

HDM:TBM
F. #2023R00846

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

KANEN FLOWERS,

Defendant.

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THE GRAND JURY CHARGES:

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
* NOVEMBER 12, 2024 *
BROOKLYN OFFICE

I N D I C T M E N T

Cr. No. 24-CR-458
(T. 15, U.S.C., §§ 78j(b) and 78ff; T. 18,
U.S.C., §§ 981(a)(1)(C), 982(a)(1),
982(b)(1), 1343, 1957(a), 1957(b),
1957(d)(1), 2 and 3551 et seq.; T. 21,
U.S.C., § 853(p); T. 28, U.S.C.,
§ 2461(c))

Judge Allyne R. Ross
Magistrate Judge Lois Bloom

I N T R O D U C T I O N

At all times relevant to this Indictment, unless otherwise indicated:

I. Relevant Entities and Individuals

1. The fund and its affiliated entities (the "Fund"), an entity the identity of which is known to the Grand Jury, was a hedge fund that had U.S. entities with a principal place of business in New York, New York. The Fund marketed itself as an "artificial intelligence" fund that used "proprietary algorithms to actively trade long and short positions." The Fund solicited investment from individual investors, both domestic and foreign, including investors located in the Eastern District of New York.

2. The defendant KANEN FLOWERS was a resident of Atlanta, Georgia. From approximately 2020 to 2023, FLOWERS served as the Portfolio Manager for the Fund.

3. Employee 1, an individual whose identity is known to the Grand Jury, was a senior executive at the Fund.

4. Employee 2, an individual whose identity is known to the Grand Jury, was a lawyer for the Fund.

5. The Fund Administrator, an entity the identity of which is known to the Grand Jury, was an Illinois-based company that served as the Fund's administrator from approximately March 2021 to December 2021.

6. CC Exchange 1, an entity the identity of which is known to the Grand Jury, was a Bahamas-based cryptocurrency exchange that collapsed in November 2022.

7. CC Exchange 2, an entity the identity of which is known to the Grand Jury, was a New York-based cryptocurrency exchange.

8. CC Exchange 3, an entity the identity of which is known to the Grand Jury, was a Delaware-based cryptocurrency exchange.

9. CC Hedge Fund, an entity the identity of which is known to the Grand Jury, was a Singapore-based cryptocurrency hedge fund.

10. CC Lender 1, an entity the identity of which is known to the Grand Jury, was a New Jersey-based cryptocurrency lender.

11. CC Lender 2, an entity the identity of which is known to the Grand Jury, was a New York-based cryptocurrency lender.

12. CC Lender 3, an entity the identity of which is known to the Grand Jury, was a Swiss-based cryptocurrency lender.

II. Relevant Definitions

13. A "security" was, among other things, any note, stock, bond, debenture, evidence of indebtedness, investment contract or participation in any profit-sharing agreement.

14. "Cryptocurrency" was a digital currency.

15. “DAI” was a cryptocurrency that attempted to keep the value of each coin to one U.S. dollar.

16. “Ether” or “ETH” was a cryptocurrency.

17. An “Ethereum address” was a unique, public identifier used to receive and store Ether.

18. A “non-fungible token” (“NFT”) was a blockchain-based token that represented a unique asset, such as a piece of digital art.

19. A “serum” was a precursor token entitling the holder to create an NFT.

20. A “wallet” or “cryptocurrency wallet” was a software program and/or hardware that allowed users to store cryptocurrency keys and to access their cryptocurrency.

21. A “Trezor” was a physical device that could store passwords to cryptocurrency accounts and wallets, and which itself required a password to access.

III. The Fraudulent Scheme

22. In or about and between November 2020 and April 2023, the defendant KANEN FLOWERS, together with others, engaged in a scheme to defraud investors and prospective investors by inducing them to invest and maintain their investment in the Fund through material misrepresentations and omissions concerning, inter alia, the volume of assets under management, the Fund’s investment strategy and performance, FLOWERS’s misappropriation of Fund assets and FLOWERS’s alleged inability to liquidate Fund assets. Based on these and other representations, FLOWERS, together with others, induced and maintained investment of approximately \$3,500,000 from a total of seven investors.

23. On or about November 30, 2020, the defendant KANEN FLOWERS informed prospective investors about the formation of the Fund and their opportunity to invest.

He represented that some investors in the Fund had “already signed term sheets or a letter of intent” and had “wired funds” to the Fund’s custodial accounts. In fact, as of that date, the Fund had no commitments from investors and the Fund had received no investor money.

24. Thereafter, the defendant KANEN FLOWERS continued to make misrepresentations concerning the size of the Fund and its assets under management. For example:

a. FLOWERS represented that as of December 2021, the Fund had “grown almost 35% in assets under management over the last quarter.” FLOWERS failed to disclose that in October 2021, the Fund received a \$1,000,000 investment from an investor, which alone accounted for the reported growth in assets under management.

b. FLOWERS represented that as of early 2022, the Fund was worth billions of dollars. In fact, as FLOWERS was aware, the Fund never had more than approximately \$3,500,000 in assets under management.

25. In a further effort to induce and retain investment in the Fund, the defendant KANEN FLOWERS made misrepresentations to investors concerning the alleged diversification efforts of the Fund, including that: (i) the Fund would allocate only a small percentage of assets under management to cryptocurrency; and (ii) as of July 2021, the Fund traded approximately one third of its assets under management in each of futures, equities and cryptocurrencies. In reality, as of July 2021, more than 50% of the Fund’s assets under management were invested in cryptocurrency. Thereafter, all assets under management were invested in cryptocurrency.

26. Additionally, the defendant KANEN FLOWERS made misrepresentations to investors, and caused misrepresentations to be made to investors, concerning the true financial performance of the Fund. For example:

a. In July 2021, FLOWERS represented that the Fund's financial results for June 2021 were unavailable due to, inter alia, brokerage firms' inability to reconcile the Fund's trading activity. In fact, the Fund Administrator had provided financial results to FLOWERS showing a negative return of investment of more than 11% for the second quarter of 2021.

b. On or about October 26, 2021, FLOWERS selectively disclosed that as of the prior day, the Fund Administrator had calculated a positive return of 7.1% for October 2021. FLOWERS omitted, however, that the Fund Administrator had calculated a negative return of investment of more than 8.5% for the third quarter of 2021.

c. In August 2022, FLOWERS represented that the provision of financial results was being delayed by "difficulty with several providers, two of which ([CC Hedge Fund] and [CC Lender 1]) are non-responsive to our requests for information." In fact, the Fund never had a relationship with CC Hedge Fund and the Fund's account at CC Lender 1 had been largely emptied as of January 2022.

27. On or about August 24, 2022, the defendant KANEN FLOWERS advised investors that the Fund would be shutting down and investors would be paid out. Thereafter, to conceal his prior misrepresentations and omissions, FLOWERS made additional misrepresentations and caused misrepresentations to be made concerning his alleged inability to liquidate Fund assets. For example:

a. On or about December 15, 2022, Employee 2, relying on information provided by FLOWERS, informed investors that the Fund's liquidation efforts had been hampered by CC Exchange 1's collapse and the aftereffects thereof. Employee 2 advised that CC Lender 1 had "confiscat[ed] 224 ETH from the fund's wallet," and that CC Lender 2 and CC Exchange 2 had constrained withdrawals. In reality, the Fund never had more than 39 Ether at CC Lender 1, those assets had been largely emptied by FLOWERS in January 2022, and no Fund assets had been confiscated by CC Lender 1. Similarly, the Fund's assets in CC Lender 2 had been moved as of June 2021 and the Fund's assets in CC Exchange 2 had largely been moved as of January 2022.

b. On or about April 24, 2023, FLOWERS represented to Employee 1 and Employee 2 that he had lost the password to the Trezor he maintained for the Fund, on which the passwords to the Fund's cryptocurrency wallets and accounts were stored. FLOWERS advised that accordingly he could not access the Fund's cryptocurrency. In reality, by that time, FLOWERS had largely withdrawn the Fund's cryptocurrency assets.

28. In or about and between October 2021 and January 2022, the defendant KANEN FLOWERS improperly used Fund assets for personal purposes and improperly transferred Fund assets to himself, without investors' knowledge or consent, and which FLOWERS failed to disclose. For example:

a. On or about October 1, 2021, FLOWERS caused the Fund's account at CC Exchange 2 to transfer to him \$70,000 worth of DAI, which he used to pay off a personal loan in an account he held at CC Lender 3.

b. In or about and between December 2, 2021 and January 8, 2022, FLOWERS caused the Fund's account at CC Exchange 2 to transfer 67 Ether, which was then valued at more than \$200,000, to his personal Ethereum address.

c. On or about January 6, 2022, FLOWERS caused the Fund to purchase a serum for 30.308 Ether, then valued at approximately \$103,000, using Ether from the Fund's account at CC Exchange 3. The serum was in turn used to create an NFT, which NFT FLOWERS then transferred to his personal Ethereum address.

d. On or about January 10, 2022, FLOWERS caused the Fund to transfer 38.895 Ether, then valued at approximately \$120,000, from the Fund's account at CC Lender 1 to his personal Ethereum address.

29. On or about April 26, 2023, the defendant KANEN FLOWERS was terminated from the Fund.

COUNT ONE
(Securities Fraud)

30. The allegations contained in paragraphs 1 through 29 are realleged and incorporated as if fully set forth in this paragraph.

31. In or about and between November 2020 and April 2023, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant KANEN FLOWERS, together with others, did knowingly and willfully use and employ one or more manipulative and deceptive devices and contrivances, contrary to Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing one or more devices, schemes and artifices to defraud; (b) making one or more untrue statements of material fact and omitting to state one or more material facts necessary in order to make the statements made, in light of the

circumstances in which they were made, not misleading; and (c) engaging in one or more acts, practices and courses of business which would and did operate as a fraud and deceit upon one or more investors or prospective investors in the Fund, in connection with the purchase and sale of investments in the Fund, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT TWO
(Wire Fraud)

32. The allegations contained in paragraphs 1 through 29 are realleged and incorporated as if fully set forth in this paragraph.

33. In or about and between November 2020 and April 2023, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant KANEN FLOWERS, together with others, did knowingly and intentionally devise a scheme and artifice to defraud and to obtain money and property by means of one or more materially false and fraudulent pretenses, representations and promises, and, for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, to wit: telephone calls, emails and electronic messages to current and prospective investors in the Fund.

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

COUNTS THREE AND FOUR
(Unlawful Monetary Transactions)

34. The allegations contained in paragraphs 1 through 29 are realleged and incorporated as if fully set forth in this paragraph.

35. On or about the dates listed below, within the Eastern District of New York and elsewhere, the defendant KANEN FLOWERS, together with others, did knowingly and intentionally engage in one or more monetary transactions, to wit: the transactions set forth below, in and affecting interstate commerce, in criminally derived property that was of a value greater than \$10,000 and that was derived from specified unlawful activity, to wit: securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and wire fraud, in violation of Title 18, United States Code, Section 1343, knowing that the property involved in such monetary transactions represented the proceeds of some form of unlawful activity:

Count	Approximate Date of Transaction	Description of Transaction
THREE	October 1, 2021	Caused a wire transfer of \$70,000 worth of DAI from the Fund's account at CC Exchange 2 to FLOWERS's account at CC Lender 3
FOUR	December 2021 – January 2022	Caused wire transfers of 67 Ether, then valued at more than \$200,000, from the Fund's account at CC Exchange 2 to FLOWERS's personal Ethereum address

(Title 18, United States Code, Sections 1957(a), 1957(b), 1957(d)(1), 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION
AS TO COUNTS ONE AND TWO

36. The United States hereby gives notice to the defendant that, upon his conviction of either of the offenses charged in Counts One and Two, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States code, Section 2461(c), which require any person convicted of such offenses to forfeit any property, real or personal, constituting or derived from, proceeds obtained directly or indirectly as a result of such offenses.

37. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- 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 divided

without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

**CRIMINAL FORFEITURE ALLEGATION
AS TO COUNTS THREE AND FOUR**

38. The United States hereby gives notice to the defendant that, upon his conviction of either of the offenses charged in Counts Three and Four, the government will seek forfeiture in accordance with Title 18, United States Code, Section 982(a)(1), which requires any person convicted of such offenses to forfeit any property, real or personal, involved in such offenses, or any property traceable to such property.

39. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- 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 divided

without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Sections 982(a)(1) and 982(b)(1); Title 21, United States Code, Section 853(p))

A TRUE BILL,

s/

FOREPERSON

By Alexandra Smith, Assistant U.S. Attorney

BREON PEACE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK