UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 12-20630-Cr-Lenard

UNITED STATES OF AMERICA

Plaintiff,

v.

JAMES C. HOWARD, III

Defendant.
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FACTUAL PROFFER

From January 2010 through March 2011, JAMES C. HOWARD, III, Patricia S. Saa, Louis N. Gallo, III, Michael R. Casey, and others used Commodities Online, LLC ("COL") to solicit funds for investment opportunities. COL's main office was in Ft. Lauderdale, Florida.

HOWARD and Saa were the founders of COL. Howard and Saa were the signers of COL bank accounts from January to May of 2010. Initially, HOWARD was President of COL, Saa was Vice-President, Gallo was Director of Sales and Casey was outside counsel. After mid-2010, Casey became the President and Gallo became the Vice-President. Casey and the COL comptroller were the signers of the COL bank accounts from May 2010 to March 2011. HOWARD continued to be the owner of COL and top person in charge of COL and its bank accounts until April 2011.

From January 2010 through March 2011, COL received from over 700 investors over $21 million for: COL ownership units; subscription fees to have access to the COL website and COL's investment opportunities; and investments in purported transactions to buy and sell commodities. HOWARD, Saa, Gallo and others caused investors to pay subscription fees via credit card payments to American Financial Solutions, LLC ("AFS"), a company controlled by Gallo. HOWARD, Saa, Gallo, Casey and others also caused COL investors to wire funds to COL bank accounts and to send checks to COL via Federal Express.

HOWARD, Saa, Gallo, Casey and others marketed COL's investments using meetings, written promotional brochures and a website. HOWARD spoke at several meetings with investors. HOWARD was also aware of and approved the contents of COL's brochures, website, and press releases. HOWARD also oversaw COL's talking points, emails and other representations made by COL employees.

HOWARD, Saa, Gallo, Casey and others also marketed COL's investments via sales offices throughout the United States. Among these was a call-center overseen by Gallo, located in Pompano Beach, Florida. COL salespersons would call potential investors, direct them to the COL website, and mail marketing materials to them.

HOWARD, Saa, Gallo and others initially focused on selling units of ownership in COL. From late January to March 2010, HOWARD, Saa and others made presentations at large meetings in several states, including Florida, Texas, Georgia, Virginia. Gallo also attended these meetings. The individuals who were invited had previously invested in another company, SSH2 Acquisitions, Inc. ("SSH2"). SSH2 was controlled by HOWARD, Saa and others. HOWARD, Saa and others had used SSH2 to solicit funds for investments in transactions to buy and sell commodities.

Via emails and at these meetings, HOWARD, Saa and others offered ownership units in COL for $25,000 each. HOWARD, Saa and others represented that COL would sell investments in pre-arranged commodities transactions, similar to SSH2; that there would be a high return on the investment in ownership units; and that the funds paid for the units would be used for COL's expenses.

COL received over $2.2 million for ownership units in February of 2010. On February 9, 2010, Saa wired $1.3 million of the COL ownership unit money from a COL account to Sutton Capital, LLC ("Sutton"), a company controlled by HOWARD. HOWARD wired these funds from Sutton to Rapallo Investment Group, LLC ("Rapallo"), a company controlled by Saa. Saa then wired these funds from Rapallo to SSH2. HOWARD and Saa caused these funds to be wired from SSH2 accounts to SSH2 investors falsely representing this money to be profits on SSH2 investments.

After receiving the COL investors' payments, HOWARD, Saa and others caused COL certificates of units of membership interests to be mailed to the investors. HOWARD, Saa, Casey and others also later sent the investors a written agreement which stated that a substantial portion of the proceeds from the offering of units would be applied to COL's working capital for general corporate use. HOWARD and Saa did not disclose to investors that at least $1.3 million of the funds investors paid for COL ownership units had been transferred in February 2010 by HOWARD and Saa and used for other purposes. Casey, Gallo, and others also learned by May 2010 that at least $1.3 million had been transferred from COL to Sutton, and they also did not disclose it to the COL investors.

In addition to selling COL ownership units, HOWARD, Saa, Gallo, Casey and others used COL to solicit funds for investments in purported transactions to buy and sell commodities, such as fish, iron and sugar. HOWARD, Saa, Gallo, Casey and others caused certain purported "pre-sold" commodities contracts to be offered for investment via the COL website, stating a pre-determined percentage return on investment and the number of days by when investors would be paid. However, the purported contracts -- for which investors sent COL money -- did not exist as represented to the investors.

HOWARD, Saa, Gallo, Casey and others also posted on the COL website a history of past COL commodities "contracts" that had purportedly paid out profits to investors. For example, the COL website stated that the "Tuna & Red Snapper Contracts that closed on 3/04/2010 paid on 3/23/2010 (19 day completion time) at 10%," and that the "Iron Ore 5 Contract that closed on 6/28/2010 paid on 9/03/2010 (67 day completion time) at 22%." HOWARD, Saa, Gallo, Casey and others also caused purported profit payments to be posted in the COL website accounts of individual investors. HOWARD, Gallo and others also caused COL employees to email investors stating that payments had been posted to their accounts. However, COL did not have any profits, and the purported profits posted on the investors' COL website accounts were false.

HOWARD, Saa, Gallo, Casey and others also made material misrepresentations and omissions about the leaders of COL. In March of 2010, HOWARD was arrested for a state fraud offense. After HOWARD's arrest, investors asked about HOWARD's role in COL and his involvement in criminal activities. HOWARD, Casey, Gallo and others stated to investors that HOWARD was no longer managing COL, when in fact, HOWARD remained in charge. Also, HOWARD, Gallo and others did not disclose to investors that both HOWARD and Gallo had previously been convicted of federal felonies and that Gallo was still serving a term of supervised release.

HOWARD, Saa, Gallo, Casey and others also made material misrepresentations and omissions about the misuse of funds that COL received from investors. HOWARD, Saa, Gallo, and others used multiple companies to transfer COL funds for other purposes and for their own benefit.

Rita E. Balbirer, who also worked in the same Pompano Beach office where COL had a sales call-center, conducted many financial transactions at the direction of Gallo, HOWARD, and Saa. The transactions involved money received from COL into AFS accounts and the accounts of Balbirer's company, Minjo Corp. ("Minjo"). HOWARD approved large payments of COL funds to AFS and Minjo. Gallo caused large amounts of these funds to be diverted for Gallo's benefit.

HOWARD and Saa also caused COL funds to be diverted using accounts controlled by Balbirer. In March of 2010, when HOWARD was arrested for a state offense, Saa wired $65,000 from a COL account to an AFS account controlled by Balbirer. That same day, Balbirer used the funds for a $24,000 cashier's check to A-Alternative Release Bail Bond for HOWARD's bond in the state case. HOWARD also caused Balbirer to divert COL funds through Minjo accounts, including but not limited to funds sent to Saa in Chile in May of 2010, and used to pay an SSH2 investor in November of 2010.

On or about March 15, 2011, HOWARD and Casey received subpoenas issued to COL by the U.S. Securities and Exchange Commission ("SEC"). Gallo, who was in Mexico, and Saa, who was in Chile, also learned about the SEC subpoenas. On April 1, 2011 the U.S. District Court appointed a Receiver to take over COL for the benefit of the investors. From March 15 to March 31, 2011, HOWARD approved the transfer of over $6 million out of the COL accounts, including approving Gallo's directions to transfer over $5 million to accounts in Mexico.

During the time COL was operating, COL paid about $3 million to investors using funds paid by later investors. Over $18 million of the funds paid by investors were not returned to the COL investors.

Date: 9/16/13 By: ______________________
ANA MARIA MARTINEZ
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