

15 MAG 1682

Approved: Edward Imperatore
EDWARD A. IMPERATORE
Assistant United States Attorney

Before: THE HONORABLE KEVIN N. FOX
United States Magistrate Judge
Southern District of New York

- - - - - x
UNITED STATES OF AMERICA : SEALED COMPLAINT
- v. - : Violations of
JAY SOSONKO, : 18 U.S.C. §§ 1349, 1344
 : and 2, and 1014
Defendant. : COUNTY OF OFFENSE:
 : NEW YORK
- - - - - x

SOUTHERN DISTRICT OF NEW YORK, ss.:

MATTHEW B. TAYLOR, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI"), and charges as follows:

COUNT ONE
(Conspiracy to Commit Bank Fraud)

1. From at least in or about December 2012, up to and including in or about March 2014, in the Southern District of New York and elsewhere, JAY SOSONKO, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, to commit bank fraud in violation of Title 18, United States Code, Section 1344, to wit, SOSONKO participated in a scheme to defraud a bank with its principal U.S. location in New York, New York ("the "Bank") by making, and causing to be made, materially false and misleading statements about a company's financial condition in order for the company to fraudulently obtain financing from the Bank to which it would not otherwise have been entitled.

2. It was a part and an object of the conspiracy that JAY SOSONKO, the defendant, and others known and unknown, willfully and knowingly would and did execute and attempt to execute a scheme and artifice to defraud a financial institution, the

deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

(Title 18, United States Code, Section 1349.)

COUNT TWO
(Bank Fraud)

4. From at least in or about December 2012, up to and including in or about March 2014, in the Southern District of New York and elsewhere, JAY SOSONKO, the defendant, willfully and knowingly, did execute, and attempt to execute, a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institution, by means of false and fraudulent pretenses, representations and promises, to wit, SOSONKO participated in a scheme to defraud the Bank by making, and causing to be made, materially false and misleading statements about a company's financial condition in order for the company to fraudulently obtain financing from the Bank to which it would not otherwise have been entitled.

(Title 18, United States Code, Sections 1344 and 2.)

COUNT THREE
(False Statements to Influence Bank Action)

5. In or about December 2012, up to and including in or about March 2014, in the Southern District of New York and elsewhere, JAY SOSONKO, the defendant, knowingly made false statements and reports for the purpose of influencing the action of an institution the accounts of which are insured by the Federal Deposit Insurance Corporation, upon an application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, and insurance agreement and application for insurance and a guarantee, and a change and extension of the same, by renewal, deferment of action and otherwise, and the acceptance, release, and substitution of security therefore, to wit, SOSONKO made, and caused to be made, materially false and misleading statements to the Bank about the Company's financial condition in order for the company to

fraudulently obtain financing from the Bank to which it would not otherwise have been entitled.

(Title 18, United States Code, Section 1014.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

6. I am a Special Agent with the FBI, and I have been so employed for approximately six and a half years. I am currently assigned to the New York Division of the FBI, where I am tasked with investigating securities fraud, wire fraud, and other white collar crimes. I have been personally involved in the investigation of this matter. This affidavit is based upon my conversations with law-enforcement agents and others and my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all of the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are presented herein, they are reported in substance and in part, except where otherwise indicated.

THE DEFENDANT AND THE COMPANY

7. Based on my review of various publicly available documents, records obtained pursuant to subpoena, and interviews I have conducted of various individuals, I have learned the following, in substance and in part:

a. At times relevant to this complaint, JAY SOSONKO, the defendant, was the Chief Financial Officer of a Florida-based company that was a wholesaler of beauty products (the "Company").

b. At certain times relevant to this complaint, the Company purported to have annual revenues in excess of \$13 million, and employed approximately ten individuals in addition to SOSONKO.

THE DEFENDANT'S SCHEME TO DEFRAUD

8. As set forth in more detail below, as part of the scheme to defraud, among other things, JAY SOSONKO, the defendant, together with co-conspirators not named herein, fraudulently induced the Bank into lending the Company millions of dollars by repeatedly making, and causing to be made,

materially false and misleading statements about the Company's financial condition. Specifically, SOSONKO and his co-conspirators falsely inflated the Company's sales and accounts receivable on "borrowing base certificates" that were provided to the Bank pursuant to loan agreements between the Bank and the Company. SOSONKO and his co-conspirators used those falsely inflated sales and accounts receivable to mislead the Bank about the Company's true financial performance so that the Company could secure and draw down millions of dollars in loans from the Bank that the Company would not otherwise have been entitled to receive.

The Company's Credit Facilities

9. Based on my review of certain documents provided to the FBI by the Bank, including loan agreements between the Bank and the Company and supporting loan documentation, I have learned the following, in substance and in part:

a. The Bank is a full-service commercial bank and a member of the Federal Deposit Insurance Corporation (the "FDIC"). The Bank's main office in the United States is located in New York, New York.

b. On or about December 12, 2012, the Company and the Bank entered into a loan agreement, pursuant to which the Bank provided a \$4.5 million secured credit facility to the Company (the "Revolving Loan").

c. Under the terms of the Revolving Loan, the Company's maximum borrowings were tied to the value of certain of the Company's assets, including its accounts receivable and inventory. Any amounts borrowed under the Revolving Loan were collateralized by those assets. The Company was required to provide to the Bank, on a monthly basis, borrowing base certificates, which certified certain financial information, including the Company's sales and accounts receivable that comprised the vast majority of its assets (the "Borrowing Base Certificates").

d. On or about December 12, 2012, the Company entered into a \$700,000 term loan facility with the Bank (the "Term Loan").

e. Pursuant to the Revolving Loan and the Term Loan, the Company was required to provide to the Bank, in addition to the monthly Borrowing Base Certificates, annual and semiannual

financial statements and annual collateral field examinations, among other documents.

The Defendant's Fraud on the Bank

10. From speaking with a senior vice president in the Bank's credit department, I have learned the following, in substance and in part:

a. Among other financial services, the Bank offered to its corporate customers asset-based loans, which were secured by the borrowing company's inventory and accounts receivable.

b. In or about September 2012, the Bank received an asset-based loan application from the Company. Before the Bank entered into the Revolving Loan and Term Loan with the Company, a field examination of the Company was completed at the Bank's direction and the Bank reviewed certain reports prepared on behalf of the Company. The Company reported to the Bank that it had annual revenues of between \$12 million and \$15 million and significant equity.

c. Based upon the representations of the Company, in or about December 2012, the Bank issued the Revolving and Term Loans to the Company.

d. Beginning in or about December 2012, on a monthly basis, the Company submitted a Borrowing Base Certificate to the Bank, as required by the loan agreements.

e. In or about December 2013, another field examination of the Company was completed at the direction of the Bank (the "Field Examination"). It reflected, among other things, that the Company's sales and inventory were lower than in previous periods, the Company was struggling to collect on accounts receivable, and the Company had overdrawn its Revolving Loan from the Bank.

f. By in or about March 2014, the Bank discovered that the Company had received loans from third-party lenders that the Company had not disclosed in the Company's loan application to the Bank.

g. By in or about March 2014, the Bank determined that the Revolving and Term Loans were uncollectable. At that time, the outstanding balance on the Revolving and Term Loans was approximately \$4.8 million.

11. From speaking with a subcontractor ("Individual-1") with a firm that conducts field examinations ("Firm-1"), I have learned the following, in substance and in part:

a. In or about November 2013, the Bank retained Firm-1 to conduct the Field Examination.

b. In connection with the Field Examination, JAY SOSONKO, the defendant, provided the Company's general ledger, financial statements, accounts receivable summary and detail, inventory reports, bills of lading, and other financial data to Individual-1.

c. In connection with the Field Examination, Individual-1 found the following, in substance and in part:

(i) Approximately 11 of the Company's invoices, representing approximately \$1.548 million in sales revenue, had been "pre-billed," meaning that the invoices reflected that the Company had billed the customer for goods the Company had not yet shipped;

(ii) The accounts receivable balances that the Company reported to the Bank in the Company's Borrowing Base Certificates were higher than the eligible accounts receivable for the Company that Individual-1 had calculated.

12. From speaking with a forensic accountant ("Accountant-1"), I have learned the following, in substance and in part:

a. In or about March 2014, the Bank retained Accountant-1 to perform a financial analysis of the Company, which at that time was unable to repay its multi-million dollar debt to the Bank.

b. Shortly thereafter, in or about March 2014, Accountant-1 met with JAY SOSONKO, the defendant, among others, at the Company's office in Florida. During the meeting, SOSONKO stated the following, in substance and in part:

i. The Company used its accounting software, known as "MAS 90," to compile ledgers reflecting sales and accounts receivable figures underlying the borrowing base certificates that the Company submitted to the Bank (the "MAS 90 Ledgers").

ii. The sales and accounts receivable balances for the Company reflected in the Company's MAS 90 Ledgers were not correct. For example, the Company recorded in the MAS 90 Ledgers a sale of 100 units, yet the Company shipped only 50 of those units to the customer.

iii. SOSONKO maintained an Excel spreadsheet (the "Second Set of Books") reflecting the Company's true sales and accounts receivable figures, which the Company did not provide to the Bank.

c. SOSONKO downloaded the Company's MAS 90 Ledgers and the Second Set of Books for the period approximately 2010 through 2013 and provided them to Accountant-1.

d. Shortly after his meeting with SOSONKO in or about March 2014, Accountant-1 conducted an analysis of the Borrowing Base Certificates, the MAS 90 Ledgers, and the Second Set of Books. From that analysis, Accountant-1 learned the following, in substance and in part:

(i) The sales and accounts receivable figures reflected in the MAS 90 Ledgers and those reflected in the Second Set of Books did not match. The MAS 90 Ledgers reflected higher accounts receivable balances than did the Second Set of Books. For example, for one particular customer, the MAS 90 Ledgers reflected significant sales, yet the Second Set of Books reflected little to no sales. The MAS 90 Ledgers also reflected a concentration of sales entered between the twentieth and thirtieth day of each month.

(ii) The financial data reflected in the Borrowing Base Certificates was consistent with the MAS 90 Ledgers with only minor discrepancies. The financial data reflected in the Borrowing Base Certificates did not comport with the Second Set of Books.

(iii) Accountant-1 used the Second Set of Books to calculate the Company's true accounts receivable balances. For example, using the Second Set of Books, Accountant-1 determined that the Company's true accounts receivable balance for the month ended on September 30, 2013 was approximately \$791,212. Yet the MAS 90 Ledgers, which underlay the Borrowing Base Certificates, reflected that the Company's accounts receivable balance for the same period of time was approximately \$5,280,665.

13. From speaking with a former employee of the Company ("Employee-1"), I have learned the following, among other things:

a. Employee-1's duties and responsibilities included, among other things, handling the accounting relating to the Company's purchase and sales orders. Employee-1, among other things, physically entered the Company's purchase orders and sales orders into the Company's MAS 90 system.

b. Employee-1 participated in regular meetings with, among others, JAY SOSONKO, the defendant, a Company executive ("CC-1"), CC-1's wife ("CC-2"), and another Company employee who was in charge of the Company's sales ("CC-3"). During the meetings, in sum and substance and in part, SOSONKO, CC-1, CC-2, and/or CC-3 discussed that the Company needed to increase its sales and accounts receivable figures. On a monthly basis, SOSONKO told CC-3 the sales figures that CC-3 had to meet.

c. CC-3, in turn, instructed Employee-1 as to which sales figures to enter into MAS 90. The sales figures entered into MAS 90 were not accurate because they reflected sales that were pre-billed, inflated, or completely fictitious. Entering such false sales figures into MAS 90 had the effect of falsely increasing the Company's accounts receivable and sales figures that the Company provided to the Bank.

d. Employee-1 estimates that, during the years in which Employee-1 was employed by the Company, the Company falsely inflated its sales and accounts receivable by approximately tens of millions of dollars.

14. On or about November 24, 2014, JAY SOSONKO, the defendant, entered into an agreement with the Bank (the "Cooperation Agreement"). Pursuant to the Cooperation Agreement, JAY SOSONKO, the defendant, agreed to "provide, to the best of his knowledge and ability, truthful and complete information to [the Bank] concerning the business and financial affairs of the Company," among other entities, and "to provide truthful testimony based upon his personal knowledge" voluntarily if called to testify by the Bank. In return, the Bank agreed pursuant to the Cooperation Agreement not to bring any civil action against SOSONKO "arising from his services for or involvement with the Company" or any related entities.

15. On or about December 17, 2014, JAY SOSONKO, the defendant, sat for a deposition, during which he was placed

under oath and asked questions by an attorney for the Bank about, among other things, the Company and its lending relationship with the Bank ("Deposition-1"). From my review of a transcript of Deposition-1, I have learned, among other things, that SOSONKO made the following statements, in substance and in part:

a. The Company "[c]onstantly" experienced "cash flow problems" during the time that SOSONKO was employed by the Company. CC-1 and CC-2 were "constantly borrowing money on the outside from various sources - family, friends, business associates. They were using that money to try to fund the business, because they weren't doing enough business to cover the overhead."

b. When SOSONKO began working at the Company, he learned that there were "issues" relating to "the receivables and the prepaid inventory accounts," and "it began to come out" that the Company was "doing some things to - to cover up the - or to be compliant with the bank's [sic] borrowing."

c. Asked whether the Company had "inflated" its accounts receivable, SOSONKO responded: "As far as I can tell, they began to do it in 2005." "[F]rom mid 2005 on, [the Company] was starting to show receivables of, oh, anywhere from 2 to 2 ½ million dollars . . . where their true receivables were, probably, \$400,000 to \$500,000, and it began to mushroom from there."

d. The Company "couldn't cover" all of the receivables, so the Company "began to inflate the prepaid inventory" in or about 2008.

e. SOSONKO "pointed out . . . discrepancies or inconsistencies in the books" to CC-1 and CC-2, among others.

f. SOSONKO "prepared" the Borrowing Base Certificates and CC-1 signed them.

g. SOSONKO knew from "Day 1" that the "account receivable figures that were being put forward in these borrowing base certificates were not right."

h. SOSONKO maintained an accurate set of sales spreadsheets that was different from the MAS 90 Ledgers underlying the Borrowing Base Certificates that the Company provided to the Bank. The MAS 90 Ledgers reflected "high[er]

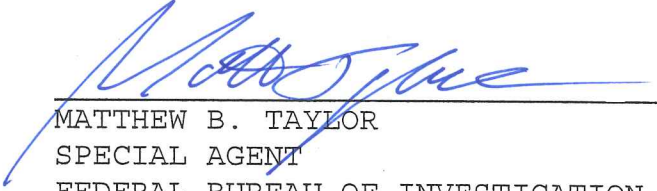
sales" and "different customers" as compared with the accurate sales spreadsheets. The MAS 90 Ledgers showed "totally different sales" because they reflected "pre-billing" for "invoices generated where the goods were not actually shipped."

i. The "pre-billing process" was "intentional[ly]" "designed to inflate the account receivables [sic] shown in [the Company's] accounting system."

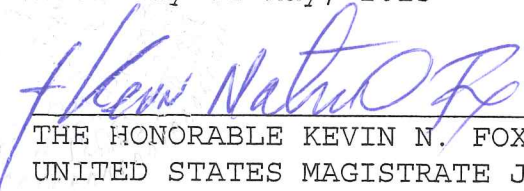
j. SOSONKO did not compare the Company's actual sales records with the MAS 90 Ledgers because doing so "would just make me sick."

k. The Company had certain loan accounts that were not reflected on the financial statements the Company provided to the Bank. The Company's accountant "did some creative accounting to make [the Company's] loan accounts disappear." "[I]t didn't really make sense for [the Company's accountant] to go through and do a regular audit [of the Company's books] because if he did, he couldn't issue a [verified financial] statement. So he went through the motions of issuing a financial statement."

WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of JAY SOSONKO, the defendant, and that he be arrested and imprisoned, or bailed, as the case may be.


MATTHEW B. TAYLOR
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Sworn to before me this
18th day of May, 2015


THE HONORABLE KEVIN N. FOX
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK