

JUDGE FURMAN

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA, :

SEALED INDICTMENT

-v.- :

15 Cr.

HARRY FALTERBAUER, :

15 CRIM 397

Defendant. :

- - - - -X

COUNT ONE

(Willful Failure to File Reports of
Foreign Bank and Financial Accounts)

The Grand Jury charges:

The Defendant

1. At all times relevant to this Indictment, HARRY FALTERBAUER, the defendant, resided in Florida, and was a citizen of the United States.

Obligations of United States Taxpayers
With Respect to Foreign Financial Accounts

2. Citizens and residents of the United States who have income in any one calendar year in excess of a threshold amount ("U.S. taxpayers") are obligated to file a U.S. Individual Income Tax Return, Form 1040 ("Form 1040"), for that calendar year with the Internal Revenue Service ("IRS"). On such return, U.S. taxpayers are obligated to report their income from any source, regardless of whether the source of their income is inside or outside the United States. In addition, on

U.S.D.C. SDNY
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Schedule B of Form 1040, the filer must indicate whether "at any time during [the relevant calendar year]" the filer had "an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account." If the taxpayer answers that question in the affirmative, then the taxpayer must indicate the name of the particular country in which the account is located. At all times relevant to this Indictment, HARRY FALTERBAUER, the defendant, was a U.S. taxpayer.

3. Separate and apart from the obligation to file Forms 1040, U.S. taxpayers who have a financial interest in, or signature authority over, a bank, securities, or other financial account in a foreign country with an aggregate value of more than \$10,000 at any time during a particular calendar year are required to file with the IRS a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1 ("FBAR"). The FBAR for any calendar year is required to be filed on or before June 30 of the following calendar year. The FBAR requires that the filer identify the financial institution with which the account is held, the type of account (either bank, securities, or other), the account number, and the maximum value of the account during the calendar year for which the FBAR is being filed.

4. When a U.S. taxpayer beneficially owns a bank, securities, or other financial account that is maintained

outside the United States, but fails to disclose the account or the income generated in the account to the IRS on Schedule B of Form 1040 or on an FBAR, the account is referred to as an "undeclared account."

**FALTERBAUER's Undeclared Account
at Liechtensteinische Landesbank AG**

5. At all times relevant to this Indictment, Liechtensteinische Landesbank AG ("LLB-Vaduz") was a bank organized under the laws of Liechtenstein with its headquarters in Vaduz, Liechtenstein. As of December 31, 2012, LLB-Vaduz had approximately \$40 billion in assets under management. In addition to maintaining accounts held by citizens and businesses based in Liechtenstein, at all relevant times, LLB-Vaduz provided private banking and asset management services to individuals and entities outside Liechtenstein, including citizens and residents of the United States.

6. On or about July 24, 2013, LLB-Vaduz entered into a Non-Prosecution Agreement ("NPA") with the Office of the United States Attorney for the Southern District of New York (the "SDNY") in connection with LLB-Vaduz's participation in a conspiracy to defraud the IRS, file false federal income tax returns, and evade federal income taxes with respect to accounts held at LLB-Vaduz by U.S. taxpayers from 2001 through 2011.

7. The SDNY entered into the NPA based in part on:

(1) LLB-Vaduz's substantial support for Liechtenstein's amendment of its Law on Administrative Assistance in Tax Matters with the United States on March 21, 2012 (the "Law on Administrative Assistance") to permit the production to the Department of Justice of account files relating to certain U.S. taxpayers who held undeclared accounts at LLB-Vaduz, including documents identifying the U.S. taxpayers who beneficially owned the accounts; and (2) LLB-Vaduz's production of more than 200 such account files to the SDNY in 2012 and 2013.

8. Among the account files produced to SDNY following the passage of the Law on Administrative Assistance was the LLB-Vaduz file of HARRY FALTERBAUER, the defendant (the "Falterbauer Account File"). Among other things, the Falterbauer Account File showed that, from at least on or about November 29, 1988, until at least on or about April 1, 2008, FALTERBAUER had a financial interest in, and signature and other authority over, an undeclared account at LLB-Vaduz that had a value of more than \$10,000 (the "Undeclared Account"). In 2008, moreover, the balance of the Undeclared Account was more than \$1.1 million.

9. More specifically, on or about November 29, 1988, HARRY FALTERBAUER, the defendant, opened the Undeclared Account in his own name at LLB-Vaduz. At the time that FALTERBAUER

opened the Undeclared Account, FALTERBAUER identified himself to LLB-Vaduz as a United States citizen residing in Punta Gorda, Florida. FALTERBAUER also presented his U.S. passport to a representative of LLB-Vaduz in order to verify his identity. Once FALTERBAUER's identity had been verified, LLB-Vaduz gave the Undeclared Account the number "Nr kto. 130828," and the Undeclared Account was thereafter referred to exclusively by that number in order to keep FALTERBAUER's identity a secret.

10. Periodically thereafter, HARRY FALTERBAUER, the defendant, directed client relationship managers at LLB-Vaduz to transfer funds from the Undeclared Account. For example:

a. On or about May 5, 2003, FALTERBAUER directed a client relationship manager at LLB-Vaduz ("Client Advisor-1") to wire \$482,000 from the Undeclared Account, and informed Client Advisor-1 that another individual ("Individual-1") would provide instructions for the wire. On or about May 7, 2003, Individual-1 instructed Client Advisor-1 to wire the \$482,000 to a particular account in Liechtenstein.

b. On or about December 19, 2003, FALTERBAUER directed Client Advisor-1 to send a U.S. dollar denominated bank check in the amount of \$20,000 to a person in Zurich.

c. On or about November 6, 2007, FALTERBAUER directed another client relationship manager at LLB-Vaduz to

release \$1,000,000 from the Undeclared Account per the instructions of another individual.

11. Moreover, on or about August 1, 2003, HARRY FALTERBAUER, the defendant, completed additional paperwork at LLB-Vaduz related to the Undeclared Account (the "August 2003 Paperwork"). The August 2003 Paperwork included, among other things, an affidavit signed by FALTERBAUER, in which FALTERBAUER declared that he was a United States citizen and stated that he was not authorizing LLB-Vaduz to disclose his name to U.S. tax authorities.

12. During the time period that HARRY FALTERBAUER, the defendant, maintained the Undeclared Account, capital gains and losses were generated in the Undeclared Account from FALTERBAUER's investments in interest-bearing money market accounts. In or about 2007, the Undeclared Account reached a high balance of approximately \$1.59 million, and had a balance of over \$1.1 million in 2008, prior to its closure.

FALTERBAUER's Tax Returns and FBARs

13. For the calendar year 2008, HARRY FALTERBAUER, the defendant, filed and caused to be filed with the IRS a U.S. Individual Income Tax Return, Form 1040. On this return, FALTERBAUER knowingly and willfully failed to report as income dividends, interest, and other income received by him in the Undeclared Account at LLB-Vaduz. On Schedule B attached to this

return, FALTERBAUER knowingly and willfully failed to disclose that he had an interest in or signature authority over a financial account in Liechtenstein when, in truth and in fact, and as FALTERBAUER then and there well knew, he had an interest in and signature authority over a financial account in Liechtenstein, namely, the Undeclared Account.

14. For the calendar year 2008, HARRY FALTERBAUER, the defendant, failed to file, and failed to cause to be filed, with the IRS an FBAR disclosing his signatory or other authority over his Undeclared Account at LLB-Vaduz.

Statutory Allegations

15. On or before June 30, 2009, in the Southern District of New York and elsewhere, HARRY FALTERBAUER, the defendant, did knowingly and willfully fail to file with the Commissioner of the IRS an FBAR disclosing that he had a financial interest in, and signature and other authority over, a bank, securities, and other financial account in a foreign country, to wit, a foreign bank, securities, and other financial account at LLB-Vaduz, which had an aggregate value of more than \$10,000 during the calendar year 2008.

(Title 31, United States Code, Sections 5314 and 5322(a);
Title 31, Code of Federal Regulations,
Sections 1010.350, 1010.306(c, d), and 1010.840(b).)

COUNT TWO
(False Statements)

The Grand Jury further charges:

16. The allegations of paragraphs 1 through 15 of this Indictment are repeated and realleged as though fully set forth herein.

17. On or about April 18, 2013, in the Southern District of New York and elsewhere, HARRY FALTERBAUER, the defendant, in a matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, did knowingly and willfully make materially false, fictitious, and fraudulent statements and representations, to wit, when interviewed by IRS Special Agents from New York, New York (the "Agents") about the Undeclared Account, FALTBAUER falsely stated to the Agents that he had not opened a bank account at LLB-Vaduz, and, thereafter, when shown documents evidencing that he had opened the Undeclared Account, falsely stated to the Agents that he had had failed to report the Undeclared Account to the IRS because he had opened the Undeclared Account for another person, whose identity FALTERBAUER did not know.

(Title 18, United States Code, Section 1001(a)(2).)


FOREPERSON


PREET BHARARA
United States Attorney

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(31 U.S.C. §§ 5314, 5322(a); 31 C.F.R. §§ 1010.350,
1010.306(c, d), 1010.840(b); 18 U.S.C. § 1001(a)(2).)

PREET BHARARA
United States Attorney.

A TRUE BILL

 Foreperson.

6/23/15 Filed sealed Indictment

Filed Arrest warrant