



A Charlotte Federal Grand Jury Indicted Four in an Alleged \$40 Million Ponzi Scheme

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 10:14 AM February 24, 2012

The Federal Bureau of Investigation (FBI) on February 23, 2012 released the following:

“Four Hedge Fund Managers Indicted in \$40 Million Ponzi Scheme

Defendants Join Seven Others and CommunityONE Bank Charged in Connection with the Scheme

CHARLOTTE, NC—A federal grand jury sitting in Charlotte returned an indictment against Jonathan D. Davey, 47, of Newark, Ohio, Jeffrey M. Toft, 49, of Oviedo, Fla., Chad A. Sloat, 33, of Kansas City, Mo., and Michael J. Murphy, 51, of Deep Haven, Minn., on February 22, 2012, on four criminal charges relating to an investment fraud conspiracy, announced Anne M. Tompkins, U.S. Attorney for the Western District of North Carolina.

Joining U.S. Attorney Tompkins in making today’s announcement are Chris Briese, Special Agent in Charge of the Federal Bureau of Investigation (FBI), Charlotte Division, and Jeannine A. Hammett, Special Agent in Charge of the Internal Revenue Service-Criminal Investigation Division (IRS-CI).

According to the criminal indictment, the defendants operated “hedge funds” as part of a conspiracy that took in \$40 million from victims for a Ponzi scheme operating under the name Black Diamond Capital Solutions (Black Diamond). The indictment alleges that the conspiracy lasted from about October 2007 through about April 2010. The indictment alleges that the defendants lied to get money from their victims by claiming, among other things, that they had done due diligence on Black Diamond and were operating legitimate hedge funds with significant safeguards, when in reality, neither claim was true. The indictment also alleges that, as Black Diamond began collapsing, the defendants and others created a new Ponzi scheme and with a separate Ponzi account that Davey administered. Thereafter, new victim money was deposited into the Ponzi account and used to make Ponzi payments to other victims and to fund the defendants’ lifestyles.

The indictment also charges Davey with

tax evasion for claiming to the IRS on his 2008 tax return that \$810,000 that Davey stole from victims was a “loan.” In reality, the indictment charges, Davey stole that \$810,000, plus approximately \$500,000 in 2009, from victims to build Davey’s personal mansion. Davey attempted to evade the taxes due and owing in 2008 by calling the money a “loan” from his investors to “Sovereign Grace, Inc.,” a Belizian corporation that Davey created as a diversion for his victims and the IRS.

The first charge against all four defendants, alleging conspiracy to commit securities fraud, carries a maximum sentence of five years’ imprisonment and a fine of up to \$250,000. The second charge against all four defendants, alleging conspiracy to commit wire fraud, carries a maximum sentence of 20 years’ imprisonment and a fine of up to \$250,000. The third charge against all four defendants, alleging a money laundering conspiracy, carries a maximum sentence of 20 years’ imprisonment and a fine of \$250,000 or twice the amount of criminally derived proceeds. The final charge against Davey only, alleging tax evasion, carries a maximum sentence of five years’ imprisonment and a fine of up to \$250,000.

The defendants will be making their initial appearances in U.S. District Court in the coming weeks.

This indictment follows a series of convictions and other charges in this matter. On December 16, 2010, Keith Simmons was convicted following a jury trial of securities fraud, wire fraud, and money laundering. Simmons is in custody awaiting sentencing.

On April 27, 2011, a criminal bill of information and a Deferred Prosecution Agreement were filed against CommunityONE Bank, N.A., for its failure to maintain an effective anti-money laundering program. As alleged in that bill of information, Simmons was a customer of CommunityONE, and used various accounts with the Bank in furtherance of the Ponzi scheme. However, as alleged in that bill of information, the Bank did not file any suspicious activity reports on Simmons, despite the hundreds of suspicious transactions that took place in his

accounts.

Other defendants convicted in this case are set forth below. It should be noted that those defendants already sentenced had their sentences reduced by the Court to reflect their cooperation with the United States in its investigation and prosecution of others.

- Bryan Keith Coats, 51, of Clayton, N.C., pled guilty on October 24, 2011, to conspiracy to commit securities fraud and money laundering conspiracy. Coats is awaiting sentencing.
- Deanna Ray Salazar, 54, of Yucca Valley, Calif., pled guilty on December 7, 2010, to conspiracy to commit securities fraud and tax evasion. Salazar is awaiting sentencing.
- Jeffrey M. Muyres, 36, of Matthews, N.C., pled guilty on May 17, 2011, to conspiracy to commit securities fraud and money laundering conspiracy. Muyres was sentenced to 23 months’ imprisonment by Chief Judge Robert Conrad, Jr., on January 18, 2012.
- Roy E. Scarboro, 47, of Archdale, N.C., pled guilty on December 3, 2010, to securities fraud, money laundering, and making false statements to the FBI. Scarboro was sentenced to 26 months’ imprisonment by Chief Judge Robert Conrad, Jr., on May 4, 2011.
- James D. Jordan, 49, of El Paso, Texas, pled guilty on September 14, 2010, to conspiracy to commit securities fraud. Jordan was sentenced to 18 months’ imprisonment by Chief Judge Robert Conrad, Jr., on June 29, 2011.
- Stephen D. Lacy, 52, of Pawleys Island, S.C., pled guilty on December 9, 2010, to conspiracy to commit securities fraud. Lacy was sentenced to six months’ imprisonment by Chief Judge Robert Conrad, Jr., on May 4, 2011.

The details contained in this indictment are allegations. The defendants are presumed innocent unless and until proven guilty beyond a reasonable doubt in a court of law. The conviction or guilty plea of any other person is not evidence of the guilt of any of the defendants.

This matter is being prosecuted by Assistant United States Attorneys Kurt W.



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Meyers and Mark T. Odulio of the Western District of North Carolina, and the case against Jeffrey Muires was prosecuted by Assistant United States Attorney Mark T. Odulio. The investigation is being handled by the FBI and the IRS.”

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Douglas McNabb and other members of the U.S. law firm practice and write and/or report extensively on matters involving Federal Criminal Defense, INTERPOL Red Notice Removal, International Extradition and OFAC SDN Sanctions Removal.

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