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D.C.
Jul 19, 2017
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
17-20508-CR-COOKE/GOODMAN

CASE NO. _____

18 U.S.C. § 371
18 U.S.C. § 981(a)(1)(C)

UNITED STATES OF AMERICA

vs.

DAVID LUBIN,

Defendant.

_____ /

INFORMATION

The Acting United States Attorney charges that:

GENERAL ALLEGATIONS

At all times material to this Information:

1. Defendant **DAVID LUBIN** was an attorney licensed to practice law in New York, and acted as a promoter and attorney for companies that were registered to do business in the State of Florida.
2. Conspirator Steven Sanders was a resident of Lake Worth, Florida, and acted as a promoter for companies that were registered to do business in the State of Florida.
3. Conspirator A was a Canadian citizen who resided in the Cayman Islands and, subsequently, was an inmate at the federal correctional institution in Allenwood, Pennsylvania (“FCI Allenwood”).
4. Conspirator B was a resident of New York, New York, and acted as a promoter and shareholder for companies that were registered to do business in the State of Florida.

5. Conspirator Daniel McKelvey was a resident of Foster City, California, and acted as a promoter for companies that were registered to do business in the State of Florida.

6. Conspirator Alvin Mirman was a resident of Sarasota, Florida, and acted as a promoter and accountant for companies that were registered to business in the State of Florida.

7. Conspirator Jeffrey Lamson was a resident of Sacramento, California, and acted as a promoter and recruiter of officers for companies that were registered to do business in the State of Florida.

8. Attorney A was an attorney licensed to practice law in Florida who conducted business in Boca Raton, Florida.

9. Attorney B was an attorney in Vancouver, Canada who acted as a broker for the purchase and sale of public companies.

10. Medford Financial Ltd. a/k/a “Medford Financial Group” (“Medford”) was a purported Belize corporation controlled by Conspirator A.

11. The U.S. Securities and Exchange Commission (“SEC”) was an agency of the United States responsible for enforcing the securities laws.

12. A Form S-1 registration statement was required to be filed with the SEC in order for a company to issue stock, or “securities,” to the public. The Form S-1 was required to disclose, among other things, the role of any promoter or officer, and the financial condition and results of operations of the company. Once a company’s registration was deemed effective, it was required to file periodic and annual reports with the SEC on Forms 8-K, 10-K, and 10-Q.

13. Shares of publicly traded companies (known as “issuers”) that were not registered via Form S-1 generally could not be sold to the public. Such shares were generally considered “restricted.” However, Rule 144 of the Rules and Regulations promulgated by the SEC (“Rule

144”) permitted the sale of restricted securities in certain circumstances. One of the conditions necessary for reliance on Rule 144 was that the issuer was not, and had never been, a “shell company.” A “shell company” was a company with no or nominal operations and no or nominal non-cash assets. Another requirement for relying on Rule 144 was that the seller of the securities was not an “affiliate.” An “affiliate” was a person that directly, or indirectly through one or more intermediaries, controlled, or was controlled by, or was under common control with, the issuer. A further requirement for reliance on Rule 144 was that restricted stock must be held for at least one year after being acquired from an issuer or an affiliate of an issuer before it could be sold into the market. Shares that were not “restricted” generally were considered “free trading.”

14. Before a transfer agent would remove the restrictive legend from previously-restricted securities, the transfer agent typically required a legal opinion letter from an attorney stating that the requirements of Rule 144 had been met. A broker typically required a similar letter before it would accept such shares for deposit and sale to the public.

15. Entertainment Art, Inc. (“EERT”); Premier Nursing Products Corp.; Pashmina Depot.com Inc.; Mobieyes Software, Inc.; mBeach Software, Inc.; Intake Communications, Inc.; BCS Solutions, Inc.; Benefit Solutions Outsourcing, Corp.; Big Clix, Corp.; and XtraSafe, Inc. were shell companies (collectively, the “Shell Companies”).

16. A “straw CEO” was an individual who, in exchange for a fee, allowed his name to be listed as a chief executive officer on corporate paperwork. A “straw shareholder” was an individual who, in exchange for a promised fixed return, allowed his name to be listed on corporate paperwork as a shareholder of one of the Shell Companies.

17. A “beneficial owner,” as defined under the rules of the SEC, included any person who directly or indirectly shared voting power or investment power (the power to sell a security).

18. In a “reverse merger,” a private company acquired a majority of the shares of a public shell company, which was then merged with the purchasing entity. The public shell company was required to report the terms of a reverse merger in a Form 8-K filing with the SEC, including all related transactions.

19. “Microcap” or “penny” stocks referred to stocks of publicly traded U.S. companies which have a low market capitalization. Microcap stocks were often traded via the OTC Bulletin Board or pink sheet markets and were subject to price manipulation because they were thinly traded and subject to less regulatory scrutiny than stocks that traded on notable exchanges. Additionally, large blocks of microcap stock were often controlled by a small group of individuals, which enabled those in the group to control or orchestrate manipulative trading in those stocks.

20. A “pump and dump” scheme was a scheme where a group of individuals who controlled the free trading or allegedly unrestricted shares of a microcap company, fraudulently inflated the share price and trading volume of the company through, among other things, wash and matched trades, false and misleading press releases, and paid stock promotions. When the company’s share price reached desirable levels, the individuals sold their free trading shares for substantial financial gain.

**CONSPIRACY TO UNLAWFULLY SELL UNREGISTERED SECURITIES
(18 U.S.C. § 371)**

From in or around January 2007, through in or around January 2014, in Miami-Dade, Broward, and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendant,

DAVID LUBIN,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with Steven Sanders, Conspirator A, Conspirator B,

Daniel McKelvey, Alvin Mirman, Jeffrey Lamson, Attorney A, Attorney B, and others known and unknown to the Acting United States Attorney, to commit certain offenses against the United States, that is: (a) to knowingly, willfully, and unlawfully, directly and indirectly, by the use of means and instruments of transportation and communication in interstate commerce and the mails, sell securities, through the use and medium of any prospectus and otherwise; and (b) to knowingly, willfully, and unlawfully carry and cause to be carried through the mails and in interstate commerce, by any means and instruments of transportation, securities, for the purpose of sale and for delivery after sale, in violation of Title 15, United States Code, Sections 77e(a)(1), 77e(a)(2), and 77x, and Title 17, Code of Federal Regulations, Section 230.144.

PURPOSE OF THE CONSPIRACY

21. It was a purpose of the conspiracy for the conspirators to unlawfully enrich themselves by creating shell companies and registering them with the SEC using false and fraudulent statements in documents submitted to the SEC, so that the companies could issue shares which could be traded in the microcap or penny stock markets. The conspirators would then offer to sell the restricted shares and the free trading shares to shell buyers, who would utilize the free trading shares to engage in pump and dump stock swindles and other manipulation schemes.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant and his conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

Offering to Sell Shares of Fraudulently Registered Shell Companies

22. Steven Sanders, Daniel McKelvey, Alvin Mirman, and others would recruit individuals to serve as straw CEOs for certain Shell Companies. These conspirators would inform the straw CEOs that they would have no further role with the company and would be paid when the company was later sold.

23. Steven Sanders, Daniel McKelvey, Alvin Mirman, and others would prepare false and fraudulent corporate documents for the Shell Companies, such as board meeting minutes, stock certificates and shareholder lists. The conspirators would then submit these false and fraudulent documents and other false information to the SEC on Forms S-1 in order to obtain effective registration of the Shell Companies. After a company's registration was effective, **DAVID LUBIN**, Sanders, McKelvey and others would file periodic and annual reports for the Shell Companies on Forms 8-K, 10-K, and 10-Q. These reports were required to be filed pursuant to 15 U.S.C. § 78m(a), or were filed pursuant to 15 U.S.C. § 78o(d). The reports did not disclose the role of the conspirators with respect to the Shell Companies or their true purpose. For certain companies, including EERT, **LUBIN** would act as an officer and attorney.

24. **DAVID LUBIN**, Steven Sanders, Daniel McKelvey, and Alvin Mirman would recruit straw shareholders for Shell Companies, that were purportedly unaffiliated with the company, and would assign a certain number of shares to each straw shareholder. This was done to make it appear that none of the straw shareholders controlled 5% of the shares. In reality, the straw shareholders were promised a fixed amount of money once the company was ready to be sold, and the shares were in fact controlled by Sanders, McKelvey, and Mirman.

25. **DAVID LUBIN**, Steven Sanders, and Daniel McKelvey, would seek buyers for the Shell Companies. For an agreed upon price, the shell buyers would be offered the opportunity to purchase, (a) control of the company and all of the restricted shares held in the name of the straw CEO as part of a reverse merger, and (b) all of the company's purportedly free trading shares that were held in the names of straw shareholders, in a separate set of transactions.

26. **DAVID LUBIN** and Attorney A would provide legal opinions for the purpose of removing the "restricted" legend on shares of various Shell Companies, that falsely and fraudulently represented that shares controlled by Steven Sanders, Daniel McKelvey, and Attorney

A, were not owned by “affiliates” of the Shell Companies. **LUBIN** and Attorney A would thereafter transmit these false and fraudulent opinion letters to various stock transfer agents and broker-dealers so that the shares could later be sold in the public marketplace.

Fraudulent Sale and Transfer of EERT Shares

27. In approximately December 2008, **DAVID LUBIN** negotiated the sale of restricted and free trading shares of EERT with Conspirator A. **LUBIN** and Conspirator A discussed the need to not document or disclose the purchase of the free trading shares because common ownership of all the shares would cause the free trading shares to become restricted shares and lose their free trading status. **LUBIN** agreed to assist Conspirator A by drafting a false and fraudulent purchase agreement, indicating that Medford would only purchase the EERT restricted shares rather than all the shares. **LUBIN** and Conspirator A discussed the fact that Conspirator A controlled Medford, and that Conspirator A was in fact purchasing all the shares. **LUBIN** drafted a separate purchase agreement to effect the purchase and sale of the free trading shares from each of the straw shareholders. In these agreements, **LUBIN** left the counterparty, purchase price, and date blank. This had the effect of concealing that the counterparty was in fact Conspirator A or an entity he controlled.

28. In approximately May 2009, **DAVID LUBIN** and Conspirator A completed the sale and transfer of the EERT restricted shares to Medford. From that point on, **DAVID LUBIN** knew that all of the EERT shares were under common control and that a single certificate should have been issued showing Medford or Conspirator A had control of all the shares. At the request of Conspirator A, **LUBIN** continued to serve, on paper, as an EERT officer and director after the purchase of all of the EERT shares by Conspirator A, and continued to draft securities filings for EERT through approximately August 2011. Conspirator B and Steven Sanders also participated in the preparation of securities filings during this period. As an EERT officer and director, and

as a practicing attorney acting on behalf of the company, **LUBIN** was required to ensure the accuracy of securities filings that he filed or caused to be filed, including with respect to any statement that described the share ownership of EERT. However, **LUBIN** knowingly and intentionally caused certain securities filings that omitted material facts concerning the common control of the restricted and free trading shares of EERT. For example, on or about August 10, 2011, on Form 10-Q, **LUBIN** caused to be filed with the SEC a statement that Medford purchased the restricted shares, including a description of how the free trading shares were purportedly issued, but omitted any description or disclosure that the restricted shares and the free trading shares were under common control of Conspirator A and Medford. These representations and omissions allowed the purported free trading shares to remain free trading, and to be bought or sold by others in connection with subsequent illegal activity.

Conspirator A Sentenced to Federal Prison, Sanders and McKelvey Broker Sale of EERT

29. On or about November 18, 2010, Conspirator A was sentenced to seventy-two months in federal prison in connection with a separate securities fraud scheme to which he pled guilty in the United States District Court for the Eastern District of New York. Shortly before being sentenced to prison, Conspirator A requested that Sanders broker a sale of EERT to a shell buyer on his behalf because the United States District Court had frozen Conspirator A's funds and assets ("EDNY asset freeze"). Thereafter at the request of Conspirator A, Steven Sanders, Daniel McKelvey and **DAVID LUBIN** participated in efforts to negotiate a sale of EERT for the financial benefit of Conspirator A and Conspirator B, and provide funds from the illicit sale of EERT in a manner that would avoid attribution of these funds to Conspirator A. Sanders and McKelvey communicated with Conspirator A while Conspirator A was incarcerated via email and telephone, and personally visited with Conspirator A at FCI Allenwood, to discuss the details for the fraudulent transfer and subsequent sale of the EERT restricted and free trading shares to a shell

buyer. Conspirator A, **LUBIN**, and Sanders had previously engaged in other fraudulent securities transactions with Conspirator A. At the request of Sanders and Conspirator B, after Conspirator A was incarcerated, **LUBIN** agreed to assist with keeping the corporate filings of EERT current so that a sale to a shell buyer could take place. From October 2010 through approximately October 2012, Sanders, Conspirator B, and **LUBIN** discussed various corporate filings and other financial transactions related to EERT.

Proceeds of Sale of EERT Wired to Conspirator B and For Benefit of Conspirator A

30. After obtaining direction from Conspirator A regarding an acceptable sale price and distribution of proceeds, Steven Sanders and Daniel McKelvey attempted to broker a sale of the restricted and free trading shares of EERT. Before a sale took place, Sanders had to get **DAVID LUBIN** to agree to resign as an officer of the company. **LUBIN** knew that Conspirator A controlled the restricted shares of EERT through Medford, and that the agreements transferring the free trading shares did not list any counterparty. Since Conspirator A was incarcerated for engaging in securities fraud, **LUBIN** also knew that Conspirator A could not readily remove **LUBIN** from his position without drawing the attention of authorities. Thus, **LUBIN** demanded a payment from Sanders before he would agree to resign. On or about May 5, 2011, Sanders and **LUBIN** agreed via email that **LUBIN** would resign from EERT in exchange for a payment of \$15,400, and Sanders wired this amount to **LUBIN** on or about May 9, 2011. After **LUBIN** resigned, Sanders and McKelvey installed conspirator Jeffrey Lamson as the straw CEO of EERT in exchange for a fee and Lamson's agreement to resign when Sanders eventually sold EERT to a shell buyer.

31. On or about July 18, 2012, Steven Sanders negotiated the sale of EERT for \$335,000 to certain shell buyers acting through Attorney B. On or about October 22, 2012, Attorney B caused an interstate wire payment to the trust account of Attorney A, at Sabadell Bank,

in Boca Raton, Florida, of approximately \$324,060, representing the shell sale price less a deposit. From these funds, at the direction of Conspirator A and Conspirator B, Sanders caused wire transfers of \$150,000 to a bank account in Zurich, Switzerland and of \$100,000 to a bank account in New York in the name of Conspirator B. Sanders understood from Conspirator A that these funds could not be transferred into an account in the name of Conspirator A because of the EDNY asset freeze. In order to avoid attribution of these funds to Conspirator A, Sanders drafted a sham promissory note dated October 22, 2012 and provided it to Conspirator B via email. This sham promissory note falsely indicated that an entity controlled by Sanders, MBN Consulting, LLC, loaned \$100,000 to Conspirator B, and that these funds were to be repaid along with 5% per annum interest, on or before October 31, 2016. Conspirator B signed the sham promissory note and transmitted it via email to Sanders shortly before the \$100,000 payment was made that same day. No principal or interest payment was made by Conspirator B or anyone else in connection with the sham promissory note.

32. The principals who purchased EERT, who were represented by Attorney B, later caused a reverse merger of EERT with another entity, and renamed the combined company "Biozoom, Inc.," with ticker symbol "BIZM." The BIZM principals and others thereafter engaged in a pump and dump stock manipulation scheme using the BIZM shares that had previously been falsely and fraudulently registered and sold under the EERT ticker symbol by **DAVID LUBIN**, Conspirator A, Conspirator B, Steven Sanders, Daniel McKelvey, Jeffrey Lamson, and their conspirators.

OVERT ACTS

In furtherance of the conspiracy and to achieve the objects and purpose thereof, at least one conspirator committed and caused to be committed, in the Southern District of Florida, and elsewhere, at least one of the following overt acts, among others:

1. On or about April 4, 2012, in connection with Intake Communications, Inc., also referred to as Game Face Gaming, Inc., **DAVID LUBIN** transmitted a letter addressed to Transfer Agent #1, stating that certain share certificates for purported free trading shares, controlled by Steven Sanders, Daniel McKelvey, Alvin Mirman, and Attorney A, were considered free trading pursuant to Rule 144, which letter was transmitted by **LUBIN** via email from Lynbrook, New York to Sanders in Lake Worth, Florida.

2. On or about August 9, 2012, **DAVID LUBIN**, who was located in Lynbrook, New York, transmitted an email to Steven Sanders in Lake Worth, Florida, stating that all of the stock certificates related to the free trading shares of EERT, in the names of straw shareholders, were transferred to Conspirator A when Conspirator A acquired EERT in 2009.

3. On or about October 22, 2012, Steven Sanders caused a wire transfer of \$150,000 from a Sabadell Bank account ending in x-9646, in Boca Raton, Florida, to a CBH Compagnie Bancaire Helvetique SA account ending in x-2793, in Zurich, Switzerland, representing a portion of the sale proceeds of EERT.

4. On or about October 22, 2012, Steven Sanders caused the wire transfer of \$100,000 from a Sabadell Bank account ending in x-9646 in Boca Raton, Florida, to a Chase Bank account ending in x-6480, in New York, in the name of Conspirator B, representing a portion of the sale proceeds of EERT.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE
(18 U.S.C. § 981(a)(1)(C))

1. The allegations of this Information are realleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant has an interest.

2. Upon conviction of the violation alleged in this Information, the defendant shall forfeit to the United States, any property, real or personal, which constitutes or is derived from proceeds traceable to such violation.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C) and the procedures set forth in Title 21, United States Code, Section 853, made applicable by Title 28, United States Code, Section 2461.



BENJAMIN E. GREENBERG
ACTING UNITED STATES ATTORNEY



JERROB DUFFY
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

DAVID LUBIN,

Defendant.

_____ /

Superseding Case Information:

Court Division: (Select One)

X Miami _____ Key West _____
_____ FTL _____ WPB _____ FTP _____

New Defendant(s) Yes _____ No _____
Number of New Defendants _____
Total number of counts _____

I do hereby certify that:

- I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
- I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
- Interpreter: (Yes or No) NO
List language and/or dialect _____
- This case will take 0 days for the parties to try.
- Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<u> X </u>	Petty	_____
II	6 to 10 days	_____	Minor	_____
II	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u> X </u>
V:	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:
Judge: _____ Case No. _____

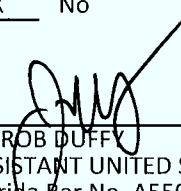
Has a complaint been filed in this matter? (Yes or No) No

If yes:
Magistrate Case No. _____
Related Miscellaneous numbers: _____
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? _____ Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? _____ Yes X No



JERROB DUFFY
ASSISTANT UNITED STATES ATTORNEY
Florida Bar No. A5501106

*Penalty Sheet(s) attached

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: DAVID LUBIN

Case No: _____

Count #: 1

Conspiracy to Unlawfully Sell Unregistered Securities

Title 18, United States Code, Section 371

*** Max. Penalty:** Five (5) years' imprisonment

Count #:

***Max. Penalty:**

Count #:

***Max. Penalty:**

Count #:

***Max. Penalty:**

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

United States of America

v.

David Lubin,

Defendant

)
)
)
)
)

Case No.

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: _____

Defendant's signature

Signature of defendant's attorney

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title