

KUNTZ, J.

FILED
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U.S. DISTRICT COURT E.D.N.Y.
★ MAR 28 2019 ★

JMK:AS/ADG
F. #2018R01661

POLLAK, M.J. BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

INDICTMENT

- against -

CR 19 161
Cr. No.

(T. 15, U.S.C., §§ 80b-6 and 80b-17; T. 18, U.S.C., §§ 981(a)(1)(C), 1343, 1512(c)(2) and 3551 et seq.; T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

GONZALO ORTIZ,

Defendant.

----- X

THE GRAND JURY CHARGES:

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

INTRODUCTION

I. The Defendant and the Victim

1. The defendant GONZALO ORTIZ was a resident of Hackensack, New Jersey. In or about and between April 2015 and May 2017, ORTIZ purported to serve as an investment adviser, including to John Doe, an individual whose identity is known to the Grand Jury.

2. John Doe was a resident of Parsippany, New Jersey.

II. The Fraudulent Scheme

3. In or about and between April 2015 and May 2017, the defendant GONZALO ORTIZ engaged in a scheme to defraud John Doe. During the course of the scheme, ORTIZ convinced John Doe to give him control of approximately \$565,000 of John

Doe's money based on material misrepresentations. ORTIZ told John Doe that he would invest that money in securities on John Doe's behalf. In reality, ORTIZ misappropriated approximately \$224,500 of John Doe's money for ORTIZ's personal use.

A. John Doe's First Investment

4. In or about April 2015, the defendant GONZALO ORTIZ stated to John Doe that ORTIZ was a successful stock trader and had made profits for other individuals by trading stocks on their behalf. ORTIZ offered to manage John Doe's money, and promised John Doe a return of 50 percent per year.

5. On or about May 10, 2015, the defendant GONZALO ORTIZ emailed John Doe. In the email, ORTIZ identified certain securities in which ORTIZ would invest John Doe's money, and stated, in Spanish, that "the possibilities are very good and although it seems to be too good to be true, in the position I am I can say that it is for real."

6. On or about May 28, 2015, the defendant GONZALO ORTIZ and John Doe entered into a written agreement (the "First Agreement"), in which John Doe gave discretionary authority to ORTIZ to invest \$100,000 of John Doe's money on John Doe's behalf. Pursuant to the First Agreement, ORTIZ promised the following: (1) ORTIZ would repay the \$100,000 investment (the "First Investment") within 365 days; (2) ORTIZ would guarantee John Doe at least a 50 percent return on the First Investment (or at least \$50,000 in gains from trading); and (3) any gains from trading up to \$100,000 would be returned to John Doe, after which ORTIZ would keep any additional gains as compensation. John Doe only authorized ORTIZ to use the First Investment to trade on John Doe's behalf, and did not

authorize ORTIZ to use the funds for any other purpose, including for ORTIZ's personal expenses.

7. On or about May 28, 2015, John Doe wired \$100,000 from his bank account at Wells Fargo (the "Victim Wells Fargo Account") to the defendant GONZALO ORTIZ's brokerage account at E-Trade Financial Corporation ("E-Trade") (the "ORTIZ E-Trade Account"). Over a period of several weeks, contrary to ORTIZ's representations to John Doe, ORTIZ took approximately \$25,000 of the First Investment and transferred it to ORTIZ's personal bank account at JPMorgan Chase (the "ORTIZ Chase Account"), and spent another approximately \$9,888 of the First Investment on personal expenses like car payments, clothes and food. Additionally, in or about June 2015, ORTIZ transferred approximately \$45,000 of the First Investment to ORTIZ's brokerage account at Interactive Brokers (the "ORTIZ Interactive Account").

B. John Doe's Second Investment

8. On or about June 19, 2015, the defendant GONZALO ORTIZ and John Doe entered into a second written agreement (the "Second Agreement"), in which John Doe gave ORTIZ discretion to invest another \$100,000 of John Doe's money (the "Second Investment") on John Doe's behalf. The Second Agreement contained the same terms as the First Agreement.

9. In or about June 2015, John Doe opened an account at E-Trade ("Victim E-Trade Account #1"). John Doe gave the defendant GONZALO ORTIZ authority to trade in Victim E-Trade Account #1, which remained in John Doe's name. On

or about June 19, 2015, John Doe wired \$100,000 from the Victim Wells Fargo Account to Victim E-Trade Account #1. On or about June 23, 2015, ORTIZ sent a check of \$99,000 from Victim E-Trade Account #1 to the ORTIZ Chase Account, and then wired \$95,000 from Victim E-Trade Account #1 to the ORTIZ Interactive Account. Over approximately the next four months, ORTIZ periodically transferred money from the ORTIZ Interactive Account back into the ORTIZ Chase Account. In total, after the June 23, 2015 deposit, ORTIZ transferred approximately \$25,000 back into the ORTIZ Chase Account, of which ORTIZ spent approximately \$17,000 on personal expenses. In addition, in furtherance of the fraudulent scheme, ORTIZ gave approximately \$8,000 back to John Doe, and falsely advised John Doe that the approximately \$8,000 represented returns on John Doe's investments.

10. In furtherance of the fraudulent scheme, on or about October 25, 2015, the defendant GONZALO ORTIZ sent John Doe an account statement that falsely showed that the First and Second Investments had generated a return of \$102,464.24 as a result of trading in three securities. In fact, ORTIZ had misappropriated approximately \$56,000 of the First and Second Investments and experienced a net loss in trading.

C. John Doe's Third Investment

11. On or about November 27, 2015, the defendant GONZALO ORTIZ and John Doe entered into a third written agreement (the "Third Agreement"). Pursuant to the Third Agreement, John Doe gave ORTIZ another \$200,000 to invest on John Doe's behalf (the "Third Investment"). In return, ORTIZ promised that he would repay the Third

Investment within 180 days and that he would guarantee John Doe at least a 50 percent return on the Third Investment (or at least \$100,000 in gains from trading). The Third Agreement further provided that John Doe would not receive any gains above \$100,000 that were generated within the first year after the Third Investment was made. John Doe only authorized ORTIZ to use the Third Investment for trading and did not authorize him to use the funds for any other purpose, including for ORTIZ's personal expenses.

12. On or about November 27, 2015, John Doe wired \$200,000 to the ORTIZ Chase Account. Shortly thereafter, in or about November 2015, the defendant GONZALO ORTIZ transferred approximately \$172,000 of the Third Investment from the ORTIZ Chase Account to the ORTIZ Interactive Account, and kept another approximately \$26,000 of the Third Investment for personal use. In furtherance of the fraudulent scheme, ORTIZ gave \$2,000 from the Third Investment back to John Doe, and falsely advised him that the \$2,000 constituted returns on his investments.

13. In or about and between December 2015 and October 2016, ORTIZ took an additional approximately \$90,000 from the Third Investment for personal use. ORTIZ also transferred \$20,000 back to John Doe, and falsely advised him that the money constituted returns on his investments. During this time, ORTIZ also conducted some trading with the investments and incurred losses.

14. As of approximately November 2016, no money remained in the ORTIZ Interactive Account.

D. John Doe's Retirement Account and the Fourth Investment

15. In or about early 2016, the defendant GONZALO ORTIZ asked John Doe to open a new E-Trade account ("Victim E-Trade Account #2"). In or about April 2016, ORTIZ convinced John Doe to transfer the holdings in John Doe's retirement account at MetLife (the "Victim Retirement Account"), which contained approximately \$114,000, into Victim E-Trade Account #2. John Doe then gave ORTIZ authority to trade in Victim E-Trade Account #2, which remained in John Doe's name. ORTIZ was the only individual who traded in the account.

16. In or about late 2016, the defendant GONZALO ORTIZ falsely told John Doe that he had lost the entire First, Second and Third Investments, totaling \$400,000, through trading. ORTIZ failed to advise John Doe that he had stolen approximately \$170,000 of those investments for personal use.

17. The defendant GONZALO ORTIZ then convinced John Doe to give ORTIZ the opportunity to make some of John Doe's money back. ORTIZ directed John Doe to open a brokerage account at Interactive Brokers (the "Victim Interactive Account") and to make ORTIZ an authorized trader for the account. In or about December 2016, John Doe provided ORTIZ with an additional \$50,000 to invest (the "Fourth Investment"), which ORTIZ deposited into the Victim Interactive Account. ORTIZ promised John Doe that ORTIZ would not allow the amount of money in the account to drop below \$50,000. John Doe authorized ORTIZ to take from the Fourth Investment living expenses of approximately \$2,000 per month.

18. Shortly thereafter, in furtherance of the fraudulent scheme, the defendant GONZALO ORTIZ executed a series of “wash trades” between the Victim Interactive Account and Victim E-Trade Account #2. Wash trading was a form of market manipulation in which an investor simultaneously sold and bought the same financial instruments, thereby creating misleading, artificial activity in the marketplace. By trading the same stock between the two accounts, ORTIZ made it appear that the Victim Interactive Account was earning substantial returns on John Doe’s investment. In reality, ORTIZ was using the wash trades to siphon money from Victim E-Trade Account #2, which John Doe could not monitor, into the Victim Interactive Account, which John Doe had the ability to monitor. In or about and between January 2017 and May 2017, ORTIZ withdrew from the Victim Interactive Account approximately \$54,250 for his personal use, well above the \$2,000 per month that John Doe had authorized.

19. In total, the defendant GONZALO ORTIZ misappropriated approximately \$224,500 of John Doe’s money for ORTIZ’s personal use. In addition, ORTIZ lost a portion of John Doe’s money as a result of trading losses.

III. The Defendant’s Attempt to Obstruct Justice

20. On or about May 16, 2017, a Special Agent of the Federal Bureau of Investigation (the “Agent”), an individual whose identity is known to the Grand Jury, interviewed the defendant GONZALO ORTIZ about the fraudulent scheme at ORTIZ’s residence in New Jersey. ORTIZ made multiple false statements to the Agent, including

stating that ORTIZ had never engaged in wash trading and had never traded stocks on behalf of other individuals.

COUNT ONE
(Investment Adviser Fraud)

21. The allegations contained in paragraphs one through 20 are realleged and incorporated as if fully set forth in this paragraph.

22. In or about and between April 2015 and May 2017, both dates being approximately and inclusive, within the Eastern District of New York and elsewhere, the defendant GONZALO ORTIZ did knowingly and willfully use the mails and other means and instrumentalities of interstate commerce, directly and indirectly: (a) to employ one or more devices, schemes and artifices to defraud John Doe; (b) to engage in one or more transactions, practices and courses of business which operated as a fraud and deceit upon John Doe; and (c) to engage in one or more acts, practices and courses of business which were fraudulent, deceptive and manipulative.

(Title 15, United States Code, Sections 80b-6 and 80b-17; Title 18, United States Code, Sections 3551 et seq.)

COUNTS TWO THROUGH FOUR
(Wire Fraud)

23. The allegations contained in paragraphs one through 20 are realleged and incorporated as if fully set forth in this paragraph.

24. In or about and between April 2015 and May 2017, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the

defendant GONZALO ORTIZ did knowingly and intentionally devise a scheme and artifice to defraud John Doe, and to obtain money and property from John Doe by means of one or more materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce one or more writings, signs, signals and sounds, as described below:

COUNT	APPROXIMATE DATE	DESCRIPTION
TWO	May 28, 2015	Wire transfer of \$100,000 from the Victim Wells Fargo Account in Charlotte, North Carolina to the ORTIZ E-Trade Account in New York, New York.
THREE	June 19, 2015	Wire transfer of \$100,000 from the Victim Wells Fargo Account in Charlotte, North Carolina to the ORTIZ E-Trade Account in New York, New York.
FOUR	November 27, 2015	Wire transfer of \$200,000 from the Victim Wells Fargo Account in Charlotte, North Carolina to the ORTIZ Chase Account in Brooklyn, New York.

(Title 18, United States Code, Sections 1343 and 3551 et seq.)

COUNT FIVE

(Attempt to Obstruct an Official Proceeding)

25. The allegations contained in paragraphs one through 20 are realleged and incorporated as if fully set forth in this paragraph.

26. On or about May 16, 2017, within the Eastern District of New York and elsewhere, the defendant GONZALO ORTIZ did knowingly and intentionally attempt to

corruptly obstruct, influence and impede an official proceeding, to wit: a federal Grand Jury investigation in the Eastern District of New York.

(Title 18, United States Code, Sections 1512(c)(2) and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

27. The United States hereby gives notice to the defendant that, upon his conviction of any of the offenses charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offenses to forfeit any property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as a result of such offenses.

28. 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 party;
- (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

divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p),

to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE BILL



FOREPERSON

RICHARD P. DONOGHUE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK


BY: Bridget M. Kade
ACTING UNITED STATES ATTORNEY
PURSUANT TO 28 C.F.R. 0.136

F.#: 2018R01661
FORM DBD-34
JUN. 85

No. _____

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

GONZALO ORTIZ,

Defendant.

INDICTMENT

(T. 15, U.S.C., §§ 80b-6 and 80b-17; T. 18, U.S.C., §§ 981(a)(1)(C),
1343, 1512(c)(2), and 3551 *et seq.*; T. 21, U.S.C., § 853(p); T. 28,
U.S.C., § 2461(c))

A true bill.

Christine Gonzales

Foreperson

Filed in open court this _____ day,

of _____ A.D. 20 _____

Clerk

Bail, \$ _____

Andrew D. Grubin, Assistant U.S. Attorney (718) 254-6322