

No.

CR-10 00153JF PVT

UNITED STATES DISTRICT COURT

~~SEALED BY ORDER
OF THE COURT~~

NORTHERN DISTRICT OF CALIFORNIA

2010 MAR -3 P 3:53

SAN JOSE DIVISION

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA - SAN JOSE

THE UNITED STATES OF AMERICA

VS.

DAVID BOYER PRINCE

INDICTMENT

COUNTS ONE THROUGH TWELVE: 18 U.S.C. 1343 - Wire Fraud

A true bill.

Jim Bonar

Foreperson

Filed in open court this 3 day of March

A.D. 2010

Patricia V. Jundell

UNITED STATES MAGISTRATE JUDGE

Bail \$ NO Bail

DOCUMENT NO.	CSA's INITIALS
<u>1</u>	<u>E</u>
DISTRICT COURT CRIMINAL CASE PROCESSING	

1 JOSEPH P. RUSSONIELLO (CASBN 44332)
2 United States Attorney

FILED
2010 MAR -3 P 3:53
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. JOSE

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6 **SEALED BY ORDER
OF THE COURT**

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 UNITED STATES OF AMERICA,

CR-10-00153
No.

13 Plaintiff,

**VIOLATIONS: 18 U.S.C. § 1343 – Wire
14 Fraud; 18 U.S.C. § 981(a)(1)(C) and 28
U.S.C. § 2461(c) – Forfeiture of Fraud
15 Proceeds**

16 v.

17 DAVID BOYER PRINCE,

SAN JOSE VENUE

18 Defendant.

UNDER SEAL

19 **INDICTMENT**

20 The Grand Jury charges:

21 **Entities and Parties**

22 At all times relevant to this indictment:

23 1. David Boyer Prince ("Prince") was an attorney licensed to practice in California,
24 who resided and practiced in Saratoga, California. His e-mail account was lexprince@aol.com.

25 2. Prince operated and controlled three investment entities: the Leopard Fund, MJE
26 Invest!, and Dawnstar Alliance, LLC ("Dawnstar Alliance").

27 3. MJE Sales, LLC ("MJE Sales") was a Nevada company that Prince and another
28 individual used at various times to manage Prince's investment funds MJE Invest! and the

INDICTMENT - UNDER SEAL

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1 Leopard Fund.

2 4. Dawnstar Alliance was a Nevada company that Prince used at various times to
3 manage his investment funds MJE Invest! and the Leopard Fund.

4 5. The following accounts were affiliated with Prince or one of the investment
5 entities referenced in the preceding paragraphs:

- 6 a. Bank of America account ending in 723 in Los Gatos, California was a
7 bank account for Prince.
- 8 b. US Bank account ending in 626 in Campbell, California was a bank
9 account for Prince.
- 10 c. Comerica account ending in 692 in Saratoga, California was the bank
11 account for "The Law Offices of David Prince."
- 12 d. Bank of America account ending in 832 in Las Vegas, Nevada was a bank
13 account for MJE Sales.
- 14 e. Bank of America account ending in 206 in Seneca Falls, New York was a
15 bank account for MJE Sales.
- 16 f. Bank of America account ending in 741 in Las Vegas, Nevada was the
17 bank account for Dawnstar Alliance.
- 18 g. Ameritrade account ending in 428 in Omaha, Nebraska was a trading
19 account for Prince.
- 20 h. Ameritrade account ending in 915 in Omaha, Nebraska was a trading
21 account for Dawnstar Alliance.

22 The Scheme to Defraud

23 6. Beginning in approximately August 2005 and continuing until at least January
24 2007, in the Northern District of California and elsewhere, Prince, along with other persons
25 known and unknown to the Grand Jury, devised a scheme to defraud investors to invest in the
26 Leopard Fund, Dawnstar Alliance, and MJE Invest! by making promises and representations to
27 those investors that Prince knew were false at the time they were made. Prince made, and caused
28 to be made, false statements to investors regarding the nature and track record of his investment

1 entities, the safety and security of their investments, the rate of return investors would receive,
2 his compliance with Securities and Exchange Commission (SEC) regulations, and the manner in
3 which their investments would be handled.

4 7. In all, Prince raised a total of approximately \$1,200,000 from more than 30
5 investors, but failed to provide the vast majority of the investors with the interest they had been
6 promised or repay their principal. Instead, Prince converted at least \$220,000 of the investors'
7 funds for his personal use and into cash, transferred a net total of at least \$68,000 to a foreign
8 bank account, and squandered much of the remaining funds day-trading and on purposes
9 unrelated to his victims' supposed "investments."

10 Manner and Means

11 8. Among the false and fraudulent statements Prince, and others acting on his behalf,
12 made to investors to induce them to invest, were the following:

- 13 (a) that Prince would guarantee their investment principal;
14 (b) that Prince would pay investors extremely high rates of return, as high as
15 5% to 25% per month;
16 (c) that Prince's investment funds had demonstrated consistently above-
17 market performance over a multi-year period;
18 (d) that the funds victims invested would be treated as a "business loan;"
19 (e) that Prince's investment funds were operated and managed by
20 professional, competent traders with a long history of market success;
21 (f) that investors were receiving "interest payments" that reflected the actual
22 performance of their investments;
23 (g) that Prince's investment funds were in full compliance with applicable
24 SEC regulations and that investors should feel confident of their legality
25 because Prince was an attorney; and
26 (h) that the funds given to Prince would be invested or otherwise used for
27 investment-related purposes.

28 9. In fact, each of the representations described in paragraph 8 was knowingly false

1 when made, in that:

- 2 (a) Prince did not handle investors' money in a manner that would guarantee
3 their principal;
- 4 (b) Prince knew that he could not deliver investors the high rates of return he
5 had promised them;
- 6 (c) Prince knew that his funds had not been in existence for the length of time
7 he had claimed, nor had they consistently earned above-market historical
8 rates of return;
- 9 (d) Prince knew that the investment funds were not "business loans," and
10 knew that he was not treating them as such;
- 11 (e) Prince knew that his investment funds were not "operated and managed by
12 professional, competent traders with a long history of market success," but
13 rather that Prince himself was simply day-trading with investors' money;
- 14 (f) Prince knew that he was paying using money from new investors to make
15 "interest" payments to earlier investors, and that those "interest" payments
16 were not related to the actual performance of any investment Prince had
17 made on those investors' behalf. Rather, Prince used the "interest"
18 payments to induce investors to remain invested, to invest additional
19 funds, and to refer his funds to others.
- 20 (g) Prince knew that he was not a registered broker as required by SEC
21 regulations.
- 22 (h) Prince knew that his practice had been to divert hundreds of thousands of
23 dollars from investors for his personal use by (i) making large
24 unauthorized cash withdrawals from his investment funds while also (ii)
25 transferring money from those funds into his personal bank account. In
26 the process, Prince converted investor money to make payments toward a
27 Mercedes automobile, his personal credit card debt, personal rent,
28 telephone bills, and his federal taxes.

COUNTS ONE THROUGH TWELVE: (18 U.S.C. § 1343 – Wire Fraud)

10. The factual allegations contained in paragraphs 1 through 9 are re-alleged and by this reference incorporated as if fully set forth here.

11. On or about the dates indicated for each of Counts One through Twelve below, in the Northern District of California and elsewhere, the defendant,

DAVID BOYER PRINCE,

and other persons known and unknown, having devised and intending to devise a scheme and artifice (A) to defraud as to a material matter, and (B) to obtain money by means of materially false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting so to do, did knowingly cause to be transmitted in interstate commerce by a wire communication certain writings, signs, signals, and pictures, namely, the wire transfers of funds described below (all victims identified by their initials):

COUNT	DATE	ITEM	WIRED FROM	WIRED TO
1	8/30/05	\$17,020 bank transfer sent by D.H.	Bank of America, Arizona	Bank of America, New York
2	9/29/05	\$100,000 wire transfer sent by P.D.	Wells Fargo, California	Bank of America, New York
3	10/4/05	\$25,040 wire transfer sent by B.W.	Wood Forest National Bank, Texas	Bank of America, New York
4	12/5/05	\$10,020 wire transfer sent by E.K.	American Bank, Pennsylvania	Bank of America, New York
5	12/30/05	\$10,020 wire transfer sent by B.W.	Wood Forest National Bank, Texas	Bank of America New York
6	1/6/06	\$200,020 wire transfer sent by G.V.A.	Washington Mutual California	Bank of America New York
7	1/13/06	\$50,020 wire transfer sent by S.S.	Compass Bank Alabama	Bank of America New York
8	1/26/06	\$32,000 wire transfer sent by A.B.	Wells Fargo, California	Bank of America New York
9	2/8/06	\$25,000 bank transfer sent by H.G.	Bank of America California	Bank of America New York

10	4/27/06	\$50,000 out-of-state counter deposit sent by R.B.	Bank of America California	Bank of America New York
11	5/1/06	\$25,000 wire transfer sent by T.M.H.	Wells Fargo, California	Bank of America New York
12	5/26/06	\$15,000 wire transfer sent by R.P.	Suntrust Bank Georgia	Bank of America New York

All in violation of Title 18, United States Code, Section 1343.

FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461)

12. The factual allegations contained in paragraphs 1 through 11 of this Indictment are re-alleged and by this reference fully incorporated here for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. 2461(c).

13. Upon a conviction of any of the offenses alleged in Counts One through Twelve, the defendant,

DAVID BOYER PRINCE,

shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to said offense, including but not limited to a sum of money equal to the total proceeds from the commission of said offense including, but not limited to, the following property: a sum of money equal to the gross proceeds obtained as a result of the offense.

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

- (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;

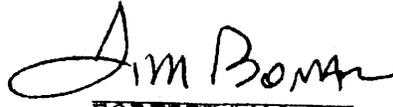
any and all interest defendant has in other property up to the value of the property described in paragraph 13 above, shall be forfeited to the United States pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461;

1 All in violation of Title 18, United States Code, Sections 981(a)(1)(C), 1343, 1349; Title
2 28, United States Code, Section 2461; and Rule 32.2 of the Federal Rules of Criminal Procedure.
3

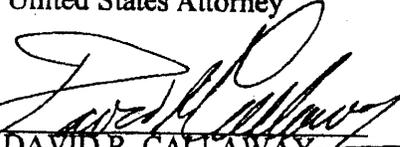
4 DATED:

A TRUE BILL

5
6 3-3-10


7 FOREPERSON

8 JOSEPH P. RUSSONIELLO
9 United States Attorney

10 
11 DAVID R. CALLAWAY
12 Chief, San Jose Branch Office

13 (Approved as to form: 
14 AUSA Fazioli
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AO 257 (Rev. 6/78)

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

BY: COMPLAINT INFORMATION INDICTMENT SUPERSEDING

OFFENSE CHARGED

18 U.S.C. § 1343 - Wire Fraud

18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461 (c) - Forfeiture of Fraud Proceeds

Petty
 Misdemeanor
 Felony

PENALTY:

20 years imprisonment; \$250,000 fine; 3 years supervised release; \$100 special assessment

PROCEEDING

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

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 re prosecution of charges previously dismissed which were dismissed on motion of:

U.S. Atty Defense

this prosecution relates to a pending case involving this same defendant

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

SHOW DOCKET NO.

MAGISTRATE CASE NO.

Name and Office of Person Furnishing Information on THIS FORM

JOSEPH P. RUSSONIELLO

U.S. Atty Other U.S. Agency

Name of Asst. U.S. Atty (if assigned)

AUSA JOSEPH FAZIOLI

Name of District Court, and/or Judge/Magistrate Location NORTHERN DISTRICT OF CALIFORNIA

FILED

DEFENDANT

2010 MAR -3 P 4:00

DAVID BOYER PRINCE

DISTRICT COURT RICHARD W. WIERING
NORTHERN DISTRICT OF CALIFORNIA
N.D. CALIFORNIA JOSE

CR-10 00153

PVT

DEFENDANT

IS NOT IN CUSTODY

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

IS IN CUSTODY

- 4) On this charge
5) On another conviction
6) Awaiting trial on other charges } Fed'l State
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: No Bail Arrest Warrant

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address:

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

Date/Time:

Before Judge:

Comments: