

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

OCT 25 2017 *W*

MATTHEW J. DYKMAN
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DAVID SCOTT GLASRUD,)
)
Defendant.)

CRIMINAL NO. 17-2966 MCA
Counts 1, 4: 18 U.S.C. § 666: Theft
Concerning Programs Receiving Federal
Funds;
Count 2: 18 U.S.C. §§ 1343, 1349: Wire
Fraud and Attempted Wire Fraud;
Counts 3, 5: 18 U.S.C. § 1341: Mail Fraud;
Counts 6-7: 18 U.S.C. § 1343: Wire Fraud;
Counts 8-9: 18 U.S.C. § 1001: False
Statement.

INFORMATION

The United States Attorney charges:

INTRODUCTION

Formation of the Southwest Learning Center schools

1. In December 1999, David Scott Glasrud (“Glasrud” or “the defendant”) was a founder of the public charter school Southwest Secondary Learning Center (“SSLC”). Later, Glasrud formed additional public charter schools, Southwest Primary Learning Center (“SPLC”), Southwest Intermediate Learning Center (“SILC”), and Southwest Aeronautics, Mathematics & Science Academy (“SAMS”). SSLC, SPLC, SILC, and SAMS collectively became known as the Southwest Learning Center (SLC) Schools. The charter schools operated with public funds, including federal funds. Glasrud served as the Head Administrator for, and exercised financial oversight over, all the SLC schools. In these roles, Glasrud had a duty to faithfully comply with all applicable state and federal statutes, regulations, rules, and charter provisions, to include

those relating to avoiding all apparent and actual conflicts of interest. Further, as Head Administrator and a paid public employee of the SLC schools, Glasrud had a standing duty to use his best efforts on behalf of the SLC schools in all matters of trust and confidence, and not to act for his own benefit at the expense of the SLC schools.

2. As part of each of the SLC school charters, the schools agreed and were required “to avoid apparent and actual conflicts of interest when administering grants and entering into contracts[.]” They further agreed and were required to “comply with conflict of interest provisions and procurement procedures identified in the New Mexico Procurement Code, Section 13-1-128 et seq., NMSA 1978 and the Prohibited Sales Act, Section 22-21-1 et seq., NMSA 1978; and the federal regulations at 34 CFR 75.525 and 34 CFR 80.36.” For example, under the New Mexico Prohibited Sales by Personnel Act:

[A] school employee shall not, directly or indirectly, sell or be a party to any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department, school district or public school with which such person is associated or employed. No such person shall receive any commission or profit from the sale or any transaction to sell any instructional material, furniture, equipment, insurance, school supplies or work under contract to the department, school district or public school with which the person is associated or employed.

NMSA § 22-21-1.A.

3. In addition to the anti-conflict provisions contained in the school charters, in order to obtain State of New Mexico capital outlay project funding, the schools executed agreements containing anti-conflict provisions, including agreements to “abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct[.]” The New Mexico Governmental Conduct Act provides that a “public ... employee shall treat the ... employee’s government position as a public trust. The ... employee shall use the powers and resources of public office

only to advance the public interest and not to obtain personal benefits or pursue private interests.” NMSA § 10-16-3.

“Southwest Educational Consultants”

4. By no later than November 2000, in his personal capacity, Glasrud was doing business under the name “Southwest Educational Consultants.” Glasrud formally incorporated “Southwest Educational Consultants” as Southwest Educational Consultants, Inc. (SEC) on or about March 20, 2002. During the life of the corporation, Glasrud has acted as registered agent, director, and President of SEC. Glasrud paid for personal expenses out of the SEC bank account.

Count 1

5. Beginning in or about November 2000, and continuing through in our about August 2014, Glasrud devised and executed a scheme to defraud involving the leasing of property located at 9904 Montgomery Boulevard NE, Albuquerque, New Mexico (“9904 Montgomery building”). In executing the scheme and artifice, the defendant misrepresented, concealed, and omitted material facts, and breached duties that he owed to the schools as an administrator and employee.

The 9904 Montgomery building lease scheme

6. In or about November 2000, while then doing business as SEC, Glasrud entered into a lease agreement with the owner of the 9904 Montgomery building to lease the entire building (“SEC Lease”). On December 1, 2000, just days after he had entered into the SEC Lease, while still doing business as SEC, Glasrud entered into an agreement to sublease the entire 9904 Montgomery building to SSLC (“SSLC Lease”). As part of his scheme, Glasrud caused SSLC to be charged approximately twice the amount in rent that SEC was paying under the SEC Lease, without disclosing this substantial profit, a material fact, to SSLC.

7. As a further part of his scheme, by no later than 2007, Glasrud had arranged for SEC to sublease the majority of the square footage at the 9904 Montgomery building to another tenant, with whom Glasrud had a close familial relationship. Thus, during Glasrud's fraud scheme, SSLC not only paid more than double the amount of rent that SEC paid to lease the entire building, but also occupied less than half the building it had paid a premium to rent. During the course of the sublease, Glasrud caused SSLC to pay SEC anywhere from approximately four to five times as much as the other tenant for use of less than half of the building they were sharing.

8. In response to concerns raised by the New Mexico Public Education Department (PED) about the SSLC Lease, in his role as Head Administrator for SSLC and the other charter schools, Glasrud caused a school representative to misrepresent to PED and the school board the amount of profit that SEC was making off of the sublease. Specifically, Glasrud caused the representative to falsely state: (1) that SEC "acts merely as a pass through entity, i.e. as 'guaranty,' and makes no profit from its position on the [SSLC Lease]" and (2) "that although there may be an appearance of a conflict ... there is no financial profit by SEC ... this lease is in the best interest of the school."

9. Over the course of his fraud scheme, Glasrud made material misrepresentations and omissions, including by falsely representing the actual amount of money that SEC was making and by failing to fully disclose the extent to which he was personally profiting from the lease that SEC had with SSLC. Over the life of the SSLC Lease, Glasrud caused SSLC to pay SEC over \$700,000 in excess of what SEC paid under the SEC Lease. Had Glasrud ever made truthful and full disclosures about the arrangements he had secretly made to reap such large profits for himself

from SSLC's rent payments for the property at the 9904 Montgomery, such payments would not have been authorized.

The execution of the offense

10. Between on or about July 1, 2013, and on or about June 30, 2014, both dates being inclusive, in Bernalillo County, in the District of New Mexico, the defendant, **DAVID SCOTT GLASRUD**, being an agent of SSLC, which received in the one year period beginning July 1, 2013, benefits in excess of \$10,000 under a Federal program involving a grant and other form of federal assistance, namely U.S. Department of Education Grant Funds, embezzled, stole, obtained by fraud, without authority knowingly converted to the use of a person not the rightful owner, and intentionally misapplied property worth at least \$5,000 that was owned by, and under the care, custody, and control of SSLC.

In violation of 18 U.S.C. § 666(a)(1)(A).

Count 2

11. Paragraphs 1 through 4 are realleged and incorporated as if fully stated herein.

12. Beginning in or about February 2004, and continuing through in or about February 2014, in Bernalillo County, in the District of New Mexico and elsewhere, the defendant, **DAVID SCOTT GLASRUD**, knowingly and intentionally devised a scheme and artifice to defraud the SLC schools related to SLC school contracts with an entity the defendant called "Media Learning Solutions" ("MLS"). In executing his scheme and artifice, the defendant misrepresented, concealed, and omitted material facts, and breached duties that he owed to the schools as an administrator and employee. For purposes of executing and attempting to execute the defendant's scheme and artifice, the defendant knowingly transmitted and caused to be

transmitted, by means of wire, radio, and television communications in interstate commerce, writings, signs, signals, and sounds.

The MLS scheme and artifice

13. On or about February 18, 2004, Glasrud filed two documents with the County Clerk in Las Vegas, Nevada, in which he certified that he, in his individual capacity, and SEC were both conducting business in Las Vegas, Nevada, under the “Fictitious Firm Name” of “Media Learning Solutions.” Further, Glasrud, on behalf of MLS, entered into a mailbox service agreement with a Mail Boxes Etc. store located at 1350 East Flamingo Rd., Suite 13B in Las Vegas, Nevada to rent mailbox number 3204 at that address.

14. In his role as Head Administrator of the SLC schools, Glasrud would cause the schools to enter into agreements, subject to anti-conflict provisions, with the State of New Mexico to obtain capital outlay funding for specific projects. For several of these projects, Glasrud represented to the SLC school and the State of New Mexico that MLS would be a vendor providing items related to the specific project. Glasrud later generated and submitted bogus MLS proposals and invoices to the school for the items that MLS purportedly would provide. In some proposals, Glasrud falsely claimed that MLS had a “support team” and a “head office” located in Las Vegas, Nevada. In fact, MLS did not have any employees, nor did it have a head office. Nonetheless, the MLS invoices listed the MLS address as 1350 East Flamingo Rd. Suite 13B, Box 3204, Las Vegas, Nevada, without revealing this to merely be a mailbox he had rented.

15. As part of his scheme, Glasrud caused the SLC schools to pay capital outlay money to MLS based on the fraudulent proposals and invoices. Most of the capital outlay money that MLS received from the SLC schools was not spent on items associated with the

approved project, or to benefit the schools. Rather, Glasrud arranged for the money that the State had allocated for the schools' benefit to be deposited into his personal accounts and used for his personal benefit.

16. The contracts, invoices, and purchase orders associated with the alleged goods and services the SLC schools purchased from MLS did not mention MLS's association with Glasrud. It was therefore not apparent from the documents that Glasrud provided that any money from the schools would be funneled directly to Glasrud from MLS. Further, Glasrud affirmatively misled two of the SLC school boards by pretending that he only had limited, indirect knowledge about MLS and omitting that he had actually formed and controlled MLS. In addition, during annual, state-mandated, audits of the SLC schools, when Glasrud was required to disclose all potential conflicts of interest he had in his positions at the schools, he never disclosed his association with MLS.

17. In 2009 and 2010 alone, Glasrud caused SSLC to pay MLS approximately \$265,000 for items that Glasrud certified that MLS would provide to SSLC for specific capital outlay projects. Of that money, approximately \$199,000 was used to pay down the balance on Glasrud's personal line of credit, \$50,000 was transferred to Glasrud's personal bank account, \$12,000 was used for personal items, and \$4,000 was used at casinos in Las Vegas, Nevada.

18. On August 7, 2012, Glasrud as Head Administrator of SILC, signed a State capital outlay agreement with PED related to project 12-1289, which contained a standard anti-conflict clause.

19. In furtherance of his scheme to defraud, on or about January 31, 2014, Glasrud used an SLC school computer to create a Google email account ("Gmail") that he named "medialearningnv@gmail.com." Glasrud falsely listed another individual as the subscriber for

the email account. On the same day Glasrud created the medialearningnv@gmail.com account, Glasrud caused two requests for proposals (RFPs) from the schools to be emailed to this Gmail account.

20. One of the RFP's mentioned in the January 31, 2014 emails related to capital outlay project 12-1289. In furtherance of his scheme to defraud, again without disclosing his association with MLS, Glasrud caused MLS to submit to SILC a proposal for MLS to be awarded over \$50,000 related to project 12-1289. Glasrud created this MLS proposal using his SLC-owned computer, copying parts of a proposal submitted by another vendor on the same project.

21. On February 27, 2014, Glasrud signed a "Request to Obligate Funds Form" asking PED for \$180,000 related to project 12-1289. In the request, Glasrud indicated that MLS would be receiving \$50,895.00 in association with the project. To ensure that MLS would receive regulated State funds, Glasrud did not disclose his association with MLS. Had he disclosed his association, the schools and the State would have been alerted to the disqualifying conflict of interest resulting from the applicable anti-conflict provisions in State law, the school's charter, and the PED capital outlay agreement.

22. In approximately February 2014, State auditors commenced an audit of the SLC schools. Shortly thereafter, in order to avoid scrutiny of MLS, Glasrud abandoned his efforts for MLS to be awarded funding from the State related to capital outlay project 12-1289.

The wire

23. For the purpose of executing, and attempting to execute, his scheme and artifice, on or about January 31, 2014, the defendant, **DAVID SCOTT GLASRUD**, transmitted and caused to be transmitted by means of wire, radio, and television communications in interstate

commerce certain writings, signs, signals, and sounds, namely an email from an SLC computer located in New Mexico to medialearningnv@gmail.com (Gmail server in California).

In violation of 18 U.S.C. §§ 1343 and 1349.

Count 3

24. Paragraphs 1 and 2 are realleged and incorporated as if fully stated herein.

25. Beginning on or about November 1, 2013, and continuing through on or about August 15, 2014, in Bernalillo County, in the District of New Mexico and elsewhere, the defendant, **DAVID SCOTT GLASRUD**, knowingly and intentionally devised a scheme and artifice to defraud the SLC schools related to SLC school contracts with a consulting company (referred to herein as “FCL”). In executing the scheme and artifice, the defendant misrepresented, concealed, and omitted material facts, and breached duties that he owed to the schools as an administrator and employee. For purposes of executing the defendant’s scheme and artifice, the defendant knowingly caused to be delivered by mail, according to the direction thereon, a matter and thing.

The FCL scheme and artifice

26. CAAPS Investments, LLC (“CAAPS”), was a limited liability company organized by the Glasrud Family Revocable Trust. According to its operating agreement, the only business purpose of CAAPS was “to invest in assets on behalf of the Glasrud Family Revocable Trust.”

27. As part of the defendant’s scheme and artifice, the defendant caused each of the SLC schools to enter into separate agreements with FCL (the “FCL Contracts”). The defendant signed these contracts on behalf of each of the respective schools on or about November 1, 2013. FCL was a company located outside of New Mexico. Under these contracts, each school agreed

to pay FCL \$14,800, to perform consulting work related to the schools' operational procedures, policies, and manuals.

28. Before the defendant caused FCL to be awarded the FCL Contracts, the defendant told FCL that it would have to subcontract support services under the FCL Contracts to SEC and CAAPS in order to be awarded the FCL Contracts. Glasrud never reduced to writing his arrangement for FCL to send to SEC and CAAPS money received from the SLC schools pursuant to the FCL Contracts.

29. In furtherance of the scheme and artifice, the defendant caused the schools to issue and mail checks to FCL in equal amounts for a combined total of \$59,200. FCL sent approximately 67% of the monies it received from the schools to Glasrud's companies, with SEC receiving approximately \$14,799 and CAAPS receiving approximately \$24,665. SEC and CAAPS never did any actual work for the schools under the FCL Contracts in exchange for the schools' money that they received through FCL.

30. By making no mention of SEC and CAAPS in the FCL Contracts, it was not apparent from the contractual paperwork that any money from the schools would be funneled directly to SEC and CAAPS from FCL. Had the defendant made full, fair, and prompt disclosures that approximately 67% of the FCL Contract money was being diverted to companies associated with the defendant, for no apparent work, the FCL Contracts would not have been permitted. Furthermore, had Glasrud disclosed his association with the FCL Contracts, the contracts would have been barred due to the applicable anti-conflict provisions in State law and the schools' charters.

The Mailing

31. For the purpose of executing his scheme and artifice, on or about February 8, 2014, the defendant, **DAVID SCOTT GLASRUD**, knowingly caused to be delivered by mail, according to the direction thereon, a matter and thing, namely an envelope from the SLC schools, in New Mexico, to FCL, outside of New Mexico, containing SLC schools' checks related to the FCL Contracts.

In violation of 18 U.S.C. § 1341.

Count 4

32. Paragraph 1 is realleged and incorporated as if fully stated herein.

33. Beginning in or before December 2002, and continuing through in or about August 2014, Glasrud devised and executed a scheme to defraud involving an SSLC program known as the Extended Learning Program (ELP). In executing the scheme and artifice, the defendant misrepresented, concealed, and omitted material facts, and breached duties that he owed to the schools as an administrator and employee.

The ELP scheme

34. SSLC's ELP offered students the opportunity to earn additional school credits, using online, computer-based courses. Students paid to take the ELP because the students received official school credit from SSLC. SSLC paid for the infrastructure and personnel support for the ELP and paid a vendor for the proprietary online curriculum used by the ELP.

35. As part of his scheme, Glasrud caused nearly all of the payments for the SSLC ELP to be diverted into an SEC bank account that Glasrud controlled. Initially, Glasrud did this by using a shell entity that he called "Platinum Learning." Nearly all the ELP money directed to "Platinum Learning" was ultimately deposited into an SEC bank account that Glasrud controlled.

“Platinum Learning” had no employees, did not develop or own any proprietary online curriculum, and had no ability to grant any official school credit. Later, Glasrud used other methods to divert ELP money to SEC.

36. From in or about 2007 to in or about 2014, Glasrud caused over \$1 million in payments for ELP courses that should have gone to SSLC to instead be deposited into an SEC bank account. Had Glasrud made full, fair, and prompt disclosures about the arrangements he had made to divert the monies from the ELP directly to “Platinum Learning” and SEC, these arrangements would not have been authorized.

The execution of the offense

37. Between on or about January 1, 2014, and on or about August 15, 2014, both dates being inclusive, in Bernalillo County, in the District of New Mexico, the defendant, **DAVID SCOTT GLASRUD**, being an agent of SSLC, which received in the one year period beginning January 1, 2014, benefits in excess of \$10,000 under a Federal program involving a grant and other form of federal assistance, namely U.S. Department of Education Grant Funds, embezzled, stole, obtained by fraud, without authority knowingly converted to the use of a person not the rightful owner, and intentionally misapplied property worth at least \$5,000 that was owned by, and under the care, custody, and control of SSLC.

In violation of 18 U.S.C. § 666(a)(1)(A).

Counts 5-7

38. Paragraphs 1 and 2 are realleged and incorporated as if fully stated herein.

39. Beginning in or about 2007, and continuing through in or about August 2014, in Bernalillo County, in the District of New Mexico and elsewhere, the defendant, **DAVID SCOTT GLASRUD**, knowingly and intentionally devised a scheme and artifice to defraud the SLC

schools. In executing the scheme and artifice, the defendant misrepresented, concealed, and omitted material facts, and breached duties that he owed to the schools as an administrator and employee. For purposes of executing the defendant's scheme and artifice, the defendant knowingly transmitted and caused to be transmitted, by means of wire, radio, and television communications in interstate commerce, writings, signs, signals, and sounds, and knowingly caused to be delivered by mail, according to the direction thereon, a matter and thing.

The scheme and artifice

40. In furtherance of the scheme, the defendant would enter into contracts and agreements with third parties to obtain goods and services for the defendant's personal benefit. The defendant subsequently submitted false documentation to the SLC schools, including false contracts and invoices, causing the schools to pay for the goods and services that the defendant had obtained for his own benefit.

The execution of the scheme

41. For the purpose of executing his scheme and artifice, on or about the dates listed below, in Bernalillo County, in the District of New Mexico, the defendant, **DAVID SCOTT GLASRUD**, knowingly transmitted and caused to be transmitted, by means of wire, radio, and television communications in interstate commerce, writings, signs, signals, and sounds, or knowingly caused to be delivered by mail, according to the direction thereon, a matter and thing.

<u>Count</u>	<u>Date</u>	<u>Fraudulent Mailing or Wire</u>
5	3/21/2013	The defendant knowingly caused the mailing of an envelope containing payments from the SLC schools to an electrical company for work that was for his personal benefit and not for the benefit of the SLC schools.
6	5/30/2014	The defendant knowingly caused SSLC to wire from SSLC's bank account in New Mexico to a bank account in Colorado an installment payment disguised as SSLC payroll that was actually used to purchase an airplane for SEC.

7	7/23/2014	The defendant, in New Mexico, knowingly faxed to another individual, in Colorado, a signed hangar lease for SEC and a W-9 tax form for SLC to rent an airplane hangar that he caused the SLC schools to pay for under the false pretenses of a fictitious motivational speaking contract and associated fictitious invoices.
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In violation of 18 U.S.C. §§ 1341 (Count 5) and 1343 (Counts 6-7).

Counts 8-9

42. Paragraphs 1 through 4, 13 through 22, and 34 through 36 are realleged and incorporated as if fully stated herein.

43. On or about July 31, 2014, in the District of New Mexico, the defendant, **DAVID SCOTT GLASRUD**, in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency within the executive branch of the United States, did knowingly and willfully make the following materially false, fictitious, and fraudulent statements and representations, knowing such statements and representations to be false, fictitious, and fraudulent:

<u>Count</u>	<u>False Statement/Representation</u>
8	Glasrud falsely represented that SEC did not have any involvement with the online courses offered by SSLC, when in truth and fact Glasrud knew that he was diverting nearly all the student payments for these courses to SEC's bank account.
9	Glasrud falsely represented that another individual started the company MLS, when in truth and fact Glasrud knew that he had created MLS as a Fictitious Firm Name of SEC and of himself, in his individual capacity, in 2004.

In violation of 18 U.S.C. § 1001.

Forfeiture Allegation

Counts 1 through 7 of this Information are incorporated as part of this section of the Information as if fully re-alleged herein for the purpose of alleging forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), 981(a)(1)(D), 28 U.S.C. § 2461, and 18 U.S.C. § 982(a)(3).

Upon conviction of any offense in violation of 18 U.S.C. §§ 666, 1341, or 1343, the

Defendant, **DAVID SCOTT GLASRUD**, shall forfeit to the United States of America pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses, or a conspiracy to commit such offenses. 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 property described above, 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 of America pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), incorporating 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

JAMES D. TIERNEY
Acting United States Attorney

FRED J. FEDERICI
HOLLAND S. KASTRIN
Assistant United States Attorneys
P. O. Box 607
Albuquerque, NM 87103