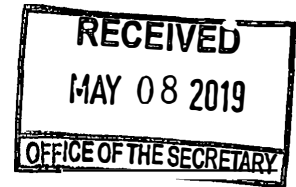


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-18774

In the Matter of

HEIDI WIVOLIN,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR DEFAULT AND OTHER RELIEF

I. Introduction

The Division of Enforcement (the "Division"), pursuant to Rule 155(a) and 220(f) of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a) and 201.220(f), moves for entry of an Order finding Respondent Heidi Wivolin in default and determining this proceeding against her upon consideration of the record. The Division sets forth the grounds below.

II. History of the Case

The Commission issued the Order Instituting Proceedings ("OIP") on September 17, 2018 pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). In summary, the OIP alleges that Wivolin, while associated with a broker-dealer and investment adviser, fraudulently converted to her own use \$100,000 she obtained from a client for investment purposes. These facts led to Wivolin's guilty plea in the criminal case against her.

On April 15, 2019, the Commission issued an Order to Show Cause, Exch. Act Rel. No. 85653, recounting that Wivolin had been served but had not filed an answer and ordering her to show cause by April 29, 2019 why she should not be found in default and have the proceeding

determined against her due to her failure to answer or otherwise defend the proceeding. That date passed without a response from Wivolin.

III. Memorandum of Law

A. Wivolin's Criminal Case

On January 30, 2018, the United States Attorney for the Southern District of Florida filed an Information against Wivolin, charging her with one count each of conspiracy to commit mail fraud (18 U.S.C. § 1349) and filing a false tax return (26 U.S.C. § 7206(1)), and two counts of tax evasion (26 U.S.C. § 7201).¹ On February 21, 2018, Wivolin pled guilty pursuant to a plea agreement to the mail fraud conspiracy and false tax return counts and one of the tax evasion counts.² On May 23, 2018, the district court sentenced Wivolin to a total of 24 months imprisonment, followed by a three-year term of supervised release.³

B. Facts

Based on Wivolin's default, the allegations of the OIP "may be deemed to be true." 17 C.F.R. § 201.155(a). Moreover, Wivolin's guilty plea binds her to the facts she admitted. *See Gary L. McDuff*, Exch. Act Rel. No. 74803, at 5 & n.18, 2015 WL 1873119 (Apr. 23, 2015); *Don Warner Reinhard*, Exch. Act Rel. No. 63720, at 11-12, 2011 WL 121451 (Jan. 14, 2011) (respondent who pleaded guilty "cannot now dispute the accuracy of the findings set out in the Factual basis for Plea Agreement); *Gary M. Kornman*, Exch. Act Rel. No. 59403, at 12, 2009 WL 367635 (Feb. 13, 2009) (criminal conviction based on guilty plea precludes litigation of issues in Commission proceedings), *aff'd*, 592 F.3d 173 (D.C. Cir. 2010).

¹Exh. 1 (Information, DE 1, *United States v. Wivolin*, No. 9:18-cr-80023 (S.D. Fla.)).

²Exh. 2 (Minute Entry for Guilty Plea, DE 11); Exh 3 (Plea Agreement, DE 12); Exh. 4 (Factual Agreement (DE 13)).

³Exh. 5 (Judgment of Conviction, DE 49).

The OIP and the facts admitted pursuant to the plea agreement establish the following:

From October 2005 through December 2008, Wivolin was associated with 1st Discount Brokerage, Inc. (“1st Discount”). From February 2009 through January 2014, Wivolin was associated with Next Financial Group, Inc. (“Next Financial”). Both 1st Discount and Next Financial were, at the relevant time, broker-dealers and investment advisers registered with the Commission.⁴

In connection with her guilty plea,⁵ Wivolin admitted that she and her co-conspirator defrauded a client of \$100,000. In July 2008, at Wivolin’s recommendation, the client provided Wivolin with \$100,000 for the purchase of a “Fintrust bond” that was purportedly tax deferred and would pay a 7% rate of return. In fact, there was no such bond, and Wivolin and her co-conspirator used the funds for their own business and personal expenses. Thereafter, and through January 2014, Wivolin provided the client with oral assurances and, in May 2013, a fraudulent account statement falsely representing that the funds had been invested and were earning the promised returns.

C. Entry of Default is Appropriate

Under Rule 155(a) of the Commission’s Rules of Practice, a party who fails to file a timely answer “may be deemed to be in default and the Commission “may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true” 17 C.F.R. § 201.155(a). Here Wivolin has not filed an answer and has not responded to the order to show cause. Therefore the proceeding should be determined against her based on the record.

⁴OIP ¶ II.A.1.

⁵The following facts are from the Factual Agreement (Exh. 4), at pp. 1-3.

The facts established by Wivolin’s default and her guilty plea show that the Division is entitled to the relief it seeks under Exchange Act Section 15(b)(6)(A), which provides in relevant part:

With respect to any person . . . at the time of the alleged misconduct, who was associated with a broker . . . the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

* * * *

(ii) has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph

Advisers Act Section 203(f) provides for an identical associational bar (but not a penny stock bar) for a person with a qualifying conviction who at the time of the misconduct was associated with an investment adviser. Each of the requirements of these provisions—timely issuance of the OIP, conviction under a qualifying statute, and misconduct committed while Wivolin was associated with a broker-dealer and/or an investment adviser—are satisfied here.

a. The Division Timely Filed this Action

The Division must commence a proceeding under Section 15(b)(6)(A)(ii) within “10 years” of the criminal conviction. *See Joseph Contorinis*, Exch. Act Release No. 72031, at 4-6, 2014 WL 1665995 (Apr. 25, 2014) (10-year limitations period governs Section 15(b)(6)(A)(ii) proceeding; limitations period runs from date of conviction, not underlying conduct). Here, Wivolin was convicted in February 2018, and the OIP was issued later that year. Therefore, this matter was timely filed.

b. Wivolin Was Convicted of a Qualifying Offense

Under both the Exchange Act and the Advisers Act, the Commission may sanction Wivolin for an offense that “involves” mail fraud, “the purchase or sale of a security,” or “embezzlement, fraudulent conversion, or misappropriation of funds.” *See* Exchange Act Sections 15(b)(4)(B)(iv), 15(b)(6)(A)(ii); Advisers Act Sections 203(e)(2)(D), 203(f). Here, Wivolin’s conviction for conspiracy to commit mail fraud “involves” mail fraud, and the underlying conduct involved the purported purchase and sale of a security and fraudulent conversion and misappropriation of funds. Therefore this condition is satisfied.

c. Wivolin Was Associated with a Broker at the Time of the Misconduct

Exchange Act Section 15(b)(6)(A) and Advisers Act Section 203(f) each require that Wivolin have been associated with, respectively, a broker or investment adviser at the time of the misconduct. Here, deemed admitted is the OIP’s allegation that Wivolin was associated with dually registered broker-dealers and investment advisers from October 2005 through December 2008 and from February 2009 through January 2014. In her plea, she admitted engaging in a scheme to defraud that began in July 2008 and continued through January 2014. Thus, Wivolin was associated “at the time of the alleged misconduct.” *See Kornman v. SEC*, 592 F.3d 173, 184 (D.C. Cir. 2010) (“The Commission properly relied on the ordinary meaning of alleged ‘misconduct,’ which refers to allegedly ‘unlawful or improper behavior.’”).

d. Industry and Penny Stock Bars Are Appropriate Sanctions

In determining whether “industry and penny stock bars . . . are in the public interest,” the Commission

considers, among other things, the egregiousness of the respondent’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent’s assurances against future violations, the respondent’s

recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

David R. Wulf, Exch. Act Rel. No. 77411, at 5-6, 2016 WL 1085661 (Mar. 21, 2016) (quotation and alterations omitted). "Absent extraordinary mitigating circumstances, an individual who has been convicted cannot be permitted to remain in the securities industry." *Frederick W. Wall*, Exch. Act Rel. No. 52467, at 8, 2005 WL 2291407 (Sept. 19, 2005) (quotation omitted); *accord Shreyans Desai*, Exch. Act Rel. No. 80129, at 6, 2017 WL 782152 (Mar. 1, 2017).

Here, these factors weigh in favor of industry and penny stock bars. First, Wivolin's actions were egregious. Her conviction establishes that she knowingly and willfully engaged in a scheme to defraud a client by converting the client's funds for the use of Wivolin and her co-conspirator.

Second, this was not a one-time lapse in judgment: Wivolin admitted to a scheme that continued for more than five years. Third, her level of scienter was extremely high, giving to a criminal conviction.

With respect to the fourth and fifth factors, notwithstanding her guilty plea, Wivolin has not participated in this matter, thus providing no assurances that she will avoid *future* violations of the law. Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar, . . . the existence of a violation raises an inference that it will be repeated." *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, at 10 n.50, 2013 WL 3864511 (July 26, 2013) (quotation and alternations omitted). Wivolin has offered no evidence to rebut that inference.

Sixth, although Wivolin is currently in custody, she will be released in 2020, and unless she is barred from the securities industry she will have the chance to again harm investors.

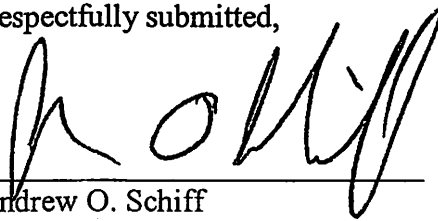
Finally, it serves the public interest to collaterally bar Wivolin from all association with the securities industry. Although Wivolin's scheme began prior to the July 2010 enactment of the Dodd-Frank Act, the collateral bars authorized therein may be imposed because her scheme extended into 2014. *James Tagliaferri*, Securities Act Rel. No. 10308, at 10 n.44, 2017 WL 632134 (Feb. 15, 2017) ("Th[e] holding [of *Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017),] does not affect our ability to impose a collateral bar based on misconduct after Dodd-Frank's effective date."). Accordingly, the Commission should bar Wivolin to the full extent permitted by the Dodd-Frank Act, even though certain of her conduct occurred prior to that statute's enactment.

IV. Conclusion

For the reasons discussed above, the Division asks the Commission to sanction Wivolin by issuing a penny stock bar and barring her from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or NRSRO.

May 7, 2019

Respectfully submitted,



Andrew O. Schiff
Regional Trial Counsel
Direct Line: (305) 982-6390
schiffa@sec.gov

DIVISION OF ENFORCEMENT
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, FL 33131
Phone: (305) 982-6300
Fax: (305) 536-4154

CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served on this 7th day of May 2019, on the following persons entitled to notice:

VIA USPS CERTIFIED MAIL

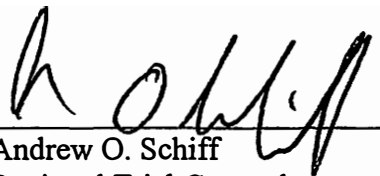
Ms. Heidi Wivolin (17094-104)

FCI Coleman Medium

Federal Correctional Institution

██████████

Coleman, FL ██████████



Andrew O. Schiff
Regional Trial Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No: 18-80023-CR-Dimitrouleas/Matthewman

18 U.S.C. §1349
26 U.S.C. §7201
26 U.S.C. §7206(1)

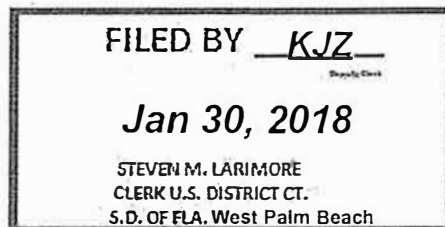
UNITED STATES OF AMERICA,

Plaintiff,

vs.

HEIDI WIVOLIN,
and
SHAWN O'SULLIVAN,

Defendants.



INFORMATION

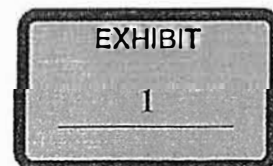
The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times relevant to this Information:

1. Firsttrust Investments, Inc. ("Firsttrust"), which was incorporated in August 1995, was a for-profit Florida Corporation with its principal place of business at 205 South Ocean Boulevard, Manalapan, Palm Beach County, Florida. Defendant **SHAWN O'SULLIVAN** incorporated Firsttrust and was its initial director and registered agent. Defendant **HEIDI WIVOLIN** joined Firsttrust in January 1996. **WIVOLIN** was named President and Chief Executive Officer of Firsttrust in January 2008.

2. Firsttrust claimed to offer securities and investment advisory services to its customers through Company A. Company A was a Virginia corporation with its principal place of business



in Texas. Company A was registered as a full service general securities broker/dealer and investment advisor and a member of the Financial Industry Regulatory Authority, Inc. ("FINRA").

3. Beginning in early 2009 and continuing through January 2014, defendant **HEIDI WIVOLIN** was a registered representative of Company A and was authorized to solicit clients for the sale of securities and insurance products and to provide financial investment advisory services exclusively through Company A. Defendant **WIVOLIN** was a registered representative of various other broker/dealers prior to Company A.

4. Finntrust, Inc. ("Finntrust") was a for-profit Florida corporation incorporated in February 1997. Finntrust's business purpose was to market the services of FIRSTRUST to Finnish clients. Finntrust was not associated with any brokerage house. **SHAWN O'SULLIVAN** was a director and registered agent of Finntrust and at various times its President and Vice President. Defendant **HEIDI WIVOLIN** became an officer of Finntrust in 2000. Both **WIVOLIN** and **O'SULLIVAN** were signatories on Finntrust's bank account at Bank Atlantic (subsequently BB&T).

COUNT 1
CONSPIRACY TO COMMIT MAIL FRAUD
(18 U.S.C. §1349)

1. Paragraphs 1 through 4 of the General Allegations Section of this Information are realleged and incorporated by reference as though fully set forth herein.

2. Beginning in or about July 2008 and continuing through on or about January 27, 2014, at Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

HEIDI WIVOLIN
and

SHAWN O'SULLIVAN,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with each other and with others known and unknown to the United States Attorney, to commit an offense against the United States, that is, to knowingly and with intent to defraud, devise and intend 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, knowing that such pretenses, representations and promises were false and fraudulent when made, and knowingly causing to be delivered certain mail matter by private and commercial interstate carrier, according to the directions thereon, for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1341.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy that the defendants, **HEIDI WIVOLIN** and **SHAWN O'SULLIVAN**, would unjustly enrich themselves by, among other things, falsely claiming that they would invest client monies in a tax free and/or tax deferred bond with a fixed rate of interest and then diverting the fraudulently obtained investment funds for their personal use and benefit and to further the fraud scheme.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. Defendants **HEIDI WIVOLIN** and **SHAWN O'SULLIVAN** established Firstrust and Finntrust to accept investment monies from various individuals.

5. Defendants **HEIDI WIVOLIN** and **SHAWN O’SULLIVAN** solicited and caused to be solicited investors by claiming, among other things, that Firstrust had a “team of financial service professionals” committed to helping investors “grow and protect your financial assets and assist in securing your legacy for your family and loved ones” through its various services. In truth and in fact, Firstrust did not employ a team of financial service professionals and did not secure investor money.

6. To induce M.W. and her husband to invest in a Finntrust bond, the defendants, **HEIDI WIVOLIN** and **SHAWN O’SULLIVAN**, promised them, among other things, the following:

- a. That M.W.’s money would be invested in a tax-free or tax deferred bond; and
- b. That they would receive income generated from the bond at a fixed annual interest rate of 7%.

7. When they received M.W.’s investment money, however, the defendants, **HEIDI WIVOLIN** and **SHAWN O’SULLIVAN**, did not invest M.W.’s money in a tax free or tax deferred bond, as promised. Instead, the defendants deposited M.W.’s money into their Finntrust bank account and within two months, used all of the money to pay personal and business expenses, including but not limited to, rent and employee salaries, personal automobile expenses, and personal credit card bills.

8. To perpetuate and conceal the scheme to defraud, the defendants, **HEIDI WIVOLIN** and **SHAWN O’SULLIVAN**, lulled M.W. and her husband into believing that their money was secure by:

a. offering numerous false verbal assurances that M.W.'s bond investment was safe and was accumulating the promised 7% rate of return on an annual basis from 2008-2013; and

b. sending M.W. by U.S. mail, a written statement of account that falsely listed the current investment value of M.W.'s Finntrust bond. The alleged value of the Finntrust bond included the principal investment and 7% accrued interest for each year since the principal investment was made.

9. To further conceal the scheme to defraud, defendant **HEIDI WIVOLIN** filed an "Outside Business Activity" form with Company A wherein she listed Finntrust and falsely described her activities as a notary, translation service, and bookkeeper. Furthermore, **WIVOLIN** did not disclose to Company A the Finntrust bank account which received investor money, nor the true purpose of Finntrust on her 'Outside Business Activity' (OBA) disclosure form. **WIVOLIN** also failed to disclose to Company A **SHAWN O'SULLIVAN's** role with Finntrust. **WIVOLIN** falsely represented that she had never offered investors the opportunity to invest in or loan money to Finntrust.

All in violation of Title 18, United States Code, Section 1349.

COUNT 2
FILING A FALSE TAX RETURN
(26 U.S.C. §7206(1))

On or about April 22, 2013, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendant,

HEIDI WIVOLIN,

a resident of Palm Beach County, Florida, did willfully make and subscribe a United States Individual Income Tax Return, IRS Form 1040, for the calendar year 2010, which was verified by

a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said 2010 return she did not believe to be true and correct as to every material matter, in that the return reported "Taxable Income" of \$0, whereas, as she then and there well knew and believed, her taxable income was substantially greater.

All in violation of Title 26, United States Code, Section 7206(1) and Title 18, United States Code, Section 2.

COUNT 3
ATTEMPT TO EVADE OR DEFEAT TAX
(26 U.S.C. §7201)

During the calendar year 2011, the defendant,

HEIDI WIVOLIN,

a resident of Palm Beach County, Florida, received taxable income, upon which there was income tax due and owing to the United States of America. Knowing the foregoing facts, and failing to make an income tax return on or before April 15, 2012, as required by law, to any proper officer of the Internal Revenue Service, and to pay the income tax to the Internal Revenue Service, Defendant, from on or about January 1, 2011 through on or about December 31, 2011, in the Southern District of Florida, and elsewhere, willfully attempted to evade and defeat income tax due and owing by her to the United States of America, for the calendar year 2011, by committing the following affirmative acts, among others: defendant paid for personal expenses, such as her home mortgage obligations, child's tuition payments and personal credit card charges, from Finntrust's corporate bank account, thereby concealing her source of income.

All in violation of Title 26, United States Code, Section 7201 and Title 18, United States Code, Section 2.

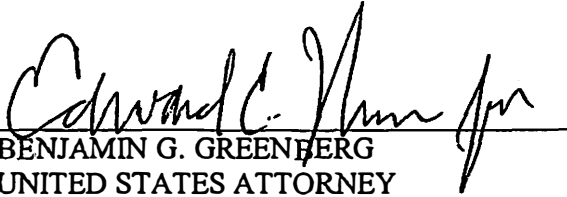
COUNT 4
ATTEMPT TO EVADE OR DEFEAT TAX
(26 U.S.C. §7201)

During the calendar year 2012, the defendant,

SHAWN O'SULLIVAN,

a resident of Palm Beach County, Florida, received taxable income, upon which there was income tax due and owing to the United States of America. Knowing the foregoing facts and failing to make an income tax return on or before April 15, 2013, as required by law, to any proper officer of the Internal Revenue Service, and to pay the income tax to the Internal Revenue Service, Defendant, from on or about January 1, 2012 through on or about December 31, 2012, in the Southern District of Florida, and elsewhere, willfully attempted to evade and defeat income tax due and owing by him to the United States of America, for the calendar year 2012, by committing the following affirmative acts, among others: defendant paid for personal expenses, such as his home mortgage obligations and personal credit card charges, from Fintrust's corporate bank account, thereby concealing his source of income.

All in violation of Title 26, United States Code, Section 7201 and Title 18, United States Code, Section 2.


BENJAMIN G. GREENBERG
UNITED STATES ATTORNEY


AURORA FAGAN
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

CASE NO. 18-80023-CR-Dimitrouleas/Matthewman

vs.

CERTIFICATE OF TRIAL ATTORNEY*

HEIDI WIVOLIN,
and
SHAWN O'SULLIVAN,

Defendants.

Superseding Case Information:

Court Division: (Select One)

___ Miami ___ Key West
___ FTL X WPB ___ FTP

New Defendant(s) Yes ___ No ___
Number of New Defendants ___
Total number of counts ___

I do hereby certify that:

- 1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
- 2.e I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 0* days for the parties to try.

5.e Please check appropriate category and type of offense listed below:e

(Check only one)

(Check only one)

I	0 to 5 days	<u>X</u>	Petty	_____
II	6 to 10 days	_____	Minor	_____
III	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u>X</u>
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes: Judge: _____ Case No. _____
(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No) No

If yes: Magistrate Case No. _____

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

Defendant(s) in state custody as of _____

Rule 20 from thee _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? ___ Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? ___ Yes X No

*Based on signed Plea Agreement.e


AURORA FAGAN
ASSISTANT UNITED STATES ATTORNEY
Florida Bar No. 0188591

*Penalty Sheet(s) attachede

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: HEIDI WIVOLIN

Case No: 18-80023-CR-Dimitrouleas/Matthewman

Count #: 1

Conspiracy to Commit Mail Fraud

18 U.S.C. § 1349

* Max. Penalty: 20 Years Imprisonment; 3 Years Supervised Release; \$250, 000 Fine; \$100 Special Assessment; Restitution

Count #: 2

Filing a False Tax Return

26 U.S.C. § 7206(1)

* Max. Penalty: 3 Years Imprisonment; 1 Year Supervised Release; \$250, 000 Fine; \$100 Special Assessment; Restitution

Count #: 3

Attempt to Evade or Defeat Tax

26 U.S.C. § 7201

* Max. Penalty: 5 Years Imprisonment; 3 Years Supervised Release; \$250, 000 Fine; \$100 Special Assessment; Restitution

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: SHAWN O'SULLIVAN

Case No: 18-80023-CR-Dimitrouleas/Matthewman

Count #: 1

Conspiracy to Commit Mail Fraud

18 U.S.C. § 1349

*** Max. Penalty: 20 Years Imprisonment; 3 Years Supervised Release; \$250,000 Fine; \$100 Special Assessment; Restitution**

Count #: 4

Attempt to Evade or Defeat Tax

26 U.S.C. § 7201

*** Max. Penalty: 5 Years Imprisonment; 3 Years Supervised Release; \$250,000 Fine; \$100 Special Assessment; Restitution**

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NUMBER: 18-80023-CR-Dimitrouleas/Matthewman

BOND RECOMMENDATION

DEFENDANT: HEIDI WIVOLIN

\$250,000 PSB co-signed by husband
(Personal Surety) (Corporate Surety) (Cash) (Pre-Trial Detention)

By:


AUSA: AURORA FAGAN

Last Known Address: _____

What Facility: _____

Agent(s):

Paul Wackes, FBI
(FBI) (SECRET SERVICE) (DEA) (IRS) (ICE) (**OTHER**)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NUMBER: 18-80023-CR-Dimitrouleas/Matthewman

BOND RECOMMENDATION

DEFENDANT: SHAWN O'SULLIVAN

\$250,000 PSB
(Personal Surety) (Corporate Surety) (Cash) (Pre-Trial Detention)

By: 
AUSA: AURORA FAGAN

Last Known Address: _____

What Facility: _____

Agent(s): Paul Wackes, FBI
(FBI) (SECRET SERVICE) (DEA) (IRS) (ICE) (OTHER)

BND BSS, BND LSS, CLOSED, REF_EVENTS ONLY (NEFs), WM

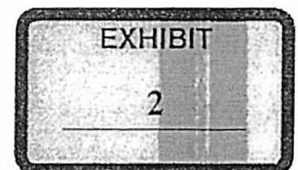
U.S. District Court
Southern District of Florida (West Palm Beach)
CRIMINAL DOCKET FOR CASE #: 9:18-cr-80023-WPD All Defendants

Case title: USA v. Wivolin et al

Date Filed: 01/30/2018

Date Terminated: 06/20/2018

Date Filed	#	Docket Text
02/21/2018	11	PAPERLESS Minute Entry for proceedings held before Judge William P. Dimitrouleas: Change of Plea Hearing as to Heidi Wivolin held on 2/21/2018. Heidi Wivolin (1) Guilty Count 1,2,3. Defendant present. Deft sworn and questioned by the Court. Court accepts guilty plea. Total time in court: 1 hour(s) : 00 minutes. Attorney Appearance(s): Aurora Fagan, Gregory Joseph Morse, Court Reporter: Francine Salopek, 954-769-5657 / Francine_Salopek@flsd.uscourts.gov. (kc) (Entered: 02/21/2018)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. *18-80023-CK-WPD*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HEIDI WIVOLIN,

Defendant.

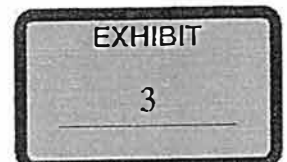
PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida ("this Office") and HEIDI WIVOLIN (hereinafter referred to as the "defendant") enter into the following agreement:


[Signature] 1. The defendant agrees to plead guilty to an Information charging her with one count of conspiracy to commit mail fraud, in violation of Title 18, United States Code, Sections 1349; one count of Willfully Filing a False Income Tax Return, in violation of Title 26, United States Code, Section 7206(1), for tax year 2010; and one count of Tax Evasion, in violation of Title 26, United States Code, Section 7201 for tax year 2011.


[Signature] 2. The defendant agrees that she shall waive Indictment and proceed via Information.

[Signature] 3. The defendant is aware that the sentence will be imposed by the Court after considering the advisory Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a pre-sentence investigation by the Court's





probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose a sentence within that advisory range; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory range. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offenses identified in paragraph 1 and that the defendant may not withdraw her plea solely as a result of the sentence imposed.

 4.e The defendant also understands and acknowledges that as to Count 1, conspiracy to commit mail fraud count, the Court may impose a statutory maximum term of imprisonment of up to twenty (20) years, followed by a term of supervised release of up to three (3) years. As to Count 2, the Court may impose a statutory maximum term of imprisonment of up to three years (3) years, followed by a term of supervised release of up to one (1) year. As to Count 3, the Court may impose a statutory maximum term of imprisonment of up to five (5) years, followed by a term of supervised release of up to three (3) years. In addition to a term of imprisonment and supervised release, the Court may impose a fine of up to \$250,000, or twice the gross gain or loss, whichever is greater. The defendant acknowledges that the Court may impose restitution.


 5. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 4 of this agreement, a special assessment in the amount of \$100 as to each count will be imposed on the defendant. The defendant agrees that any special

assessment imposed shall be paid at the time of sentencing. If the defendant is financially unable to pay the special assessment, the defendant agrees to present evidence to this Office and the Court at the time of sentencing as to the reasons for the defendant's failure to pay.

 6.e This Office reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

 7. This Office agrees that it will recommend at sentencing that the Court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, this Office will file a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. This Office, however, will not be required to make this motion if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but

not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

 8. The United States and the defendant agree that, although not binding on the probation office or the court, they will jointly recommend that the court make the following findings and conclusions as to the sentence to be imposed:

a.e Conspiracy to Commit Mail Fraud:e

i. Loss: The parties agree to recommend that the loss suffered by victim M.W. consists of the \$100,000 principal investment made in July 2008.

b.e Tax Fraud:e

i.e Applicable Guideline: That the applicable Guideline is USSG §2T1.1;e

ii.e Loss: Although the defendant is pleading guilty to willfully filing false tax returns for tax year 2010 and tax evasion for tax year 2011, under §2T1.1 and §1B1.3(a)(2), the total additional tax due and owing for tax years 2009 through 2013 is [REDACTED]. For purposes of Section 2T4.1, the parties agree to recommend that the defendant be held accountable for a tax loss between [REDACTED]

 9. Restituti


The Defendant agrees that the amount of restitution reflected in this agreement results from the Defendant's fraudulent conduct.

a.e The defendant agrees to pay restitution to M.W. in the amount of \$190,280.51, which is comprised of the \$100,000 principal investment, as well as the promised 7% annual interest rate that should have accrued since July 2008. Title 18, United States Code, Section 3663(a)(3); *United States v Fiorentino*, 149 F. Supp. 1352, 1364 (11th Cir. January 13, 2016).

b.e The defendant agrees to pay restitution to the Internal Revenue Service in the total amount of \$140,069, pursuant to Title 18, United States Code, Section 3663(a)(3).

c. Pursuant to 18 U.S.C. §3663(a)(3), the defendant also agrees to make restitution to "P.M." in the amount of \$2,567,585, which resulted from a wire fraud offense against P.M. in years 2012 and 2013. However, the Government agrees to ask the Court to limit its U.S.S.G. §2B1.1 loss calculation to the loss involved in the mail fraud count as identified in paragraph 1, that is, \$100,000. If, however, the Department of Probation and/or the Court determines that the loss amount is greater than \$100,000 under U.S.S.G. §1B1.3 (Relevant Conduct), the parties agree to ask the Court for a downward variance when determining a term of incarceration to the mail fraud loss (\$100,000).


d.e The restitution obligations in paragraphs 9a and 9c shall be joint and several with Shawn O'Sullivan, the defendant's co-defendant.


 10. The defendant agrees to cooperate with the I.R.S. in its civil examination, determination, assessment, and collection of all taxes of any parties of any years related to this prosecution, including, but limited to, any corporate, payroll, and personal tax liabilities for tax years 2009 through 2013, and further agrees not to conceal, transfer, or dissipate funds or property that could be used to satisfy such taxes, penalties, and interest. The defendant agrees to provide the I.R.S. with any documentation and information in the defendant's possession and/or control requested by the I.R.S. in connection with its civil examination, determination, assessment, and collection of any corporate, payroll, and personal tax liabilities for herself and any entities related in any way to her prior to sentencing, and the defendant stipulates to the authenticity and admissibility in any civil or criminal proceeding of any documentation provided by the defendant to the I.R.S. The defendant also hereby waives any rights she may have regarding disclosure of

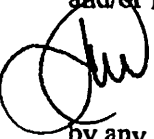
tax information for any purpose, including but not limited to, any disclosure by I.R.S. Criminal Investigation division to the I.R.S Examination and Collection divisions for all documents obtained and I.R.S. reports produced during the criminal investigation. The defendant further knowingly and voluntarily agrees to waive any statute of limitations with respect to assessment and collection of the defendant's corporate, payroll, and personal tax liabilities concerning tax years 2009 through 2013.

11. This agreement does not resolve the defendant's civil tax liability for any years and does not bind the I.R.S. in any way regarding its efforts to examine or collect defendant's civil tax liabilities. The defendant also agrees to pay all taxes, interest, and penalties due and owing to the I.R.S., including all taxes, interest, and penalties on her corporate, payroll and personal tax liabilities for herself and any entities related in any way to her for tax years 2009 through 2013. Nothing in this agreement shall limit the I.R.S. in its civil determination, assessment, and collection of any taxes, interest, and/or penalties that the defendant or any entities related in any way to her may owe. The defendant agrees that the taxes due and owing to the I.R.S., excluding interest and penalties, for the tax years 2009 through 2013 are, at least, as follows:

Year	Tax	Tax Owed as per Filed Return	Additional Tax Due	Total Tax Due
2009	Individual	\$0	[REDACTED]	[REDACTED]
2010	Individual	\$0	[REDACTED]	[REDACTED]
2011	Individual	No Return Filed	[REDACTED]	[REDACTED]
2012	Individual	No Return Filed	[REDACTED]	[REDACTED]
2013	Individual	No Return Filed	[REDACTED]	[REDACTED]

 12. The defendant agrees that any statements made by her to the I.R.S. or any law enforcement personnel, in this Agreement, and/or in the parties' Factual Agreement executed on January 30, 2018, shall be admissible against the defendant without any limitation in any civil or criminal proceeding, and the defendant stipulates to the authenticity and admissibility, in any civil or criminal proceeding, of any documentation provided by the defendant to the I.R.S. The defendant hereby waives any protection afforded by Rule 410 of the Federal Rules of Evidence and Rule 11(f) of the Federal Rules of Criminal Procedure with regard to any such statements and documentation. In the event that the defendant withdraws from this agreement prior to pleading guilty and/or fails to fully comply with any of the terms of this agreement, the United States will, at its option, be released from its obligations under this Agreement, but under no circumstances, shall the defendant be released from the agreements and waivers made by her in this paragraph and paragraphs 10 and 11 of this Agreement.

 13. If full payment cannot be made immediately, the defendant agrees to make a complete and accurate financial disclosure to the IRS on forms prescribed by the IRS (including, but not limited to, IRS Form 433-A.) The defendant also agrees to provide the above-described information to the probation office. The defendant also agrees to make full and accurate disclosure of her financial affairs to the U.S. Attorney's Office. The defendant agrees that she will not sell, hide, waste, encumber, destroy, or otherwise devalue any asset until her restitution and/or fine is paid in full without the prior approval of the U.S. Attorney's Office.

 14.e The defendant agrees not to file any claim for refund of taxes or interest represented by any amount of restitution paid pursuant to this agreement.



15. The defendant agrees that she is liable for the fraud penalty under Title 26, United States Code, Section 6663 or 6651(f) that will be assessed for the taxable years 2009, 2010, 2011, 2012 and 2013.



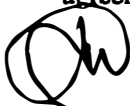
16. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, this Office, or the probation office, is a prediction, not a promise, and is not binding on this Office, the probation office or the Court. The defendant understands further that any recommendation that this Office makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the defendant may not withdraw her plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, this Office, or a recommendation made jointly by the defendant and this Office.

SENTENCING APPEAL WAIVER



17. The defendant is aware that Title 18, United States Code, Section 3742 and Title 28, United States Code, Section 1291 afford the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Sections 3742 and 1291 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or an upward variance from the advisory guideline range that the Court establishes at sentencing. The defendant further understands that nothing in these

agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b) and Title 28, United States Code, Section 1291. However, if the United States appeals the defendant's sentence pursuant to Sections 3742(b) and 1291, the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that the defendant has discussed the appeal waiver set forth in this agreement with the defendant's attorney.

 18. This is the entire agreement and understanding between this Office and the defendant. There are no other agreements, promises, representations, or understandings.

BENJAMIN G. GREENBERG
UNITED STATES ATTORNEY

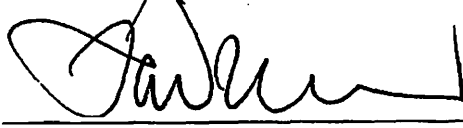
Date: 2/21/18

By: 
AURORA FAGAN
ASSISTANT U.S. ATTORNEY

Date: January 30, 2018

By: 
GREGORY MORSE
ATTORNEY FOR DEFENDANT

Date: January 30, 2018

By: 
HEIDI WIVOLIN
DEFENDANT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 18-80023-WPD

18 U.S.C. §1349
26 U.S.C. §7206(1)
26 U.S.C §7201

UNITED STATES OF AMERICA

vs.

HEIDI WIVOLIN,

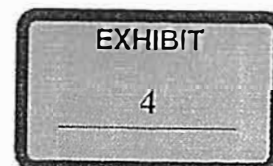
Defendant.

_____ /

FACTUAL AGREEMENT

The parties agree that had this case proceeded to trial, the United States (hereinafter, “the Government”) would have proven the following facts beyond a reasonable doubt, which set forth a legal and factual basis for proving that HEIDI WIVOLIN (hereinafter, “Defendant”) did conspire to commit mail fraud, in violation of Title 18, United States Code, Section 1349; did willfully file false tax returns for tax year 2010, in violation of Title 26, United States Code, Section 7206(1); and did willfully evade taxes for tax year 2011, in violation of Title 26, United States Code, Section 7201.

At all times relevant to the Information, Defendant was a resident of Palm Beach County, Florida. Defendant was the President and CEO of Firsttrust Investments, Inc., which offered securities and investment advisory services to its customers. Defendant was also an officer of Finntrust Inc., which marketed the services of Firsttrust to Finnish clients. Since 2009, Defendant was a registered representative with “Company A,” which is a registered broker/dealer licensed to

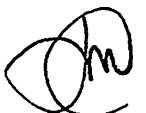


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transact business pursuant to the rules and regulations of the Securities and Exchange Commission. Defendant possessed Series 7, 65, 63 and 24 licenses, which enabled Defendant to offer and sell securities to her clients. Defendant's co-defendant and business partner, SHAWN O'SULLIVAN (hereinafter, "O'SULLIVAN"), was also an officer of Firstrust and Finntrust. Both Defendant and O'SULLIVAN were signatories on the Finntrust bank account(s) at Bank Atlantic (subsequently BB&T bank).

Defendant and O'SULLIVAN were investment advisors to an elderly client, "M.C." After M.C.'s death, Defendant continued to financially advise M.C.'s daughter, "M.W.," who inherited part of M.C.'s estate. Defendant reviewed M.W.'s investments, and advised M.W. regarding various annuities and insurance policies M.W. and her husband had. Defendant also prepared the state and federal tax returns for M.W. and her husband over a number of years. Defendant would fly to Kansas City, Missouri, to meet with M.W. and her husband, to advise them on their investments and prepare their tax returns.

Between in or around July 2008 through in or around January 2014, Defendant and O'SULLIVAN devised a scheme to defraud "M.W." by obtaining money from M.W. under false and fraudulent pretenses, by purporting to sell M.W. a tax deferred, fixed interest rate bond which Defendant and O'SULLIVAN never intended to, nor did actually purchase with M.W.'s money. As part of the scheme, on or about July 15, 2008, Defendant offered M.W. a \$100,000 bond through Finntrust, promising a 7% rate of return. M.W. agreed to purchase the "Finntrust bond" and gave Defendant a check for \$100,000, which Defendant deposited into Finntrust's bank account. Over the next few years, Defendant gave M.W. numerous verbal assurances that her money was safely invested and secure in the Finntrust bond. In or around February 2013, Defendant sent M.W. a list of her investment accounts for which M.W. was told to gather her 1099



statements for Defendant to use in preparing M.W.'s tax returns. The Finntrust bond was not included on the list. After M.W. inquired about the Finntrust bond, Defendant mailed M.W. a revised statement of her accounts from Finntrust's offices in Florida to M.W. in Kansas City, Missouri on or about May 20, 2013. This revised statement included the purported \$100,000 Finntrust bond, which showed the initial principal payment of \$100,000 on July 15, 2008, the rate of return of 7%, the maturity date of July 15, 2015, and an alleged current value of \$128,096. Defendant mailed this statement to M.W. when, in truth and in fact, neither Defendant nor O'SULLIVAN had invested M.W.'s \$100,000 in a bond, or in any investment vehicle whatsoever. Instead, Defendant and O'SULLIVAN, took M.W.'s \$100,000 and used it for their own personal and business expenses, without M.W.'s knowledge or consent. Despite spending M.W.'s money within two months of receiving it, Defendant continued to perpetuate the illusion that M.W.'s money had been invested and was earning 7% annual interest for a number of years by verbal assurances that her money was safe and by creating and sending M.W. a false and fraudulent statement of her accounts.

2010 tax return(s)

On or about April 22, 2013, Defendant signed and submitted a Form 1040 to the Internal Revenue Service attesting to the veracity of the information provided therein under penalties of perjury. With her Form 1040, Defendant submitted a Schedule C listing profit or loss from services as a financial advisor with gross income of \$23,842 and after expenses, she reported a net profit for tax year 2010 of \$19,106. Defendant reported that her income was derived from her services as a financial advisor at 205 S. Ocean Boulevard, Manalapan, FL. In truth and in fact, Defendant willfully failed to disclose additional income in the amount of approximately \$240,020, which includes payments Defendant received directly from Finntrust, and payments Finntrust made to



pay for Defendant's personal expenses such as her home mortgage and personal credit card expenses. Therefore, the defendant willfully failed to include the unreported income in the amount of approximately [REDACTED] from her business Finntrust on her 2010 individual 1040 tax form. Based upon this income, Defendant's 2010 taxable income should have been reported as [REDACTED] 5. Instead, Defendant listed her 2010 taxable income as \$0, when she knew, based upon her true income, the taxable income should have been substantially greater. Defendant's unreported income resulted in an additional tax due and owing in the amount of \$ [REDACTED] for tax year 2010.

2011 tax return(s)

For tax year 2011, Defendant earned income as a financial advisor in the amount of \$161,180 which was comprised of income from Company A and Finntrust. A revenue agent with the Internal Revenue Service analyzed Defendant's personal and business bank records and determined that her corrected taxable income for 2011, after the allowable deductions and credits were applied, was [REDACTED]. Based upon this corrected taxable income, Defendant's tax due and owing for tax year 2011 was [REDACTED]. Defendant did not file any tax form for 2011. Not only did Defendant willfully fail to report to the Internal Revenue Service any income for tax year 2011, Defendant also sought to evade the assessment of taxes by concealing income earned from Finntrust for tax year 2011. Defendant attempted to conceal her income by paying or causing to be paid personal expenses from the Finntrust bank account, such as her home mortgage, tuition payments for Defendant's minor child, and personal credit card expenses. Consequently, Defendant's unreported income of approximately \$161,180 resulted in unpaid tax due and owing in the amount of [REDACTED] for tax year 2011.

Additional Tax Years

In addition to the Defendant's admitted tax due and owing of [REDACTED] for tax year 2010, and \$27,381 for tax year 2011, Defendant willfully failed to disclose additional income for tax



year 2009. On or about July 23, 2013, Defendant signed and submitted a Form 1040 to the Internal Revenue Service attesting to the veracity of the information provided therein under penalties of perjury. With her Form 1040, Defendant submitted a Schedule C listing profit or loss from services as a financial advisor with gross income of [REDACTED] and after expenses, she reported a net profit for tax year 2009 of [REDACTED]. Defendant reported that her income was derived from her services as a financial advisor at 1015 Gateway Boulevard, 506, Boynton Beach, FL. In truth and in fact, Defendant willfully failed to disclose additional income in the amount approximately, at least [REDACTED] which includes payments Defendant received directly from Fintrust, and payments Fintrust made to pay for Defendant's personal expenses, such as her home mortgage and personal credit card expenses. Therefore, the defendant willfully failed to include the unreported income of [REDACTED] from her business Fintrust on her 2009 individual 1040 tax form. Based upon this income, Defendant's 2009 taxable income should have been reported as [REDACTED]. Instead, Defendant listed her 2009 taxable income as \$0, when she knew, based upon her true income, the taxable income should have been substantially greater. Defendant's unreported income resulted in an additional tax due and owing in the amount of [REDACTED] for tax year 2009.

Defendant also willfully evaded the assessment of taxes for tax years 2012 and 2013 by willfully failing to report to the Internal Revenue Service any income for tax years 2012 and 2013. For tax year 2012, Defendant earned income as a financial advisor in the amount of [REDACTED] which was comprised of income from Company A and Fintrust. A revenue agent with the Internal Revenue Service analyzed Defendant's personal and business bank records and determined that her corrected taxable income for 2012, after the allowable deductions and credits were applied, was [REDACTED]. Based upon this corrected taxable income, Defendant's tax due and owing for tax year 2012 was \$24,167. For tax year 2013, Defendant earned income as a financial advisor in the



amount of \$116,924 which was comprised of income from Company A and Finntrust. A revenue agent with the Internal Revenue Service analyzed Defendant's personal and business bank records and determined that her corrected taxable income for 2013, after the allowable deductions and credits were applied, was [REDACTED]. Based upon this corrected taxable income, Defendant's tax due and owing for tax year 2013 was [REDACTED]. In an effort to evade the assessment of taxes, Defendant willfully failed to file any income tax forms for tax years 2012 and 2013, and willfully concealed income from Finntrust for calendar years 2012 and 2013. Defendant attempted to conceal her income by paying or causing to be paid personal expenses from the Finntrust bank account, such as her home mortgage and personal credit card expenses.

Consequently, Defendant has taxes due and owing of [REDACTED] for tax year 2012 and [REDACTED] for tax year 2013; or a total of [REDACTED] for tax years 2009-2013, not including interest and penalties.

Statutory Elements

The elements of the crime of **Conspiracy, 18 U.S.C. §1349**, are:

- First: That two or more persons, in some way or manner, agreed to try to accomplish a common and unlawful plan to commit mail fraud, as charged in the indictment; and
Second: the Defendant knew the unlawful purpose of the plan and willfully joined in it.

The elements of the crime of **Mail Fraud, 18 U.S.C. §1341**, are:

- First: That the Defendant knowingly devised or participated in a scheme to defraud someone, or obtain money or property, using false or fraudulent pretenses, representations or promises;
Second: the false or fraudulent pretenses, representations, or promises were about a material fact;
Third: the Defendant intended to defraud someone; and



Fourth: the Defendant used the United States Postal Service by mailing or causing to be mailed something meant to help carry out the scheme to defraud.

The elements of the crime of **Filing a False Tax Related Document, 26 U.S.C.**

§7206(1), are:

First: That the Defendant made or caused to be made an IRS form 1040 for the calendar year 2010;

Second: the IRS form 1040 contained a written declaration that it was made under penalty of perjury;

Third: when the Defendant made or helped to make the IRS form 1040, he knew it contained false material information;

Fourth: when the Defendant did so, he intended to do something he knew violated the law; and

Fifth: the false matter in the IRS form 1040 related to a material statement.

The elements of the crime of **Tax Evasion** under the Internal Revenue laws, **26 U.S.C. §7201**, are:

First: That the Defendant committed an affirmative act or acts constituting an attempt to evade or defeat a tax or the payment thereof;

Second: an additional tax was due and owing; and

Third: the Defendant acted willfully.

Defendant HEIDI WIVOLIN states that she has consulted with her attorney and has fully discussed with him the evidence against her and any possible defenses. She further admits that the facts described above are true; that they support a finding that the elements of the offenses of conspiracy to commit mail fraud, in violation of Title 18, United States Code, Section 1349; willfully filing false tax returns for tax year 2010, in violation of Title 26, United States Code,



Section 7206(1); and willfully evading taxes for tax year 2011, in violation of Title 26, United States Code, Section 7201 have been met; that they support a factual basis for the entry of her pleas of guilty to counts 1, 2 and 3 of the information; and that she is in fact guilty of those crimes.



AURORA FAGAN
ASSISTANT UNITED STATES ATTORNEY



GREGORY MORSE, ESQ
ATTORNEY FOR HEIDI WIVOLIN



HEIDI WIVOLIN
DEFENDANT

UNITED STATES DISTRICT COURT
Southern District of Florida
Fort Lauderdale Division

UNITED STATES OF AMERICA
v.
HEIDI WIVOLIN

JUDGMENT IN A CRIMINAL CASE

Case Number: 18-80023-CR-DIMITROULEAS
USM Number: 17094-104

Counsel For Defendant: Gregory Morse, Esq.
Counsel For The United States: Aurora Fagan, AUSA
Court Reporter: Francine Salopek

The defendant pleaded guilty to count(s) One-Three of Information.

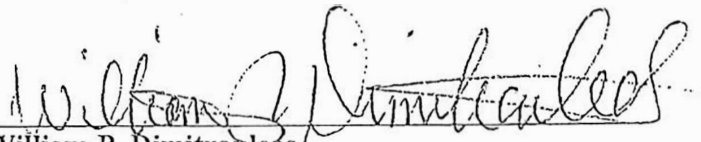
The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 USC 1349	Conspiracy to commit mail fraud	01/27/2014	One
26 USC 7206(1)	Willfully filing a false income tax return	04/22/2013	Two
26 USC 7201	Attempt to evade or defeat tax	12/31/2011	Three

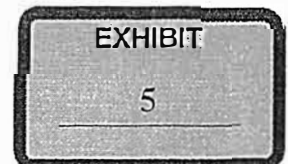
The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: 5/23/2018


William P. Dimitrouleas
United States District Judge

Date: May 24, 2018



DEFENDANT: HEIDI WIVOLIN
CASE NUMBER: 18-80023-CR-DIMITROULEAS
IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 24 months on each of Counts One-Three all to run concurrently.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: HEIDI WIVOLIN

CASE NUMBER: 18-80023-CR-DIMITROULEAS

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years consisting of 3 years on Counts One and Three and 1 year as to Count Two. All Counts to run concurrent.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: HEIDI WIVOLIN

CASE NUMBER: 18-80023-CR-DIMITROULEAS

SPECIAL CONDITIONS OF SUPERVISION

Cooperation with the IRS - The defendant shall cooperate fully with the Internal Revenue Service in determining and paying any tax liabilities. The defendant shall provide to the Internal Revenue Service all requested documents and information for purposes of any civil audits, examinations, collections, or other proceedings. It is further ordered that the defendant file accurate income tax returns and pay all taxes, interest, and penalties due and owing by him/her to the Internal Revenue Service.

Credit Card Restriction - The defendant shall not possess any credit cards, nor shall he be a signer on any credit card obligations during his term of supervision, without the Court's approval.

Employment Solicitation Restriction - The defendant shall not be engaged in any business that offers securities, investments, or business opportunities to the public. The defendant is further prohibited from engaging in telemarketing, direct mail, or national advertising campaigns for business purposes without the permission of the Court.

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

No New Debt Restriction - The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Self-Employment Restriction - The defendant shall obtain prior written approval from the Court before entering into any self-employment.

Restitution in the amount \$140,069 as a Condition of Supervision (Title 26)

Unpaid Restitution, Fines, or Special Assessments - If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: HEIDI WIVOLIN
CASE NUMBER: 18-80023-CR-DIMITROULEAS
CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$300.00	\$0.00	\$2,757,865.51 with special condition of an additional \$140,069

The defendant must make restitution (including community restitution) to the attached list of payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
For Administrative Purposes Only and Not To Be Made Part Of Public Record	\$2,757,865.51 plus additional \$140,069	\$2,757,865.51 plus an additional \$140,069	

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of \$2,757,865.51 . During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: HEIDI WIVOLIN
CASE NUMBER: 18-80023-CR-DIMITROULEAS
SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of \$300.00 due immediately.

**F. Special instructions regarding the payment of criminal monetary penalties:
 Any remaining monetary penalties are to be paid during the period of supervised release.**

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>CASE NUMBER</u> <u>DEFENDANT AND CO-DEFENDANT NAMES</u> <u>(INCLUDING DEFENDANT NUMBER)</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL AMOUNT</u>
co-defendant Shawn O'Sullivan	\$2,757,865.51 (plus \$140,069 as a special condition of supervised release)	\$2,757,865.51 (plus \$140,069 as a special condition of supervised release)

Restitution is owed jointly and severally by the defendant and co-defendants in the above case.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.