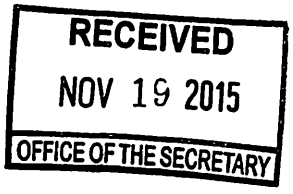
United States of America
Securities and Exchange Commission



Administrative Proceedings
File No. 3-16926

In the Matter of

Robert Burton,

Respondent

Motion to Dismiss for Prosecutorial Misconduct

Robert Burton (Respondent) moves the Securities and Exchange Commission (Commission) to dismiss these proceedings with prejudice pursuant to Rule 154(2) of the Rules of Practice of the Securities and Exchange Commission because of gross professional misconduct on the part of the Assistant United States Attorney who prosecuted the Respondent, the Federal Bureau of Investigation, and other agents assigned to the Internal Revenue Service. All of them have to accept responsibility for collective malfeasence in this matter.

In support of the foregoing, the Respondent asserts that the prosecutor in this case either intentionally or negligently suppressed material, exculpatory evidence in a criminal investigation that should have never been initiated. That investigation and conviction, now subject to collateral attack in a 2255 motion, is inextricably connected to the present proceeding before this Commission. Accordingly, counsel in this case should scrutinize with a great deal of care, the performance and actions of the agents and her fellow prosecutor who excoriated the Respondent before Judge Wolf and failed miserably in their duty to disclose material, exculpatory evidence to the sentencing court.

The motion is being brought as a supplement to a timely answer

filed by the Respondent in this matter. It complies with Rule 154 of the Rules of Practice of the Securities and Exchange Commission. It is also filed in the criminal case brought against the Respondent in the District of Massachusetts before Judge Mark Wolf. A hearing on the motion to dismiss will be heard before the Court that sentenced the defendant. At that time, the Respondent will provide that Court and this Commission with a long litany of criminal cases that have been adversely impacted by the professional misconduct of a number of federal prosecutors in the District of Massachusetts. Fortunately, for the defendant and unfortunately for the prosecutor, their glaring deficiencies and misconduct have been discovered, commented on and ultimately redressed by Judge Mark Wolf. See United States v. Darwin Jones, 620 F. Supp. 163 (1st Cir. 2009); Pasquale Barone and Vincent Ferrara, 384 F. supp 2d 384 (D. Mass 2005) and the long list of cases cited in In Re: Jeffrey Auerhan, 2009 U.S. Dist Ct. Lexis 88161.

This case is yet another example of gross, professional misconduct in connection with the failure of an officer of this Court to produce material, exculpatory evidence that would have adversely impacted the integrity of the government's case. Indeed, full disclosure of this material, exculpatory evidence would not just serve to impeach the so-called victims. Here, it would have produced actual evidence of innocence and lack of mens rea- a crucial element for maintaining any of the charges in this case. It is clear that the failure of the government to disclose this material, exculpatory evidence violated the constitutional duty set forth in Brady v. Maryland, 373 U.S. 83(1963) and the Court's opinion in United States v. Darwin Jones, 620 F. Supp 2d 164 (2009). Moreover, "the egregious failure of the government to disclose plainly material exculpatory evidence in this case extends a

dismal history of intentional and inadvertent violations of the governments duties to disclose in cases assigned to this court" Jones, 2009 U.S. Dist Lexis 6434.

To fully comprehend the gravity of the prosecutorial misconduct, one must consider the factual circumstances unique to this case.

On August 21, 2014, the Respondent pled guilty to five counts of securities fraud, two counts of procuring false tax returns, and four courts of subscribing false tax returns. The Respondent was later sentenced on December 23, 2014 to a 48 month prison term followed by three years of supervised release. Restitution in the amount of $159,500 was also ordered by the Court.

The gravaman of the claim against the defendant in both of these cases is that he obtained not less than $150,000 from four investors by falsely representing that he would invest such money on their behalf. The prosecutor in the criminal case, as well as the agents involved in the investigation used all the prosecutorial power at their disposal to conduct a detailed forensic examination of his bank accounts and the bank accounts of the so-called victims in this case.

Messrs Coleman, Hannan, Castillo and Vozzella were examined and interrogated by the agents concerning their relationships with the defendant. The amount of money they transferred to the defendant, AS WELL AS THE AMOUNT OF MONEY THEY RECEIVED BACK from the defendant was known to the agents and the prosecutor. For some inexplicable reason, all the agents and the assistant United States attorney chose not to disclose the stream of payments made by the defendant to each of the four parties allegedly "victimized" by the defendant. The failure to disclose this material, exculpatory information, even up to now, is inexcusable given Judge Mark Wolf's numerous opinions and warnings to

prosecutors in this District.

In essence, the government alleged that the Respondent perpetuated a larceny (securites fraud) against four people. However, the same prosecutors failed to complete the truthful and accurate picture of the Respondent or even attempt to offer exculpatory and mitigating evidence that was in their collective possession. Specifically, the Respondent paid back $70,500 to the witnesses in this case. This salient fact was never mentioned years before the accusations, investigation, indictment and guilty plea either by the prosecutor or the federal defender. Clearly, the government knew about this important, exculpatory fact. Seeing fit to remain silent rather than disclose such information to the Court is outrageous and should shock the conscious of this Court.

As Judge Wolf correctly stated in United States v. Darwin Jones, supra

> "The prosecution of a criminal case is not a game to be played casually or thoughtlessly. Many years of a man's life were at stake in the suppression hearing. The Court's ability to make a properly informed decision on a matter of profound consequence was threatened. Even when viewed as inadvertent, the misconduct was very serious. This militates in favor of imposing appropriate sanctions."

It is crystal clear that the government has a constitutional duty to disclose to a criminal defendant material exculpatory evidence. See Brady v. Maryland, 373 U.S. 83 (1963). It is also established law that exculpatory evidence includes what is potentially useful in impeaching government witnesses. See Giglio v. United States, 405 U.S. 150 (1972).

In this District, the office of the United States Attorney has been rebuked a number of times for "sloppy practices" in connection

with its ongoing duty to disclose exculpatory evidence. Indeed, the First Circuit has commented on the "astounding negligence" shown by that office and its "recurring problem of belated government compliance with its duty to provide timely disclosure of exculpatory evidence." United States v. Osorio, 929 F. 2d 753 (1st Cir. 1991) and United States v. Ingraldi, 793 F. 2d 408 (1st Cir. 1986). Nonetheless,again in Ferrara v. United States, 384 F. Supp 2d 384 (2005) this Court took the highly unusual step of actually naming the prosecutor who was responsible for multiple Brady violations and actually initiating disciplinary proceedings against him at the state and federal level. In Ferrara, supra this Court again found that Jeffrey Auerhahn "repeatedly failed to disclose exculpatory evidence. Seven or eight of those violations revealed that the prosecutor had withheld powerful exculpatory information provided by a witness that directly negated the guilt of a defendant and a co-defendant. See Ferrara v. United States, 372 F. Supp. 2d 108 (D. Mass 2005).

In this case, the prosecutor withheld material exculpatory evidence establishing that this defendant, over a period of years, made a continuous stream of payments to the four alleged victims in this case. She and numerous agents attached to the F.B.I. and I.R.S. simply "sat" on this material exculpatory evidence. It was not disclosed to the defense lawyer, who the record will show was essentially "over his head" in a case involving numerous bank accounts and the credits and disbursements made from each one. Indeed, a simple examination of the individual bank accounts would reveal that substantial payments were made over a protracted period of time. The payments were not just exculpatory, but they were also material to the issue of innocence and mens rea.

Finally, the defendant points to five cases brought before Judge Mark Wolf and inflicted with the same problem that seems to permeate the office of the United States Attorney for the District of Massachusetts.

In United States v. Diabate, 90 F. Supp 2d 140 (D. Mass 2000) this Court dismissed a case without prejudice after defense counsel alerted the Court that impeachment evidence relative to a critical witness was withheld. In United States v. Henderson, CR No. 01-10264, the Court was compelled to declare a mistrial because the prosecutor failed to disclose impeachment evidence before a hearing on a defense motion to suppress. In 2002, in United States v. Baskin, CR No 01-10319, the Court was again required to reopen a concluded hearing because material impeachment evidence was not disclosed. Lastly, in United States v. Diaz, CR No. 05-30042-MLW, the Court again declared a mistrial in a case involving the Latin Kings because of the government's failure to disclose material impeaching information concerning a co-operative witness. Before the second trial, the government dismissed the case because, incredibly, it had repeated the error.

This case involved a change of plea to a matter that was not complex, protracted or labor sensative. It is fair to say that it is the type of case that is routinely investigated and later presented to a grand jury for indictment. It is a document sensative case and predicated on the executions of a number of subpoenas in a routine fashion to any number of local banks. It involved a singular defendant and four alleged victims who has an investment relationship with the defendant.

The government alleged, and the grand jury so found, that the defendant received money from the witnesses and simply stole it. THIS IS NOT TRUE. Bank records seized by these agents compel the conclusion

that this defendant received money from them and paid them a return over a period of years. He harbored no intent to permanently deprive. This fact is easily proved by an examination of the banking records, which contained material exculpatory evidence of numerous payments made to them over a period of time. Yet the prosecutor failed to disclose this material fact. This Court now needs to find the appropriate answer and also to redress the problem by formulating a prophylactic remedy and send a message to this office so this practice ends.

In the instant case, many years of Mr. Burton's life are at stake because of what the prosecutor and her army of federal agents did to this defendant. This has to stop and now is the time to impose the "Darwin" sanctions mentioned in the detailed comprehensive decision by this Court.

Accordingly, this Court should not only impose financial sanctions against the prosecutor and her agents, but should also, consistent with that same opinion in Darwin "give notice and institute criminal contempt proceedings pursuant to 18 USC section 401 and Federal Rules of Criminal Procedure 42A."

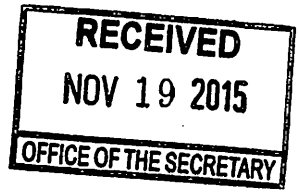
This defendant is now serving a 48 month sentence in part because of prosecutorial misconduct. This prosecutor should be jailed, after an appropriate contempt hearing, so that a proper message can finally be sent to other prosecutors that this type of conduct will not be tolerated.

11/10/15

Robert Burton, [redacted]

Ayer, MA [redacted]

November 10, 2015



Securities and Exchange Commission
Attorney Rebecca Israel
Senior Enforcement Counsel
33 Arch Street, 23rd Floor
Boston, MA 02110-1424

RE: Telephone conversation and Motion to Dismiss

Dear Attorney Israel,

Thank you for taking the time to talk to me today. You may think this case is simple. It is not. The Assistant United States Attorney suppressed material, exculpatory evidence during my sentencing hearing. Your conversation on the telephone and your prior pleadings corborate that fact. Specifically, your October 27, 2015 "order instituting proceedings" against me contains reference on page 2 that the "alleged victims" provided me with $105,000. The prosecutor, during the sentencing hearing informed Judge Wolf that the figure was $159,500. There are substantial inconsistencies and clear Brady violations within the meaning of Rule 230(b)(2) of the Securities and Exchange Commission Rules of Practice. The enclosed motion speaks for itself. I am the victim of gross, prosecutorial misconduct since the Assistant United States Attorney and her collection of F.B.I. and I.R.S. agents either intentionally or negligently suppressed material, exculpatory evidence during my sentencing hearing. A first year law student could easily see that I reimbursed at least $70,500 to the four witnesses in this case BEFORE the sentencing hearing. The government knew about this and suppressed it.

Yet again, Judge Mark Wolf has to deal with prosecutors who play fast and loose with the truth. Please read the Darwin case (U.S. v. Darwin Jones, 620 F. Supp 163, 2008) so you are not subject to the same sanctions referenced by Judge Wolf in his excellend opinion on the

obligation to produce exculpatory evidence.

11/10/15

Robert Burton, [redacted] No. [redacted]

[redacted]

Ayer, MA [redacted]