

United States District Court
District of New Jersey



UNITED STATES OF AMERICA : Hon. Leda D. Wettre
v. : Mag. No. 16-8070 (LDW)
ANTONIO R. FASOLINO : CRIMINAL COMPLAINT

I, James H. Spence, IV, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with the Federal Bureau of Investigation and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached pages and made a part hereof.

James H. Spence, IV, Special Agent
Federal Bureau of Investigation

Sworn to before me and
subscribed in my presence

June 6, 2016 at
Essex County, New Jersey

HONORABLE LEDA D. WETTRE
UNITED STATES MAGISTRATE JUDGE

Signature of Judicial Officer

ATTACHMENT A

Count One
(Wire Fraud)

From at least as early as in or about January 2012 through in or about November 2012, in Hudson County, in the District of New Jersey and elsewhere, defendant

ANTONIO R. FASOLINO

did knowingly and intentionally devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, did knowingly and intentionally transmit and cause to be transmitted by means of wire communications in interstate commerce certain writings, signs, signals, pictures, and sounds, including, for example, a wire transfer of approximately \$2.2 million on or about November 15, 2012 from Victim 2 in New York to a bank account controlled by defendant FASOLINO in New Jersey.

In violation of Title 18, United States Code, Section 1343 and Section 2.

ATTACHMENT B

I, James H. Spence, IV, a Special Agent with the Federal Bureau of Investigation ("FBI"), having conducted an investigation and discussed this matter with other law enforcement officers who have participated in this investigation, have knowledge of the following facts. Because this Complaint is being submitted for the limited purpose of establishing probable cause, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause. Unless specifically indicated, all conversations and statements described in this affidavit are related in substance and in part. Where I assert that an event took place on a particular date, I am asserting that it took place on or about the date alleged.

Relevant Entities and Individuals

1. At all times relevant to this Complaint, unless otherwise indicated:
 - a. Defendant Antonio R. Fasolino ("defendant FASOLINO") resided in or around Jersey City, New Jersey, and was the primary shareholder of Fasolino Foods Co., Inc.; Fasolino Enterprises, Inc. ("Fasolino Enterprises"); Fasolino Wine & Spirits, Inc.; and Fasolino Foods USA, Inc. ("Fasolino Foods") (collectively, the "Fasolino Companies").
 - b. The Fasolino Companies were located in or around Bayonne, New Jersey, and they were purportedly involved in the manufacture, sale, and distribution of pasta, tomato sauce, olive oil and other food products.
 - c. Company A, a Maryland limited liability company, was an investment bank that provided financing and access to capital markets to small companies.
 - d. Company B was a retailer headquartered in Washington state.
 - e. Company C was a retailer headquartered in Massachusetts.
 - f. Victim 1, a Kansas limited liability company, provided funding to companies.
 - g. Victim 2, a resident of Florida, was an individual investor.

The Scheme to Defraud

2. Beginning at least as early as January 2012 through in or about November 2012, defendant FASOLINO engaged in an investment fraud scheme, pursuant to which he fraudulently obtained more than \$3.4 million from Victim 1 and Victim 2 (hereinafter, the "Victim Investors"), by falsely representing, among other things, that the Fasolino Companies had been awarded lucrative contracts by Company A and Company B to purchase olive oil from the Fasolino Companies. In fact, neither Company A nor Company B had ever awarded either defendant FASOLINO or the Fasolino Companies any such contract.

3. Defendant FASOLINO represented to Company A and the Victim Investors, among other things, that the Fasolino Companies had approximately \$33 million in inventory. These representations were false, because as defendant FASOLINO well knew, and as bank records and other documents have shown, the Fasolino Companies did not possess nearly that amount of inventory.

4. Defendant FASOLINO further represented to Company A and the Victim Investors that he had approximately \$4.9 million as of September 30, 2012 in a Citibank Account ending in 5382 in the name of Fasolino Enterprises (the "Citibank 5382 Account"), and produced documents purportedly corroborating the same. These documents and representations were also false. To support his false claims, defendant FASOLINO created or caused to be created a number of fraudulent bank statements and tax records.

5. In or about October 2012, defendant FASOLINO was introduced to Company A by an attorney ("Attorney 1"). The purpose of this introduction was to secure a short term bridge loan for defendant FASOLINO and the Fasolino Companies pending defendant FASOLINO's commencement of business transactions with Company B and Company C.

6. At the time that Attorney 1 introduced defendant FASOLINO to Company A, Victim 1 had already agreed to lend defendant FASOLINO approximately \$1,375,000, with a fixed interest of \$875,000 for a total of approximately \$2,250,000, all of which came due on or about November 6, 2012 (the "Original Victim 1 Loan").

7. On or about November 1, 2012, Company A entered into a Placement Agreement with defendant FASOLINO, pursuant to which Company A was retained to arrange one or more senior secured debt financing transactions in accordance with the terms and conditions of the Placement Agreement.

8. Defendant FASOLINO represented to Company A and the Victim Investors that the loan proceeds from Victim 2 plus the Original Victim 1 Loan would be used to finance part of the acquisition of olive oil to fulfill anticipated

purchase orders from Company B and Company C, among other things. This representation, too, was false as no such contract had been awarded to defendant FASOLINO or the Fasolino Companies by either Company B or Company C.

9. Based on defendant FASOLINO's false representations, Victim 2 agreed to lend approximately \$2.75 million to defendant FASOLINO and the Fasolino Companies, pursuant to a November 14, 2012 Promissory Note.

10. In addition, based on defendant FASOLINO's false representations, Victim 1 agreed to recast the Original Victim 1 Loan into a new Promissory Note, inclusive of the interest that accrued through the November 14, 2012. A new Security Agreement, dated on or about November 14, 2012, was executed by all parties, including the Victim Investors.

11. Based on, among other things, the false statements and documents described above, on or about August 6, 2012, Victim 1 wired approximately \$150,000 from Kansas to the Citibank 5382 Account controlled by defendant FASOLINO in New Jersey. On or about August 31, 2012, Victim 1 wired and additional approximately \$1.225 million from Kansas to the Citibank 5382 Account controlled by defendant FASOLINO in New Jersey. Furthermore, based on defendant FASOLINO's misrepresentations, on or about November 15, 2012, Victim 2 wired approximately \$2.2 million from New York to the Citibank 5382 Account controlled by defendant FASOLINO in New Jersey.

12. On or about November 15, 2012, the same day that defendant FASOLINO and the Fasolino Companies received approximately \$2.2 million from Victim 2, defendant FASOLINO transferred approximately \$240,000 from the Citibank Account to his personal TD Ameritrade securities account ending in 6995 (the "TD Ameritrade Account").

13. Furthermore, on or about November 19, 2012, and December 4, 2012, defendant FASOLINO transferred approximately \$1 million from his Citibank Account to the TD Ameritrade Account.

14. Using the manner and means described above, defendant FASOLINO diverted the Victim Investors' funds to pay for, among other things, personal expenses such as car and mortgage payments, apartment rentals, a wedding, college tuition and credit card payments, and also used some of the Victim Investors' money to conduct securities trading in the TD Ameritrade Account.

FORFEITURE ALLEGATION

1. The allegations contained in this Complaint is incorporated by reference as though set forth in full herein for the purpose of noticing forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461.

2. The United States hereby gives notice to defendant FASOLINO that, upon conviction of the offense charged in the Complaint, 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 obtained directly or indirectly traceable to wire fraud, including but not limited to a sum of money equal to at least \$3.425 million in United States currency.

3. If by any act or omission of defendant FASOLINO, 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, as incorporated by Title 28, United States Code, Section 2461(c),

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of defendant FASOLINO up to the value of the property described above in paragraph 2.