

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

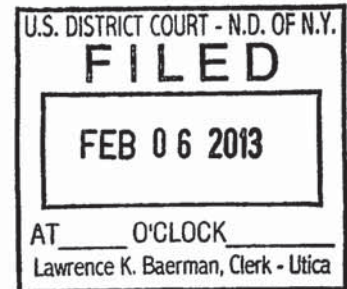
UNITED STATES OF AMERICA

-v-

1:12-CR-28

TIMOTHY M. MCGINN and DAVID L. SMITH,

Defendants.



VERDICT FORM

DAVID L. SMITH

ORIGINAL

FEBRUARY 1, 2013
Utica, New York

Court's Exhibit No. 4b

COUNT 1: CONSPIRACY TO COMMIT MAIL AND WIRE FRAUD

Do you find beyond a reasonable doubt that from on or about September 29, 2006, through about April 20, 2010, the defendant, David L. Smith, conspired with Timothy M. McGinn and others to commit mail and wire fraud?

Not Guilty Guilty

COUNT 2: MAIL FRAUD

Do you find beyond a reasonable doubt that in October 2007 the defendant, David L. Smith, committed mail fraud by mailing or causing to be mailed a private placement memorandum as described in Count 2 of the superseding indictment?

Not Guilty Guilty

COUNT 3: MAIL FRAUD

Do you find beyond a reasonable doubt that on December 18, 2007, the defendant, David L. Smith, committed mail fraud by mailing or causing to be mailed a check as described in Count 3 of the superseding indictment?

Not Guilty Guilty

COUNT 4: MAIL FRAUD

Do you find beyond a reasonable doubt that on January 28, 2008, the defendant, David L. Smith, committed mail fraud by mailing or causing to be mailed a letter of authorization as described in Count 4 of the superseding indictment?

X Not Guilty _____ Guilty

COUNT 5: MAIL FRAUD

Do you find beyond a reasonable doubt that on May 15, 2008, the defendant, David L. Smith, committed mail fraud by mailing or causing to be mailed a check as described in Count 5 of the superseding indictment?

X Not Guilty _____ Guilty

COUNT 6: MAIL FRAUD

Do you find beyond a reasonable doubt that on June 6, 2008, the defendant, David L. Smith, committed mail fraud by mailing or causing to be mailed a subscription agreement as described in Count 6 of the superseding indictment?

X Not Guilty _____ Guilty

COUNT 7: MAIL FRAUD

Do you find beyond a reasonable doubt that on June 9, 2008, the defendant, David L. Smith, committed mail fraud by mailing or causing to be mailed a check as described in Count 7 of the superseding indictment?

Not Guilty Guilty

COUNT 8: MAIL FRAUD

Do you find beyond a reasonable doubt that on July 17, 2008, the defendant, David L. Smith, committed mail fraud by mailing or causing to be mailed a cashier's check as described in Count 8 of the superseding indictment?

Not Guilty Guilty

COUNT 9: MAIL FRAUD

Do you find beyond a reasonable doubt that on March 20, 2009, the defendant, David L. Smith, committed mail fraud by mailing or causing to be mailed cashier's checks as described in Count 9 of the superseding indictment?

Not Guilty Guilty

COUNT 10: MAIL FRAUD

Do you find beyond a reasonable doubt that on September 10, 2009, the defendant, David L. Smith, committed mail fraud by mailing or causing to be mailed a letter and memorandum as described in Count 10 of the superseding indictment?

____ Not Guilty X Guilty

COUNT 11: WIRE FRAUD

Do you find beyond a reasonable doubt that on April 23, 2008, the defendant, David L. Smith, committed wire fraud by using or causing to be used a fax as described in Count 11 of the superseding indictment?

X Not Guilty ____ Guilty

COUNT 12: WIRE FRAUD

Do you find beyond a reasonable doubt that on May 10, 2008, the defendant, David L. Smith, committed wire fraud by using or causing to be used a fax as described in Count 12 of the superseding indictment?

X Not Guilty ____ Guilty

COUNT 13: WIRE FRAUD

Do you find beyond a reasonable doubt that on May 28, 2008, the defendant, David L. Smith, committed wire fraud by using or causing to be used a fax as described in Count 13 of the superseding indictment?

 X Not Guilty Guilty

COUNT 14: WIRE FRAUD

Do you find beyond a reasonable doubt that on July 14, 2008, the defendant, David L. Smith, committed wire fraud by using or causing to be used a fax as described in Count 14 of the superseding indictment?

 Not Guilty X Guilty

COUNT 15: WIRE FRAUD

Do you find beyond a reasonable doubt that on August 29, 2008, the defendant, David L. Smith, committed wire fraud by using or causing to be used a wire transfer as described in Count 15 of the superseding indictment?

 X Not Guilty Guilty

COUNT 16: WIRE FRAUD

Do you find beyond a reasonable doubt that on August 29, 2008, the defendant, David L. Smith, committed wire fraud by using or causing to be used a wire transfer as described in Count 16 of the superseding indictment?

X Not Guilty _____ Guilty

COUNT 17: WIRE FRAUD

Do you find beyond a reasonable doubt that on July 1, 2008, the defendant, David L. Smith, committed wire fraud by using or causing to be used a wire transfer as described in Count 17 of the superseding indictment?

_____ Not Guilty X Guilty

COUNT 18: WIRE FRAUD

Do you find beyond a reasonable doubt that on July 1 or 15, 2008, the defendant, David L. Smith, committed wire fraud by using or causing to be used a wire transfer as described in Count 18 of the superseding indictment?

X Not Guilty _____ Guilty

COUNT 19: WIRE FRAUD

Do you find beyond a reasonable doubt that on August 22, 2008; September 8, 2008; October 22 or 27, 2008; November 7, 2008; or July 8, 2009, the defendant, David L. Smith, committed wire fraud by using or causing to be used a wire transfer as described in Count 19 of the superseding indictment?

Not Guilty Guilty

COUNT 20: WIRE FRAUD

Do you find beyond a reasonable doubt that on April 30, 2009, the defendant, David L. Smith, committed wire fraud by using or causing to be used a wire transfer as described in Count 20 of the superseding indictment?

Not Guilty Guilty

COUNT 21: SECURITIES FRAUD

Do you find beyond a reasonable doubt that on January 11 or 28, 2008, the defendant, David L. Smith, committed securities fraud by using or causing to be used a wire transfer as described in Count 21 of the superseding indictment?

Not Guilty Guilty

COUNT 22: SECURITIES FRAUD

Do you find beyond a reasonable doubt that on January 28, 2008, the defendant, David L. Smith, committed securities fraud by using or causing to be used a wire transfer as described in Count 22 of the superseding indictment?

____ Not Guilty X Guilty

COUNT 23: SECURITIES FRAUD

Do you find beyond a reasonable doubt that on September 29, 2008; or October 3 or 6, 2008, the defendant, David L. Smith, committed securities fraud by using or causing to be used a wire transfer as described in Count 23 of the superseding indictment?

____ Not Guilty X Guilty

COUNT 24: SECURITIES FRAUD

Do you find beyond a reasonable doubt that on September 29, 2008; or October 3 or 6, 2008, the defendant, David L. Smith, committed securities fraud by using or causing to be used a wire transfer as described in Count 24 of the superseding indictment?

____ Not Guilty X Guilty

COUNT 25: SECURITIES FRAUD

Do you find beyond a reasonable doubt that on October 3, 2008, the defendant, David L. Smith, committed securities fraud by using or causing to be used a wire transfer as described in Count 25 of the superseding indictment?

____ Not Guilty X Guilty

COUNT 26: SECURITIES FRAUD

Do you find beyond a reasonable doubt that on November 7, 2008, the defendant, David L. Smith, committed securities fraud by using or causing to be used an email as described in Count 26 of the superseding indictment?

____ Not Guilty X Guilty

COUNT 30: FILING A FALSE TAX RETURN

Do you find beyond a reasonable doubt that on or about October 17, 2007, the defendant, David L. Smith, filed or caused to be filed a false tax return for tax year 2006 as described in Count 30 of the superseding indictment?

____ Not Guilty X Guilty

COUNT 31: FILING A FALSE TAX RETURN

Do you find beyond a reasonable doubt that on or about October 20, 2008, the defendant, David L. Smith, filed or caused to be filed a false tax return for tax year 2007 as described in Count 31 of the superseding indictment?

____ Not Guilty X Guilty

COUNT 32: FILING A FALSE TAX RETURN

Do you find beyond a reasonable doubt that on or about October 15, 2009, the defendant, David L. Smith, filed or caused to be filed a false tax return for tax year 2008 as described in Count 32 of the superseding indictment?

____ Not Guilty X Guilty

PROCEED TO THE NEXT PAGE, SIGN IN THE SPACE PROVIDED, AND NOTIFY THE MARSHAL THAT YOU HAVE REACHED A VERDICT.

Please sign and date this verdict form.

YOUR VERDICT MUST BE UNANIMOUS.
ALL JURORS MUST SIGN.

Dated: Feb. 6th, 2013

