

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

FILED
2013 OCT -8 PM 12:09
U.S. DISTRICT COURT
SAN FRANCISCO, CALIFORNIA

UNITED STATES OF AMERICA,

v.
CR 13 666 EMC

NIMER ANTON MASSIS

DEFENDANT(S).

INDICTMENT

VIOLATIONS:

18 U.S.C. § 1014 - Making False Statements to a Bank; 18 U.S.C. § 1001 - Making
a False Statement to the U.S. Government;
18 U.S.C. § 982 (a)(2)(A) - Forfeiture of Fraud Proceeds

A true bill.

J. Schen
Foreman

Filed in open court this 8 day of

Oct. 2013

Karen L. Hon KAREN L. HON
Clerk

JOSEPH C. SPERO
UNITED STATES MAGISTRATE JUDGE

Bail, \$ Summons c/o Doran Weinberg
Oct. 29, 2013
9:30 am
Dept 6

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

VIOLATIONS:
18 U.S.C. § 1014 - Making False Statements to a Bank;
18 U.S.C. § 1001 - Making a False Statement to the U.S. Government; 18 U.S.C. § 982 (a)(2)(A) - Forfeiture of Fraud Proceeds

Petty
 Minor
 Misdemeanor
 Felony

PENALTY: Counts 1-3 (each count): 30 years imprisonment, 5 years supervised release, \$1 million fine, \$100 special assessment
Count 4: 5 years imprisonment, \$250,000 fine, 3 years supervised release, \$100 fine.

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEFENDANT - U.S.

▶ **Nimer Anton Massis**

DISTRICT COURT NUMBER

CR 13 666

EMC

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Wesley King, SBA OIG

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:

U.S. ATTORNEY DEFENSE } **SHOW DOCKET NO.**

this prosecution relates to a pending case involving this same defendant } **MAGISTRATE CASE NO.**

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under }

Name and Office of Person Furnishing Information on this form **MELINDA HAAG**

U.S. Attorney Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) **ROBIN L. HARRIS**

DEFENDANT

IS NOT IN CUSTODY

- Has not been arrested, pending outcome this proceeding.
- If not detained give date any prior summons was served on above charges
 - Is a Fugitive
 - Is on Bail or Release from (show District)
Northern District of California

IS IN CUSTODY

- On this charge
- On another conviction } Federal State
- Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No } If "Yes" give date filed

DATE OF ARREST ▶ **Month/Day/Year**

Or... If Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY ▶ **Month/Day/Year**

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT

Bail Amount: _____

If Summons, complete following:

Arraignment Initial Appearance

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Defendant Address:

Nimer Anton Massis, c/o Law Offices of Doron Weinberg, 523 Octavia Street, San Francisco, CA 94102

Date/Time: **10/29/13 at 9:30 AM** Before Judge: **Spero**

Comments:

FILED

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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

1 MELINDA HAAG (CABN 132612)
2 United States Attorney
3 Attorney for Plaintiff

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

EMC

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 NIMER ANTON MASSIS,
15 Defendant.

) No. **CR 13 666**
) VIOLATIONS: 18 U.S.C. § 1014 - Making False
) Statements to a Bank; 18 U.S.C. § 1001 - Making a
) False Statement to the U.S. Government; 18 U.S.C. §
) 982 (a)(2)(A) - Forfeiture of Fraud Proceeds
)
) SAN FRANCISCO VENUE

18 INDICTMENT

19 The Grand Jury charges:

20 At all times relevant to this Indictment, unless otherwise indicated:

21 Defendant and Relevant Entities

- 22 1. Defendant, Nimer Anton Massis (MASSIS), was a San Francisco business owner who
- 23 resided in Burlingame, California. Among other businesses, MASSIS owned Val-16 Market, located at
- 24 3100 16th Street in San Francisco, California; Point Richmond Market, located at 160 Washington
- 25 Avenue, Richmond, California; and Econo Market, located at 593 O'Farrell Street in San Francisco.
- 26 2. Mission National Bank and One California Bank were financial institutions whose
- 27 accounts were insured by the Federal Deposit Insurance Corporation (FDIC).
- 28 3. Capital Access Group Company (Capital Access Group) was a "Certified Development

1 Company" (CDC) operating under the auspices of the United States Small Business Administration.

2 Small Business Administration Loans

3 4. The Small Business Administration (SBA) is a federal agency that provides management
4 and financial assistance to small businesses. The SBA guarantees loans through financial institutions
5 and CDCs. These loans may be used for working capital, equipment, construction, and other authorized
6 business purposes.

7 SBA 7(a) Loan Program

8 5. The SBA 7(a) Loan Program is designed to encourage lenders to make loans to small
9 businesses that have weaknesses in their loan applications. An SBA 7(a) loan exists to provide the
10 lender with an increased guaranty against default.

11 6. SBA 7(a) loans are ordinarily for a maximum of \$5 million, with the SBA guaranteeing a
12 maximum of 75 percent; however, loans funded using American Recovery and Reinvestment Act funds
13 could be guaranteed for up to 90 percent of the loan amount. The terms for SBA 7(a) loans are 25 years
14 for owner occupied real estate and ten years for working capital. Interest rates vary based on the prime
15 rate, the size of the loan, and the maturity date.

16 SBA CDC/504 Loan Program

17 7. The SBA CDC/504 ("504") loan program provides small businesses having limited
18 equity with loan guarantees to purchase major fixed assets such as land and buildings for economic
19 development and owner occupied commercial real estate. The purposes of loans made under the 504
20 program are to improve the economy of a locality and to assist businesses owned by women, minorities,
21 and veterans, as well as the owners of rural and other designated businesses.

22 8. A 504 project includes a loan secured with a senior lien from a private sector lender
23 covering up to 50 percent of the project cost, a loan secured with a junior lien from the CDC (backed by
24 a 100 percent SBA guarantee) covering up to 40 percent of the cost, and a contribution of at least 10
25 percent equity from the small business receiving the loan.

26 The SBA Loan Application Process

27 9. A prospective borrower for an SBA loan provides a lender with information and
28 certifications on (1) an Application for Business Loan (SBA Form 4), (2) a Personal Financial Statement

1 (SBA Form 413), and (3) Statement of Personal History (SBA Form 912). The lender uses these forms
2 to underwrite the loan to determine whether it should be approved and the funds disbursed. In signing a
3 loan application, Personal Financial Statement, and the Statement of Personal History, a borrower
4 acknowledges that making a false statement can result in federal prosecution. Before any funds are
5 released, the borrower must acknowledge in writing that no material change has occurred since the
6 application was submitted, and the borrower is again warned that any false statement can result in
7 federal prosecution.

8 Massis Defaults on Three Loans from Citibank,
9 Fails to Disclose Indebtedness or Default in SBA Loan Applications

10 10. On December 21, 2007, MASSIS applied for a \$250,000 Citibank Business Installment
11 Loan under the business entity "M. Massis Corporation." The loan was approved the same day. In or
12 about May 2008, MASSIS's loan was in default. On or about April 20, 2009, MASSIS received a
13 certified letter on behalf of Citibank notifying him that this loan was in default and that he owed
14 principal of \$216,014.60, interest of \$7,224.86, plus late charges and costs of collection.

15 11. On November 15, 2007, MASSIS applied for a \$250,000 loan from Citibank under the
16 business entity LLE, Inc. This loan was approved on December 26, 2007. In or about April 2008,
17 MASSIS missed his first payment on the LLE loan. On or about April 20, 2009, MASSIS received a
18 certified letter on behalf of Citibank notifying him that this loan was in default and that he owed
19 principal of \$214,787.30, interest of \$7,734.30, plus late charges and costs of collection.

20 12. On or about February 21, 2008, MASSIS applied for a \$200,000 Business Installment
21 Loan from Citibank under the business entity "Right Way Market." This loan was approved the
22 following day. In or about June 2008, MASSIS missed his first payment on the Right Way Market
23 loan. On or about April 20, 2009, MASSIS received a certified letter on behalf of Citibank notifying
24 him that this loan was in default and that he owed principal of \$176,273.99, interest of \$4,533.64, plus
25 late charges and costs of collection.

26 SBA Loan # xxxxxx6007 for Val-16 Market

27 13. On or about June 20, 2008, MASSIS applied for a \$250,000 SBA loan for "working
28 capital" for the Val-16 Market. The loan was approved on August 1, 2008, under the SBA 7(a) loan

1 program. The primary lender was Mission National Bank. The SBA guaranteed 75 percent of the loan.

2 14. The loan application MASSIS completed required him to disclose "business
3 indebtedness," including "all outstanding installment debts, contracts, notes and mortgages payable."
4 MASSIS did not disclose any of the outstanding debt owed to Citibank. MASSIS similarly failed to
5 disclose the Citibank debt in a Personal Financial Statement he submitted in connection with this loan
6 application.

7 15. On August 8, 2008, before loan funds were disbursed, MASSIS signed an SBA
8 Settlement sheet (SBA Form 1050) in which he attested that there had been "no substantial adverse
9 changes to his financial condition, organization, operation or fixed assets since [the] application for the
10 loan was filed or since the previous disbursement . . ." He signed the same attestation on September 12,
11 2008, before additional loan funds were disbursed. In both instances, MASSIS failed to disclose that the
12 Citibank loans were in default.

13 16. Beginning in September 2008, MASSIS, missed the deadline for making payments for
14 this loan and began to make late payments. After making a payment on August 23, 2010, MASSIS
15 stopped making payments for one year.

16 17. On January 31, 2011, the SBA liquidated the loan, paying Mission National Bank a total
17 of \$162,724. The loss to the SBA from its loan guarantee was \$162,724, while Mission National Bank
18 lost approximately \$52,695.

19 SBA Loan # xxxxxx5507 for Point Richmond Market

20 18. On or about March 25, 2009, MASSIS applied for \$1.1 million in loans under the SBA
21 504 loan program. The stated purpose of the loan was "to purchase commercial land and building." The
22 loan was approved on April 29, 2009, for a combined total of \$905,000. The senior lender was One
23 California Bank, which lent \$500,000. The junior lender was a CDC, Capital Access Group. Capital
24 Access Group lent \$405,000, which was 100% guaranteed by the SBA. According to the terms of the
25 loan, MASSIS was expected to contribute \$100,000 from his own resources, or from another source that
26 would be subordinate to both the primary and secondary loans. The seller of the commercial property
27 also agreed to accept a personal note from MASSIS for \$100,000 of the purchase price.

28 19. In support of the 504 loan request for Point Richmond Market, on or about March 25,

1 2009, MASSIS submitted a Personal Financial Statement to Capital Access Group that reflected
2 \$17,555,000 in assets and \$8,044,364 in liabilities, for a total stated net worth of \$9,510,636. Those
3 liabilities consisted entirely of mortgages on real estate; they did not include the almost \$642,000 in
4 principal alone that was outstanding to Citibank, nor that by this date those loans were in default.

5 20. Also in support of the 504 loan request for Point Richmond Market, on or about April 29,
6 2009, MASSIS submitted a Small Business Loan Application to One California Bank. The loan
7 application asked the borrower to disclose "business indebtedness," including "all outstanding
8 installment debts, contracts, notes and mortgages payable." MASSIS only disclosed his business debt
9 associated with Mercantile Bank. He did not disclose any of the outstanding debt owed to Citibank, nor
10 that the loans with Citibank were in default.

11 21. On May 11, 2009, before any funds were disbursed, MASSIS signed a Borrower and
12 Operating Company Certification (SBA Form 2289), in which he attested, among other things, that since
13 the date of the loan application there had "been no unremedied substantial adverse change in financial
14 condition of Borrower or Operating Company or their ability to repay . . . the Note." MASSIS further
15 attested in this document that any "insolvency proceedings involving, or pending lawsuit against
16 Borrower, Operating Company or any of their principals has been disclosed in writing to the CDC."
17 MASSIS again failed to disclose that the Citibank loans were in default or that he had been contacted on
18 April 20, 2009, by a law firm engaged by Citibank to commence an enforcement action against him and
19 the other borrowers.

20 22. On February 8, 2011, the SBA liquidated the loan, repaying Capital Access Group
21 \$400,280.35. The loan to One California Bank remains in default as of the date of this Indictment.

22 SBA Loan xxxxxx5002 for Econo Market

23 23. On or about May 5, 2009, MASSIS applied for an \$800,000 SBA loan for the Econo
24 Market. The stated purposes of the loan were for "working capital" (\$101,352.97) and "other debt
25 payment" (\$698,647.03). The loan was under the SBA 7(a) loan program. The primary lender was One
26 California Bank. Because this loan was funded using American Recovery and Reinvestment Act funds,
27 the SBA guaranteed 90 percent of the principal balance.

28 24. The loan application asked the borrower to disclose "business indebtedness," including

1 "all outstanding installment debts, contracts, notes and mortgages payable." MASSIS only disclosed his
2 business debt associated with Mercantile Bank for the refinance. He did not disclose any of the
3 outstanding debt owed to Citibank, nor that the loans with Citibank were in default.

4 25. Also in support of this loan, MASSIS submitted a Personal Financial Statement to One
5 California Bank that reflected \$10,193,150 in assets and \$4,944,036 in liabilities, for a total net worth of
6 \$5,249,114. The liabilities reflected in the financial statement submitted to One California Bank
7 consisted almost entirely of mortgages on real estate (\$4,888,036), and did not include almost \$642,000
8 in principal that was outstanding to Citibank, nor that the Citibank loans were in default.

9 26. On September 17, 2009, before any funds were disbursed, MASSIS signed a Business
10 Loan Agreement in which he attested that

11 Each of Borrower's financial statements supplied to Lender truly and
12 completely disclosed Borrower's financial condition as of the date of the
13 statement, and there has been no material adverse change in Borrower's
14 financial condition subsequent to the date of the most recent financial
statement supplied to Lender. Borrower has no material contingent
obligations except as disclosed in such financial statements.

15 On the same date, MASSIS signed a Borrower's Certification stating that "there has been no adverse
16 change in Borrower's financial condition . . . since the date the Loan application was signed.

17 27. MASSIS again failed to disclose that the Citibank loans were in default or that he had
18 been contacted on April 20, 2009, by a law firm engaged by Citibank to commence an enforcement
19 action against him and the other borrowers.

20 28. The loan was funded on September 30, 2009. MASSIS began making late payments less
21 than three months later, and stopped making regular payments in May 2010. Beginning in October
22 2010, MASSIS did not make a payment for approximately 17 months.

23 29. On November 15, 2010, the SBA liquidated the loan, paying One California Bank a total
24 of \$704,013.36. The loss to the SBA from its loan guarantee was approximately \$686,784; One
25 California Bank lost approximately \$17,273.

26 COUNTS ONE through THREE: (18 U.S.C. § 1014 - Making A False Statement to a Bank)

27 30. Paragraphs 1 through 29 of this Indictment are realleged and incorporated as if fully set
28 forth here.

1 31. On or about the dates set forth below, in the Northern District of California and
2 elsewhere, the defendant,

3 NIMER ANTON MASSIS,

4 did knowingly make and cause to be made false statements in SBA Form 4 (Application for Business
5 Loan) and SBA Form 413 (Personal Financial Statement), and did make and submit false and fraudulent
6 documents and statements in support of SBA loan applications, for the purpose of influencing the
7 actions of a financial institution insured by the Federal Deposit Insurance Corporation, as set forth in
8 each of Counts One through Three below:

Count	Date	Financial Institution	False Statements
1	6/20/2008	Mission National Bank (SBA 7(a): \$250,000)	Failed to disclose Citibank indebtedness and that his loans with Citibank were in default.
2	4/29/2009	One California Bank (SBA 504- Bank portion: \$500,000)	Failed to disclose Citibank indebtedness and that his loans with Citibank were in default.
3	5/5/2009	One California Bank (SBA 7(a) \$800,000)	Failed to disclose Citibank indebtedness and that his loans with Citibank were in default.

17 All in violation of Title 18, United States Code, Sections 1014.

18 COUNT FOUR: (18 U.S.C. § 1001 - False Statement to the Government)

19 32. Paragraphs 1 through 29 of this Indictment are realleged and incorporated as if fully set
20 forth here.

21 33. On or about March 25, 2009, in the Northern District of California and elsewhere, the
22 defendant,

23 NIMER ANTON MASSIS,

24 did knowingly make and cause to be made a false statement on an SBA Form 4 (Application for
25 Business Loan) and SBA Form 413 (Personal Financial Statement), and did make and submit false and
26 fraudulent documents in support of SBA loan applications, for the purpose of influencing the actions of
27 the government, specifically: (1) MASSIS failed to disclose his indebtedness to Citibank and that his
28 loans with Citibank were in default and (2) submitted a Personal Financial Statement (PFS) with a

1 materially higher net worth than reflected in the PFS submitted to One California Bank in connection
2 with the same loan, all in violation of Title 18, United States Code, Section 1001.

3 FORFEITURE ALLEGATION: (18 U.S.C. § 982(a)(2)(A) – Forfeiture of Bank Fraud Proceeds)

4 34. The factual allegations contained in Paragraphs 1 through 29 and Counts One through
5 Three of this Indictment are hereby realleged and by this reference fully incorporated here for the
6 purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 982(a)(2)(A).

7 35. Upon a conviction of any of the offenses alleged in Counts One through Three, the
8 defendant,

9 NIMER ANTON MASSIS,

10 shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A),
11 any property constituting, or derived from, proceeds the defendant obtained, directly or indirectly, as a
12 result of said violations, including but not limited to a money judgment equal to the total gross proceeds
13 obtained as a result of the offenses.

14 36. If any of said property, as a result of any act or omission of the defendant –

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

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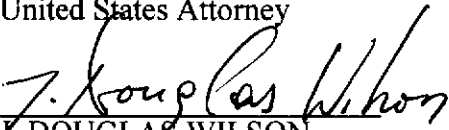
1 any and all interest defendant has in any other property, up to value of the property described in
2 paragraph 24 above, shall be forfeited to the United States, pursuant to Title 21, United States Code,
3 Section 853(p), as incorporated by Title 18, United States Code, Section 982(b) and Rule 32.2 of the
4 Federal Rules of Criminal Procedure.

5
6 DATED: October 8, 2013

A TRUE BILL.

7
8 
9 FOREPERSON

9 MELINDA HAAG
United States Attorney

10 
11 J. DOUGLAS WILSON
12 Chief, Criminal Division

13 (Approved as to form: 
14 AUSAs Harris/Kingsley