

Black Diamond CPA Convicted in Fed Court

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On Friday, February 8, 2013, a federal jury in Charlotte convicted certified public accountant Jonathan D. Davey, 48, of Newark, Ohio of four criminal charges relating to an investment fraud conspiracy, announced Anne M. Tompkins, U.S. Attorney for the Western District of North Carolina. The federal indictment, returned in February 2012, charged Davey with serving as the "Administrator" for numerous hedge funds for the Black Diamond Ponzi Scheme, with soliciting over \$11 million from victims with his own hedge fund, "Divine Circulation Services," and with tax evasion. The charges arise out of the Black Diamond investigation, which has brought criminal charges against eleven individuals and CommunityONE Bank, relating to conduct between October 2007 and April 2007 that deprived over 400 victims of more than \$40 million.

U.S. Attorney Tompkins is joined in making today's announcement by Roger A. Coe, Acting Special Agent in Charge of the Federal Bureau of Investigation (FBI), Charlotte Division, and Jeannine A. Hammett, Special Agent in Charge of the Internal Revenue Service - Criminal Investigation Division (IRS-CI). According to evidence presented at trial, Davey lied to collect over \$11 million from victims mainly in North Carolina, Virginia, and Ohio for his hedge fund by claiming, among other things, that he had done due diligence on Black Diamond and was operating a legitimate hedge fund with significant safeguards, when, in reality, neither claim was true. Then, as Black Diamond began to collapse, Davey and other hedge fund managers started a derivative Ponzi scheme using a so-called "cash account" that Davey controlled. Davey and his co-conspirators collected over \$5 million from new victim investors for the cash account, and used the new victim money to make Ponzi payments to old investors and themselves. The evidence at trial showed that, as Administrator for the scheme, Davey controlled most funds and wires for the scheme, and published a website for victims that reflected false returns. At trial, the Government showed that by the end of the scheme, the website reflected over \$120 million in supposed value for victim-accounts when Davey and the hedge fund managers in reality had less than \$1 million total in their accounts. According to evidence presented at trial, Davey used an elaborate network of shell companies to evade taxes and commit money laundering with the proceeds of the Ponzi scheme. In particular, Davey used an offshore shell company in Belize to funnel money to build a mansion in Ohio, creating a sham "loan" by pretending that investors had "loaned" investment money to the Belizean shell company that was then used to build Davey's personal mansion.

Other defendants convicted in this case are set forth below.

- Keith Franklin Simmons, 47, formerly of West Jefferson, N.C., was convicted following a jury trial of securities fraud, wire fraud, and money laundering.

Simmons was sentenced to 50 years in prison on May 23, 2012.

- Bryan Keith Coats, 52, of Clayton, N.C., pleaded guilty on October 24, 2011, to conspiracy to commit securities fraud and money laundering conspiracy. Coats was sentenced to 15 years in prison on November 16, 2012.

- Deanna Ray Salazar, 55, of Yucca Valley, Calif., pleaded guilty on December 7, 2010, to conspiracy to commit securities fraud and tax evasion. Salazar was sentenced to 54 months in prison on May 23, 2012.

- Jeffrey M. Muyres, 37, of Matthews, N.C., pleaded guilty on May 17, 2011, to conspiracy to commit securities fraud and money laundering conspiracy. Muyres was sentenced to 23 months in prison on January 18, 2012.

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- Roy E. Scarboro, 48, of Archdale, N.C., pleaded guilty on December 3, 2010, to securities fraud, money laundering, and making false statements to the FBI. Scarboro was sentenced to 26 months in prison on May 4, 2011.
- James D. Jordan, 49, of El Paso, Texas, pleaded guilty on September 14, 2010, to conspiracy to commit securities fraud. Jordan was sentenced to 18 months in prison on June 29, 2011.
- Stephen D. Lacy, 53, of Pawleys Island, S.C., pled guilty on December 9, 2010, to conspiracy to commit securities fraud. Lacy was sentenced to six months in prison on May 4, 2011.
- Chad A. Sloat, 34, of Kansas City, Missouri, pleaded guilty on October 17, 2012, to conspiracy to commit securities fraud and failure to file a tax return. Sloat is currently waiting to be sentenced.
- Jeffrey M. Toft, 50, of Oviedo, Fla., pleaded guilty on November 26, 2012, to conspiracy to commit securities fraud, conspiracy to commit wire fraud, and conspiracy to commit money laundering. Toft is currently waiting to be sentenced.
- Michael J. Murphy, 52, of Deep Haven, Minnesota, pleaded guilty on January 22, 2013, to conspiracy to commit securities fraud. Murphy is currently waiting to be sentenced.

On April 27, 2011, a criminal bill of information and a Deferred Prosecution Agreement were filed against CommunityONE Bank, N.A., related to its failure to file a suspicious activity report (SAR) and maintain an effective anti-money laundering program. As court records show, Simmons was a customer of CommunityONE, and used various accounts with the Bank in furtherance of the Ponzi scheme. However, according to filed court documents, the Bank did not file any suspicious activity reports on Simmons, despite the hundreds of suspicious transactions that took place in his accounts. The Bank agreed to pay \$400,000 toward restitution to victims of the Ponzi scheme that operated through accounts maintained at the bank.

Davey was convicted of all charges following a 45 minute jury deliberation. Davey faces a statutory maximum sentence of five years in prison for count one (securities fraud conspiracy) and a \$250,000 fine, a maximum of 20 years in prison for count two (wire fraud conspiracy) and a \$250,000 fine, a maximum of 20 years in prison for count three (money laundering conspiracy) and a \$250,000 fine, and a maximum of five years in prison for count four (tax evasion) and a \$250,000 fine. Davey has been released on bond and a sentencing date has not been set yet. This matter is being prosecuted by Assistant United States Attorneys Kurt W. Meyers and Mark T. Odulio of the Western District of North Carolina, and the case against Jeffrey Mures was prosecuted by Assistant United States Attorney Mark T. Odulio. The investigation is being handled by the FBI and the IRS.