

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2013 NOV -6 PM 12:32

DEPUTY CLERK *[Signature]*

UNITED STATES OF AMERICA

v.

DAVID LYMAN SPALDING

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§

No.

3 - 13 CR - 422 - M

INDICTMENT

The Grand Jury Charges:

Introduction

1. From in or about April 2004 and continuing through in or about July 2009, in the Dallas Division of the Northern District of Texas, and elsewhere, defendant, **David Lyman Spalding**, did knowingly and intentionally devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises.

2. The object of the scheme was to cause, by means of materially false and fraudulent representations, persons to invest in a number of promissory notes offered by Wind Plus, Inc., and then use those funds for purposes other than the purposes represented to the investors and to obtain money to be used for Spalding's personal benefit. During the course of the scheme and artifice to defraud, the defendant raised

approximately 3.7 million dollars from over 97 investors.

3. It was a part of the aforesaid scheme and artifice to defraud that the defendant would and did knowingly and with the intent to defraud:

A. Establish the following companies Wind Plus, Inc., a Province of Ontario, Canada corporation (Wind Plus), Wind Plus Holdings, Inc., a Delaware corporation (Wind Plus Holdings), and Wind Plus, Inc., a Delaware corporation (Wind Plus Delaware);

B. Create and distribute promissory notes to investors in 11 states;

C. Direct investors to mail in the executed promissory notes to the headquarters of Wind Plus, in Texas, which is located within the Northern District of Texas;

D. Receive investor funds by wire transfer and convert the investor funds to his personal benefit, contrary to representations made by the defendant to the investors;

E. Receive investor funds by mail and convert the investor funds to his personal benefit, contrary to representations made by the defendant to the investors;

F. Lull and persuade investors to maintain their investments and to invest additional funds by making small payments to investors;

G. Create and distribute to investors and potential investors false and fictitious documents, including a power point presentation which vastly overstated the amount of megawatts Wind Plus controlled;

H. Divert and use the investor funds for the defendant's own benefit, including

the acquisition of assets such as real estate and extensive international travel, and other retail purchases, not related to Wind Plus business.

4. It was further part of said scheme and artifice to defraud that the defendant did make and cause to be made materially false and fraudulent pretenses, representations, and promises to investors, intending to obtain money and property, knowing the representations were false and fraudulent when made, including, but not limited to the following:

A. That the funds invested would be used to build infrastructure for the business and pay Wind Plus legal fees;

B. That the change in management was for business purposes when, in fact the staff had quit Wind Plus because they were not being paid;

C. That investors would be repaid their investments within varying timeframes ranging from 60 days to 1 year, when in fact the defendant did not repay anyone within any of the specified time frames;

D. That Wind Plus had signed a large Power Purchase Agreement with a Houston based independent power marketing firm, when in fact no such agreement existed;

E. That Wind Plus continued to “plow-thru cash,” to pay its on-going bills, and that cash was “very tight;” when in fact the defendant would not spend the necessary money required to complete Wind Plus projects, and he had, within the preceding six months, finalized the purchase of his personal residence with investor money;

F. That Cabot Creek Mineral Corporation was going to be the subject of a reverse takeover by Wind Plus in mid-July, 2005; when in fact Cabot Creek Mineral Corporation was under a Cease Trade order issued by Ontario Securities Commission at the time.

5. It was further a part of the scheme and artifice to defraud that the defendant made and caused others to make false material and fraudulent pretenses, representations, and promises to investors and prospective investors, knowingly, and with intent to defraud and omitted and failed to disclose certain material facts, including but not limited to the following:

A. That Wind Plus and the defendant had been sued by previous investors in July of 2007;

B. That Wind Plus and the defendant had been sued by previous investors in November of 2008;

C. That the company Wind Plus, for which some investors executed promissory notes, was no longer an actively registered company in Ontario, Canada, at the time of the execution of those promissory notes; and

D. That Wind Plus had been sued by two consulting firms in October of 2008, for breach of contract; and

E. That Cabot Creek Mineral Corporation, which the defendant represented was the entity Wind Plus was going to takeover, had been the subject of multiple Cease Trade Orders issued by the Ontario Securities Commission.

Count One
Wire Fraud
(Violations of 18 U.S.C. § 1343)

1. The Grand Jury hereby realleges and incorporates by reference the allegations set forth in the Introduction of this Indictment.

2. On or about March 10, 2009, in the Dallas Division of the Northern District of Texas, and elsewhere, defendant, **David Lyman Spalding**, for the purpose of executing and carrying out the aforesaid scheme and artifice to defraud, and for obtaining money and property by means of false, material and fraudulent pretenses, representations, and promises, did knowingly and with intent to defraud, cause to be transmitted in interstate commerce by means of wire and radio communication, certain writings, signs, signals, and sounds by sending an email from the email account of Wind Plus in Texas to the email account of AW, which transited across state lines to AW's email account located on the servers for MSN in the State of Washington.

In violation of 18 U.S.C. § 1343.

Count Two
Mail Fraud
(Violations of 18 U.S.C. § 1341)

1. The Grand Jury hereby realleges and incorporates by reference the allegations set forth in the Introduction of this Indictment.
2. On or about December 9, 2008, in the Dallas Division of the Northern District of Texas and elsewhere, defendant, **David Lyman Spalding**, having devised and for the purpose of executing and carrying out the aforesaid scheme and artifice to defraud and for obtaining money and property by means of material, false and fraudulent pretenses, representations, and promises, and attempting to do so, knowingly caused to be delivered by mail and commercial interstate carrier from the investor SL to 7701 Las Colinas Ridge, Suite 325, Irving, Texas, an envelope containing a check in the amount of \$25,000.00.

In violation of 18 U.S.C. § 1341.

Forfeiture Notice
[18 U.S.C. §§ 981(a)(1)(C) and 28 U.S.C. § 2461(c)]

Upon conviction of any of the offenses alleged in Counts One and Two of this Indictment and pursuant to 18 U.S.C. § 981(a)(1)(C) in conjunction with 28 U.S.C. § 2461(c), the defendant, **David Lyman Spalding**, shall forfeit to the United States all property, real or personal, constituting or derived from proceeds traceable to the offense of conviction or all property constituting or derived from proceeds obtained directly or indirectly as a result of the offense of conviction.

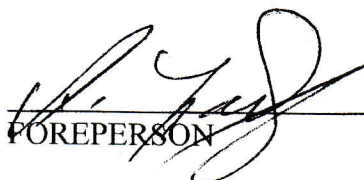
The above-referenced property subject to forfeiture includes, but is not limited to, the following:

1. A "money judgment" in the amount of U.S. currency constituting the proceeds traceable to each respective offense alleged in Counts One and Two.
2. The real property located at 3993 Spring Garden Drive, Colleyville, Tarrant County, Texas, including all buildings, appurtenances, and improvements thereon, more specifically described as Lot 11, Block D of Spring Garden, an addition to the City of Colleyville, Tarrant County, Texas according to the amended plat thereof recorded in Volume A, Page 4985, Plat Records, Tarrant County, Texas.

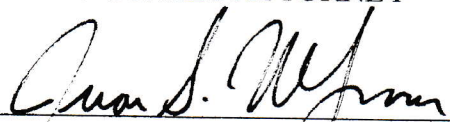
Pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b), if any of the above-referenced property subject to forfeiture, as a result of any act or omission of the defendant, cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third person; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be subdivided without difficulty, it is the intent of the United

States to seek forfeiture of any other property of the defendant up to the value of the above-described property subject to forfeiture.

A TRUE BILL


FOREPERSON

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UNITED STATES ATTORNEY


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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE UNITED STATES OF AMERICA

v.

DAVID LYMAN SPALDING

INDICTMENT

18 U.S.C. § 1343
Wire Fraud

18 U.S.C. § 1341
Mail Fraud

18 U.S.C. §§ 981(a)(1)(C) and 28 U.S.C. § 2461(c)
Forfeiture Notice

2 Counts

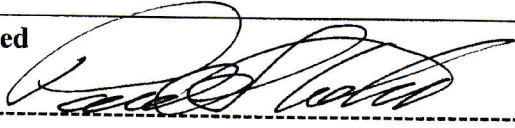
A true bill rendered

DALLAS


FOREPERSON

Filed in open court this 8 day of November, 2013.

Clerk

Warrant to be Issued 

UNITED STATES DISTRICT/MAGISTRATE JUDGE

No Criminal matter pending