2010R00096/jwa/jte

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon.
	:	
	:	Crim. No. 10-
	:	
	:	15 U.S.C. §§ 78j(b) and
v.	:	78ff; 17 C.F.R. 240.10b-5
	:	
	:	18 U.S.C. §§ 371,
	:	981(a)(1)(C), 982(a)(1),
	:	1343, 1957, and 2
	:	
NEVIN SHAPIRO	:	28 U.S.C. § 2461(c)

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

COUNT 1
(Conspiracy to Commit Securities and Wire Fraud)

1. At all times relevant to this Indictment:

a. Capitol Investment USA, Inc. ("Capitol"), a Florida corporation with offices in Miami Beach, Florida, was a purported wholesale grocery distribution business. Capitol was run by defendant NEVIN SHAPIRO, who was Capitol's founder, owner and Chief Executive Officer. As CEO, defendant SHAPIRO controlled all aspects of Capitol's business, which also employed a number of additional individuals. From in or around January 2005 to in

or around November 2009, defendant SHAPIRO and his co-conspirators induced investors to provide defendant SHAPIRO and Capitol with hundreds of millions of dollars, promising that the money would be used to fund Capitol's grocery distribution business - through which Capitol would purportedly purchase merchandise which would then be resold at a profit. However, during this time, Capitol had virtually no active wholesale grocery business. Instead, Capitol operated an investment scheme commonly known as a "Ponzi" scheme, in which new investors' funds are utilized to pay previous investors in the absence of any underlying security, legitimate investment vehicle or other commodity. Pursuant to this scheme, defendant SHAPIRO used the money provided by investors to (i) pay earlier investors in order to further the fraud; and (ii) for defendant SHAPIRO's personal benefit.

b. An individual who is named as a co-conspirator and a co-schemer but not as a defendant herein ("UC 1") worked as Capitol's Chief Financial Officer.

c. An individual who is named as a co-conspirator and a co-schemer but not as a defendant herein ("UC 2") worked as an accountant at Capitol.

d. An individual who is named as a co-conspirator and a co-schemer but not as a defendant herein ("UC 3") worked as a bookkeeper at Capitol.

2. From in or around January 2005 to in or around November 2009, in the District of New Jersey, and elsewhere, defendant

NEVIN SHAPIRO

did knowingly and willfully conspire and agree with UC 1, UC 2, UC 3 and others to commit offenses against the United States, that is:

a. by use of the means and instrumentalities of interstate commerce and the mails, directly and indirectly, to use manipulative and deceptive devices and contrivances in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5 (Rule "10b-5") in connection with the purchase and sale of securities by (i) employing devices, schemes, and artifices to defraud members of the investing public; (ii) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (iii) engaging in acts, practices, and a course of business which operated and would operate as a fraud and deceit upon Capitol investors, contrary to Title 15, United States Code, Sections 78j(b) and 78ff(a) and Title 17, Code of Federal Regulations, Section 240-10b-5; and;

b. to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and to use interstate wire communications for the purpose of executing such

scheme and artifice, contrary to Title 18, United States Code, Section 1343.

Object of the Conspiracy

3. The object of the conspiracy was for defendant NEVIN SHAPIRO, UC 1, UC 2, UC 3 and others to fraudulently obtain hundreds of millions of dollars from Capitol investors in New Jersey and elsewhere by falsely claiming that the money was going to be used to fund Capitol's grocery distribution business when, in fact, the money was intended to be used and was used to pay earlier investors in order to further the fraud and for defendant SHAPIRO's personal benefit, and to use wire communications in interstate commerce, including wire communications to and from New Jersey, for the purpose of executing this scheme.

Manner and Means of the Conspiracy

The manner and means by which defendant NEVIN SHAPIRO and his co-conspirators sought to accomplish the object of the conspiracy included, among other things, the following:

4. Defendant SHAPIRO, UC 1, UC 2, UC 3, and others made and caused to be made numerous false statements, false representations, and material omissions regarding the profitability of Capitol's purported grocery distribution business to fraudulently induce investors to provide defendant SHAPIRO and Capitol with millions of dollars, when in fact Capitol had virtually no sales or profit during the relevant time period.

5. Defendant SHAPIRO, UC 1, UC 2, UC 3, and others, made and caused to be made to potential investors numerous false statements and representations that the investors' money would be used to fund Capitol's grocery diversion business, including by using the funds to buy grocery products and resell them at a profit, when in fact defendant SHAPIRO intended to use, and did use, the funds to repay earlier investors and for his own personal benefit.

A. False Representations

6. On numerous occasions, to induce investors to invest money in Capitol, defendant SHAPIRO directed others to create and show to potential investors fraudulent documents falsely touting the profitability of Capitol's purported grocery wholesale business, including, among other things:

a. financial statements, including profit and loss statements, which falsely represented that Capitol's wholesale grocery business was generating tens of millions of dollars in sales;

b. business income tax returns for defendant SHAPIRO and Capitol that falsely reflected tens of millions of dollars in sales for Capitol; and

c. numerous invoices falsely reflecting transactions purportedly entered into between Capitol and other companies in the wholesale grocery business and purporting to show Capitol's sources of product and income.

7. As a further inducement for investors to invest money in Capitol, defendant SHAPIRO and others provided and caused to be provided to investors documents, including promissory notes, joint venture agreements, and other evidence of indebtedness, that reflected the amount of the investors' investment in Capitol and falsely promised specific returns, in the form of interest ranging from 10 percent to 26 percent on an annualized basis, according to a schedule that varied from a matter of days up to one year.

8. Based on these false statements and representations and material omissions, investors in New Jersey and throughout the United States sent money to defendant SHAPIRO and Capitol that was then deposited into Capitol's bank accounts and into defendant SHAPIRO's personal bank accounts. During the time period relevant to this Indictment, defendant SHAPIRO raised at least approximately $880 million in this fashion.

9. Contrary to the statements and omissions described above, Capitol did not have a profitable wholesale grocery business and defendant SHAPIRO, UC 1, UC 2, UC 3, and others did not use investor money to fund Capitol's grocery business as promised. Specifically:

a. Capitol had virtually no active wholesale grocery business during the time period relevant to this Indictment;

b. defendant SHAPIRO and Capitol did not produce tens of millions of dollars in yearly sales based on any legitimate

business activity. In fact, Capitol had virtually no business sales, and a vast majority of the money that came into Capitol was through the solicitation of investor money;

c. Capitol did not have the sources of product and income reflected on the invoices. In fact, Capitol conducted virtually no legitimate business transactions during the time period relevant to this Indictment; and

d. The proceeds of the fraud were in fact used primarily (i) to make payments to investors in order to gain their confidence so as to encourage the investors to provide additional funds to SHAPIRO and Capitol and to avoid detection of the fraudulent scheme("lulling payments"), (ii) to fund defendant SHAPIRO's lavish lifestyle, and (iii) to make payments to certain individuals who recruited additional investors to invest with Capitol.

B. Proceeds of the Fraud

10. Defendant SHAPIRO misappropriated millions of dollars of investor funds for his personal benefit. For example, despite representing to investors that funds would be used to fund Capitol's grocery business, defendant SHAPIRO used investor funds to pay for, among other things:

a. debts resulting from illegal gambling on sporting events;

b. floor seats to professional basketball games;

c. his monthly mortgage payment on his residence in

Miami Beach, Florida;

d. payments on a Riviera yacht; and

e. his monthly payment for the lease of a Mercedes-Benz S65 AMG.

11. Defendant SHAPIRO used additional misappropriated investor funds to finance donations to the athletic program of a local university in the Miami, Florida area. As a result of a 10-year gift to the university, the Nevin Shapiro Student-Athlete lounge at the university was named for defendant SHAPIRO.

C. Failure to Make Required Principal and Interest Payments

12. Beginning in or about January 2009, defendant SHAPIRO and Capitol began failing to make required principal and interest payments to investors.

13. In response to investor questions surrounding payments which had not been made, defendant SHAPIRO made a number of false representations to investors, including that Capitol's vendors were late in making payments to Capitol, that Capitol was suffering from "cash flow problems," and that defendant SHAPIRO's accountant was "on vacation."

14. On or about November 30, 2009, certain Capitol investors to whom defendant SHAPIRO and Capitol had failed to make required principal and interest payments filed an involuntary bankruptcy petition against Capitol. At that time, defendant SHAPIRO and Capitol owed more than $100 million to investors.

Overt Acts

15. In furtherance of the conspiracy and in order to effect the objects thereof, defendant SHAPIRO and his co-conspirators committed or caused the commission of the following acts in the District of New Jersey and elsewhere:

16. Defendant SHAPIRO, UC 1, UC 2, UC 3, and others made and caused to be made numerous false statements, false representations, and material omissions to fraudulently induce investors to provide defendant SHAPIRO and Capitol with millions of dollars, including the following acts:

a. On or about January 5, 2006, defendant SHAPIRO engaged in a telephone conversation with investor "R.K." in New Jersey to solicit investor R.K. to invest approximately $200,000 in Capitol based on defendant SHAPIRO's false statements that the money would be used to fund Capitol's wholesale grocery business.

b. On or about January 10, 2006, defendant SHAPIRO and others created and caused to be created fictitious invoices to solicit investor "A.S." to invest, through A.S.'s business, approximately $126,725 in Capitol based on defendant SHAPIRO's false representations that the money would be used to fund Capitol's wholesale grocery business.

c. In or around July 2007, defendant SHAPIRO and others provided and caused to be provided to investor J.W. financial statements, tax returns, and other documents in which it was represented that:

i. Capitol had an ongoing grocery wholesale business;

ii. Capitol had gross sales of approximately $55 million in 2006; and

iii. Capitol anticipated gross sales of $60 million in 2007.

d. In or around September 2007, defendant SHAPIRO had a telephone conversation with investor "G.M." in which defendant SHAPIRO solicited investor G.M. to invest in Capitol based on defendant SHAPIRO's false representations that the money would be used to fund Capitol's wholesale grocery business.

e. On or about October 4, 2007, UC 3, at the direction of defendant SHAPIRO, sent an email to investor S.J., with a copy to defendant SHAPIRO, attaching Capitol's 2006 tax Form 1120S, which falsely reported gross sales of approximately $54 million in 2006.

f. On or about November 5, 2007, UC 3, at the direction of defendant SHAPIRO, sent an email to investor S.J., with copies to defendant SHAPIRO and UC 1, attaching "financial reports as of June 30, 2007" for Capitol, which falsely reported gross sales of approximately $25 million between January 1, 2007, and June 30, 2007.

g. On or about January 26, 2009, defendant SHAPIRO and others created and caused to be created fictitious invoices to solicit investor A.S., though A.S.'s business, to invest

approximately $200,000 in Capitol based on defendant SHAPIRO's false representations that the money would be used to fund Capitol's wholesale grocery business.

h. In or about early 2009, defendant SHAPIRO had a telephone conversation with investor "R.S." in which defendant SHAPIRO falsely stated that Capitol could not pay investor R.S. his interest payments due and owing because defendant SHAPIRO's accountant was "on vacation" and because Capitol's vendors were late in making payments to Capitol.

i. In or about May 2009, defendant SHAPIRO had a conversation with investor "A.H." in which defendant SHAPIRO falsely stated that Capitol could not pay investor A.H. his interest payments due and owing because Capitol's vendors were "dragging out payments" and "running 90 days late, when previously they had paid in 45 days."

17. Defendant SHAPIRO, UC 1, UC 2, UC 3, and others made and caused to be made numerous lulling payments to investors, including the following acts:

a. On or about January 10, 2006, defendant SHAPIRO and others sent and caused to be sent approximately $202,000 by wire transfer from Capitol's account at Bank of America to investor R.K.'s business account in Florida.

b. On or about April 6, 2006, defendant SHAPIRO and others sent and caused to be sent approximately $1,000 by wire transfer from Capitol's account at Bank of America to investor

J.D.'s account at Flagstar Bank in Michigan.

c. On or about February 23, 2007, defendant SHAPIRO and others sent and caused to be sent approximately $96,627.50 by wire transfer from Capitol's account at Bank of America to investor D.W.'s account at Wachovia Bank NA in Virginia.

d. On or about February 2, 2009, defendant SHAPIRO and others sent and caused to be sent approximately $204,000 by wire transfer from Capitol's account at Bank of America to A.S.'s business account.

18. Defendant SHAPIRO, UC 1, UC 2, UC 3, and others misappropriated investor funds for defendant SHAPIRO's personal use from the Capitol account to various other bank accounts under Defendant SHAPIRO's control, including the following acts:

a. On or about February 8, 2008, defendant SHAPIRO and others sent and caused to be sent approximately $32,000.45 from Capitol's account at Bank of America to defendant SHAPIRO's personal account at Wachovia Bank NA.

b. On or about February 15, 2008, defendant SHAPIRO and others sent and caused to be sent approximately $25,105.26 from Capitol's account at Bank of America to defendant SHAPIRO's account at Bank of America.

c. On or about February 15, 2008, defendant SHAPIRO and others sent and caused to be sent approximately $25,105.26 by wire transfer from defendant SHAPIRO's account at Bank of America to defendant SHAPIRO's personal account at Wachovia Bank NA.

d. On or about February 19, 2008, defendant SHAPIRO and others sent and caused to be sent approximately $26,316.46 from defendant SHAPIRO's personal account at Wachovia Bank NA to IndyMac Bank in payment for defendant SHAPIRO's mortgage.

e. On or about May 19, 2008, defendant SHAPIRO and others sent and caused to be sent approximately $100,000 by wire transfer from Capitol's account at Bank of America to defendant SHAPIRO's personal account at Wachovia Bank NA.

f. On or about May 19, 2008, defendant SHAPIRO and others sent and caused to be sent approximately $26,316.46 from defendant SHAPIRO's personal account at Wachovia Bank NA to IndyMac Bank in payment for defendant SHAPIRO's mortgage.

g. On or about August 22, 2008, defendant SHAPIRO and others sent and caused to be sent approximately $31,124.45 from Capitol's account at Bank of America to defendant SHAPIRO's personal account at Wachovia Bank NA.

h. On or about September 19, 2008, defendant SHAPIRO and others sent and caused to be sent approximately $31,124.45 from Capitol's account at Bank of America to defendant SHAPIRO's personal account at Wachovia Bank NA.

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

COUNT 2
(Securities Fraud)

1. Paragraphs 1 and 4 through 18 of Count 1 of this Indictment are realleged as if set forth in full herein.

2. From in and around January 2005 to in and around November 2009, in the District of New Jersey and elsewhere, defendant

NEVIN SHAPIRO

by use of the means and instrumentalities of interstate commerce and the mails, directly and indirectly, knowingly and willfully used manipulative and deceptive devices and contrivances in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5 (Rule "10b-5") in connection with the purchase and sale of securities by (a) employing devices, schemes, and artifices to defraud members of the investing public; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and a course of business which operated and would operate as a fraud and deceit upon Capitol investors;

In violation of Title 15, United States Code, Sections 78j(b) and 78ff(a) and Title 17, Code of Federal Regulations, Section 240-10b-5.

COUNTS 3-4
(Wire Fraud)

1. Paragraphs 1 and 4 through 18 of Count 1 of this Indictment are realleged as if set forth in full herein.

2. On or about the dates set forth below, in the District of New Jersey and elsewhere, having devised and intending to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing and attempting to execute such scheme, defendant

NEVIN SHAPIRO

did knowingly and intentionally transmit and cause to be transmitted by means of wire, radio, or television communications in interstate and foreign commerce, the writings, signs, signals, pictures, and sounds described below:

COUNT	APPROXIMATE DATE	WIRE COMMUNICATION
3	May 16, 2008	Wire transfer of approximately $130,993.75 from Capitol's account at Bank of America in Florida, to Pershing LLC in New Jersey for benefit of investor "J.Y."
4	July 8, 2008	Wire transfer of approximately $127,260.27 from Capitol's account at Bank of America in Florida, to Pershing LLC in New Jersey for benefit of investor J.Y.

In violation of Title 18, United States Code, Section 1343 and Section 2.

Counts 5-6
(Transacting in Criminal Proceeds)

1. Paragraphs 1 and 4 through 18 of Count 1 of this Indictment are realleged as if set forth in full herein

2. On or about the dates set forth below, in the District of New Jersey and elsewhere, defendant

NEVIN SHAPIRO

knowingly engaged and attempted to engage in monetary transactions affecting interstate commerce in criminally derived property of a value greater than $10,000, such property having been derived from specified unlawful activity, that is securities fraud and wire fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), Title 17, Code of Federal Regulations, Section 240-10b-5, and Title 18, United States Code, Sections 1343 and 2, as follows:

COUNT	APPROXIMATE DATE	MONETARY TRANSACTION
5	May 16, 2008	Wire transfer of approximately $130,993.75 from Capitol's account at Bank of America in Florida, to Pershing LLC in New Jersey for benefit of investor J.Y.
6	July 8, 2008	Wire transfer of approximately $127,260.27 from Capitol's account at Bank of America in Florida, to Pershing LLC in New Jersey for benefit of investor J.Y.

In violation of Title 18, United States Code, Section 1957 and Section 2.

FIRST FORFEITURE ALLEGATION

1. The allegations contained in Counts 1 through 4 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

2. Upon conviction of the offenses in violation of Title 15, United States Code, Section 78ff(a), Title 18, United States Code, Section 371, and Title 18, United States Code, Section 1343, set forth in Counts 1 through 4 of this Indictment, the defendant, NEVIN SHAPIRO, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), all right, title, and interest in any property, real or personal, that constitutes or is derived from proceeds traceable to the offenses of conviction.

3. 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

e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to forfeiture of any other property of the defendant, Nevin Shapiro, up to the value of the property described in the preceding paragraph.

SECOND FORFEITURE ALLEGATION

1. The allegations contained in Counts 5 and 6 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 982(a)(1).

2. Upon conviction of the offenses in violation of Title 18, United States Code, Section 1957, set forth in Counts 5 and 6 of this Indictment, the defendant, NEVIN SHAPIRO, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), all right, title, and interest in any property, real or personal, involved in such offense, and all property traceable to such property, including, but not limited to, approximately $258,254.02 in United States currency and all property traceable thereto, in that such sum in aggregate is property that was involved in the aforesaid offenses and is traceable to such property.

3. 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

e. has been commingled with other property which cannot be divided without difficulty,

the United States shall be entitled, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(a)(1), to forfeiture of any other property of the defendant, NEVIN SHAPIRO, up to the value of the property described in the preceding paragraph.

A TRUE BILL

FOREPERSON

PAUL J. FISHMAN
UNITED STATES ATTORNEY

CASE NUMBER:_____

United States District Court
District of New Jersey

UNITED STATES OF AMERICA

v.

NEVIN SHAPIRO

INDICTMENT FOR

15 U.S.C. §§ 78j(b) and 78ff; 17 C.F.R. 240.10b-5;
18 U.S.C. §§ 371, 981(a)(1)(C), 982(a)(1), 1343, 1957 and 2;
28 U.S.C. §§ 2461(c)

A True Bill,

_____

Foreperson

PAUL J. FISHMAN

U.S. ATTORNEY

NEWARK, NEW JERSEY

JUSTIN ARNOLD

ASSISTANT U.S. ATTORNEY

973-645-2785