

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No. 16-
	:	
v.	:	18 U.S.C. § 371
	:	
JOSHUA GAYL	:	<u>INFORMATION</u>
	:	

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

1. At all times relevant to this Information:
 - a. VO Financial, Inc. (“VO Financial”) purported to offer timeshare consulting services and had its headquarters in Egg Harbor Township, Atlantic County, New Jersey;
 - b. VO Financial was the successor to the Vacation Ownership Group, Inc., a/k/a VO Group (the “VO Group”);
 - c. VO Financial and VO Group were owned, managed, and controlled by Adam Lacerda and Ashley Lacerda; and
 - d. Defendant JOSHUA GAYL was an attorney who worked for VO Financial at its headquarters in Egg Harbor Township.

2. On or about April 12, 2012, the United States filed criminal complaints charging VO Group President Adam Lacerda, his wife VO Group Chief Operations Officer Ashley Lacerda, VO Group Vice President of Sales Ian Resnick, and several others with conspiracy to

commit mail fraud. The charges were based on actions the defendants took at the VO Group to defraud customers of the VO Group.

3. Adam Lacerda, Ashley Lacerda, Ian Resnick, and other defendants were arrested in or about April 2012. As part of their conditions of release, the court ordered Adam Lacerda, Ashley Lacerda, and Ian Resnick, in substance and in part, to avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution.

4. After the criminal complaints were filed, Adam Lacerda changed the name of the business from the VO Group to VO Financial and continued operating VO Financial as the successor to the VO Group. Individuals who had worked at the VO Group, including Adam Lacerda, Ashley Lacerda, and Ian Resnick, continued their work at VO Financial.

5. On or about May 3, 2012, the grand jury in and for the District of New Jersey, sitting at Trenton, returned an indictment charging Adam Lacerda, Ashley Lacerda, and five other VO Group employees with conspiracy to commit mail fraud and wire fraud, as well as individual acts of mail fraud and wire fraud and other offenses. United States v. Adam Lacerda et al., Crim. No. 12-303 (NLH). In substance and in part, the indictment charged that the VO Group employees made misrepresentations to owners of timeshares and persuaded those victims to send money to the VO Group. The indictment charged that the object of the conspiracy was that defendants falsely represented to VO Group customers that “the VO Group could pay off timeshare owners’ ‘mortgages’ on their timeshares, have timeshares cancelled, or have the owners’ timeshares sold.” Ian Resnick was not named as a defendant in the indictment but remained charged in the criminal complaint.

6. Defendant JOSHUA GAYL started working at VO Financial as General Counsel and Corporate Secretary on or about July 1, 2012.

7. In his work at VO Financial, defendant JOSHUA GAYL regularly used VO Financial's Pipeline system. The Pipeline system was a database containing notes prepared by VO Financial employees summarizing contacts with VO Financial customers, copies of recordings of calls with customers, copies of documents, and tasks from one VO Financial employee to another.

8. Defendant JOSHUA GAYL read the indictment in United States v. Adam Lacerda et al., Crim. No. 12-303 (NLH), before he started working at VO Financial and also read the criminal complaint naming Adam Lacerda, Ashley Lacerda, Ian Resnick, and others as defendants.

9. As part of his duties as General Counsel of VO Financial, defendant JOSHUA GAYL monitored developments in the criminal case.

10. On January 23, 2013, the grand jury in and for the District of New Jersey, sitting at Camden, returned a superseding indictment against Adam Lacerda, Ashley Lacerda, Ian Resnick, and seven other VO Group employees. Except for the addition of three defendants and some clarification of the charges, the superseding indictment was substantially identical to the indictment.

11. On or about March 7, 2013, the court scheduled trial in the criminal case to start on or about July 8, 2013.

12. Adam Lacerda and Ashley Lacerda continued to work at VO Financial while they were under indictment and awaiting trial. Defendant JOSHUA GAYL continued to work at VO

Financial with Adam Lacerda and Ashley Lacerda. GAYL was aware of the criminal charges and the impending trial in United States v. Adam Lacerda et al.

13. Between in or about January 2013 and in or about June 2013, 13 individuals who had worked at the VO Group pled guilty to conspiring to commit mail fraud and wire fraud with Adam Lacerda, Ashley Lacerda, and other defendants, and some of the 13 individuals pled guilty to additional charges. These guilty pleas were publicized, and Gayl was aware of them on or about when they occurred.

14. The trial in United States v. Adam Lacerda et al. commenced on or about July 11, 2013, with the start of jury selection. Adam Lacerda, Ashley Lacerda, Ian Resnick, and two other individuals were the defendants at trial.

15. On or about July 19, 2013 at the Egg Harbor Township offices of VO Financial, agents of the Federal Bureau of Investigation handed defendant JOSHUA GAYL a trial subpoena addressed to VO Financial. The trial subpoena directed VO Financial to produce all documents relating to 36 potential trial witnesses listed in the trial subpoena, including any recordings of telephone calls with those 36 potential trial witnesses.

16. On or about July 23, 2013, defendant JOSHUA GAYL provided a CD of documents as VO Financial's response to the trial subpoena. The CD included documents GAYL had obtained from the Pipeline system. The CD also included a certification prepared and signed by GAYL. The CD was marked for identification at the trial as Government Exhibit 2001, and several documents from the CD were introduced into evidence at the criminal trial.

17. The jury heard evidence in the criminal trial in July and August 2013 and found Adam Lacerda, Ashley Lacerda, Ian Resnick, and another defendant guilty of conspiracy to commit mail and wire fraud and additional charges.

The Conspiracy

18. From in or about September 2012 through in or about August 2013 at Egg Harbor Township, in Atlantic County, in the District of New Jersey, and elsewhere, defendant

JOSHUA GAYL

did knowingly and intentionally conspire and agree with Adam Lacerda and others to commit an offense against the United States, that is, to corruptly endeavor to influence, obstruct, and impede the due administration of justice, contrary to Title 18, United States Code, Section 1503.

The Object of the Conspiracy

19. It was the object of the conspiracy that defendant JOSHUA GAYL, Adam Lacerda, and others misled witnesses, tried to improperly influence witnesses, contacted witnesses in violation of court-ordered bail conditions, made false statements to the court, and presented altered documents to the court in response to a trial subpoena, all in an endeavor to obstruct the due administration of justice in United States v. Adam Lacerda, et al.

Manner and Means of the Conspiracy

20. It was part of the conspiracy that defendant JOSHUA GAYL and others tried to mislead Victim #1, a witness in the criminal case, and alter Victim #1's testimony:

- a. Victim #1 was told by VO Group employee Eric "Skip" Reiff in or about September 2010 that the VO Group would sell Victim #1's timeshare and settle Victim #1's timeshare debt if Victim #1 paid money to the VO Group. Victim #1 paid the money, but the VO Group did not sell the timeshare or settle the debt.
- b. Eric "Skip" Reiff was charged with Adam Lacerda, Ashley Lacerda, and others in the criminal complaint filed on or about April 12, 2012.

- c. In or about April 2012, shortly after she was arrested, Ashley Lacerda directed S.A., an employee of VO Financial, to call Victim #1, and S.A. called and wrote repeatedly to Victim #1 over the next months. When S.A. spoke to Victim #1 in or about September 2012, Victim #1 said that the VO Group told Victim #1 that the VO Group would sell Victim #1's timeshare and that Victim #1 had spoken to the FBI. On or about September 2012, S.A. wrote a note in the VO Financial Pipeline system summarizing what Victim #1 had said.
- d. In or about September and October 2012, defendant JOSHUA GAYL wrote and called Victim #1 to lock Victim #1 into a story and to elicit any statements that would be helpful to the defense in the criminal case, but GAYL did not tell Victim #1 that that was the reason for writing and calling Victim #1. GAYL knew that Victim #1 was a witness in the criminal case before writing and calling Victim #1.
- e. On or about September 25, 2012, defendant JOSHUA GAYL wrote and sent a letter to Victim #1. The letter recited some statements that GAYL said Victim #1 had made to S.A., including a false statement by GAYL that Victim #1 was told by the FBI to make payments to a timeshare developer, which the defense believed would be favorable to the defense. GAYL's letter then stated: "We will be able to assist you better moving forward if you are able to confirm this information in writing." This statement was false and misleading because GAYL's purpose was to obtain Victim #1's agreement with statements favorable to the defense, including agreement with the false statement in

GAYL's letter, and because the confirmation had nothing to do with helping Victim #1.

- f. On or about October 15, 2012, Victim #1 faxed a statement to VO Financial. In the statement, Victim #1 refused to agree with the false statement that the FBI told Victim #1 to make payments to a timeshare developer.
- g. On or about October 31, 2012, defendant JOSHUA GAYL and S.A. made two telephone calls to Victim #1. During the two October 31, 2012 calls, S.A. and GAYL gave the false impression that the purpose of the calls was to assist Victim #1, which was false and misleading because the purpose of the calls was to obtain statements favorable to the defense.
- h. At the beginning of the first call, S.A. told Victim #1, in the presence of defendant JOSHUA GAYL, that the call was being recorded for quality training and assurance purposes. This statement was false and misleading, as the purpose of recording the call was to obtain favorable statements for use at trial.
- i. During the first October 31, 2012 call, defendant JOSHUA GAYL gave Victim #1 a false and misleading summary of the misrepresentations alleged in the criminal case and asked if any of those misrepresentations were made to Victim #1, and Victim #1 said that they were not. GAYL's summary of the criminal case's misrepresentations was false and misleading because GAYL omitted that the criminal case alleged that the defendants misrepresented to victims that the VO Group would sell their timeshare – the very misrepresentation that Victim #1 said was made to Victim #1 by the VO

Group. The natural effect of GAYL's false and misleading summary would be to give Victim #1 the false impression that the misrepresentation made to Victim #1 was not part of the criminal case.

- j. In the first October 31, 2012 call, defendant JOSHUA GAYL tried to change Victim #1's recollection about being told that the VO Group would sell Victim #1's timeshare. GAYL asked if Victim #1 understood that "we do not sell timeshares" and suggested that Victim #1 was suffering from "confusion" in recalling that the VO Group said that it would sell Victim #1's timeshare.
- k. Near the end of the first October 31, 2012 call, Victim #1 asked if Victim #1 would have to testify against anybody, and defendant JOSHUA GAYL replied that he did not know if the prosecution would require that.
- l. Defendant JOSHUA GAYL spoke to Adam Lacerda immediately after ending the first October 31, 2012 call. At Adam Lacerda's request, GAYL called Victim #1 back a few minutes later to elicit further statements helpful to the defense in the criminal case, including to elicit a statement that Victim #1 was mistaken in recalling that the VO Group promised to sell Victim #1's timeshare. GAYL failed to tell Victim #1 that that was the purpose of the call.
- m. During the second October 31, 2012 call, defendant JOSHUA GAYL explained the VO Group Debt Reduction Deed Replacement program and suggested that a misunderstanding of this program was a possible reason for Victim #1's understanding of what "Skip" had told her. This explanation and suggestion was false and misleading because that program did not exist when Eric "Skip" Reiff persuaded Victim #1 to send money to the VO Group and

because GAYL had no idea what Eric “Skip” Reiff told Victim #1. GAYL told Victim #1 that under the Debt Reduction Deed Replacement program, the original timeshare developer would sell the timeshare. GAYL asked Victim #1 if the Debt Reduction Deed Replacement Program he described was familiar, and Victim #1 said that it was possible that Victim #1 had misunderstood. GAYL then told Victim #1 that it was “likely” and “logical” that Victim #1 had misunderstood.

- n. The defense listed Victim #1 as a trial witness, but Victim #1 was never called to testify.
- o. Eric “Skip” Reiff pled guilty to conspiracy to commit mail fraud and wire fraud on May 1, 2013.

21. It was further part of the conspiracy that defendant JOSHUA GAYL, Ashley Lacerda, Adam Lacerda, Ian Resnick, and others paid money to witnesses in the criminal case in exchange for a release, in order to improve the defense’s position at trial and to make the witnesses less likely to testify at trial and, if they did testify, to be more favorably inclined to the defense.

22. It was further part of the conspiracy that defendant JOSHUA GAYL, Ian Resnick, and Ashley Lacerda worked together to persuade Victim #2 to accept payment in exchange for a release:

- a. In or about September 2010, Ian Resnick persuaded Victim #2 to pay the VO Group \$4,000 to cancel Victim #2’s timeshare. Victim #2 paid the money but the timeshare was not cancelled.

- b. From in or about August 2012 through in or about December 2012, Ian Resnick called Victim #2 repeatedly and recorded numerous calls in an effort to obtain statements helpful to the defense at trial.
- c. Ian Resnick offered to have Victim #2's \$4,000 refunded in exchange for a release. Resnick believed that if Victim #2 accepted a refund, Victim #2 would be unable to testify at trial.
- d. After Victim #2 initially refused to sign a release and power of attorney on advice of Victim #2's counsel, Ashley Lacerda directed defendant JOSHUA GAYL to write to Victim #2. GAYL knew that Victim #2 was a potential trial witness against Ian Resnick and that Resnick wanted Victim #2 to take a refund.
- e. On or about December 5, 2012, defendant JOSHUA GAYL wrote and sent a letter to Victim #2. GAYL's letter urged Victim #2 to accept the refund, stating, in part: "I simply cannot comprehend any basis for refusing to accept a refund in this circumstance. . . . [I]t makes no sense to me why you should 'sit and wait.' What are you waiting for??? Have you changed your mind and no longer want a refund?"
- f. Defendant JOSHUA GAYL's letter was false and misleading because it failed to inform Victim #2 of the true reasons that the refund was being offered.
- g. On or about March 29, 2013, Ian Resnick wrote a note in the VO Financial Pipeline system stating that Victim #2 left a voicemail asking about the refund and stating that Resnick was not comfortable returning the call because Victim #2 mentioned talking to the FBI. Ashley Lacerda advised that

defendant JOSHUA GAYL therefore should return the call. GAYL returned the call, reassured Victim #2 that the refund would be paid, and wrote a note in the Pipeline system immediately following Resnick's note.

- h. Victim #2 signed a release and received a refund. Victim #2 testified at trial and stated, among other things, that Victim #2 was "perturbed" by defendant JOSHUA GAYL's December 5, 2012 letter.

23. It was further part of the conspiracy that defendant JOSHUA GAYL sent a letter offering payment to Victim #3, a witness, if Victim #3 signed a release:

- a. In or about April 2010, Adam Lacerda, using the false name Robert Klein, told Victim #3 that the VO Group would list Victim #3's timeshare for sale for a fee of \$1,098 and would return the fee if the timeshare was not sold within 30 days. Victim #3 paid the fee but the timeshare was not sold.
- b. When Victim #3 asked for a refund, Adam Lacerda, posing as Robert Klein, told Victim #3 that he had previously conveyed an offer and that Victim #3 had not responded. As proof, Lacerda/Klein sent Victim #3 an email purporting to contain a copy of an email to Victim #3 conveying the offer, but Victim #3 never received the email conveying the offer and believed the email was fabricated. Victim #3's last communication from the VO Group was in July 2010.
- c. On or about March 28, 2013, documents relating to Victim #3, including documents showing that Victim #3 communicated with Robert Klein (Adam Lacerda) and that Victim #3 believed that Lacerda/Klein produced a

fabricated email, were provided to the defense in discovery in the criminal case.

- d. On or about June 1, 2013, Ashley Lacerda directed VO Financial employee Dennis Nadeau to contact Victim #3 offering a refund. Nadeau called Victim #3 and then wrote a note in the VO Financial Pipeline system to defendant JOSHUA GAYL.
- e. On or about June 7, 2013, defendant JOSHUA GAYL wrote and sent a letter to Victim #3 with an enclosed release. At the time he wrote the letter, GAYL knew that Victim #3 was a witness who might testify in the trial that was scheduled to start the following month. GAYL's letter stated that Victim #3's case file was recently recovered and that "a refund was in order due to the fact that VO Group, LLC was not able to complete the services it offered as part of an Agreement you signed back in April 2010." GAYL's letter was false and misleading because the letter failed to state that a refund was being offered because Victim #3 was a potential trial witness.

24. It was further part of the conspiracy that defendant JOSHUA GAYL sent a letter offering payment to Victim #4, a witness, if Victim #4 signed a release:

- a. In or about February 2010, Victim #4 paid the VO Group \$700 to list Victim #4's timeshare for sale, and the VO Group agreed to refund the \$700 if an offer was not received. Victim #4 did not receive an offer or a refund.
- b. On June 2, 2013, Ashley Lacerda made the first entry into the Pipeline system concerning Victim #4, which stated that Victim #4 spoke to the government

on September 1, 2011. Ashley Lacerda instructed Dennis Nadeau to call Victim #4, which he did.

- c. On or about June 7, 2013, defendant JOSHUA GAYL wrote and sent a letter to Victim #4 with an enclosed release. At the time he wrote the letter, GAYL knew that Victim #4 was a potential trial witness in the trial that was scheduled to start the following month. GAYL's letter stated that Victim #4's case file was recently recovered and that "a refund was in order due to the fact that VO Group, LLC was not able to complete the services it offered you as part of an Agreement you signed back in February 2010." GAYL's letter was false and misleading because the letter failed to state that a refund was being offered because Victim #4 was a potential trial witness.

25. It was further part of the conspiracy that on or about July 23, 2013, defendant JOSHUA GAYL and Adam Lacerda presented a false response to the July 19, 2013 trial subpoena directed to VO Financial:

- a. The subpoena to VO Financial was accepted by defendant JOSHUA GAYL at or about 5:45 p.m. on July 19, 2013.
- b. On or about 6:40 p.m. on July 19, 2013, Mark Cedrone, Esquire, the lawyer defending Adam Lacerda in the criminal trial, sent an email to counsel for the prosecution, with a copy to defendant JOSHUA GAYL, stating that counsel had advised Adam Lacerda "to remove himself from any and all aspects of VO Financial's response/reaction to the subpoena."
- c. Later in the evening of July 19, 2013, defendant JOSHUA GAYL consulted with Adam Lacerda about the response to the trial subpoena. GAYL played

for Adam Lacerda a recording of a call between Dennis Nadeau and one of the witnesses listed in the subpoena and called to Lacerda's attention a troubling portion of the recording.

- d. Defendant JOSHUA GAYL knew at the time that Adam Lacerda had the ability to delete materials from the Pipeline system.
- e. Before the production of documents in response to the subpoena, Adam Lacerda altered the recording that defendant JOSHUA GAYL had played for Adam Lacerda and deleted the portion that GAYL had brought to Adam Lacerda's attention. The altered recording was produced as part of the response to the subpoena, without any indication that it had been altered.
- f. An additional recording produced in response to the subpoena, of a conversation between Ian Resnick and Victim #2, has a loud buzzing sound at the only time in the recording when Resnick was using the names of Adam and Ashley Lacerda, and the buzzing sound makes their names largely, but not entirely, inaudible.
- g. Entries from a Pipeline system login number assigned to Adam Lacerda were deleted from the Pipeline system at or about 10:30 p.m. on the evening of July 19, 2013.
- h. On or about July 23, 2013, defendant JOSHUA GAYL prepared, signed, and submitted a false certification with the response to the trial subpoena. GAYL's certification stated: "Mark Cedrone, Esq., counsel for Defendant Adam Lacerda, instructed me not to consult with Defendants regarding the document production, and as such I have not consulted with any of the

Defendants regarding the document production and specifically to what documents would be considered responsive to the subpoena.” GAYL’s certification was false because he did consult with Adam Lacerda regarding the document production.

- i. Defendant JOSHUA GAYL’s certification also stated: “I have endeavored to comply in good faith with the production. . . . I . . . compiled the responsive documents and copied them to a CD-R.” GAYL’s certification was false and misleading because at least one altered recording was produced as part of the production and GAYL failed to verify that the complete recording he played for Adam Lacerda was included in the production.


Overt acts

26. In furtherance of the conspiracy and to effectuate its objects, defendant JOSHUA GAYL and his co-conspirators committed and caused to be committed the following acts in the District of New Jersey and elsewhere:

- a. On or about September 25, 2012, defendant JOSHUA GAYL wrote a letter to Victim #1.
- b. On or about October 31, 2012, defendant JOSHUA GAYL and S.A. called Victim #1.
- c. On or about October 31, 2012, defendant JOSHUA GAYL called Victim #1 a second time.
- d. On or about December 5, 2012, defendant JOSHUA GAYL sent a letter to Victim #2.
- e. On or about March 29, 2013, defendant JOSHUA GAYL called Victim #2.

- f. On or about June 7, 2013, defendant JOSHUA GAYL sent a letter to Victim #3.
- g. On or about June 7, 2013, defendant JOSHUA GAYL sent a letter to Victim #4.
- h. On or about July 23, 2013, defendant JOSHUA GAYL prepared and submitted a certification concerning the VO Financial production of documents in response to a trial subpoena.
- i. On or about July 23, 2013, defendant JOSHUA GAYL submitted a CD with documents constituting VO Financial's response to the trial subpoena.

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



PAUL J. FISHMAN
United States Attorney

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UNITED STATES OF AMERICA

v.

JOSHUA GAYL

INFORMATION

18 U.S.C. § 371

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