

Approved: _____
JONATHAN S. ABERNETHY
Assistant United States Attorney

Before: HONORABLE KEVIN NATHANIEL FOX
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA : SEALED COMPLAINT

-v.- : Violation of
18 U.S.C. §§ 371 and 1349

LESLIE PINSKY and :
STEPHEN CLARK, :

Defendants. : COUNTY OF OFFENSE:
NEW YORK

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SOUTHERN DISTRICT OF NEW YORK, ss.:

EBEN ROBERTS, being duly sworn, deposes and says that he is a Special Agent of the Department of Homeland Security, Immigration and Customs Enforcement, and charges as follows:

COUNT ONE

1. From at least in or about December 2001 through at least in or about July 2003, in the Southern District of New York and elsewhere, LESLIE PINSKY and STEPHEN CLARK, the defendants, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States of America, to wit, to violate Title 18, United States Code, Section 1343.

2. It was a part and an object of the conspiracy that LESLIE PINSKY and STEPHEN CLARK, the defendants, together with their co-conspirators, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds for the purpose of executing such scheme and

artifice, in violation of Title 18, United States Code, Section 1343.

Overt Acts

3. In furtherance of said conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

- a. On or about March 28, 2003, a co-conspirator not named as a defendant herein ("CC-1") spoke by telephone from an office in New York, New York with STEPHEN CLARK, the defendant.
2. On or about June 24, 2003, CC-1 spoke by telephone from an office in New York, New York with LESLIE PINSKY, the defendant.

(Title 18, United States Code, Sections 371 and 1349.)

The bases for my knowledge and the foregoing charge are, in part, as follows:

4. I am a Special Agent with the Department of Homeland Security, Immigration and Customs Enforcement ("ICE"), and I have been personally involved in the investigation of this matter. This affidavit is based upon my personal knowledge and participation in this investigation, my conversations with other law enforcement agents and witnesses, and my examination of reports and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

THE TELEMARKETING FRAUD SCHEME

General Background

5. Since in or about the summer of 2003, ICE and Project COLT, a joint U.S.-Canadian telemarketing fraud task force located in Montreal, Quebec, have been jointly investigating a telemarketing fraud scheme operated by a company located in Montreal (the "Company"). The Canadian agencies that comprise Project COLT include the Royal Canadian Mounted Police ("RCMP"), Surete de Quebec (the Quebec Provincial Police), the Montreal Urban Community Police and the Competition Bureau.

6. In the course of this investigation, through interviews of numerous witnesses and a review of documents, ICE and Project COLT have learned the following:

- a. From at least in or about December 2001 through at least in or about July 2003, the Company operated a facility in Montreal in which salespeople of the Company made unsolicited calls - or "cold-calls" - to United States residents with poor credit.
- b. In these cold-calls, Company salespeople offered U.S. residents a "guaranteed" credit card for a fee of initially approximately \$250. This fee was later increased to approximately \$300. The vast majority of U.S. residents who were cold-called were quoted a fee of approximately \$300.
- c. Also in these cold-calls, Company salespeople obtained the U.S. residents' bank account information. The Company used this information to set up automatic transfers of funds, by means of Automated Clearing House ("ACH") transactions, from the bank accounts of U.S. residents who were cold-called to a bank account held by the Company at HSBC Bank USA ("HSBC") in New York, New York.

Victims of the Fraud Scheme

7. In the course of this investigation, I and other law enforcement personnel have interviewed several individuals who were cold-called by Company salespeople and whose bank accounts each were subsequently debited by approximately \$300. In these interviews, I and other law enforcement personnel learned that the Company had offered these individuals a guaranteed credit card for a fee of approximately \$300. I and other law enforcement personnel further learned that none of these individuals received a credit card from the Company, but that they instead received, at most, (i) written credit manuals with information on how to repair one's poor credit ("Credit Manuals"); (ii) CD-ROMs containing the Credit Manuals in electronic format ("CD-ROMs"); (iii) documents with information on debt consolidation; (iv) offers for a free

consultation on debt consolidation; and (v) applications for a Mastercard and/or Visa.¹

8. In addition, I have learned from a Federal Trade Commission ("FTC") database that approximately 400 people who had their bank accounts debited by approximately \$300 never received a credit card from the Company. Numerous victims of the fraud have also reported to the FTC that they attempted to telephone the Company to cancel their orders and obtain refunds, but that they were unable to reach anyone at the Company.

9. Based on a review of HSBC records, ICE and Project COLT have learned that during the time period under investigation, the Company initiated ACH transfers totaling approximately \$30 million from bank accounts in the U.S. to the Company's bank account at HSBC. Given that the Company charged most of the U.S. residents a fee of approximately \$300, this \$30 million total fraud amount represents approximately 100,000 victims of the fraud scheme.

Information Obtained From a Former Employee of the Company

10. An investigator with the Competition Bureau in Canada and a Project COLT investigator each have interviewed a Canadian citizen who worked for the Company making cold calls during the year 2002 (the "Cold-Caller"). I have reviewed notes taken of these interviews, and have learned that the Cold-Caller stated, in substance and in part, the following:

- a. The Company is owned by LESLIE PINSKY and STEPHEN CLARK, the defendants. PINSKY and CLARK both had offices at the facility from which the Cold-Caller made cold-calls, and both of them were present virtually every day the Cold-Caller worked at that facility.

¹ In the course of this investigation, I have spoken with representatives of Mastercard and Visa. Those representatives informed me that they had never authorized the Company to offer Mastercards and Visas or to send out applications for the same.

- b. There were a total of approximately 15 telemarketers who worked at that facility during the time the Cold-Caller worked there.
- c. The Company purchased lists of names and telephone numbers of U.S. residents to be cold-called from brokers who were located in the U.S. The people who were cold-called were all low-income people with poor credit.
- d. An employee of the Company who was responsible for training telemarketers (the "Trainer") gave the Cold-Caller a script to be used in making calls to U.S. residents. The Trainer informed the Cold-Caller that if s/he had questions about cold-calling, s/he could ask the other telemarketers working for the Company.
- e. When the Cold-Caller phoned U.S. residents, s/he would tell them that they had been approved to receive a credit card with a \$2500 spending limit. The Cold-Caller would then ask the U.S. residents for their bank account information, after which point s/he would transfer the call to a verification agent working for the Company, who would complete the sale.
- f. After the cold-calls, the bank accounts of the U.S. residents who were called were debited by approximately \$300. The Company made, on average, 40 to 50 sales per day.
- g. Some of the U.S. residents whom the Cold-Caller phoned never received anything from the Company in exchange for the approximately \$300 their accounts were debited; other U.S. residents received, at most, information on how to repair their credit; and, as far as the Cold-Caller knew, no U.S. resident who was called received any credit card.

Background on the Co-Conspirator in New York

11. I have learned from representatives of HSBC and from documents obtained from HSBC that from in or about July **2001 through in or about July 2003**, a Vice President of HSBC who worked out of HSBC's corporate offices in Manhattan acted as the relationship manager for the Company. (This individual will be

referred to hereinafter in this complaint as CC-1.) I have also learned from HSBC records that, in addition to serving as relationship manager for the Company, CC-1 also was the owner and operator of two businesses that sold the Credit Manuals and CD-ROMs to the Company.

Records Pertaining to the Company's HSBC Account

12. I have learned from a review of the Company's HSBC account records the following:

- a. The Company's HSBC account was opened in or about December 2001. At that time, the Company submitted as one of its account opening documents a corporate resolution, dated on or about January 31, 2001, which stated in part and in substance that LESLIE PINSKY and STEPHEN CLARK, the defendants, were designated and appointed as the signing officers of the Company with respect to all banking affairs. In addition, at that time, CLARK and PINSKY provided to HSBC signed handwritten personal financial statements.
- b. The Company's HSBC account remained open from in or about December 2001 through in or about the fall of 2003. Throughout the life of the account, LESLIE PINSKY and STEPHEN CLARK, the defendants, were the only signatories on the account.

Copies of Checks Written Off of the Company's HSBC Account

13. Among the other documents I have obtained from HSBC are copies of approximately 246 checks written against the Company's HSBC account from on or about February 27, 2002 through on or about July 1, 2003. Nearly all of these checks were signed by both LESLIE PINSKY and STEPHEN CLARK, the defendants.

14. I have compared the handwriting on the payee and amount sections of these approximately 246 checks to the handwriting on the handwritten financial statement of STEPHEN CLARK, the defendant (which is referred to in paragraph 12b. above). Based on that review, it appears that the handwriting on these sections on approximately 239 out of the approximately 246 checks is that of CLARK.

Records of Payments to CC-1

15. HSBC has also provided me copies of electronic mail messages ("E-mails") that CC-1 sent from CC-1's HSBC E-mail account to LESLIE PINSKY, the defendant, including several E-mails, dated from on or about July 2, 2002 through on or about March 12, 2003, in which CC-1 asked PINSKY to remit payment to CC-1 for CD-ROMs and Credit Manuals sold to the Company. CC-1 attached invoices to these E-mails and these invoices showed that the price he charged to the Company per CD-ROM and Credit Manual, combined, was \$5.

16. I have obtained from HSBC records relating to the personal bank account of CC-1. From these records, I have learned that from in or about February 27, 2002 through in or about February 20, 2003, CC-1 received several checks made out to him from the Company, which he then deposited into his HSBC account. The amounts on these checks ranged from approximately \$2,500 to approximately \$3,000.

17. Among the E-mails I received from HSBC is one that CC-1 sent from CC-1's HSBC E-mail account to LESLIE PINSKY, the defendant, on or about February 11, 2003. In this E-mail, CC-1 asked PINSKY to wire approximately \$10,000 to a bank account (the "Account") at J.P. Morgan Chase ("Chase"). Attached to the February 11, 2003 E-mail CC-1 sent to PINSKY was an invoice for approximately \$10,000 for CDs and Credit Manuals.

18. According to records I have obtained from Chase, on or about February 20, 2003, approximately nine days after the above E-mail, the Account received a wire transfer of approximately \$10,000 from the Company. Subsequent to that date, the Account received approximately eleven additional wire transfers from the Company in amounts ranging from approximately \$5,000 to approximately \$15,000.

RECORDED CALLS INVOLVING PINSKY AND CLARK

19. I have learned from HSBC that during the time period that CC-1 was employed as a Vice President of HSBC, HSBC had a policy of recording telephone calls made or received by bank employees who had regular contact with HSBC clients. As part of this policy, HSBC recorded numerous telephone calls made or received by CC-1 while CC-1 was at work.

20. HSBC has provided to ICE recordings of calls CC-1 either made or received that related to CC-1's work on behalf of the Company. A number of these calls were either between CC-1 and LESLIE PINSKY, the defendant, or between CC-1 and STEPHEN CLARK,

the defendant. I have reviewed recordings of these calls, as well as a document from HSBC showing when the calls were made. In addition, with the assistance of a transcription service, I have prepared preliminary transcripts of some of these calls. Excerpts from a number of the calls follow:²

- a. On or about March 28, 2003, at approximately 3:08 p.m., CC-1 placed a call to the Company and spoke with STEPHEN CLARK, the defendant. During the call, CLARK and CC-1 discussed the Company's call center in Las Vegas, Nevada that handled customer service. In substance, CC-1 expressed concern that the call center was not sufficiently staffed to handle the high volume of customer complaints, and that therefore customers were calling HSBC to complain. CLARK responded, in substance, that the Company could increase the staffing at the call center. Based on my participation in this investigation, including my review of the call that is set forth immediately below, I believe that CLARK's suggestion that the staffing could be increased reflected his and the Company's desire that customer complaints not reach HSBC because that could engender suspicion on the part of HSBC.

- b. On or about April 2, 2003, at approximately 4:07 p.m., CC-1 called LESLIE PINSKY, the defendant, who was at the Company. During the call, PINSKY said to CC-1, "You know what, and we're talking about sales people, a sales room that has forty or fifty people and they're all lying through their teeth too" At other points in this same call, PINSKY expressed concern that customers of the Company who did not receive credit cards were calling "the bank" to complain since they were unable to reach anyone at the Company. PINSKY stated, "I gotta go talk to Steve about this, calling." Based on my participation in this investigation, I believe that when PINSKY referred

² All quotations set forth in this affidavit are taken from preliminary transcripts of the calls.

to "Steve," he was referring to STEPHEN CLARK, the defendant; and that when PINSKY referred to "the bank" he was referring to HSBC.

- c. On or about April 7, 2003, at approximately 12:17 p.m., CC-1 called LESLIE PINSKY, the defendant, who was at the Company. During the call, PINSKY and CC-1 discussed updating literature that the Company sent to individuals describing the services the Company purportedly offered. In the course of that conversation, CC-1 asked PINSKY, "[W]ho is doing the debt consolidation?" PINSKY responded, "Nobody. Why would you have debt consolidation?" CC-1 then pointed out that the materials the Company sends to individuals indicate that the Company provided debt consolidation and credit counseling services. PINSKY responded, "We don't do that, maybe it says [that] on there, but we don't do it." CC-1 replied, "Alright."
- d. On or about April 11, 2003, at approximately 6:02 p.m., CC-1 called LESLIE PINSKY, the defendant, at PINSKY's home. During the call, CC-1 told PINSKY that he had some "good news." CC-1 then proceeded to report to PINSKY that HSBC's compliance group, which had conducted an investigation that was prompted by, among other things, customer complaints about the Company, had found no adverse information about the Company, about PINSKY and about STEPHEN CLARK, the defendant, that would preclude HSBC from continuing its relationship with the Company. PINSKY responded, "Oh, that's beautiful." PINSKY then went on to ask CC-1, "[J]ust say hypothetically someone like myself or Steve, if we had a criminal record or something than they would . . . be able to find it." CC-1 assured PINSKY that this was correct. Based on other information that I have obtained in the course of this investigation, I believe that PINSKY was expressing relief that his and CLARK's prior convictions had not been discovered by HSBC.³

³ I have reviewed the criminal records of both LESLIE PINSKY and STEPHEN CLARK, the defendants. Those records indicate that PINSKY has a prior conviction for possession of narcotics; and

- e. On or about June 6, 2003, at approximately 2:36 p.m., CC-1 called LESLIE PINSKY, the defendant, who was at the Company. During the call, PINSKY and CC-1 discussed how the Company might change its sales pitch to offer a new product. In the course of that conversation, PINSKY, referring to the credit card pitch that the Company was using, stated, "I think . . . it's getting a little bit too hot with this credit" CC-1 responded, "I would agree, I would agree." PINSKY went on to say, "So I think before I have the cops at the door," and CC-1 interjected, "I would . . . agree with that."

that CLARK has two prior convictions for (i) conspiracy to commit wire fraud and wire fraud in the Southern District of California (for which he was sentenced on February 10, 1998 to 15 months' imprisonment) and (ii) fraud charges in Canada. I have reviewed records concerning CLARK's prior convictions, and have learned that the conduct which led to both of those convictions was telemarketing fraud. In addition, records I have obtained from Canada indicate that CLARK is currently under a 10-year prohibition from participating in any manner in false or misleading telemarketing. (The Government does not include this information out of a belief that these prior convictions are in any way independent evidence supporting probable cause. Rather, they are set forth because they provide context to the April 11, 2003 telephone call.)

- f. On or about June 24, 2003, at approximately 10:37 a.m., **CC-1 called LESLIE PINSKY, the defendant, who was at the Company.** During the call, PINSKY stated that he was thinking about downsizing the Company's operations because he was concerned about "the heat." PINSKY went on to say, "I honestly believe that, you know, that if the ACH goes, then the next step is the police coming in the door." CC-1 responded, "If I were sitting in your shoes, it probably would not be a bad idea."

WHEREFORE, deponent prays that an arrest warrant be issued for the arrest of LESLIE PINSKY and STEPHEN CLARK, the defendants, and that they be arrested and imprisoned, or bailed, as the case may be.

EBEN ROBERTS
SPECIAL AGENT, DEPARTMENT OF
HOMELAND SECURITY, IMMIGRATION
AND CUSTOMS ENFORCEMENT

Sworn to before me this
28th day of January, 2005

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK