

FILED IN CHAMBERS
U.S.D.C. Atlanta

AUG 28 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTEN, Clerk

By: 

UNITED STATES OF AMERICA

v.

MARK A. STEWART

Criminal Information

No. 1:20-CR-00319

THE UNITED STATES ATTORNEY CHARGES THAT:

Count One

Conspiracy

18 U.S.C. § 371

1. In or about May 2020, in the Northern District of Georgia and elsewhere, the defendant, MARK A. STEWART, did knowingly and willfully combine, conspire, confederate, agree, and have a tacit understanding with Co-Conspirator 1 and others, known and unknown, to commit an offense against the United States, that is, to devise and intend to devise a scheme and artifice to defraud the United States and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by omission of material facts, and, with the intent to defraud, cause to be transmitted certain wire communications in interstate and foreign commerce for the purposes of executing the scheme, in violation of Title 18, United States Code, Section 1343.

Background

The Paycheck Protection Program

2. The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act is a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of up to \$349 billion in forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program (“PPP”). In or around April 2020, Congress authorized over \$300 billion in additional PPP funding.

3. In order to obtain a PPP loan, a qualifying business must submit a PPP loan application, which is signed by an authorized representative of the business. The PPP loan application requires the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application, the small business (through its authorized representative) must state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures are used to calculate the amount of money the small business is eligible to receive under the PPP. In addition, businesses applying for a PPP loan must provide documentation showing their payroll expenses.

4. A PPP loan application must be processed by a participating financial institution (the lender). If a PPP loan application is approved, the participating financial institution funds the PPP loan using its own monies, which are 100% guaranteed by Small Business Administration (“SBA”). Data from the

application, including information about the borrower, the total amount of the loan, and the listed number of employees, are transmitted by the lender to the SBA in the course of processing the loan.

5. PPP loan proceeds must be used by the business on certain permissible expenses – payroll costs, interest on mortgages, rent, and utilities. The PPP allows the interest and principal on the PPP loan to be entirely forgiven if the business spends the loan proceeds on these expense items within a designated period of time after receiving the proceeds and uses a certain amount of the PPP loan proceeds on payroll expenses.

6. The PPP is overseen by the SBA, which is headquartered at 409 3rd Street SW, Washington, D.C. 20416, and has authority over all loans. Individual PPP loans, however, are issued by private approved lenders (most commonly, banks and credit unions), which receive and process PPP applications and supporting documentation, and then make loans using the lenders' own funds.

Relevant Entities

7. Bank 1 is an SBA-approved lender headquartered in Fort Lee, New Jersey.

8. Bank 2 is a federally-insured financial institution headquartered in Cherry Hill, New Jersey.

9. Company 1 pairs PPP applicants with lenders by collecting applications, performing underwriting tasks, and submitting approved applications to SBA-approved lenders such as Bank 1 for funding.

The Co-Conspirators

10. STEWART was a citizen of the United States and resident of the District of South Carolina.

11. STEWART was an owner and authorized representative of The Infinity Group of SC, LLC, located at 1451 East Main Street 1E, Spartanburg, SC 29307. The Infinity Group of SC, LLC's Employer Identification Number issued by the U.S. Internal Revenue Service was 47-4157317.

12. The Infinity Group of SC, LLC maintained a business checking account number ending 2283 at Bank 2. STEWART was an authorized signatory on the account.

13. Co-Conspirator 1 (CC-1) was a United States citizen and a resident of the Northern District of Georgia.

14. CC-1 aided STEWART in submitting an application for a PPP loan for The Infinity Group of SC, LLC.

Object of the Conspiracy

15. The object of the conspiracy was for STEWART, CC-1, and others to fraudulently obtain Paycheck Protection Program loans for themselves, and to conceal the conspiracy.

Manner and Means of the Conspiracy

The Fraudulent PPP Loan Application

16. On or about May 11, 2020, a PPP loan application package was submitted to Bank 1, via Company 1, requesting a \$300,000 PPP loan for The Infinity Group of SC, LLC. Included with the loan application were (1) an SBA Form 2483 PPP Borrower Application Form bearing STEWART's digital signature; (2) an IRS Form 941 (Employer's Quarterly Federal Tax Returns) purportedly reflecting The Infinity Group of SC, LLC's payroll data for April to June 2019; (3) a statement

from The Infinity Group of SC, LLC's business checking account at Bank 2; and (4) a Promissory Note bearing STEWART's digital signature.

17. On the SBA Form 2483, STEWART falsely certified that his business had an average monthly payroll of \$120,000 and 16 employees. Among other things, STEWART further falsely certified that all of the PPP loan funds would be "used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule." STEWART also acknowledged that failure to use the PPP funds in accordance with the requirements of the PPP program, and making false statements in support of the loan application, could result in criminal penalties.

18. The IRS Form 941 that was included with the PPP loan application falsely represented, among other things, that The Infinity Group of SC, LLC had 16 employees and paid wages, tips, and other compensation in the amount of \$358,819.00 in each quarter of 2019. In fact, The Infinity Group of SC, LLC made no quarterly tax filings in 2019.

19. On or about May 11, 2020, at CC-1's direction, STEWART digitally signed the SBA Form 2483 and the Promissory Note and electronically transmitted them to Company 1. Company 1 then transmitted the loan package to Bank 1 for approval.

20. On or about May 11, 2020, Bank 1 approved the PPP loan.

21. On or about May 13, 2020, Bank 1 wired approximately \$300,000 to The Infinity Group of SC, LLC's business checking account at Bank 2.

22. In or about May 2020, in coordination with CC-1, STEWART signed approximately 28 checks written against The Infinity Group of SC, LLC's business checking account at Bank 2, made out to himself, to cash, and to other individuals who were not eligible to receive the loan proceeds.

23. Some of the individuals who received checks signed by STEWART cashed the checks within the Northern District of Georgia.

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

Count Two

False Statements
18 U.S.C. § 1001(a)(1) and 2

24. In or about May 2020, in the Northern District of Georgia and elsewhere, the defendant, MARK A. STEWART, did knowingly and willfully make materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, namely, the Small Business Administration, those being: on or about May 11, 2020, STEWART signed and initialed an SBA Form 2483 Paycheck Protection Program Borrower Application Form knowing the form contained false information regarding his company's eligibility for a Paycheck Program loan.

All in violation of Title 18 United States Code, Section 1001(a)(1) and Section 2.

FORFEITURE ALLEGATION

25. Upon conviction of the offense alleged in Count One of this Criminal Information, the defendant, MARK A. STEWART, shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all property, real and personal, constituting and derived from proceeds traceable to the scheme to defraud, including but not limited to the following:

(a) MONEY JUDGMENT: A sum of money in United States currency equal to the amount of proceeds the defendant obtained as a result of the offense for which the defendant is convicted.

(b) FUNDS:

(1) \$ 50,334.60 seized from TD Bank account number XXXXXX2283 held in the name of The Infinity Group of SC, LLC.

26. If any of the property described above, 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 party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty;

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

BYUNG J. PAK

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