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U.S. DISTRICT COURT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
PHILIP A. CARGNINO,)
)
Defendant.)
)

INDICTMENT

JUDGE

4:11CR 003
JUDGE POLSTER

CASE NO. _____

Title 18, United States Code,
Sections 371,1341,1343 and 2

COUNT 1

(Conspiracy to Commit Mail and Wire Fraud)

The Grand Jury charges:

- At all times material herein, Royal Links USA, Inc. (RLUSA) was incorporated in Ohio and had its headquarters in the Northern District of Ohio. Defendant PHILIP A. CARGNINO and co-conspirator Daniel W. Sandwisch established and owned RLUSA in order to work with Royal Links, Canada (RL Canada) to expand RL Canada's business of leasing non-motorized beverage caddies and carts to golf courses in Canada to the United States.
- In establishing RLUSA, Defendant PHILIP A. CARGNINO and co-conspirator Sandwisch arranged for meetings with the principals of RL Canada to discuss their business model and the prospects of marketing that business model in the United States. RL Canada

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purportedly was running a successful business by leasing non-motorized beverage caddies or carts to golf courses in Canada and paying the golf courses a “rebate” to cover the cost of their lease, which rebate money came from advertisers, mostly beer companies, who purportedly paid to post advertising on these caddies. Initially, Defendant PHILIP A. CARGNINO and co-conspirator Sandwisch entered into an agreement with the main principal of RL Canada to bring the RL Canada business model to the United States wherein RL Canada would provide the carts, which were then manufactured in a small Canadian shop, obtain advertisers, and transfer the advertising money to Defendant PHILIP A. CARGNINO and co-conspirator Sandwisch to pay golf courses the “rebate” on their lease payments. Defendant PHILIP A. CARGNINO and co-conspirator Sandwisch initially began marketing this business model to golf courses in the United States under the corporate name of Tower Building Supplies, Inc., which was later changed to RLUSA. No advertising money was forthcoming from RL Canada and the carts provided by RL Canada proved to be inadequate and had to be redesigned and rebuilt. Defendant PHILIP A. CARGNINO and Sandwisch lost contact with RL Canada, which failed shortly after Defendant PHILIP A. CARGNINO and co-conspirator Sandwisch began dealing with them.

3. After RL Canada failed to provide advertising revenue and suitable carts for sale and leasing, Defendant PHILIP A. CARGNINO and co-conspirator Sandwisch began marketing these beverage carts to various golf courses in the United States, promising the golf courses a “rebate” from advertising revenue which would cover the cost of their lease. Knowing full well that there was no advertising money forthcoming from RL Canada, Defendant PHILIP A. CARGNINO and co-conspirator Sandwisch, instead of returning the funds raised initially through their marketing effort, decided to keep marketing these beverage caddies under their own

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similar program, without disclosing that there was no advertising revenue and that any monies used for a “rebate” would come from the sale of carts to leasing companies and from monies provided by golf courses to join what RLUSA marketed as “The Program.”

4. As part of its own program, RLUSA, under the direction of Defendant PHILIP A. CARGNINO and co-conspirator Sandwisch, began manufacturing its own non-motorized beverage caddies at a cost of approximately \$4,000 per unit. These units were marketed to golf courses for their use, and sold to leasing companies at approximately \$12,500 per unit. Over the term of the lease, the unit eventually cost approximately \$16,000, so the leasing company received a profit as part of this marketing plan. Under this scheme, as marketed by RLUSA, all the leasing payments would be paid by RLUSA purportedly from their advertising revenue, thereby removing any risk of loss to the golf courses and the leasing companies.

5. At all times material herein, co-conspirator Robin J. Flaum, was hired by Defendant PHILIP A. CARGNINO to be President of Marketing for RLUSA. Defendant PHILIP A. CARGNINO directed, supervised, and controlled the operations of RLUSA. As part of her duties, co-conspirator Flaum, under the direction of Defendant PHILIP A. CARGNINO prepared and reviewed various advertising brochures and literature, spoke to leasing companies and golf course clients, and established a nationwide network of RLUSA sales representatives to telephone and visit golf courses, to encourage the leasing and sale of beverage caddies under the terms of what RLUSA called the “Royal Links Beverage Caddy Express Program” or “The Program.”

6. From in or about 2002 through in or about August 2005, the exact dates being unknown to the grand jury, in the Northern District of Ohio, Eastern Division, and elsewhere, the

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defendant, PHILIP A. CARGNINO and co-conspirators Daniel W. Sandwisch and Robin J. Flaum, and others known and unknown to the grand jury, knowingly and voluntarily, did combine, conspire, confederate and agree together and with each other to violate the laws of the United States, to wit: to commit mail fraud, in violation of Title 18, United States Code, Section 1341; and wire fraud, in violation of Title 18, United States Code, Section 1343.

The Objects of the Conspiracy

7. The objects of the conspiracy were to: a) obtain money from golf courses and leasing companies through materially false promises and misrepresentations and omissions of material fact for financial gain and in order to keep the scheme going; b) to conceal the scheme, including the true source of so-called “rebate” money and the financial condition of RLUSA from their clients, customers, Attorney General offices of various states, and other regulatory law enforcement agencies; and c) to entice golf courses to remain RLUSA clients and to enter into new programs and to lull them into a false sense of security in an effort to discourage them from complaining and/or from contacting law enforcement regulators.

Manner and Means

Among the manner and means by which Defendant PHILIP A. CARGNINO and co-conspirators Sandwisch and Flaum, and others known and unknown to the grand jury, carried out the conspiracy were the following:

8. It was part of the conspiracy that Defendant PHILIP A. CARGNINO and co-conspirators Sandwisch and Flaum:
- a. Made, and caused to be made, interstate telephone calls to solicit clients for “The Program,” and sent, and caused to be sent, facsimile

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transmissions and emails through interstate wire facilities, of brochures, promotional materials, correspondence, and other documents, to solicit leasing companies and golf courses to purchase and lease beverage caddies;

- b. Sent and caused to be sent, through the United States mails and interstate private carriers, brochures, promotional materials, correspondence, "rebate payment checks," and other documents, to solicit leasing companies and golf courses to purchase and lease beverage caddies;
- c. Lulled those clients already in "The Program" into a false sense of security through the use of wire and mail communications; and
- d. Sent and caused to be sent, mail, interstate facsimile transmissions, and emails; and made telephone calls to the RLUSA sales staff instructing them on how to sell "The Program" to golf courses.

9. It was part of the conspiracy that RLUSA, through Defendant PHILIP A. CARGNINO and co-conspirators Sandwisch and Flaum, engaged in a sales campaign to induce golf courses throughout the United States to enter into "The Program," to encourage leasing companies to purchase beverage caddies at greatly inflated prices, and to lease these caddies to the golf courses under "The Program." To that end, co-conspirators Sandwisch and Flaum, under the direction of Defendant PHILIP A. CARGNINO prepared and distributed, and caused to be prepared and distributed, glossy brochures, hired a national network of sales representatives, and provided them with a sales script, in order to contact and sell "The Program" to golf courses throughout the United States.

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10. It was part of the conspiracy that Defendant PHILIP A. CARGNINO and co-conspirators Sandwisch and Flaum, fraudulently sold, and cause to be sold, participation in “The Program” to golf courses by describing it as follows: RLUSA required the golf courses to lease beverage caddies from third party leasing companies (to which RLUSA, contingent upon the golf courses’ credit approval, sold the caddies at a large profit to the leasing companies) and, in turn, RLUSA promised to reimburse these golf courses, through “monthly sponsorship revenue sharing,” or “rebate” payments, which were equal to the amount of monthly lease payments which the golf courses owed to the leasing companies. In return, the golf courses agreed to permit RLUSA to display advertising panels on the beverage caddies. RLUSA represented that these “monthly sponsorship revenue sharing” payments were generated by RLUSA’s contracts with several nationally known companies, such as P&G, Kellogg’s, Campbell’s and Hershey Foods, to advertise their products on panels on the beverage caddies in return for advertising revenue from these companies. Under “The Program”, RLUSA agreed to share these advertising revenues with participating golf courses, thereby providing a “rebate” to the golf courses for their monthly lease payments.

11. It was part of the conspiracy that Defendant PHILIP A. CARGNINO and co-conspirators Sandwisch and Flaum, made, and caused to be made, one or more of the following false material statements and misrepresentations and omitted, and caused to be omitted, material facts, in order to induce leasing companies to purchase beverage caddies at a significant markup and golf courses to lease these beverage caddies under “The Program:”

- a. That there were “[g]uaranteed monthly sponsorship revenue” payments that would be made to golf courses under “The Program;”

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- b. That RLUSA's program "arrives to the course on a Net-Zero basis through a fully rebated lease payment funded by our national sponsors such as P&G, Kellogg's, Campbell's, and Hershey Foods;"
- c. That RLUSA had agreements in place with Kellogg's, Hershey's, Pringles and V-8, as national sponsors, for these companies to provide funds to RLUSA for advertising in return for these companies paying RLUSA "monthly sponsorship revenue;"
- d. That golf courses could "get the Nationally-Sponsored Beverage Caddy Express Free;"
- e. That RLUSA would "rebatе the exact dollar amount of the lease;"
- f. That "[m]onthly, and at the end of the 60-month period, there is no cost to you [the golf course]. You [the golf course] have use of our beverage caddies for 5 years at no cost to you;" and
- g. That "[t]he worst thing that can happen is the course will make money."

12. In truth and fact, as Defendant PHILIP A. CARGNINO and co-conspirators Sandwisch and Flaum, well knew:

- a. There were no contracts or agreements in place with P&G, Kellogg's, Campbell's, Pringles, V-8, and Hershey Foods, as national sponsors, for these companies to provide funds to RLUSA for advertising;
- b. What advertising revenue RLUSA did receive was from smaller and lesser known companies than those noted in subparagraph (a), and were insignificant and whose income was wholly insufficient to cover the

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“rebate” payments promised to the golf courses to pay their monthly lease payments or “monthly sponsorship revenue” payments under the so called “Program” or “Net-Zero Program;”

- c. “The Program” was not riskless; the “rebate” payments were not “guaranteed” such that the golf courses could not be assured that they would receive their leased beverage caddies for “free;”
- d. RLUSA concealed from the client leasing companies and golf courses that it did not have the advertising revenue it claimed to have, and that the only means RLUSA had to keep making “rebate” payments was to continue to sell more beverage caddies and to lease these caddies to other golf courses, all of whom, in turn, were promised their own “rebate” payments as an inducement to enter “The Program.” With this scheme in place, the worsening financial condition of RLUSA was concealed from RLUSA's clients.

13. It was a further part of the conspiracy that, during 2004, Defendant PHILIP A. CARGNINO and co-conspirators Sandwisch and Flaum, and others, met a number of times to discuss the worsening financial condition of RLUSA.

14. It was a further part of the conspiracy that, on or about October 4, 2004, after being aware of the ever-worsening financial condition of RLUSA, Defendant PHILIP A. CARGNINO prepared, and caused to be prepared, and mailed, and caused to be mailed, a letter to all golf courses in “The Program.” This letter, which was signed by co-conspirator Flaum as President of Royal Links USA, Inc., was mailed to the participating golf courses informing them

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that “The Program” would no longer fund the monthly payments, and offering to place these golf courses in a new program. This letter falsely stated that the cessation of these “rebate” payments was due to “advertiser demands and, significantly, the non-compliance” of golf courses to “change out the sign panels” and the failure of golf courses “to display the Beverage Caddy Express/Express Hospitality Center on a consistent basis or at all.” In truth and fact, as Defendant PHILIP A. CARGNINO well knew, there were no national sponsors as RLUSA represented and any so-called “advertiser demands” or purported “non-compliance” of golf courses had nothing to do with the failure of RLUSA to pay the promised “rebate” payments to golf courses under “The Program.” Defendant PHILIP A. CARGNINO thereby continued to conceal, in this letter, the true financial condition of RLUSA to the golf courses in “The Program” and the fact that RLUSA had grossly insufficient advertising revenue to pay for “rebate” payments. The letter also attempted to convince the golf courses to shift to another program which they claimed would also provide revenue to the golf courses.

15. From in or about 2002 through in or about December 2004, Defendant PHILIP A. CARGNINO and co-conspirators Sandwisch and Flaum, leased, or caused to be leased, one or more beverage caddies to hundreds of golf courses throughout the United States, causing these golf courses and a substantial number of leasing companies to sustain monetary losses under RLUSA's fraudulent “Program” after RLUSA failed to make the promised “rebate” payments.

Overt Acts

In furtherance of the conspiracy and to effect its lawful objectives, Defendant PHILIP A. CARGNINO and co-conspirators Sandwisch and Flaum, and others known and unknown,

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committed the following overt acts, among others, in the Northern District of Ohio, Eastern Division, and elsewhere:

16. Defendant PHILIP A. CARGNINO and co-conspirators Sandwisch and Flaum mailed, and caused to be mailed, a letter to golf courses on October 4, 2004, in an effort to conceal from the golf courses the true financial condition of RLUSA.

17. Following the October 4, 2004, letter, and continuing through at least December, 2004, Defendant PHILIP A. CARGNINO and co-conspirators Sandwisch and Flaum discussed among themselves, and with others, the need to monitor the responses of the golf courses to this letter, to promote alternative programs which they claimed would be profitable, and to discuss suggested responses for sales representatives to make to client complaints/inquiries in order to keep these clients from complaining, to lull them into a false sense of security, and in an effort to keep them in a business relationship with RLUSA.

18. On or about October 5, 2004, Defendant PHILIP CARGNINO, and co-conspirators Flaum and Sandwisch, and others, through the use of interstate wire transmissions, facsimile and email communications, sent out information and "talking points" to various RLUSA sales representatives continuing to suggest language to use in convincing golf courses to remain with RLUSA in another purportedly profitable program.

19. On or about October 12, 2004, a golf course in Texas emailed inquires to RLUSA in Ohio regarding the October 4, 2004 letter from RLUSA sent by RLUSA to that golf course.

20. On or about October 12, 2004, co-conspirator Flaum directed an RLUSA employee to respond to the above mentioned inquiry from the Texas golf course.

All in violation of Title 18, United States Code, Section 371.

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Count 2
(Mail Fraud)

The Grand Jury further charges:

1. The allegations contained in paragraphs 1 through 5 and 7 through 20 of Count 1 are repeated and realleged as if fully set forth herein.

2 From in or about 2002 through in or about August 2005, in the Northern District of Ohio, and elsewhere, Defendant PHILIP A. CARGNINO knowingly devised, and intended to devise, a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises from golf courses and individuals enticed to purchase and lease beverage caddies under "The Program," as described in Count 1, and to send money to Defendant PHILIP A. CARGNINO, and others.

3. On or about October 4, 2004, in the Northern District of Ohio, and elsewhere, Defendant PHILIP A. CARGNINO for the purpose of executing such scheme and artifice and attempting to do so, knowingly placed in any post office or authorized depository for mail matter to be sent and delivered by the Postal Service, and deposited, and caused to be deposited, any matter or thing to be sent or delivered by any private or commercial interstate carriers, and knowingly caused to be delivered by mail and by private or commercial interstate carrier according to the directions thereon, any matter or thing, to wit: letters addressed to numerous client golf courses throughout the United States that falsely blamed them for decreased advertising revenue to RLUSA, when, in fact, as Defendant PHILIP A. CARGNINO well knew, there were no advertisers or payments, thereby misrepresenting the true financial condition of RLUSA, and attempting to lull their clients into remaining their clients and into a false sense of

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security so that they would not complain to authorities, or take legal action against RLUSA, by not only misrepresenting and concealing these material facts, but also by trying to sign these clients up for another purportedly profitable “program.”

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 3
(Wire Fraud)

The Grand Jury further charges:

1. The allegations contained in paragraphs 1 through 5 and 7 through 20 of Count 1 are repeated and realleged as if fully set forth herein.
2. From in or about 2002 to in or about August 2005, in the Northern District of Ohio, Eastern Division, and elsewhere, Defendant PHILIP A. CARGNINO and others known and unknown to the grand jury, knowingly devised, and intended to devise, a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises from golf courses and individuals enticed to purchase and lease beverage caddies under “The Program,” as described in Count 1, and to send money to Defendant PHILIP A. CARGNINO and others.
3. On or about October 5, 2004, in the Northern District of Ohio, Eastern Division, and elsewhere, Defendant PHILIP A. CARGNINO for the purpose of executing and attempting to execute said scheme and artifice, transmitted and caused to be transmitted, by means of wire and radio communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, to wit: facsimile transmissions and email transmissions from RLUSA to RLUSA sales representatives in various states outside the State of Ohio, for the purpose of providing

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these sales representatives with a script or talking points to convince golf courses to remain with RLUSA and participate in another purportedly profitable program.

All in violation of Title 18, United States Code, Sections 1343 and 2.

A TRUE BILL.

Original document - Signatures on file with the Clerk of Courts, pursuant to the E-Government Act of 2002.