

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X
:
UNITED STATES OF AMERICA :
:
- v. - :
:
ERIC MALLEY, :
:
Defendant. :
:
- - - - - X

INFORMATION

21 Cr. 215

COUNT ONE
(Securities Fraud)

The United States Attorney charges:

Overview of the Scheme to Defraud

1. At all times relevant to this Information, ERIC MALLEY, the defendant, perpetrated a scheme to fraudulently induce investors to invest in two real estate investment funds by means of misrepresentations and omissions, and continued those misrepresentations and omissions throughout the life of those funds, in connection with his role as founder and Chief Executive Officer of a real estate private equity investment firm called MG Capital Management L.P. ("MG Capital").

2. ERIC MALLEY, the defendant, is a fifty year-old citizen of the United States. In or about January 2013, MALLEY formed MG Capital, which MALLEY described as an opportunity for investors to invest, through the purchase of limited partnership ("LP") interests, in Class A residential real estate properties in New

York City. On its website, MG Capital describes itself as a "premier private equity real estate manager that has been investing exclusively in Class A residential properties across Manhattan since early 2000." Between in or about 2013 and in or about December 2019, MALLEY served as both MG Capital's CEO and its Chief Investment Officer.

3. During the period from in or about January 2013 up to and including in or about 2017, ERIC MALLEY, the defendant, formed at least two real estate investment funds - MG Capital Management Residential Fund III ("Fund III") (formed in or about 2013) and MG Capital Management Residential Fund IV ("Fund IV") (formed in or about 2017) (collectively, the "Funds").

4. ERIC MALLEY, the defendant, touted the Funds as providing investors with the opportunity to own, through the purchase of LP interests in the Funds, an equity interest in hundreds of luxury income-producing properties across Manhattan, following a debt-free investment strategy informed by sophisticated proprietary analytics MALLEY had developed over the course of his career in real estate. MALLEY further represented, among other things, that the properties would primarily be leased to corporate tenants, including, among others, well-known technology companies and a prominent university based in New York City. In soliciting investors, MALLEY touted two purportedly extremely successful prior funds he had formed, Fund I and Fund

II. Investors purchased LP interests in Funds III and IV in reliance on MALLEY's claims.

5. Throughout the life of the Funds, ERIC MALLEY, the defendant, also continued to maintain, among other things, that the Funds were debt-free and that the properties the Funds held were primarily leased to corporate tenants.

6. In truth and in fact, these representations by ERIC MALLEY, the defendant, were largely false. Contrary to his claims that the Funds were debt-free, MALLEY had in fact mortgaged multiple properties held by the Funds, and the vast majority of properties held by the Funds were leased to individuals, rather than corporate tenants, as MALLEY had promised. Furthermore, MALLEY's representations about the existence and performance of Funds I and II were largely fabricated.

7. Through these and other fraudulent misrepresentations and omissions, ERIC MALLEY, the defendant, induced approximately 335 investors to invest a total of approximately \$58 million in the Funds. The Funds suffered large losses, and no investors have received their investments back absent separate civil litigation. The Funds are currently in the process of being liquidated.

Statutory Allegations

8. From at least in or about 2013, up to and including in or about March 2020, ERIC MALLEY, the defendant, willfully and knowingly, directly and indirectly, by use of the means and

instrumentalities of interstate commerce and of the mails, and of the facilities of national securities exchanges, used and employed manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, MALLEY fraudulently induced victims to purchase limited partnership interests in two real estate investment funds by means of misrepresentations and omissions, and continued that pattern of fraudulent misrepresentations and omissions throughout the life of the funds.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5; and
Title 18, United States Code, Section 2.)

COUNT TWO
(Wire Fraud)

The United States Attorney further charges:

9. The allegations contained in paragraphs 1 through 7 of this Information are repeated and realleged as if fully set forth herein.

10. From at least in or about 2013, up to and including in or about March 2020, in the Southern District of New York and elsewhere, ERIC MALLEY, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, MALLEY, using electronic transfers of funds, email communications, interstate telephone calls, and other wire communications, fraudulently induced his victims to purchase, including via interstate wires into the Southern District of New York, limited partnership interests in two real estate investment funds by means of misrepresentations and omissions, and continued that pattern of fraudulent misrepresentations and omissions throughout the life of the funds.

(Title 18, United States Code, Sections 1343 and 2.)

FORFEITURE ALLEGATIONS

11. As a result of committing the offenses alleged in Counts One and Two of this Information, ERIC MALLEY, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code,

Section 2461(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

Substitute Assets Provision


12. If any of the above-described forfeitable property, 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, pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described

above.

(Title 18, United States Code, Section 981;
Title 21, United States Code, Section 853;
Title 28, United States Code, Section 2461.)



AUDREY STRAUSS
United States Attorney

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(15 U.S.C. §§ 78j(b) & 78ff;
17 C.F.R. § 240.10b-5; 18 U.S.C. §§ 1343
and 2.)

AUDREY STRAUSS

United States Attorney.