

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERK'S OFFICE

UNITED STATES OF AMERICA)
)
 v.)
)
 MICHAEL F. SCHIAVO,)
)
 Defendant.)
 _____)

Criminal No. 11-10192 MAY 19 A 9:50
VIOLATION: U.S. DISTRICT COURT
DISTRICT OF MASS.
31 U.S.C. §§ 5314 and 5322(a)
(Willfully Violating Foreign Bank Account
Reporting Requirements)

INFORMATION

THE UNITED STATES CHARGES THAT:

General Allegations

1. At all times material to this Information, the defendant, Michael F. Schiavo was a resident of Westford, Massachusetts. From February 2009 to the present, he has been a managing director at SCG Consulting Group, a consulting firm based in Boston, Massachusetts that serves the venture capital and private equity industries. From May 2000 to August 2008, Schiavo was a general partner and the chief financial officer of Kodiak Venture Partners, a venture capital firm based in Waltham, Massachusetts. From July 2003 to the present, he has been a Director at Boston Private Bank and Trust Company, a full service commercial bank headquartered in Boston whose deposits were insured by the Federal Deposit Insurance Corporation.

2. At all times material to this Information, HSBC Bank Bermuda Limited ("HSBC Bank Bermuda") (formerly The Bank of Bermuda, Ltd.) was a Bermuda bank headquartered in Hamilton, Bermuda. Beginning in at least in or about 2003 and continuing to at least 2008, Schiavo maintained an account at HSBC Bank Bermuda in which the balance ranged from approximately \$65,000 to \$150,000.

3. At all times material to this Information, Union Bank of Switzerland AG (“UBS”) was the largest bank in Switzerland and one of the largest banks in the world.

4. At all times material to this Information, Peter A. Schober, was a resident of Boston, Massachusetts, and was a venture capitalist. Schober and Schiavo have been partners in various business deals since the 1990s.

5. At all times material to this Information, Headway Investment Partners, LP. (“Headway”) was a venture capital firm based in London, England.

6. At all times material to this Information, United States citizens, resident aliens, and legal permanent residents of the United States had an obligation to report to the IRS on Schedule B of a U.S. Individual Income Tax Return, Form 1040, whether that individual had a financial interest in, or signature authority over, a financial account in a foreign country in a particular year by checking “Yes” or “No” in the appropriate box and identifying the country where the account was maintained. United States citizens and residents had an obligation to report all income earned from foreign bank accounts on the tax return.

7. At all times material to this Information, United States citizens, resident aliens, and legal permanent residents of the United States who had a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any time during a particular year were required to file with the Department of the Treasury a Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1 (the “FBAR”). The FBAR for the applicable year was due by June 30 of the following year.

8. An “undeclared account” was a financial account owned by individuals subject to United States tax and maintained in a foreign country that had not been reported to the United States government on an income tax return and an FBAR.

9. A “tax haven” was a country or territory whose institutions and laws, including bank secrecy laws, were intended to conceal financial information evidencing tax evasion from other countries.

10. The Offshore Account Voluntary Disclosure Program (“Voluntary Disclosure Program”) was a program administered by the IRS that was intended to serve as a vehicle for U.S. taxpayers to disclose their previously undeclared offshore accounts and pay tax on the income earned in those accounts. Under the Voluntary Disclosure Program, the participants pay tax on the unreported income, a 20% accuracy penalty on the tax, a 20% penalty on the high balance of the undeclared account, together with interest, related to their failure to disclose their accounts so as to avoid criminal prosecution.

11. A “silent disclosure” occurs when a U.S. taxpayer with an undeclared account files FBARs and amended returns and pays any related tax and interest for previously unreported offshore income without notifying the IRS of the undeclared account through the Voluntary Disclosure Program. A silent disclosure does not constitute a voluntary disclosure. On its website, the IRS strongly encourages taxpayers to come forward under the Voluntary Disclosure Program and warns them that taxpayers who instead make silent disclosures risk being criminally prosecuted for all applicable years.

Failure to Report a Foreign Account

12. In or about 2004, Schiavo and Schober entered a partnership that, together with Headway and at Schober's direction, invested in an American medical device company. In or about December 2005, Schober requested a payout of the partnership's "carrying interest" from the investment.

13. Schiavo and Schober were aware that the payout would be subject to taxation in the United States, and Schober arranged to have Headway make payment in a way that would not be reported to the IRS. Specifically, on behalf of his partnership with Schiavo, Schober asked Headway to create a "consultancy agreement," in which the carrying interest would be paid out as a "fee." Schiavo's name was removed from the agreement, and Schober directed Headway to make payment to the undeclared account he held at UBS in Switzerland in the name of a nominee tax haven entity.

14. Schober and Schiavo agreed that once payment was made, Schober would arrange to be sent one third of the payment to Schiavo's HSBC Bank Bermuda account.

15. In or about September 30, 2006, Headway wired \$297,816.00 to Schober's undeclared account at UBS in Switzerland. That same day, Schober caused UBS to transfer \$99,273.00 to Schiavo's undeclared account at HSBC Bank Bermuda. Schiavo was aware that this income was taxable in the United States.

16. For the tax years 2003 to 2008, Schiavo willfully failed to file FBARs with the Department of the Treasury and failed to disclose that he had an interest in a financial account in Bermuda.

17. For the tax years 2003 to 2008, Schiavo prepared and signed under the pains and penalties of perjury, and filed, Individual Income Tax Returns with the IRS. On Schedule B of each

return, Schiavo represented that he did not have an interest in any foreign financial accounts, and failed to report his income from either the Headway deal or the interest that accrued in his HSBC Bank Bermuda account. In so doing, Schiavo deprived the IRS of \$40,624 in tax due and owing.

18. On or about October 6, 2009, following widespread media coverage of UBS's disclosure to the IRS of account records for undeclared accounts held by U.S. taxpayers and the IRS's Voluntary Disclosure Program, Schiavo made a "silent disclosure" by preparing and filing FBARs and amended Forms 1040 for tax years 2003 to 2008, in which he reported the existence of his previously undeclared account at HSBC Bank Bermuda. He made such filings notwithstanding the availability of the Voluntary Disclosure Program. Schiavo reported on the amended individual income tax returns the interest income that he earned from the previously undeclared account he held at HSBC Bank Bermuda but did not report on the 2006 return the income earned that he earned from Headway Partners.

19. On or about October 27, 2009, a Special Agent from the IRS attempted to interview Schiavo at his home.

20. On or about October 29, 2009, Schiavo prepared and executed a second amended individual income tax return for tax year 2006 on which he reported the income earned that he earned from Headway Partners and that had been deposited into his previously undeclared account at HSBC Bank Bermuda.

COUNT ONE
31 U.S.C. §§ 5314 and 5322(a)
Willful Violation of Foreign Bank Account Reporting Requirements

21. Paragraphs 1-20 are re-alleged and incorporated by reference as though fully set forth herein.

22. On or about June 30, 2007, at Boston in the District of Massachusetts and elsewhere, the defendant,

MICHAEL F. SCHIAVO,

did knowingly and willfully violate the requirements prescribed by the United States Secretary of the Treasury, as codified at Title 31, Code of Federal Regulations, § 103.24(a), to report a financial interest in a bank, securities and other financial account in a foreign country in calendar year 2006; to wit, the defendant failed to file an FBAR disclosing his financial interest in an account at the HSBC Bank Bermuda, which had a value of greater than \$10,000 during calendar year 2006.

All in violation of Title 31, United States Code, Sections 5314 and 5322(a).

Dated: *5/19/11*

CARMEN M. ORTIZ
United States Attorney

JONATHAN F. MITCHELL
Assistant U.S. Attorney

Mark F. Daly
MARK F. DALY
Trial Attorney
Tax Division
U.S. Department of Justice

Place of Offense: Westford Category No. III Investigating Agency IRS

City Westford Related Case Information:

County Middlesex Superseding Ind./ Inf. _____ Case No. _____

Same Defendant _____ New Defendant _____

Magistrate Judge Case Number 2011 MAY 19 A 9:50

Search Warrant Case Number _____

R 20/R 40 from District of U.S. DISTRICT COURT DISTRICT OF MASS.

Defendant Information:

Defendant Name Michael F. Schiavo Juvenile Yes No

Alias Name _____

Address 6 Swanson Lane, Westford, Massachusetts

Birth date (Year only): 1958 SSN (last 4 #): 2204 Sex M Race: White Nationality: USA

Defense Counsel if known: James Lawson Address: Prince, Lobel Glovsky & Tye

100 Cambridge St., Boston, MA 02210

Bar Number: _____

U.S. Attorney Information:

AUSA Jonathan F. Mitchell Bar Number if applicable 629499

Interpreter: Yes No List language and/or dialect: _____

Victims: Yes No If Yes, are there multiple crime victims under 18 U.S.C. §3771(d)(2) Yes No

Matter to be SEALED: Yes No

Warrant Requested Regular Process In Custody

Location Status:

Arrest Date: _____

Already in Federal Custody as _____ in _____

Already in State Custody _____ Serving Sentence Awaiting Trial

On Pretrial Release: Ordered by _____ on _____

Charging Document: Complaint Information Indictment

Total # of Counts: Petty _____ Misdemeanor _____ Felony 1

Continue on Page 2 for Entry of U.S.C. Citations

I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.

Date: 5/13/11 Signature of AUSA: _____

District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant Michael F. Schiavo

U.S.C. Citations			
<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count Numbers</u>	
Set 1	<u>31 U.S.C. §§ 5314</u>	<u>Willful Failure to Report Foreign Bank Account</u>	<u>1</u>
Set 2	<u>and 5322</u>	_____	_____
Set 3	_____	_____	_____
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set 10	_____	_____	_____
Set 11	_____	_____	_____
Set 12	_____	_____	_____
Set 13	_____	_____	_____
Set 14	_____	_____	_____
Set 15	_____	_____	_____

ADDITIONAL INFORMATION: