

18 MAG 3310

Approved: EL-2
ELINOR L. TARLOW
Assistant United States Attorney

Before: HONORABLE STEWART D. AARON
United States Magistrate Judge
Southern District of New York

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	:	<u>SEALED COMPLAINT</u>
UNITED STATES OF AMERICA	:	
	:	Violations of
- v. -	:	18 U.S.C. §§ 1029,
	:	1343, 1344, and 2
MICHELLE FOLEY,	:	
	:	
Defendant.	:	COUNTY OF OFFENSE:
	:	NEW YORK
	:	

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SOUTHERN DISTRICT OF NEW YORK, ss.:

JUSTIN ELLARD, being duly sworn, deposes and says that he is a Special Agent with the United States Attorney's Office in the Southern District of New York, and charges as follows:

COUNT ONE
(Access Device Fraud)

1. From at least in or about August 2017 up to and including at least in or about February 2018, MICHELLE FOLEY, the defendant, knowingly and with intent to defraud, as part of an offense affecting interstate and foreign commerce, did traffic in and use one and more unauthorized access devices during any one-year period, and by such conduct did obtain any things of value aggregating \$1,000 and more during that period, to wit, FOLEY obtained a corporate credit card, without her employer's knowledge or consent, which she used to make unauthorized purchases online and at stores in New York, New York and elsewhere, totaling more than \$1,000 in a one-year period.

(Title 18, United States Code, Sections 1029(a)(2) and 2.)

COUNT TWO
(Wire Fraud)

2. From at least in or about August 2017 up to and including at least in or about February 2018, in the Southern District of New York and elsewhere, MICHELLE FOLEY, the defendant, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, FOLEY defrauded a nonprofit organization where she was employed by converting funds that belonged to that organization to her own use, including through the use of the internet and wire transfers.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT THREE
(Bank Fraud)

3. From at least in or about July 2017 up to and including at least in or about February 2018, in the Southern District of New York and elsewhere, MICHELLE FOLEY, the defendant, did knowingly 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 material false and fraudulent pretenses, representations, and promises, to wit, FOLEY issued checks to herself on behalf of her employer, without the authority or permission to do so, forged her employer's signature on these checks, and then deposited the checks into a bank account.

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

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

4. I am a Special Agent with the United States Attorney's Office in the Southern District of New York. I have been personally involved in the investigation of this matter, and I base this affidavit on that experience, on my conversations with other law enforcement officials and others, and on my examination of various reports and records. Because this affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include all 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 reported herein, they are reported in substance and in part, except where otherwise indicated.

Overview

5. As set forth more fully below, from at least in or about July 2017 up to and including in or about February 2018, MICHELLE FOLEY, the defendant, stole funds from a nonprofit organization (the "Nonprofit") while she was employed as the Nonprofit's Director of Finance and Operations. As part of this scheme, FOLEY obtained two corporate credit cards, which were linked to the Nonprofit's bank account and which she used to make personal, unauthorized purchases. FOLEY also issued checks on behalf of the Nonprofit to herself, without the authority or permission to do so, which were deposited and deducted from the Nonprofit's bank account.

Background

6. Based on my conversations with a representative of the Nonprofit, I have learned that, the Nonprofit, which was founded in 1998, is located in Manhattan and provides arts and mentoring programs to underserved youth, including low-income, homeless, abused, and neglected children. The Nonprofit is funded primarily through private donations and has an operating budget of roughly \$2 million each year.

7. From in or about June 2017 until in or about February 2018, MICHELLE FOLEY, the defendant, was employed as the Nonprofit's Director of Finance and Operations. FOLEY was responsible in this role for, among other things, managing the Nonprofit's budget, purchasing office supplies, and making payments to vendors. FOLEY had access to the Nonprofit's bank and credit card accounts, check books, and electronic accounting system, which the Nonprofit used to track its expenses.

The Offense Conduct

8. Based on my interview with the Executive Director of the Nonprofit ("Employee-1"), as well as my review of records provided by the Nonprofit, I have learned the following, in substance and in part:

a. The Nonprofit has a business account at a Bank-1 branch located in New York, New York, which the Nonprofit uses to pay certain operating expenses ("Business Account-1"), including charges associated with the Nonprofit's corporate credit cards. Employee-1 is the only authorized signatory for Business Account-1.

b. Shortly after FOLEY began working at the Nonprofit, she was issued a corporate credit card in her name ("Credit Card-1"). The Nonprofit authorized FOLEY's use of Credit Card-1 for specific business-related expenses, including payments for the Nonprofit's office supplies. Between in or about August 2017 and in or about February 2018, more than \$19,000 in purchases were charged to Credit Card-1. Employee-1 has identified unauthorized charges on Credit Card-1 which were made online and at stores in New York, New York and elsewhere, including purchases at retail stores, restaurants, and hotels.

c. In or about July 2017, FOLEY was issued a second corporate credit card in her name ("Credit Card-2") without the Nonprofit's knowledge or consent. Between in or about August 2017 and in or about February 2018, Credit Card-2 was used to make more than \$90,000 of unauthorized purchases online and at stores in New York, New York and elsewhere, including payments for a puppy, home furnishings and appliances, and expenses associated with a trip to Disney World.

d. From at least in or about July 2017 up to and including at least in or about February 2018, unauthorized checks, totaling more than \$56,000, were issued to FOLEY on behalf of the Nonprofit and deposited into a bank account. The funds for the checks were deducted from Business Account-1. According to Employee-1, FOLEY did not receive authorization from the Nonprofit to issue these checks and Employee-1's signature, which was purportedly provided on these checks, was forged.

9. Based on my review of law enforcement records as well as conversations that I have had with law enforcement

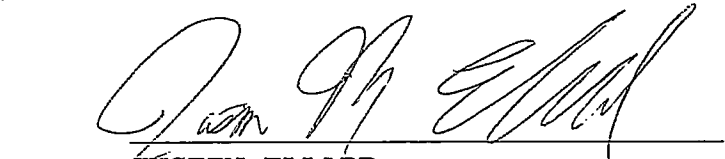
officials and Employee-1, I have learned, in substance and in part, that:

a. While FOLEY was employed at the Nonprofit, FOLEY informed her colleagues that she resided at a particular address in Wilton, Connecticut ("Address-1").


b. On or about March 23, 2018, FOLEY was arrested in Connecticut as a fugitive on an outstanding warrant. In connection with this arrest, FOLEY provided law enforcement officials with Address-1 as her home address.

10. On or about April 4, 2018, I participated with other law enforcement officials in a judicially authorized search of Address-1. During this search, law enforcement officials seized, among other items, receipts for some of the unauthorized purchases that were made on Credit Card-1 and Credit Card-2, including purchases for a mattress, bed, television stand, air conditioner, and refrigerator. Several of these receipts list the customer who purchased the item as "Michelle Foley," the defendant, and a shipping or delivery address as Address-1.

WHEREFORE, I respectfully request that a warrant be issued for the arrest of MICHELLE FOLEY, the defendant, and that she be arrested and imprisoned, or bailed, as the case may be.


JUSTIN ELLARD
Special Agent
United States Attorney's Office

Sworn to before me this
15th day of April, 2018


HONORABLE STEWART D. AARON
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK