

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.
: :
: Criminal No. 16-
v. :
: 18 U.S.C. § 371
: 15 U.S.C. §§ 78j(b) & 78ff
: 17 C.F.R. § 240.10b-5
STEVEN COSTANTIN : 18 U.S.C. § 2

INFORMATION

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

COUNT ONE
(Conspiracy to Commit Securities Fraud)

Background

1. At all times relevant to this Information unless otherwise indicated:
 - a. Defendant STEVEN COSTANTIN (“defendant COSTANTIN”) was a resident of Farmingdale, New Jersey, and worked as a day trader for Steven Fishoff, his brother-in-law. Defendant COSTANTIN was affiliated with one or more of Steven Fishoff’s trading entities, which are described below in paragraph 1(b).
 - b. Steven Fishoff (“Fishoff”), a co-conspirator not charged as a defendant herein, was a resident of Westlake Village, California, and was the president and sole owner of Featherwood Capital, Inc. (“Featherwood”), a trading entity that he named after the street on which he lived. Featherwood’s

business address was Fishoff's residence. Fishoff also owned, controlled, and was financially affiliated with several other trading entities (the "Fishoff Trading Entities") through which he engaged, and directed others to engage, in securities and other financial transactions.

c. Ronald Chernin ("Chernin"), a co-conspirator not charged as a defendant herein, was a resident of Oak Park, California. Chernin was a personal friend of defendant COSTANTIN and Fishoff and worked for Fishoff as one of his day traders. Chernin was also affiliated with one or more of the Fishoff Trading Entities.

d. Paul Petrello ("Petrello"), a co-conspirator not charged as a defendant herein, was a resident of Brielle, New Jersey. Petrello was the president and sole owner of two trading entities (the "Petrello Trading Entities") through which he engaged in securities and other financial transactions. Petrello was a personal friend and longtime business associate of Fishoff.

e. Co-conspirator #1 ("CC-1"), not charged as a defendant herein, was a former resident of Westfield, New Jersey, and resided in Boca Raton, Florida. CC-1 was a personal friend and business associate of Fishoff and Petrello. CC-1 was the president and sole director of a trading entity (the "CC-1 Trading Entity") through which he engaged in securities and other financial transactions.

f. "Trader A" was a resident of New York, New York, and a self-described portfolio manager for one of the Fishoff Trading Entities.

g. The securities sold and purchased by the conspirators in connection with the insider trading scheme alleged herein were listed on the NASDAQ Stock Market (“NASDAQ”) and/or the New York Stock Exchange (“NYSE”).

h. NASDAQ was the largest electronic equity securities trading market in the United States and was the second largest equities-based exchange in the world based on market capitalization. NASDAQ did not have a central trading floor. Instead, it relied on computer servers to facilitate all trading activity. Since at least 2006, NASDAQ maintained computer servers in Carteret, New Jersey.

i. NYSE was the largest equities-based exchange in the world based on total market capitalization of its listed securities. By in or about August 2010, all of NYSE’s trade processing and data services were performed at its U.S. data center in Mahwah, New Jersey.

The Conspiracy

2. From in or about May 2010 through in or about August 2013, in the District of New Jersey and elsewhere, the defendant,

STEVEN COSTANTIN,

did knowingly and willfully combine, conspire, and agree with Fishoff, Chernin, Petrello, CC-1, and others to commit an offense against the United States, namely, securities fraud, by using and employing by the direct and indirect use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, in connection with the purchase and sale of securities, manipulative and deceptive devices, including the purchases and sales of securities of issuers on the basis of material nonpublic information about those securities and issuers, in breach of a duty of trust and confidence that was owed directly, indirectly, and derivatively to the issuers of those securities, the shareholders of those issuers, and to other persons and entities who were the source of the material nonpublic information, in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud members of the investing public; (b) 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 (c) engaging in acts, practices, and a course of business which operated and would operate as a fraud and deceit upon

persons, contrary to Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

Object of the Conspiracy

3. The object of the conspiracy was for defendant COSTANTIN, Fishoff, Chernin, Petrello, CC-1, and others, acting individually and through the Fishoff Trading Entities, Petrello Trading Entities, and CC-1 Trading Entity (the “Conspiracy’s Trading Entities”), to enrich themselves by short selling stock on the basis of material nonpublic information (“Inside Information”) obtained by defendant COSTANTIN, Fishoff, Chernin, and Trader A through their participation in confidentially marketed secondary stock offerings by publicly traded companies (collectively, the “Subject Offerings”).

Manner and Means of the Conspiracy

4. It was a part of the conspiracy that defendant COSTANTIN, Fishoff, and Chernin—either directly or, later in the scheme, indirectly through Trader A—cultivated contacts within certain investment banks (the “Investment Banks”) for the purpose of, among other things, ensuring that if any of the Investment Banks were confidentially marketing a secondary offering on behalf of a client issuer, they would reach out to defendant COSTANTIN, Fishoff, Chernin, and/or Trader A as potential investors.

5. It was further part of the conspiracy that defendant COSTANTIN, Fishoff, Chernin, and others falsely characterized the Conspiracy’s Trading Entities as legitimate, full-service financial management firms with as much as \$150 million in assets under management, in order to, among other things,

increase the likelihood that Investment Banks would solicit them to participate in the Subject Offerings.

6. It was further part of the conspiracy that for each of the Subject Offerings, defendant COSTANTIN, Fishoff, Chernin, and Trader A, as representatives of one or more of the Conspiracy's Trading Entities, entered into confidentiality or "wall-crossing" agreements whereby they agreed not to disclose or trade on Inside Information concerning the Subject Offerings, such as the name of the issuers and timing of the transactions, and were brought "over the wall" for the narrow purpose of determining whether to purchase the offered securities.

7. It was further part of the conspiracy that defendant COSTANTIN and his co-conspirators breached the confidentiality and trading restrictions of the wall-crossing agreements by directly or indirectly tipping each other and others with the Inside Information about the Subject Offerings, executing short sales through the Conspiracy's Trading Entities on the issuers' stocks in anticipation of a drop in the stocks' price when the Subject Offerings were disclosed to the public, and covering their short positions once the Subject Offerings were disclosed.

8. It was further part of the conspiracy that defendant COSTANTIN, Fishoff, Chernin, Petrello, and CC-1 shared the illicit profits from their insider trading scheme, which amounted to more than approximately \$3.9 million.

Overt Acts

9. In furtherance of the conspiracy and to effect its illegal object, the following overt acts, among others, were committed in the District of New Jersey and elsewhere:

a. On or about May 11, 2011, defendant COSTANTIN, on behalf of one of the Fishoff Trading Entities, received Inside Information concerning a confidentially marketed secondary stock offering by Plug Power Inc. (the "Plug 1 Offering"), pursuant to his entry into a wall-crossing agreement prohibiting him from trading in Plug Power Inc. ("Plug") securities or disclosing the Inside Information to anyone else prior to the public announcement of the Plug 1 Offering.

b. Shortly after receiving Inside Information related to the Plug 1 Offering, defendant COSTANTIN passed the Inside Information to Fishoff and Chernin. Around the same time, Fishoff passed the Inside Information to his friend and former colleague, Petrello, who in turn passed the Inside Information to CC-1.

c. Between on or about May 11, 2011, and on or about May 24, 2011, Fishoff, via Featherwood; Chernin, via one of the Fishoff Trading Entities; Petrello, via one of the Petrello Trading Entities; and CC-1, via the CC-1 Trading Entity, each illegally short sold thousands of shares of Plug stock based on the Inside Information obtained by defendant COSTANTIN.

In violation of Title 18, United States Code, Section 371.

COUNT TWO
(Securities Fraud—Insider Trading)

1. The allegations set forth in paragraphs 1, and 4 through 9 of Count One of this Information are realleged and incorporated herein.

2. Between on or about May 11, 2011, and on or about May 24, 2011, in the District of New Jersey and elsewhere, the defendant,

STEVEN COSTANTIN,

by use of the means and instrumentalities of interstate commerce, the mails, and facilities of national securities exchanges, directly and indirectly, did knowingly and willfully use manipulative and deceptive devices and contrivances in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5, in connection with the purchase and sales of securities by:

(a) employing devices, schemes, and artifices to defraud members of the investing public; (b) 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 (c) engaging in acts, practices, and a course of business which operated and would operate as a fraud and deceit upon persons, in that defendant COSTANTIN executed and caused Fishoff, Chernin, Petrello, CC-1, and others to execute trades in the securities of Plug Power Inc. based upon the material nonpublic information that defendant COSTANTIN obtained through his solicitation to participate in a confidentially marketed secondary stock offering by Plug Power Inc.

In violation of Title 15, United States Code, Section 78j(b) and Section 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

FORFEITURE ALLEGATIONS

1. As the result of committing the offenses constituting specified unlawful activity as defined in 18 U.S.C. § 1956(c)(7), as alleged in Counts One and Two of this Information, defendant STEVEN COSTANTIN 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 property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the said conspiracy and securities fraud offenses, and all property traceable thereto, including, but not limited to the following:

- a. All of the defendant's right, title, and interest in the following specific property: the contents of Citibank Account number [REDACTED] 4414, held in the name of Cedar Lane Enterprises Inc., which were seized on or about June 3, 2015.

Substitute Assets Provision

2. 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 person;
- 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;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

Paul J. Fishman/rah

PAUL J. FISHMAN
United States Attorney

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PAUL J. FISHMAN

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