

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

MAR 12 2021

MITCHELL R. ELFERS
CLERK

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CRIMINAL NO. <u>21-265 WJ</u>
)	
vs.)	Count 1: 18 U.S.C. § 1341: Mail Fraud;
)	
RICHARD KESSLER,)	Count 2: 18 U.S.C. § 1343: Wire Fraud;
)	
Defendant.)	Counts 3 and 4: 18 U.S.C. § 1957:
)	Laundering of Monetary Instruments; and
)	
)	Counts 5–8: 26 U.S.C. § 7203: Failure to File
)	Tax Returns.

INDICTMENT

The Grand Jury charges:

Counts 1–2

1. From on or about February 26, 2016, and continuing to on or about August 23, 2016, in Bernalillo County, in the District of New Mexico, and elsewhere, the defendant, **RICHARD KESSLER**, with intent to defraud, knowingly and unlawfully devised and intended to devise a scheme and artifice to defraud, and to obtain money by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing and attempting to execute the scheme and artifice caused writing, signs, and signals to be delivered by mail and transmitted by means of wire communications in interstate commerce.

The Scheme and Artifice

2. **KESSLER** was the sole proprietor of Guardian Group Investments LLC (GGI). He ran his investment advisor business through that company, which was registered with the New Mexico Secretary of State in 2008.

3. **KESSLER**'s scheme and artifice consisted of using his position as a registered securities broker and investment advisor to fraudulently induce investors to provide him access to investment funds that he diverted to his own benefit by placing them in GGI's business savings account with Sandia Laboratory Federal Credit Union (SLFCU), account number ending in 2328.

4. As part of the scheme and artifice, **KESSLER** convinced investors to transfer funds that they had in retirement savings accounts to **KESSLER** so that he could invest those funds in qualified retirement plans. **KESSLER** assisted his investors in executing disbursements from their other retirement accounts to **KESSLER** through GGI. Instead of transferring those funds into qualified investments, **KESSLER** deposited them in GGI's business savings account. In this manner, **KESSLER** fraudulently converted approximately \$123,277.65 from four victims.

5. As part of the scheme and artifice, **KESSLER** failed to provide investors with documentation of their investments, including documentation that would have showed that their money had not been invested as they were told.

6. As part of the scheme and artifice, **KESSLER** caused payments to be made to certain investors with the funds provided by other investors, in order to conceal and continue the fraud after **KESSLER** had put investor funds to his personal use.

Execution of the Scheme

7. On or about February 25, 2016, **KESSLER** directed John Doe 1 to instruct John Doe 1's former employer to liquidate John Doe 1's qualified retirement plan held with OneAmerica Financial Partners, Inc. (OAFP). **KESSLER** and John Doe 1 made that request in a conference call with the former employer, which caused the former employer to request disbursement from OAFP. OAFP is an Indiana company and the request was made via interstate fax from New Mexico. At **KESSLER**'s direction, the \$25,796 disbursement check was sent by mail. John Doe 1 agreed to give

the funds to **KESSLER** based on **KESSLER**'s representations that the funds would be invested in a qualified retirement plan. Instead of investing these funds, **KESSLER** deposited them into GGI's business savings account on March 4, 2016.

8. On or about March 26, 2016, **KESSLER** assisted John Doe 2 with a disbursement from John Doe 2's investment account held at OppenheimerFunds Services (OFS). On or about March 25, 2016, and again on or about March 28, 2016, **KESSLER** sent a letter to OFS requesting disbursement. OFS is a New York company, and the letters were sent by interstate fax. The letters stated that **KESSLER** had established a qualified retirement plan with GGI for John Doe 2, a representation that **KESSLER** had also made to John Doe 2. Four checks dated April 5, 2016 and totaling \$47,481.35 were delivered to **KESSLER**'s home address by mail service. Instead of depositing those funds in a qualified retirement plan, **KESSLER** deposited them into GGI's business savings account: one on April 29, 2016, and three on May 9, 2016.

9. On or about July 22, 2016, **KESSLER** assisted John Doe 3 with a disbursement from John Doe 3's employer retirement account. A distribution check was mailed to John Doe 3; John Doe 3, at **KESSLER**'s direction, then took that check to his financial institution and bought a \$30,000 cashier's check made payable to Guardian Group Investments FBO John Doe 3. John Doe 3 gave the check to **KESSLER** to deposit in a qualified retirement plan. Instead, **KESSLER** deposited the \$30,000 into GGI's business savings account.

10. On or about August 4, 2016, **KESSLER** initiated a wire transfer in the amount of \$12,372.68 from GGI's business savings account for the benefit of another client, John Doe 5.

11. On or about August 8, 2016, **KESSLER** instructed John Doe 4 to have a retirement disbursement check mailed to John Doe 4's home address. **KESSLER** also instructed John Doe 4 to purchase a cashier's check and to put **KESSLER**'s home address on it. **KESSLER** represented that

he would transfer the funds into a qualified retirement plan. **KESSLER** did not deposit the funds into a qualified retirement plan, but instead deposited the \$20,000 cashier's check into GGI's business savings account on August 23, 2016.

12. On or about August 26, 2016, **KESSLER** initiated a wire transfer in the amount of \$25,296.30 from GGI's business savings account to an Allianz Life account FBO John Doe 1. The Allianz Life account was a Roth IRA instead of the qualified retirement plan that John Doe 1's money was supposed to be deposited into in March 2016.

In violation of 18 U.S.C. §§ 1341 and 1343.

Counts 3-4

13. On or about the dates set forth below, in Bernalillo County, in the District of New Mexico, and elsewhere, **RICHARD KESSLER** did knowingly engage and attempt to engage in the following monetary transactions by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, that is, the withdrawal and exchange of funds, such property having been derived from a specified unlawful activity, that is, mail and wire fraud.

Count	Date	Description	Amount
3	May 12, 2016	Cashier's Check purchased from SLFCU 2328	\$20,000.00
4	August 4, 2016	Cash withdrawal from SLFCU 2328	\$13,270.00

In violation of 18 U.S.C. § 1957.

Counts 5-8

14. During the below listed calendar years, **RICHARD KESSLER**, who was a resident Albuquerque, New Mexico, had and received gross income in excess of the statutory filing requirement. By reason of such gross income, he was required by law, following the close of each calendar year and on or before April 15 of the following year, to make an income tax

return to an Internal Revenue Service office permitted by the Commissioner of Internal Revenue, stating specifically the items of his gross income and any deductions and credits to which he was entitled. Well knowing and believing all of the foregoing for each of the below listed years, he did willfully fail, on or about April 15 of the relevant year, in Bernalillo County, in the District of New Mexico and elsewhere, to make an income tax return.

<u>Count</u>	<u>Tax Year</u>	<u>Statutory Filing Requirement</u>
5	2014	\$13,050
6	2015	\$13,250
7	2016	\$13,350
8	2017	\$13,400

In violation of 26 U.S.C. § 7203.

FORFEITURE ALLEGATION

Counts 1 and 2 of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461.

Upon conviction of any offense in violation of 18 U.S.C. §§ 1341 or 1343, the defendant, **RICHARD KESSLER**, shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461 all property constituting or derived from proceeds traceable to the commission of the offense.

The property to be forfeited to the United States includes but is not limited to the following:

MONEY JUDGMENT:

A sum of money, representing all property constituting or derived from proceeds traceable to the commission of the offense.

SUBSTITUTE ASSETS:

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

- A. Cannot be located upon 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;
- 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, to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

A TRUE BILL:



Assistant United States Attorney

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FOREPERSON OF THE GRAND JURY