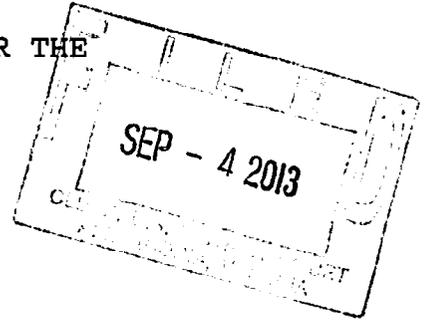


IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division



UNITED STATES OF AMERICA)
)
 v.)
)
 ROBERT TIMOTHY KOGER)
)
 Defendant.)

Case No. 1:13-mj- 542

[FILED UNDER SEAL]

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST WARRANT

I, Charles E. Price II, having been duly sworn, hereby
depose and say:

1. I am a **Special Agent** of the Federal Bureau of Investigation ("FBI"), and have been so employed **for more than 27 years**. I am assigned to a white collar crime squad at the FBI's Washington Field Office. While I have investigated a wide variety of crimes, I have spent the majority of my career investigating white collar crimes.

2. The facts and information contained in this affidavit are based on my personal knowledge and observations of other United States Government officials involved in this investigation. All observations that were not personally made by me were related to me by the persons who made them or by representatives of those persons. This affidavit does not contain each and every fact

known to the government. It contains only those facts necessary to support a finding of probable cause.

3. This affidavit is made in support of a criminal complaint and an arrest warrant charging ROBERT TIMOTHY KOGER ("KOGER") with violations of Title 18, United States Code, Section 1341 (mail fraud) for his role in executing a successful \$2.5 million fraud and attempting to execute a \$15 million fraud targeting a physician/businessman in Tampa, Florida.

Overview

4. KOGER was formerly the President and sole owner of Molinaro-Koger ("MK"), an international hotel real estate brokerage and advisory firm headquartered in Tysons Corner, Virginia. As described in MK's website, MK's professionals "structure[d] hotel real estate transactions at optimal price and provide[d] advisory services on an international basis with emphasis on full-service, upscale and resort properties." According to MK's website, MK completed in excess of \$18 billion in transactions since its inception, and KOGER's personal sales volume during a recent two year period was \$1.1 billion.

5. Kiran Patel, M.D. ("Patel") is a Tampa, Florida-based physician and businessman who owns the Wyndham Grand Hotel in Pittsburgh, PA ("Patel's hotel").¹

6. As described in greater detail below, in May 2013, KOGER, while posing as "Rick Thompson" ("Thompson") falsely informed Patel that "Thompson" had placed a bid on a promissory note secured by Patel's hotel and was going to foreclose on the hotel. "Thompson" then induced Patel to wire transfer \$2.5 million to an attorney's trust account by falsely representing that he would withdraw his (non-existent) bid and by falsely claiming that Patel's money would stay in the trust account and serve as a non-refundable deposit for "Thompson's" purchase of Patel's hotel. In fact, "Thompson" never bid on the note and Patel's money did not stay in the trust account. Within less than a week, more than \$2.4 million of Patel's money was transferred by wire out of the country, and its whereabouts are currently unknown.

7. In a second and related on-going scheme, KOGER is posing as both "Thompson" and "John Stern." In July 2013, in connection with the \$2.5 million fraud scheme, "Thompson" entered into a letter of intent to buy Patel's hotel for \$87.5 million. Last week, KOGER, posing as "Stern," signed a letter of intent to

¹FBI Tampa is conducting a healthcare fraud investigation of Patel and his company.

purchase Patel's hotel for \$125 million. "Thompson" is currently attempting to force Patel to pay a \$15 million "break-up" fee so that Patel can sell the hotel to "Stern" for \$38 million more than "Thompson" was going to pay.

8. I have several reasons to believe that KOGER is posing as both "Thompson" and "Stern." At my request, Patel invited "Stern" to Florida for an August 29, 2013, meeting, which was covertly videotaped. Based on my review of surveillance video from Patel's office, I have determined that KOGER, whom I have met on multiple occasions, was posing as "Stern." The telephone number Patel uses to contact "Thompson" is KOGER's iPhone, which KOGER had in his possession when I executed a search of his residence in June 2013 (during the midst of the Tampa frauds). Two lawyers who are perhaps unwittingly facilitating the Tampa frauds have pre-existing relationships with KOGER.

Facts in Support of Probable Cause

9. BlackRock Financial Management Inc. ("BlackRock") is an investment management firm who held a \$43 million promissory note secured by an interest in Patel's hotel ("BlackRock's note"). In May 2013, BlackRock was interested in selling their note. Patel was interested in buying BlackRock's note because he believed he could buy it at a discount (i.e., less than face value), thereby saving money in future interest payments.

10. A Tampa attorney, T.S., contacted Patel and informed him that his client, "Thompson," worked for GICRE Holdings, a \$5 billion fund. T.S. initially informed Patel that "Thompson" wanted to buy Patel's hotel and was willing to pay \$85 million for it.

11. T.S. then told Patel that PAAG Holdings, LLC, an entity related to GICRE Holdings, had already placed a \$40 million confidential bid on BlackRock's note and planned to acquire Patel's hotel by first acquiring the note and then, after alleging violation of loan covenants, foreclosing on the note. T.S. told Patel that in exchange for \$2.5 million, "Thompson" would withdraw his bid on the BlackRock's note and purchase the hotel from Patel for \$87.5 million (i.e., "Thompson's" initial offer of \$85 million plus the \$2.5 million that Patel was to contribute). T.S. told Patel that a) Patel's \$2.5 million would be placed in T.S.'s trust account; b) "Thompson" would add an additional \$2.5 million to the trust account; and c) the \$5 million would serve as "Thompson's" non-refundable deposit to purchase Patel's hotel for \$87.5 million

12. On July 3, 2013, "Thompson" signed a binding term sheet on behalf of PAAG Holdings LLC.² In the document, which was post-dated to July 30, 2013, "Thompson" agreed to purchase Patel's

²While the first page of the term sheet contains a heading of PAAG Holdings LLC and document refers to PAAG Holdings LLC as the buyer, on the signature page "Thompson" signed on behalf of PAAG Investments LLC.

hotel for \$87.5 million and promised to make a non-refundable deposit of \$5 million. The document also contains an exclusivity requirement prohibiting Patel from negotiating with, or entertaining offers from, any other buyers.

13. On July 3, 2013, in reliance on "Thompson's" and T.S.'s written and verbal representations, Patel wire transferred \$2.5 million to T.S.'s account at TD Bank, which was opened on July 2, 2013.

14. I contacted the BlackRock personnel who were responsible for the \$43 million note secured by Patel's hotel and they told me that they never received a bid from Thompson, PAAG Holdings LLC, PAAG Investments LLC or GICRE Holdings. Accordingly, the fundamental premise underlying Thompson's entire business dealings with Patel is simply a lie.

15. My investigation has determined that despite his obligation and notwithstanding T.S.'s representations to the contrary, "Thompson" never placed an additional \$2.5 million in T.S.'s trust account.

16. In addition, in violation of the July 3, 2013, agreement, Patel's \$2.5 million was not held as a non-refundable deposit. In the week following the deposit of Patel's \$2.5 million into T.S.'s trust account, slightly more than \$2.4 million of Patel's

money was wire transferred out of the country.³ Specifically, on July 8, 2013, \$1.2 million was wired from T.S.'s trust account to RBC Royal Bank of the Bahamas, beneficiary "Garland and Company" with a reference to "investment," and on July 9, 2013, an additional \$1.225 million was wired to the same RBC account. The current whereabouts of these funds are unknown.

17. On July 5, 2013, two days after Patel's money was deposited into T.S.'s trust account, approximately \$75,000 of Patel's money was wire transferred from T.S.'s trust account to T.S.'s personal account, \$25,000 of which was then wire transferred to KOGER's account at PNC Bank.

18. Notwithstanding the almost immediate disbursement of funds from T.S.'s trust account, in an August 5, 2013, email to Patel's lawyer, T.S. falsely claimed that:

"my clients have been 100% in compliance with the binding LOI from the date it was signed on July 3, 2013 until July 31, 2013, at which time I was taken out of the loop by Rick (Thompson) and his team for a variety of reasons."

19. There are several indicia that "Thompson" is, in fact,

KOGER:

a) As further described below, "Thompson" is communicating with Patel via KOGER's iPhone. When "Thompson" phoned Patel, the caller-identification on the incoming calls was blocked.

³On August 29, 2013, KOGER's defense attorney requested that the Government return KOGER's passport so that KOGER could travel to Europe on business.

However, when "Thompson" texted Patel, the incoming number was not blocked and, accordingly, Patel was able to determine that "Thompson" was communicating with him using a phone with the number 646-469-1279. On June 10, 2013, when I executed a search warrant at KOGER's house, KOGER possessed an iPhone with the number 646-469-1279. Accordingly, "Thompson" is communicating with KOGER's iPhone.

b) Notwithstanding the fact that he purportedly represents a \$5 billion fund that presumably would have a well-established email account, "Thompson" is communicating via a recently created domain name. Specifically, "Thompson" communicated with Patel via the email address rthompson@gicreholdings.com. My investigation has determined that this domain name was established on August 1, 2013. The domain was established by DomainsByProxy, with a registrar of Godaddy.com. Creating a domain name in this manner masks the identity of the individual creating the domain name and requires contact with Godaddy.com in order to determine who actually created it. As further discussed below, KOGER has a long history of using fake email accounts to deceive his victims.

c) On or about July 31, 2013, "Thompson" replaced T.S. with D.L., a London-based lawyer. Both T.S. and D.L. have pre-existing relationships with KOGER. Through my earlier investigations of KOGER, I know that KOGER has a long history of

using lawyers to insulate himself from deals and to create the illusion that (non-existent) third parties are involved in his transactions.

Details Regarding Koger's On-Going Attempt

To Execute A \$15 Million Fraud

20. In a follow-on fraud, KOGER is currently posing as a new prospective buyer of Patel's hotel, with the goal of getting Patel to pay "Thompson" a \$15 million "break-up" fee.

21. On July 23, 2013, "John Stern," who claimed to be a member of the Mellon family, a very wealthy family from Pittsburgh, PA, telephoned Patel and indicated that the Mellon Family Real Estate Trust ("MFRE Trust") was willing to pay \$125 million to acquire Patel's Wyndham Grand hotel.

22. "Stern" used an email address of jstern@mfretrust.com. My investigation has determined that this domain name was established on July 23, 2013 (i.e. the same day "Stern" first contacted Patel). "Stern's" domain was also established by DomainsByProxy, with a registrar of Godaddy.com.

23. After speaking with Patel on the phone, "Stern" sent a FedEx package to Patel in Tampa, Florida, with a letter of intent to purchase Patel's hotel. The FedEx's handwritten packing slip lists the sender as: "John Stern, MFRE Trust, 500 Grant Street, Pittsburgh, PA 15219" and lists a Pittsburgh phone number (412-689-5535). However, a review of the FedEx records

revealed that the package was actually mailed to Florida from Vienna, Virginia, a town very close to KOGER's home in Oakton, Virginia. This is an interstate mailing and serves as the basis for the mail fraud charge sought in this criminal complaint and arrest warrant.

24. On August 1, 2013, "Stern" met with Patel in his (Patel's) Tampa office.⁴ Patel provided me with surveillance video of "Stern" entering and leaving his office. I have reviewed the video. The person who met with Patel claiming to be "Stern" was, in fact, KOGER.

25. After "Stern" offered \$125 million to Patel for his hotel, "Thompson" re-contacted Patel and accused him of breaching the exclusivity clause of their July 3, 2013, agreement.

Notwithstanding that "Thompson" never deposited his \$2.5 million into T.S.'s trust account and the fact that Patel's \$2.5 million was absconded with, "Thompson" demanded that Patel pay him a "break-up" fee of \$15 million for breaching the July 3, 2013, agreement.

26. On August 25, 2013, at my direction, Patel re-established contact with both "Thompson" and "Stern" ostensibly to convince "Thompson" that he was willing to pay him a break-up fee, which

⁴While posing as "Thompson," KOGER never had a face-to-face meeting with Patel. Accordingly, KOGER was able to meet Patel in person while posing as "Stern."

would then motivate "Stern" to have additional discussions with Patel about buying Patel's hotel.

27. In a consensually monitored phone call on August 28, 2013, "Thompson" demanded that Patel pay him a break-up fee and threatened to sue Patel if he didn't pay. "Thompson" agreed to "compromise" and lowered his fee to \$11 million, but he demanded the money be paid quickly. During the discussion, "Thompson" speculated that if Patel could obtain a high enough price for his hotel both he ("Thompson") and Patel could make money.

28. On August 29, 2013, "Stern" traveled to Tampa, met Patel in his office and, posing as "MFRE Trust's Managing Director," signed a \$125 million purchase offer for Patel's hotel. This meeting was covertly videotaped. Based on my review of surveillance video from Patel's office, I have confirmed that KOGER was posing as "Stern" during this meeting. Additionally, my investigation determined that KOGER flew from Dulles, Virginia to Tampa on the morning of August 29, 2013, via United Airlines flight 387, arriving in Tampa shortly before his meeting with Patel.

***Background Regarding My Investigation of Koger's Extensive
Fraudulent Activity***

29. The following background regarding KOGER and my other investigations of him provides evidence that the *modus operandi*

KOGER used during his earlier frauds is virtually identical to the *modus operandi* used during the Tampa frauds, and provides evidence that KOGER has the business acumen and industry experience necessary to execute the Tampa frauds.

30. As noted in paragraph 4, KOGER, as the owner and chief executive officer of MK, has extensive experience in the hotel brokerage and real estate industries. When MK was hired by a hotel owner to serve as the broker for the sale of a hotel, KOGER performed a series of services for the hotel owner including: assisting the owner in valuing the property and determining an asking price for the property; marketing the property to prospective buyers; and assisting the owner in negotiations with prospective buyers. As the seller's broker, KOGER had a fiduciary duty to act in the best interest of his client and to attempt to obtain the highest price possible for the property. KOGER received a commission as compensation for serving as the seller's broker, which was often based on a percentage of the sales price of the property and was payable at closing.

31. My investigation of KOGER's criminal activities at MK has determined that he successfully executed at least three types of frauds: 1) a Ponzi scheme in which he fraudulently procured deposits on real estate deals and then stole the deposits, using them to pay his personal and business expenses; 2) loan frauds

in which he made materially false representations to obtain loans; and 3) a series of illegal flips of hotels and monetary instruments in which KOGER violated his fiduciary duty to the sellers, who had employed him as their broker. The aggregate losses associated with these frauds exceed \$50 million.

32. In civil litigation regarding one of the transactions (NJ Hotel Management, LLC v. Molinar Koger, Inc. et al; 1:11-cv-1213), Judge Liam O'Grady found that KOGER executed a "Ponzi scheme" during which he "deliberately and callously defrauded the plaintiff by . . . convincing them to turn over money to be held in escrow pending a real estate deal that never materialized, and instead converting the money for their own use." Judge O'Grady ordered punitive damages due to the KOGER's "actual malice." The conduct described by Judge O'Grady is similar to the conduct in the Tampa fraud.

33. On February 19, 2013, Jonathan Propp ("Propp"), KOGER's long-time friend and MK's former Chief Operating Officer, pleaded guilty before Judge O'Grady to conspiring with KOGER, Todd Lawyer ("Lawyer"), and others to execute a series of fraud schemes including the hotel flips scheme described below. Propp admitted to \$20-\$50 million in losses resulting from his conspiracy with KOGER. Propp told me that in order to execute the schemes, KOGER often posed as someone other than himself.

Propp also told me that in order to create the illusion that others were involved, KOGER had another member of their conspiracy create fictitious email accounts under the names of the straw buyers, and KOGER then communicated with unsuspecting third parties using these assumed names. Propp further told me that he obtained cell phones that KOGER used to communicate while posing as the straw buyers ("throw phones"). Propp told me that as part of his schemes, KOGER used or directed others to use the following aliases: Stan Jenkins, Mike Mason, John Lovell, Robert Stern, and David Miller. Propp also indicated that to facilitate the fraud, KOGER conducted transactions in the name of one of his deceased employees and created a fake driver's license in the name of another straw buyer.

34. Propp's assertions have been corroborated in a number of ways. During the execution of the search warrant at KOGER's residence, I seized "throw phones," which KOGER used to communicate as Stan Jenkins, Mike Mason, and John Lovell. In addition, another of KOGER's co-conspirators told me that, at KOGER's request, he created some of the email accounts described by Propp.

35. Lawyer, another of KOGER's co-conspirators, also pleaded guilty before Judge O'Grady on February 19, 2013. LAWYER admitted to serving as KOGER's straw buyer and acknowledged \$7-\$20 million in losses.

36. KOGER used London based lawyer D.L. to assist him in more than one of the illegal flips. D.L. is currently representing "Thompson" in the on-going Tampa fraud.

Background Regarding My Obstruction Investigation

37. After my investigation of KOGER became public, KOGER and his counsel met several times with Assistant United States Attorneys ("AUSA") Michael Rich and Chad Golder. On May 30, 2013, AUSA Rich received an email from someone who identified himself as "Sonny Jones". "Jones" alleged a conspiracy by Host Hotels and Resorts ("Host") employees to frame KOGER and hide exculpatory documents. Jones' assertions essentially parroted the claims KOGER made during his meetings with the AUSAs.

38. "Jones'" email raised a number of issues that, if true, would be material to the government's on-going investigation of KOGER and Judge O'Grady's upcoming sentencing of Propp and Lawyer. For example, "Jones'" email casts suspicion on the legitimacy of Host's assertions and motivations, generally, and suggests a conspiracy on Host's part to conceal exculpatory evidence. In addition, the assertions in "Jones'" email, if true, would cause the government to expend significant time and effort attempting to prove a negative - that certain documents don't exist - thereby delaying and impeding the government's ongoing investigation of KOGER's conduct.

39. A review of the emails sent to AUSA Rich revealed that they were sent from two local hotels. Video surveillance footage taken by the hotels at the time that the emails were sent showed an individual whom I believed to be KOGER at the hotels. In one of the videos, the person I believed to be KOGER was wearing a t-shirt with a logo from Punta Mita, a resort in Mexico.

40. On June 10, 2013, I executed a search warrant at KOGER's house and seized a Punta Mita t-shirt identical to the shirt that KOGER was wearing in one of the hotel surveillance videos. During the execution of the search, KOGER's wife identified him as the person in the hotel surveillance photographs, admitted that she had vacationed in Punta Mita with KOGER, and helped the searching Agents locate KOGER's Punta Mita t-shirt.

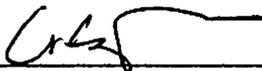
41. As discussed above, the method and means that KOGER used to execute the Tampa frauds (e.g., the assumption of false identities and the creation of fictional email accounts, etc.) are consistent with the long-term pattern of criminal tradecraft KOGER has used to execute multiple other similar fraud schemes. Significantly, KOGER has continued this pattern of activity while he knew he was under investigation and in an ostensible attempt to impede that investigation.

Summary

42. In summary, my investigation has shown that on July 3, 2013, KOGER, posing as "Thompson," successfully defrauded Patel

of \$2.5 million, and, in a follow-on fraud, **KOGER** is currently posing as "Stern", with the goal of getting Patel to pay "Thompson" an additional \$15 million.

43. Based on the foregoing, I respectfully submit that probable cause exists to conclude that **ROBERT TIMOTHY KOGER**, in the Eastern District of Virginia and elsewhere, committed mail fraud in violation of Title 18, United States Code, Section 1341, and I respectfully request that a warrant be issued for his arrest.



Charles E. Price II
Special Agent
Federal Bureau of Investigation

SWORN AND SUBSCRIBED BEFORE ME THIS 1st DAY OF SEPTEMBER, 2013.

/s/



Theresa Carroll Buchanan
United States Magistrate Judge

Theresa C. Buchanan
United States Magistrate Judge