

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
:
UNITED STATES OF AMERICA :
:
- v. - : INDICTMENT
:
ELLIOT SMERLING, : 21 Cr. ()
:
Defendant. :
:
- - - - - x

COUNT ONE
(Wire Fraud)

The Grand Jury charges:

1. From at least in or about December 2020, up to and including at least March 2021, in the Southern District of New York and elsewhere, ELLIOT SMERLING, 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, transmitted and caused 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, SMERLING sought and obtained an approximately \$95,000,000 collateralized loan for his private equity fund ("Private Equity Fund-1") on the basis of a forged audit letter concerning Private Equity Fund-1's finances, falsified subscription agreements, and falsified bank account

statements, and in furtherance of the scheme, transmitted, and caused to be transmitted, emails and transfers of funds into and out of the Southern District of New York.

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

COUNT TWO
(Bank Fraud)

The Grand Jury further charges:

2. From at least December 2020, up to and including at least March 2021, in the Southern District and elsewhere, ELLIOT SMERLING, the defendant, and others known and unknown, willfully and knowingly, executed 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, SMERLING caused, and attempted to cause, the issuance of an approximately \$95,000,000 collateralized loan for Private Equity Fund-1 from Victim Bank-1 on the basis of a forged audit letter concerning Private Equity Fund-1's finances, falsified subscription agreements, and falsified bank account statements.

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

COUNT THREE
(Aggravated Identity Theft)

The Grand Jury further charges:

3. From at least December 2020, up to and including at least March 2021, in the Southern District of New York and elsewhere, ELLIOT SMERLING, the defendant, knowingly did transfer, possess, and use, without lawful authority, a means of identification of another person, during and in relation to a felony enumerated in Title 18, United States Code, Section 1028A(c), to wit, SMERLING used the names, titles, and forged the signatures of principals at certain financial institutions on falsified subscription agreements purporting to reflect capital commitments to Private Equity Fund-1 to obtain an approximately \$95 million dollar subscription-backed line of credit, when, in fact, those financial institutions had not committed any capital to Private Equity Fund-1, during and in relation to the wire fraud and bank fraud offenses charged in Counts One and Two of this Indictment.

(Title 18, United States Code, Sections 1028A(a)(1), 1028A(b),
and 2.)

FORFEITURE ALLEGATION

4. As a result of committing the offenses alleged in Counts One and Two of this Indictment, ELLIOT SMERLING, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A), any and all property,

constituting, or derived from, proceeds the defendant obtained directly or indirectly, as a result of the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

Substitute Assets Provision


5. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a) cannot be located upon the exercise of due diligence;
- b) has been transferred or sold to, or deposited with, a third person;
- c) has been placed beyond the jurisdiction of the Court;
- d) has been substantially diminished in value; or
- e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p); and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 982;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)


FOREPERSON



AUDREY STRAUSS
United States Attorney

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SOUTHERN DISTRICT OF NEW YORK

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- v. -

ELLIOT SMERLING,

Defendant.

INDICTMENT

21 Cr. ()

(18 U.S.C. §§ 1028A, 1343, 1344.)

AUDREY STRAUSS
United States Attorney.

A TRUE BILL

Foreperson.

