

CRIMINAL

Court: United States District Court, Eastern District of New York

Case Title: USA v. Motz

Docket Number: 2:08CR00598

Expert(s): n/a

Mark the Correct Category	Crime Type	LBL2
X	White Collar Crime	CRIM100
	Drugs	CRIM120
	DUI/DWI	CRIM140
	Immigration	CRIM160
	RICO	CRIM180
	Murder	CRIM200
	Burglary	CRIM220
	Robbery	CRIM240
	Illegal Possession of Guns/Firearms	CRIM260
	Miscellaneous	CRIM300

IN CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
★ OCT 01 2009 ★

BROOKLYN OFFICE

JM:RB
F.#2007R01013

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

- against -

GEORGE M. MOTZ and
MELHADO, FLYNN & ASSOCIATES, INC.,

Defendants.

-----X

S U P E R S E D I N G
I N D I C T M E N T

Cr. No. 08-598 (S-2) (ADS)
(T. 18, U.S.C.,
§§ 1348(1), 2,
981(a)(1)(C) and 3551 et
seq.; T. 28, U.S.C.,
§ 2461(c))

THE GRAND JURY CHARGES:

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

I. Background

1. The defendant MELHADO, FLYNN & ASSOCIATES, INC. ("MFA") was a broker-dealer and investment adviser registered with the National Association of Securities Dealers ("NASD"). Its principal office was located in New York, New York.

2. The defendant GEORGE M. MOTZ was MFA's President, CEO, Director and Chairman of the Executive Committee. MOTZ owned approximately 9.3% of MFA. MOTZ was also MFA's Compliance Officer.

3. In addition to these various titles, MOTZ was a registered representative and investment advisor who managed numerous discretionary accounts and some non-discretionary

accounts at MFA. Discretionary accounts were accounts over which MOTZ had been given trading authority by his clients. MOTZ also had exclusive authority to trade on behalf of MFA's proprietary trading account, which was an account from which MOTZ traded for the firm's benefit. On Fridays during much of the relevant period, MOTZ worked from an office located in Suffolk County, New York, and communicated with his office in Manhattan via telephone and facsimile.

4. Third Millennium Fund, L.P. ("Third Millennium Fund"), was a limited partnership formed under the laws of Delaware in or about 2002. Third Millennium Fund was an investment vehicle whose limited partners were primarily high net worth individuals. The fund was marketed to investors based, in part, on MOTZ's track record of success in trading the MFA proprietary account.

5. Third Millennium GP, LLC ("Third Millennium GP"), served as Third Millennium Fund's general partner, which meant that it organized and managed the Third Millennium Fund. Third Millennium GP's members included MOTZ. From in or about July 2002 through at least June 2005, Third Millennium GP gave MOTZ authority to trade Third Millennium Fund's assets on behalf of the limited partners.

6. Investment Fund #1, whose identity is known to the Grand Jury, was a private investment fund that managed the assets of high net worth individuals and families, endowments, foundations and corporations. In or about and between November 2002 and November 2004, Investment Fund #1 maintained a trading account at MFA that was intended to mirror the trading activity in the Third Millennium Fund.

II. Cherry-Picking and MFA Policies

7. "Cherry-picking" was an improper securities trading practice in which the responsible individual executed trades without assigning those trades to a particular trading account. After a period of time, the responsible individual determined which, if any, of those trades became profitable, and then assigned some or all of the profitable trades to favored accounts and assigned the unprofitable trades to disfavored accounts.

8. MFA's discretionary account clients were informed that, to the extent that MFA engaged in proprietary trading on its own behalf, MFA's proprietary trading account would not be favored over the clients' accounts.

III. The Cherry-Picking Scheme

9. In or about and between November 2000 and June 2005, MOTZ engaged in a fraudulent cherry-picking scheme in which

he retroactively allocated profitable trades to accounts he favored and unprofitable trades to accounts he disfavored.

A. MOTZ's Favoring of MFA's Proprietary Account

10. In the beginning of MOTZ's cherry-picking scheme, MOTZ retroactively allocated profitable trades to MFA's proprietary account and unprofitable trades to the Third Millennium Fund, Investment Fund #1, MOTZ's discretionary client accounts or all three. During this period, MOTZ was the sole individual responsible for trading in the MFA proprietary trading account.

11. MOTZ frequently submitted orders to purchase securities to the MFA trading desk in the morning. MOTZ usually waited for several hours before informing the trading desk where to allocate particular trades. If the trade became profitable during the day, he frequently placed the trade into the firm's proprietary trading account. He would then close out the profitable position in the firm's trading account by selling the position, thereby locking in a profit. Such transactions, in which the same securities were purchased and sold during the course of the same day were known as "day-trades."

12. If the trade did not become profitable, MOTZ allocated the trade to the Third Millennium Fund, Investment Fund #1, MOTZ's discretionary client accounts, or all three. He

usually allocated trades to client accounts shortly before the close of trading at 4:00 pm ET to allow maximum time to determine whether the trade would become profitable. MOTZ generally did not close out the unprofitable trades on the same day he purchased the securities. Instead, he closed those trades out at a later date. Those trades may or may not have become profitable by the time they were closed.

13. As a result of MOTZ's conduct, the proprietary account that he controlled was highly successful from in or about and between November 2000 and September 2003. Of the 204 trades MOTZ assigned to the MFA proprietary trading account during this period, 202 were profitable. All of these trades were day-trades. Because MOTZ assigned primarily only profitable trades to the MFA proprietary account, and because those trades were closed out and the gains thereon already realized at the time of allocation, the profits were risk-free.

B. Cover Up of the Cherry-Picking Scheme

14. In or about and between August 2003 and September 2003, the NASD conducted an on-site examination of MFA's New York office. In or about and between November 2003 and December 2003, the United States Securities and Exchange Commission ("SEC") conducted an independent on-site examination of MFA's New York office. During the course of those examinations and thereafter,

MOTZ, together with others, altered trade tickets associated with MFA's proprietary trading account in order to make it appear as though the trades in question had been allocated earlier in the trading day than they actually were allocated, thereby concealing his cherry-picking scheme.

15. MFA's trade tickets, which were used to instruct MFA's trading desk to execute securities transactions, consisted of three copies attached together. The top copy was white, the middle copy blue, and the bottom copy pink. In the normal course of business, the blue copy was discarded, the white copy was maintained by MFA's trading desk, and the pink copy was maintained by the responsible registered representative.

16. The registered representative or his/her assistant would prepare a trade ticket identifying, among other information, the security and number of shares to be traded and the account to which the trade should be allocated. The trading desk would then add information on the ticket, including time stamps showing when the ticket was received and when the trade was executed. The pink copy would then be distributed to the registered representative and the white copy would be maintained by the trading desk.

17. In 2003, during the regulators' examinations of MFA and thereafter, MOTZ, together with others, gathered together

the white and pink copies of the trade tickets representing the trades given to MFA's proprietary trading account. In some instances, MOTZ, together with others, altered tickets by adding a "T" to the white and pink copies to make it appear, at the time he had initially given the tickets to MFA's trading desk, that he had intended that the trade go to MFA's proprietary "Trading" account. In other instances, where MOTZ originally had written a "V" on trade tickets to indicate that the trade was destined for various client accounts, MOTZ, together with others, altered the tickets by writing over the "V" to make it look like a "T" on both the pink and white copies.

C. MOTZ's Favoring of the Third Millennium Fund and Investment Fund #1

18. In or about November 2002, MFA representatives, including MOTZ, made a presentation to Investment Fund #1 in an effort to convince Investment Fund #1 to invest money with MFA in the Third Millennium Fund. As part of that presentation, MOTZ informed Investment Fund #1 that he had achieved a 38% return in MFA's proprietary account in 2001 and a 20% return in that account, year-to-date, in 2002. Indeed, MOTZ regularly touted, both within and outside MFA, his success in trading MFA's proprietary account. MOTZ did not inform Investment Fund #1 or others that these returns in the proprietary account were the product of MOTZ's cherry-picking scheme. Following the November

2002 presentation, Investment Fund #1 invested \$2 million with MFA in an account that was intended to mirror the trading activity of the Third Millennium Fund.

19. In or about and between approximately July 2002 and April 2003, however, the performance of the Third Millennium Fund was poor. Because Investment Fund #1's account with MFA mirrored the trading activity in the Third Millennium Fund, from its initial \$2 million investment through in or about April 2003, its performance was also poor. In part, the poor performance was due to the fact that MOTZ assigned these accounts unprofitable trades and did not assign them profitable trades.

20. In order to improve the performance of, and prevent investors from withdrawing their investments from, the Third Millennium Fund and the Investment Fund #1 account, in approximately June 2003, MOTZ began to assign profitable trades to these two accounts.

21. In or about September 2003, MOTZ stopped regularly assigning profitable trades to MFA's proprietary trading account. The Third Millennium Fund and Investment Fund #1 became the primary beneficiaries of his cherry-picking scheme.

22. In keeping with his practice when he favored MFA's proprietary account, MOTZ frequently submitted orders to purchase securities to the MFA trading desk in the morning. MOTZ again

usually waited for several hours before informing the trading desk where to allocate particular trades. If the trade became profitable during the day, he then frequently placed the trade into the Third Millenium Fund and Investment Fund #1 accounts.

23. If the trade did not become profitable, MOTZ allocated the trade to MOTZ's discretionary client accounts. He usually allocated trades to client accounts shortly before the close of trading at 4:00 pm ET to allow maximum time to determine whether the trade would become profitable. MOTZ generally did not close out the unprofitable trades on the same day he purchased the securities. Instead, he closed those trades out at a later date. Those trades may or may not have become profitable by the time they were closed.

24. In or about and between June 2003 and June 2005, each of the 106 day-trades MOTZ allocated to the Third Millennium Fund and Investment Fund #1 was profitable. Because MOTZ assigned only profitable day-trades to these accounts, and because those trades were closed out and the gains thereon already realized at the time of allocation, the profits were risk-free.

COUNT ONE
(Securities Fraud)

25. The allegations contained in paragraphs 1 through 22 are repeated and incorporated as though fully set forth in this paragraph.

26. In or about and between November 2000 and June 2005, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants GEORGE M. MOTZ and MELHADO, FLYNN & ASSOCIATES, INC., together with others, did knowingly and intentionally execute a scheme and artifice to defraud persons in connection with securities of issuers with a class of securities registered under section 12 of the Securities Exchange Act of 1934, specifically, shares of publicly-held companies.

(Title 18, United States Code, Sections 1348(1), 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

27. As the result of committing the offense alleged in Count One of this Superseding Indictment, contrary to Title 18, United States Code, Sections 1348 and 2, the defendant GEORGE M. MOTZ 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), which require any person convicted

of such offense(s) to forfeit any property constituting or derived from proceeds obtained directly or indirectly as a result of such offense(s), a sum of money up to a value of not less than \$2,164,869 in United States currency, which represents the amount of proceeds obtained as a result of the scheme described in the above-listed offense.

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 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 that cannot be subdivided 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

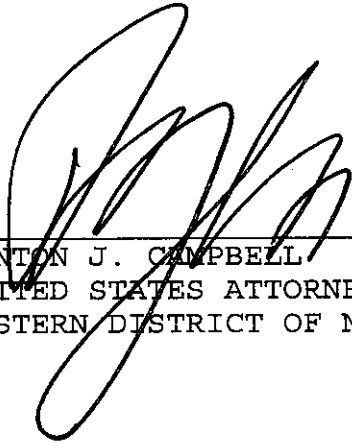
property of said defendants up to the value of the above
forfeitable property, including but not limited to the following:

any and all right, title and interest in the real
property and appurtenances, improvements,
fixtures, attachments, and easements known as 6
Bayview Drive, Quogue, New York 11959, held in the
names of George M. Motz and Kittric Motz.

(Title 18, United States Code, Section 981; Title 28,
United States Code, Section 2461)

A TRUE BILL


FOREPERSON


BENTON J. CAMPBELL
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

No.

UNITED STATES DISTRICT COURT

EASTERN District of NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

*GEORGE M. MOTZ and
MELHADO, FLYNN & ASSOCIATES, INC.,*

Defendants.

INDICTMENT

(T. 18, U.S.C., §§
1348(1), 2, 981(a)(1)(C) and 3551
et seq.; T. 28, U.S.C. § 2461(c))

A true bill.

Mary Catherine Johnson
Foreman

Filed in open court this _____ day.

of _____ A.D. 20 _____

Clerk

Bail, \$ _____

William E. Schaeffer, Assistant United States Attorney (718) 254-6059

INFORMATION SHEET

INDICTMENT OFFICE
U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

OCT 01 2009 ★

BROOKLYN OFFICE

1. Title of Case: United States v. George M. Motz & Melhado, Flynn & Associates, Inc.

2. Related Magistrate Docket Number(s) N/A

3. Arrest Date: August 28, 2009

4. Nature of offense(s): **Felony**
 Misdemeanor

5. Related Civil or Criminal Cases - Title and Docket No(s). (Pursuant to Rule 50.3 of the Local E.D.N.Y. Division of Business Rules):

08-598 (S-1) (ADS) (same case)

6. Projected Length of Trial: **Less than 6 weeks** ()
More than 6 Weeks ()

7. County in which crime was allegedly committed: SUFFOLK
(Pursuant to Rule 50.1(d) of the Local E.D.N.Y. Division of Business Rules)

CASE SHOULD BE VENUED IN CENTRAL ISLIP, NEW YORK

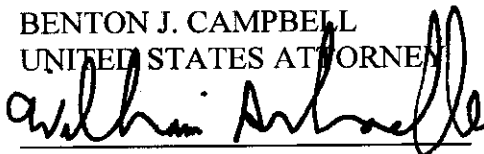
8. Has this indictment been ordered sealed? () Yes () No

9. Have arrest warrants been ordered? () Yes () No

10. Is a capital count included in the indictment? () Yes () No

BENTON J. CAMPBELL
UNITED STATES ATTORNEY

By:



William E. Schaeffer
Assistant U.S. Attorney
(718) 254-6059