with his daughter's wedding.

c. In addition, LOMBARDO transmitted at least \$52,000 from the Lombardo Account to various members of his family.

d. LOMBARDO also transferred \$67,000 from the Lombardo Account to the Lombardo & Co. Trust Account, and \$8,000 to the Joint Account.

12. Based upon a review of bank records for the Lombardo & Co. Trust Account, I have learned the following:

a. Between in or about June 2012 up to and including in or about April 2013, the Lombardo & Co. Trust Account received wire transfers totaling \$365,500 in due diligence payments from small business owners.

b. During the period of time relevant to this Complaint, OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, spent thousands of dollars from the Lombardo & Co. Trust Account on personal expenses, including the following:

i. More than \$12,000 in cash withdrawals;

ii. More than \$1,900 on restaurants located near his residence in Brooklyn; and

iii. More than \$11,000 on membership dues for a private gun club located in Manhattan.

c. LOMBARDO also transferred \$206,000 from the Lombardo & Co. Trust Account to the Joint Account, and \$120,000 to the Lombardo Account.

13. Based on a review of bank records for the Lombardo Account, the Lombardo & Co. Trust Account, and the Joint Account, I know that OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, had no other source of income into these accounts during the period of time relevant to this Complaint other than tax refunds and small lottery winnings totaling less than \$50,000.<sup>5</sup>

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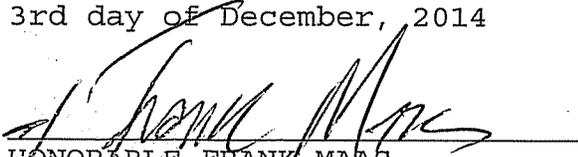
<sup>5</sup> However, these accounts did receive approximately \$96,500 in additional funds as a result of payments from life insurance

WHEREFORE, I respectfully request that an arrest warrant be issued for OCTAVIO LOMBARDO, a/k/a "Otto Lombardo," the defendant, and that he be arrested and imprisoned or bailed, as the case may be.



PAUL F. ROBERTS, JR.  
SPECIAL AGENT  
FEDERAL BUREAU OF INVESTIGATION

Sworn to before me this  
3rd day of December, 2014



HONORABLE FRANK MAAS  
CHIEF UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK

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policies held by LOMBARDO's father-in-law, now deceased, of which LOMBARDO's wife was the beneficiary.