

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Cathy L. Waldor
	:	
v.	:	Mag. No. 19-7523
	:	
RAJENDRA KANKARIYA and	:	<u>CRIMINAL COMPLAINT</u>
RAKESH SETHI	:	


I, Anip Patel, 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 for the Federal Bureau of Investigation, and that this complaint is based on the following facts:

SEE ATTACHMENT B

Continued on the attached page and made a part hereof:



Anip Patel
Special Agent
Federal Bureau of Investigation

Sworn to before me and subscribed in my presence,
December 9, 2019 in Essex County, New Jersey

HONORABLE CATHY L. WALDOR
UNITED STATES MAGISTRATE JUDGE



Signature of Judicial Officer

ATTACHMENT A

From at least as early as in or around January 2016 through in or around March 2018, in the District of New Jersey, and elsewhere, defendants

RAJENDRA KANKARIYA and
RAKESH SETHI

knowingly and intentionally conspired and agreed with each other and others to devise a scheme and artifice to defraud, affecting a financial institution as that term is defined in Title 18, United States Code, Section 20, namely the Victim Bank, 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 to defraud, to transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, contrary to Title 18, United States Code, Section 1343.

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

ATTACHMENT B

I, Anip Patel, am a Special Agent with the Federal Bureau of Investigation. I have knowledge about the facts set forth below from my involvement in the investigation, my review of reports, documents, pictures, videos, witness interviews, and discussions with other law enforcement officials. Because this affidavit is submitted for the limited purpose of establishing probable cause, I have not set forth each and every fact that I know concerning this investigation. All statements described herein are relayed in substance and in part. In addition, 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.

1. At all times relevant to this Complaint:

- a. Defendant RAJENDRA KANKARIYA ("KANKARIYA") was the President and part owner of Lotus Exim International, Inc. ("LEI").
- b. Defendant RAKESH SETHI ("SETHI") was the Chief Financial Officer of LEI.
- c. LEI was a wholesale distributor of marble and granite with offices in Elmwood Park, New Jersey and India, among other places.
- d. The "Victim Bank" was a financial institution, as defined by Title 18, United States Code, Section 20, with headquarters in Jersey City, New Jersey.

Overview of the Scheme to Defraud

2. In late 2015 to 2017, LEI applied for and obtained a \$17 million secured revolving line of credit from the Victim Bank to refinance an existing loan and to obtain working capital. According to the term sheet, the line of credit was to be secured by LEI's accounts receivable, as well as certain LEI assets. In reality, however, LEI did not have sufficient accounts receivable and assets to pledge as collateral for the line of credit. Instead, LEI and some of its employees, including KANKARIYA and SETHI (collectively, the "Co-Conspirators"), fabricated certain accounts receivable (the "Fictitious Accounts Receivable") and provided this false information to the Victim Bank as part of LEI's financial disclosures.

3. By deceiving the Victim Bank and its representatives into believing that the Fictitious Accounts Receivable were real, the Co-Conspirators fraudulently induced the Victim Bank to extend to LEI a \$17 million line of credit secured in part by the Fictitious Accounts Receivable. After LEI obtained the line of credit, the Co-Conspirators borrowed more than approximately \$16.8 million. LEI then defaulted on the loan and ultimately declared

bankruptcy in March of 2018. The Victim Bank was only able to collect a fraction of the accounts receivables and assets pledged by LEI, resulting in a loss to the Victim Bank of approximately \$16,972,003.

The Scheme to Defraud the Victim Bank

4. During early to mid-2016, KANKARIYA met with various representatives of the Victim Bank to negotiate the line of credit.

5. Before extending the line of credit and as part of its due diligence, the Victim Bank engaged the services of a field examination company in order to verify LEI's accounts receivable and assets. The field examination company completed its initial report on or about November 11, 2016 (the "November 2016 Report"). The Victim Bank also relied, in part, on the results of an audit of LEI's financial statements conducted by an outside accounting firm in early 2016 (the "2016 Audit").

6. The November 2016 Report stated that at the request of LEI, the field examination company did not contact LEI's customers by telephone—as would have been its normal procedures—to verify the accounts receivable. Instead, the field examination company provided an LEI employee ("Employee-1") with a standard verification email, which Employee-1 was to send to each customer, copying a representative of the field examination company (the "Field Examiner"), and requesting invoice verification. According to the November 2016 Report, this process was done with respect to eleven customer accounts comprising approximately 4.7% of LEI's accounts receivable as of September 30, 2016. The Field Examiner received seven positive confirmations and declared the results of the verification procedure satisfactory.

7. In reality, many of the confirmation emails sent back to the Field Examiner to confirm the accounts receivable were created by LEI employees in order to defraud the Victim Bank and the Field Examiner. Once Employee-1 sent the verification emails to these fraudulent email accounts, an employee of LEI accessed those email accounts and posed as the LEI customer to verify the Fictitious Accounts Receivable. A similar method was used by the Co-Conspirators during the 2016 Audit to provide false information to LEI's outside auditors in support of false financial statements. Those false financial statements were then later relied upon by the Victim Bank.

The 2016 Audit

8. During the 2016 Audit, KANKARIYA, SETHI and other LEI employees sent information about Fictitious Accounts Receivable to LEI's outside auditor.

a. For example, on or about January 4, 2016, SETHI sent an email to KANKARIYA, copying Employee-1 and another LEI employee

("Employee-2"), with the subject line: "customers where we need website, phone no, email – URGENT." The email listed twelve customers, including those referred to herein as "Customer-1" and "Customer-2," respectively.

b. On or about March 5, 2016, Employee-1 sent an email to SETHI and Employee-2, regarding issues relating to accounts receivable. On March 8, 2016, SETHI replied, stating:

[Employee-1]

For pending AR just make email in gmail or yahoo etc.
we will send email some we will verify and some we will
not and if auditor insist we will show those payments
in March.

Thanks

Regards

Rakesh

c. Documents show that Employee-2 created fraudulent emails on behalf of Customer-1 and Customer-2. Specifically, an excel spreadsheet from Employee-2's records contained a spreadsheet that listed several LEI customers, including Customer-1 and Customer-2 (the "Customer Spreadsheet"). For each of the customers, the spreadsheet listed, among other things, the following information: "web address," "domain p/w," "email id of rep," "p/w for email id," "name of rep," "Per month Charges," and "Yearly Charges."

d. The Customer Spreadsheet listed an email address for the Customer-1 representative referred to herein as the "Customer-1 Email Address," and an email address for the Customer-2 representative referred to herein as the "Customer-2 Email Address." Documents show that these email addresses were controlled by LEI and Employee-2 in particular, and that they were used to verify the company's receivables to the Field Examiner and outside auditors.

e. On or about March 5, 2016, an email was sent from the Customer-2 Email Address to the LEI email address of Employee-2. The subject of the email was "Hi Test 2016" and the email stated: "hioDFm,Smsd." Sometime later the same day, a response was sent from Employee-2's LEI email address to the Customer-2 Email Address, stating "hi reverted back,...skd;ls;l;dklzcvm,n b.,adglAK;SJDGsdnml,gSDD."

f. On or about March 15, 2016, another email was sent from the Customer-2 Email Address to the LEI email address of Employee-2. The

subject of the email was "Test Email" and the email stated: "Test email from [REDACTED] of [Customer-2]."

g. On or about April 11, 2016, Employee-1 sent an email to the Customer-2 Email Address, copying KANKARIYA, Employee-2 and one of LEI's outside auditors, requesting that Customer-2 confirm an outstanding account receivable. On April 15, 2016, a response from the Customer-2 Email Address confirmed the outstanding balance of \$95,410 as of December 31, 2015.

h. On April 14, 2016, an email was sent from the Customer-1 Email Address to the LEI email addresses of Employee-1 and Employee-2. The subject of the email was "Email id for [Customer-2]" and the email stated: "fyi."

i. On April 18, 2016, an email was sent from the Customer-1 Email Address to the LEI email addresses of Employee-1 and Employee-2. The subject of the email was "OK I am good to use this email id.....Yepeeeee" and the body of the email was "☺."

The 2016 Field Examination

9. Documents show that prior to the field examination, KANKARIYA, SETHI and other LEI employees were aware that the account receivable figures LEI had provided to the Victim Bank were inaccurate, in that they were either inflated or entirely fabricated. In preparation for the survey by the Field Examiner, KANKARIYA, SETHI and other LEI employees systematically created and caused to be created fraudulent emails in the names of LEI customers and tasked an LEI employee to pose as that customer to confirm the existence of the Fictitious Accounts Receivable to the Field Examiner.

a. For example, on or about August 23, 2016, Employee-1 sent an email to KANKARIYA, copying SETHI and Employee-2, with the subject line "CUSTOMER VERIFICATION," stating "Sir, Please check we need to discuss on this." Attached to the email was an Excel spreadsheet labeled "Verification working_AR Ageing_07.31.16.xls" (the "Accounts Receivable Spreadsheet"). The document listed 464 LEI customers for many of which the figure in the column labeled "Balance" and the figure in the column labeled "Actual Balance" greatly differed.

b. On or about August 25, 2016, Employee-2 sent an email to the Customer-1 Email Address. The subject of the email was "Test" and the email stated: "As on [sic] 8.25.16 [Employee-2's initials]." Approximately four minutes later, a response was sent from the Customer-1 Email Address to Employee-2's LEI email address stating: "Yes it is working." Customer-1 was one of the customers the Field Examiner selected for verification. According to the November 2016 Report, the Customer-1 Email Address confirmed a total of \$41,607.32 in outstanding invoices from June and August 2016.

c. On or about August 25, 2016, Employee-1 sent an email to another LEI employee ("Employee-3"), copying KANKARIYA and SETHI, and bcc'ing Employee-2, with the subject line: "Customer Bal Confirmation" (the "August 25" Email). The email stated in part:

Hello [Employee-3],

For the purpose of Bank Field Examination coming in Sept 2016 which we need to get the customer verification done for the balances outstanding as on 07.31.16 (and might be 08.31.16 as well at same time).

Please check the list of customers mentioned below where we need the support from you to get this done. In case you any constraint for any of this customers the please do let us know.

The email then listed twenty-one customers, including Customer-3.

d. On or about August 27, 2016, Employee-2 responded to the August 25 Email from Employee-1, copying KANKARIYA and SETHI, and stated as follows:

Hi [Employee-1],

Had a word with [Employee-3] & following are the outcome:

The email then included the same list of twenty-one customers from the original email, indicating most as being "OK," while identifying seven as being a "Problem," including Customer-3. With respect to Customer-3, the email stated:

Problem - Solution = Phone no. of magic jack # 586-XXX-XXXX ([Employee-2 initials]-India Off.) shall be used. Email id to be created.

The 586 number was Employee-2's mobile number listed in his LEI email signature. Customer-3 was one of the customers from whom the Field Examiner received verification of accounts receivable.

Issuance of the Line of Credit

10. On or about September 16, 2016, the Victim Bank provided LEI with a proposed term sheet. On or about September 21, 2016, KANKARIYA signed the term sheet on behalf of LEI.

11. On or about January 19, 2017, the Victim Bank and LEI executed a Revolving Credit and Security Agreement (the "Loan Agreement"), which extended to LEI the \$17 million line of credit. Among other things, the Loan Agreement required LEI to assign all new accounts receivable to the Victim Bank.

12. Thereafter, LEI provided to the Victim Bank on a bimonthly basis an Assignment of Scheduled Accounts, which included up to date information about the accounts receivable. KANKARIYA signed the Assignment of Scheduled Accounts on behalf of LEI, certifying that the information therein was correct. LEI also submitted to the Victim Bank accounts receivable aging reports that showed the underlying information KANKARIYA attested to in the Assignments of Scheduled Accounts. The investigation has revealed that the accounts receivable aging reports attested to by KANKARIYA contained false information. For example, the March 15, 2017 aging report included a balance of \$27,293.45 for an LEI customer ("Customer-4"). Customer-4, however, had not purchased anything from LEI in nearly two decades.

13. In order to execute and attempt to execute the scheme, KANKARIYA, SETHI, and the Co-Conspirators sent and caused to be sent numerous interstate wire communications which were transmitted into and out of the District of New Jersey. For example:

<u>Approximate Date</u>	<u>Description</u>
March 7, 2016	Employee-2 created a web-based email account from an IP address associated with LEI in New Jersey. Co-Conspirators, including Employee-1, subsequently used the fraudulent email account in furtherance of the scheme to defraud.
March 10, 2016	Employee-2 created a web-based email account from an IP address associated with LEI in New Jersey. Co-Conspirators, including Employee-1, subsequently used the fraudulent email account in furtherance of the scheme to defraud.
February 17, 2017	Employee-2 created a web-based email account from an IP address associated with LEI in New Jersey. Co-Conspirators, including Employee-1, subsequently used the fraudulent email account in furtherance of the scheme to defraud.

<u>Approximate Date</u>	<u>Description</u>
February 20, 2017	Employee-2 created a web-based email account from an IP address associated with LEI in New Jersey. Co-Conspirators, including Employee-1, subsequently used the fraudulent email account in furtherance of the scheme to defraud.
February 20, 2017	Employee-2 created a web-based email account from an IP address associated with LEI in New Jersey. Co-Conspirators, including Employee-1, subsequently used the fraudulent email account in furtherance of the scheme to defraud.