

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-20898-CR-KMM(s)

18 U.S.C. § 371

18 U.S.C. § 1001(a)(2)

18 U.S.C. § 981(a)(1)(C)

UNITED STATES OF AMERICA,

v.

EDWARD J. DIMARIA,

Defendant.



_____ /

SUPERSEDING INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times relevant to the Superseding Information:

The Defendant and Relevant Entities

1. Bankrate, Inc. ("Bankrate") was a marketing and financial publishing company. Bankrate aggregated and published information related to various consumer financial products, including mortgages, credit cards, insurance, and automobile loans.

2. Bankrate owned and operated a number of websites that allowed potential customers to compare and shop for different financial products. When a potential customer used one of Bankrate's websites and showed interest in a particular financial product, Bankrate passed the customer's information along to the bank or financial services company that was offering the product. In exchange for providing information about the potential customer to the company offering the financial product, Bankrate received a payment from the company. Bankrate called

the information it sold about the potential customer a “lead.” Bankrate sold mortgage leads to banks and mortgage originators; insurance leads to regional and national insurance companies; and credit card leads to various credit card originators.

3. Bankrate also generated revenue by selling financial information, such as average mortgage rates, directly to newspapers or other publishers, and through advertising on its websites.

4. Bankrate’s principal offices were in North Palm Beach, Florida. Bankrate also maintained offices in New York, New York, Denver, Colorado, and Austin, Texas. Bankrate employed approximately 450 people who worked in three primary divisions: (1) “Bankrate Core,” a mortgage information business; (2) “Bankrate Insurance,” an insurance information business; and (3) “Bankrate Credit Cards,” a credit card information business. Bankrate’s offices in Florida focused on the mortgage information business.

5. Starting in or around June 2011, Bankrate’s stock was traded publicly on NYSE, a national securities exchange, and was registered with the United States Securities and Exchange Commission (“SEC”), an agency of the United States, pursuant to Section 12(b) of the Securities Exchange Act of 1934.

6. From in or around September 2006 to in or around September 2014, the defendant **EDWARD J. DIMARIA** served as Bankrate’s Chief Financial Officer (“CFO”) and a Senior Vice President. **DIMARIA** was also a certified public accountant (“CPA”), and his principal office was located in New York. As Bankrate’s CFO, **DIMARIA** was responsible for overseeing Bankrate’s books and records, and for signing and certifying that Bankrate’s financial statements filed with the SEC were truthful and accurate.

7. From in or around September 2006 to in or around September 2014, Hyunjin Fritz Lerner served as Bankrate’s Vice President of Finance. Lerner’s principal office was located at

Bankrate's corporate headquarters in North Palm Beach, Florida, in the Southern District of Florida. As Vice President of Finance, Hyunjin Fritz Lerner reported directly to **DIMARIA**, and supervised other employees in the finance department.

8. From in or around 2011 and continuing through in or around 2014, a known public accounting firm ("Accounting Firm A") with offices located in Miami, Ft. Lauderdale, and elsewhere, acted as the independent auditor of Bankrate's financial statements.

COUNT 1

**Conspiracy to Make False Statements to a Public Company's Accountants, to Falsify a Public Company's Books and Records, and to Commit Securities Fraud
(18 U.S.C. § 371)**

1. The General Allegations section of this Superseding Information are realleged and incorporated by reference as though fully set forth herein.

2. From in or around at least 2011, through in or around at least September 2014, in Miami-Dade, Broward, and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendant,

EDWARD J. DIMARIA,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, and agree with other individuals known and unknown to the United States Attorney, to commit certain offenses against the United States, namely:

a. to knowingly and willfully, directly or indirectly: (a) make and cause to be made materially false or misleading statements to Accounting Firm A, and omit to state, and cause another person to omit to state, any material fact to Accounting Firm A necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, in connection with Accounting Firm A's reviews and audits of Bankrate's financial statements and preparation of Bankrate's quarterly and annual reports required to be filed with the

SEC; and (b) take action to coerce, manipulate, mislead, and fraudulently influence Accounting Firm A knowing that such action, if successful, could result in rendering Bankrate's financial statements materially misleading, while Accounting Firm A was engaged in performing reviews and audits of Bankrate's financial statements and preparation of Bankrate's quarterly and annual reports required to be filed with the SEC, in violation of Title 15, United States Code, Section 78ff, and Title 17, Code of Federal Regulations, Sections 240.13b2-2(a) and 240.13b2-2(b);

b. to knowingly and willfully falsify, and cause to be falsified, books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and dispositions of Bankrate, in violation of Title 15, United States Code, Sections 78m(b)(2) and 78m(b)(5), and 78ff; and;

c. to knowingly and willfully execute a scheme and artifice (a) to defraud any person in connection with any security of Bankrate, an issuer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l), and (b) to obtain, by means of materially false and fraudulent pretenses, representations, and promises, and by statements containing material omissions, any money and property in connection with the purchase and sale of any security of Bankrate, an issuer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. § 78l), to wit, **DIMARIA**, Hyunjin Fritz Lerner, and others made, and caused to be made, false and misleading representations to Bankrate's shareholders and members of the investing public about Bankrate's true financial condition, in violation of Title 18, United States Code, Section 1348.

Purpose of the Conspiracy

3. The purpose of the conspiracy was for **DIMARIA**, Hyunjin Fritz Lerner and their co-conspirators to mislead Bankrate's shareholders, regulators, independent auditors, and the investing public about Bankrate's true financial condition in order to: (a) maintain and increase the market price of Bankrate's stock; and (b) unjustly enrich **DIMARIA**, Hyunjin Fritz Lerner, and their co-conspirators through the continued receipt of compensation, stock and other benefits.

Manner and Means of the Conspiracy

Bankrate's Publicly Reported Financial Metrics

4. Bankrate filed quarterly and annual reports with the SEC that contained, among other things, Bankrate's revenue, earnings per share ("EPS"), and earnings before interest, taxes, depreciation, amortization ("EBITDA"). Bankrate also provided investors with "adjusted" earnings calculations which were purportedly adjusted to exclude, among other things, certain identified expenses. In addition to including adjusted earnings figures in Bankrate's quarterly and annual financial reports, Bankrate also published adjusted earnings figures in regular press releases, and Bankrate's management discussed adjusted earnings figures in calls with stock market analysts and investors. Specifically, Bankrate claimed publicly that when the company reported "Adjusted EPS" and "Adjusted EBITDA" figures, it meant that Bankrate had adjusted these earnings metrics to only exclude "stock based compensation expense, offering and deal-related expenses and amortization expense."

Falsely Inflating Bankrate's Publicly Reported Earnings and Adjusted Earnings

5. **DIMARIA**, Hyunjin Fritz Lerner, and their co-conspirators maintained a spreadsheet – which **DIMARIA**, Hyunjin Fritz Lerner, and their co-conspirators referred to as "cushion" – that documented and tracked expense accruals that were not supported. Rather than

reduce Bankrate's improperly recorded expense accruals immediately, as required under the accounting rules, **DIMARIA** directed and agreed with his co-conspirators to selectively reverse certain of the expense accruals in certain later quarters as a means of falsely inflating Bankrate's publicly reported earnings and adjusted earnings.

6. **DIMARIA**, Hyunjin Fritz Lerner and their co-conspirators falsely inflated Bankrate's Adjusted EPS and Adjusted EBITDA figures by directing Bankrate's finance department to improperly book routine fees and expenses as "deal related expenses" or "deal costs." By intentionally adding routine expenses to the "deal costs" account, **DIMARIA**, Hyunjin Fritz Lerner and their co-conspirators caused more expenses to be excluded from Bankrate's publicly reported adjusted earnings figures than were disclosed to investors, and caused Bankrate's publicly reported Adjusted EPS and Adjusted EBITDA to be falsely inflated.

Concealing False and Misleading Entries from Accounting Firm A

7. **DIMARIA** and his co-conspirators concealed and agreed to conceal certain of the false and misleading entries they had made and caused to be made from Bankrate's independent auditors and others through various means. In particular, **DIMARIA**, Hyunjin Fritz Lerner, and their co-conspirators would sign management representation letters to Bankrate's auditors which falsely certified that **DIMARIA**, Hyunjin Fritz Lerner, and their co-conspirators, among other things: (a) had made available to Bankrate's auditors all financial records and related data of Bankrate; (b) had no knowledge of fraud or suspected fraud affecting Bankrate involving Bankrate's management; and (c) were not aware of any information indicating that an illegal act, or violations or possible violations of any regulations, had or may have occurred, whether or not perceived to have a material effect on the interim financial statements of Bankrate.

False Statements to the SEC

8. **DIMARIA**, Hyunjin Fritz Lerner, and their co-conspirators also caused Bankrate to file financial statements with the SEC that contained material misrepresentations about Bankrate's financial condition. In particular, after having first reversed certain of the expense accruals from the "cushion" spreadsheet, on or about May 14, 2012, **DIMARIA**, Hyunjin Fritz Lerner, and their co-conspirators caused Bankrate to file financial statements with the SEC for the quarter ending March 31, 2012 that contained false earnings figures.

Overt Acts

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

1. On or about March 5, 2011, and immediately after receiving a copy of the "cushion" spreadsheet, **DIMARIA** wrote Hyunjin Fritz Lerner that he was concerned that Accounting Firm A might see certain information on the spreadsheet: "People really have to start using their brains, sometimes I really wonder. Ok why not just write 'Hey [Accounting Firm A] - This entry is cushion, please propose an adjusting entry' I really expect this stuff to be managed better."

2. Hyunjin Fritz Lerner immediately responded to **DIMARIA** in a separate email, writing "This schedule was never shared with [Accounting Firm A] nor any of the subsidiary schedules from CC or NQ that has these comments. This is purely an internal document that is only shared between you, [two other Bankrate employees], and myself."

3. On or about March 9, 2012, **DIMARIA** emailed Hyunjin Fritz Lerner the following instructions regarding Accounting Firm A: "Charge ALL THEIR BILLS TO ACCRUED DEAL COST – I DON'T CARE IF THEY COMPLAIN, WE CAN SAY IT WAS A MISTAKE."

4. On or about April 11, 2012, **DIMARIA** sent Hyunjin Fritz Lerner an email writing “I need all the accrual overage – I need to tune the numbers up closer to \$38 [million in reported earnings].”

5. Hyunjin Fritz Lerner responded to **DIMARIA** by attaching the “cushion” spreadsheet and writing “We have \$1.7 million + MIP accrual reversal.”

6. On or about May 14, 2012, **DIMARIA** and Hyunjin Fritz Lerner signed Bankrate’s management representation letter addressed to Accounting Firm A’s offices in the Southern District of Florida falsely certifying that they, among other things: (a) had made available to Bankrate’s auditors all financial records and related data of Bankrate; (b) had no knowledge of fraud or suspected fraud affecting Bankrate involving Bankrate’s management; and (c) were not aware of any information indicating that an illegal act, or violations or possible violations of any regulations, had or may have occurred, whether or not perceived to have a material effect on the interim financial statements of Bankrate.

7. On or about August 13, 2012, **DIMARIA** and Hyunjin Fritz Lerner signed Bankrate’s management representation letter addressed to Accounting Firm A’s offices in the Southern District of Florida falsely certifying that they, among other things: (a) had made available to Bankrate’s auditors all financial records and related data of Bankrate; (b) had no knowledge of fraud or suspected fraud affecting Bankrate involving Bankrate’s management; and (c) were not aware of any information indicating that an illegal act, or violations or possible violations of any regulations, had or may have occurred, whether or not perceived to have a material effect on the interim financial statements of Bankrate.

8. On or about August 28, 2012, Hyunjin Fritz Lerner sent **DIMARIA** an email attaching a version of the “cushion” spreadsheet.

9. On or about March 1, 2013, **DIMARIA** caused Bankrate to file its SEC Form 10-K reporting its financial results for 2012.

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

COUNT 2
False Statements
(18 U.S.C. § 1001(a)(2))

On or about May 14, 2012, in Miami-Dade, Broward, and Palm Beach Counties, in the Southern District of Florida, and elsewhere, in a matter within the jurisdiction of the Securities and Exchange Commission (“SEC”), an agency of the executive branch of the United States Government, the defendant,

EDWARD J. DIMARIA,

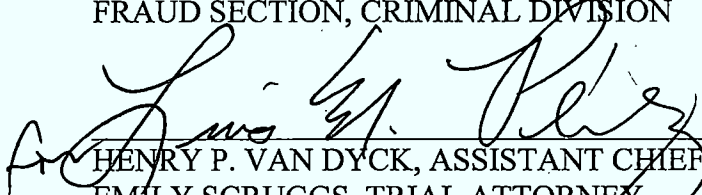
did knowingly and willfully make false, fictitious and fraudulent statements and representations as to material facts, in that, the defendant caused Bankrate to file its SEC Form 10-Q for the quarter ending March 31, 2012 with the SEC that materially misrepresented Bankrate’s financial condition and performance.

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



BENJAMIN G. GREENBERG
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

SANDRA MOSER, ACTING CHIEF
FRAUD SECTION, CRIMINAL DIVISION



HENRY P. VAN DYCK, ASSISTANT CHIEF
EMILY SCRUGGS, TRIAL ATTORNEY
JASON COVERT, TRIAL ATTORNEY
FRAUD SECTION, CRIMINAL DIVISION
U. S. DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA

CASE NO. 17-20898-CR-KMM(s)

v.

EDWARD J. DIMARIA,

CERTIFICATE OF TRIAL ATTORNEY*

Defendant.

Superseding Case Information:

Court Division: (Select One)

X Miami ___ Key West
 ___ FTL ___ WPB ___ FTP

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

I do hereby certify that:

1. 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.

2. 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.

3. Interpreter: (Yes or No) No
 List language and/or dialect _____

4. This case will take 0 days for the parties to try.

5. 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
III	11 to 20 days	___	Misdem.
IV	21 to 60 days	___	Felony.
V	61 days and over	___	

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

If yes: Judge: K. Michael Moore Case No. 17-20898-CR-KMM

(Attach copy of dispositive order) Has a complaint been filed in this matter? (Yes or No) No

If yes: Magistrate Case No. _____

Related Miscellaneous numbers: 17-20235-CR-KMM

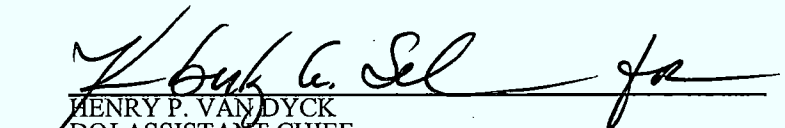
Defendant(s) in federal custody as of _____

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 ___ No X


 HENRY P. VANDUYCK
 DOJ ASSISTANT CHIEF
 Court ID No. A5501507

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: EDWARD J. DIMARIA

Case No: 17-20898 CR-KMM(s)

Count #: 1

Conspiracy to Make False Statements to a Public Company's Accountants, to Falsify a Public Company's Books and Records, and to Commit Securities Fraud

Title 18, United States Code, Section 371

* Max. Penalty: Five (5) Years' Imprisonment

Count #: 2

False Statements

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

* Max. Penalty: Five (5) Years' Imprisonment

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.**