

UNITED STATES DISTRICT COURT RECEIVED

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

JUN 17 2009

UNITED STATES OF AMERICA

v.

DAVID J. HERNANDEZ

MAGISTRATE JUDGE SUSAN E. COX
CRIMINAL COMPLAINT
UNITED STATES DISTRICT COURT

09 16

CASE NUMBER:
MAGISTRATE JUDGE COX

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. Between or about February 2008, and June 12, 2009 in Cook county, and elsewhere, in the Northern District of Illinois defendant(s) did,

(Track Statutory Language of Offense)

having devised a scheme or artifice to defraud, and for obtaining money or property by means of false or fraudulent pretenses, representations, and promises, for the purpose of executing the scheme and attempting to do so, knowingly caused to be delivered on or about June 2, 2009, by commercial interstate carrier according to the directions thereon, an envelope containing documents addressed to Victim D on the 1100 West block of Roscoe Street, Chicago, Illinois,

in violation of Title 18 United States Code, Section(s) 1341.

I further state that I am a(n) FBI Special Agent and that this complaint is based on the following facts:
Official Title

Continued on the attached sheet and made a part hereof: x Yes No

Signature of Complainant

Sworn to before me and subscribed in my presence,

June 17, 2009
Date

at Chicago, Illinois
City and State

SUSAN COX, U.S. Magistrate Judge
Name & Title of Judicial Officer

Signature of Judicial Officer 10:35a

FILED

JUN 17 2009

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

I, Mark Stakem, first being duly sworn, state the following under oath:

INTRODUCTION

1. I am an agent of the Federal Bureau of Investigation (FBI) and have been so employed for approximately 11 years. I am currently assigned to the Chicago Division of the FBI. As part of my assigned duties, I investigate violations of federal criminal law, including violations of Title 18, United States Code, Sections 1341 (mail fraud) and 1343 (wire fraud).

2. The following statements are based on my personal knowledge, conversations with other law enforcement officers and witnesses, as well as records obtained from various sources. The information contained in this affidavit is submitted for the limited purpose of establishing probable cause to arrest DAVID J. HERNANDEZ for devising and participating in a scheme to defraud in violation of Title 18, United States Code, Section 1341. As such, this affidavit does not contain all of the information that I have gathered during the investigation.

OVERVIEW

3. Evidence further described below provides reason to believe that David J. Hernandez, a felon who was convicted of bank fraud in the Northern District of Illinois in 1998, is currently engaging in a scheme to defraud investors through entities that he operates known as NextStep Financial Services, NextStep Medical Staffing IL, and other related entities. In summary, a website associated with Hernandez and the NextStep Financial Services, www.nfsillinois.com, contains representations which appear to be false regarding (i) Hernandez's background, (ii) the dramatic returns that NextStep investors will earn, and (iii) the absolute lack of

risk to the investment principal. Victim investors who have met with Hernandez and provided funds to NextStep have advised that Hernandez has made similar and consistent representations to them regarding the NextStep investment program. Based upon the information that I have received about Hernandez and NextStep, I believe it is likely that he is operating a Ponzi scheme. As such, this Affidavit is submitted in support of an application for warrants to search the NextStep offices located at 225 W. Washington Street, Chicago, Illinois.

SPECIFIC FACTS

Information relating to NextStep Website

4. The FBI recently became aware that NextStep Financial Services, Inc. is soliciting investments through its President, David J. Hernandez and a website, www.nfsillinois.com (the "NextStep Website"). A copy of relevant portions of the NextStep Website is attached as *Exhibit A*. According to Network Solutions, an aggregator of domain name registration information, www.nsfillinois.com is registered to NextStep Medical Staffing, 225 W. Washington #2200, Chicago, Illinois, 60606; the "administrative" and "technical" contact for the site is listed as David Hernandez at the same address. The Nextstep Website listed the company's mailing and operating address as 225 W. Washington Street, Suite 2200, Chicago, Illinois 60606; and invites viewers to contact NextStep via email and telephone.

5. In a section of the Nextstep Website titled "About Us," David J. Hernandez is identified as the President and Founder of NextStep, further stating that he is a recent graduate of "The John Marshall Law School at DePaul

University - Chicago.” John Marshall Law School has advised the government that Hernandez is not a graduate of that school. Furthermore, the John Marshall Law School is a separate entity from DePaul University, which has its own law school.

6. The NextStep Website states that Hernandez “has been in the Financial Industry for over 26 years.” In its “FAQ” [frequently asked questions] section, the NextStep Website states, “I’ve (David Hernandez) been involved in these types of products for 26 years, (American National Bank of Chicago, Exchange Bank of Chicago, LaSalle Bank of Chicago, NextStep Financial Services).” The NextStep Website makes no mention of the fact that in April 1998, Hernandez pled guilty in the Northern District of Illinois (case no. 97 CR 591) to committing wire fraud in connection with his employment at Columbia National Bank. Defendant was sentenced to serve a term of imprisonment of 34 months, followed by a 5-year term of supervised release, and ordered to pay restitution in the amount of \$723,397.50.

7. The Nextstep Website represents that its investment product is a “Guaranteed Investment Contract.” According to a chart on the NextStep Website, investors earn 10% to 12% interest per month depending on the amount invested. For example, the chart indicates that one who invests \$30,000 beginning in January will see their investment grow to \$111,754 by December. In the FAQ section of the website, when asked to describe “How does it work,” the NextStep Website states, “Through a qualified investor under the directive of the statutes of the SEC.” The SEC has advised the FBI that NextStep Financial Services, NextStep Medical Staffing, and David J. Hernandez are not registered with the

SEC.

8. The NextStep Website states that interest is paid to investors monthly, or can be rolled over into the initial investment principal. With regard to withdrawals, the NextStep Website states: "How can I get my money back if I need it for an emergency? 72 hour notice, then approximately 5 business days after."

With regard to investors' tax liability, the NextStep Website states that "taxes are the burden of us."

9. The NextStep Website states the following regarding insurance for its investment product:

Is it FDIC insured? No, because it's not a consumer product; it is a commercial product. How does that affect me- if at all? It's commercially insured- NOT AT ALL!! 'Secured Investments'- what does that mean? It is actually twice protected: Through Nationwide Insurance Group, Nation Fidelity, and Axiom (subject to change); Through insurance that Payday Advance Centers (Check 'n Go's) have for defaulted loans.

10. On June 11, 2009, a representative from Nationwide Insurance Group advised the FBI that they did not insure NextStep GIC's and there was no affiliation between the companies. Furthermore, my search of public databases revealed no company named Nation Fidelity, nor a company named "Axiom" related to insurance of GIC's. Finally, a representative from Check 'N Go recently advised the FBI that the company has no affiliation with NextStep or David Hernandez.

Information Obtained From NextStep Investors

11. Victim A recently provided information to law enforcement indicating that he invested \$45,000 with Hernandez and NextStep in October 2008. According

to Victim A, Hernandez told him that NextStep owned approximately 23 Payday Loan Stores in North Carolina and Florida, which did business as "Check 'N Go," and that NextStep financed over 100 more "Check 'N Go" stores. Victim A stated that he asked Hernandez why Victim A's social security number was not requested by Hernandez in connection with his investment. Hernandez replied that "taxes are hidden from the IRS."

12. Although he has previously received a number of "interest" payments from NextStep, Victim A advised the government that he has not received his April 2009 interest payment. Victim A told the government that he requested a full withdrawal of his remaining \$25,000 account balance on May 1, 2009, but as of June 3, 2009, had not received a refund.

13. Victim A provided law enforcement a copy of a letter which he received which indicates it was written by Hernandez. The letter appears to state that NextStep's delay in making interest payments and issuing account statements is associated with "conversion to the new IBM processor." The letter further stated Nextstep had over 300 accounts "holding balances in excess of \$18M." As further described below, accounts associated with various NextStep entities at Marquette Bank had a combined balance of approximately \$67,000 on or about May 29, 2009.

14. Victim A also provided the FBI with a copy of a document titled "NextStep News," which was dated December 15, 2008, which purports to have been authored by David J. Hernandez. Among other things, the document contains a "summary of the Performance for our Holding Company and its Subsidiaries,"

listing the returns on investment for a number of entities, including “NextStep Financial Services,” “NextStep Business Solutions,” “NextStep Tax Consultants,” “NextStep Mortgage Services,” “NextStep Medical Staffing,” “NextStep Medical Consultants,” “NextStep Medical Management,” and “Spectrum Entertainment Group.”

15. Victim B recently provided information to the government indicating that Hernandez told Victim B his NextStep investment of approximately \$156,000 (made during 2008 and 2009) was invested in Check 'N Go stores owned by NextStep. Victim B said he requested a \$20,000 withdrawal from NextStep on May 14, 2009, but has not received a refund. Victim B requested a full withdrawal from NextStep on May 22, 2009, but as of June 8, 2009, had not received a refund.

16. Victim C recently advised law enforcement that he invested \$50,000 in NextStep in March 2009. Victim C stated that she sent money to NextStep Financial but has not received an investment contract or the promised 14% dividend check from NextStep.

17. Information obtained from victim investors indicates that Hernandez has communicated with investors, among other ways, through email and correspondence sent through the United Parcel Service.¹ For example, Victim D advised law enforcement that he received a NextStep “closing statement” and a check via United Parcel Service (“UPS”), a commercial interstate carrier, on June 2,

¹The Marquette Bank records discussed below reflect frequent payments to UPS which reference UPS tracking numbers.

2009, but noted that the check bounced. Victim D provided a copy of the "closing statement" to the FBI on June 16, 2009.

18. As another example, Victim E stated that all NextStep correspondence that he has received since July 2008 was transmitted to him via UPS.

Information Obtained from Marquette Bank

19. Marquette Bank has provided records and information to the government indicating that David J. Hernandez is a signatory on a number of accounts, including those maintained in the name of Nextstep Medical Staffing IL (accounts sub-titled "payroll" and "operating"), Nextstep Holdings, Illumina Group and Spectrum Entertainment Group. The address of record for all of the accounts is 225 W. Washington Street, Suite 2200, Chicago, Illinois. According to the account statements received by the government, the combined balance of the accounts as of approximately May 29, 2009, was \$67,000.

20. Although the NextStep News document provided to Victim A indicated that NextStep was garnering significant returns from entities known as "NextStep Business Solutions," "NextStep Tax Consultants," "NextStep Mortgage Services," "NextStep Medical Consultants," and "NextStep Medical Management," Marquette Bank has advised the government that no such accounts exist at Marquette Bank.

21. Although review of these records is ongoing, preliminary review of the activity in the accounts of the NextStep related-entities is consistent with operation of a Ponzi scheme. For example, during the last six months, deposits into the NextStep Medical Staffing (operating) and NextStep Holdings account consist solely

of checks made payable by individuals to NextStep Financial Services or to Hernandez in amounts totaling more than \$5,000,000.² Deposit of checks from NextStep investors were frequently followed by issuance of checks payable to a variety of individuals who previously provided funds to Hernandez and NextStep. There are no significant deposits from any source that would indicate NextStep is earning returns from investments of any sort. There are no deposits evident from any entities related to Check 'N Go or PayDay Advance.

22. In addition, funds from the NextStep Medical Staffing accounts appear to be the main source of deposits into the accounts of the other NextStep-related entities. For example, according to the account statement provided by Marquette Bank, the initial \$100,000 deposit into the Ilumina Group bank account was made on November 11, 2008. An account statement for the NextStep Medical Staffing (operating) account indicates that a \$100,000 check was written against the account on November 11, 2008. The next deposit into the Ilumina Group account was made on December 9, 2008, in the amount of \$65,000; the NextStep Medical Staffing (operating) account statement indicates that a \$65,000 check was written against that account on the same day.

23. As to the Spectrum Entertainment Group account, the first deposit into the account was made on March 25, 2009, in the amount of \$5,000. A \$5,000 check was issued against the NextStep Medical Staffing (operating) account on the same

²Thus far, law enforcement has recovered checks payable to NextStep Financial Services from what appear to be victim investors dated as early as February 2008.

day. \$15,000 was deposited into the Spectrum Entertainment Group account on April 24, 2009, the same day a \$15,000 check was written against the NextStep Medical Staffing (operating) account.

24. Preliminary review of the NextStep Medical Staffing (payroll) account reveals that it has largely been funded through transfers from the NextStep Medical Staffing (operating) account.

25. It appears Hernandez used funds from NextStep investors to make purchases for personal items, such as musical instruments and vehicles.

a. For example, a copy of a check dated November 14, 2008, in the amount of \$16,684.21 written against the NextStep Medical Staffing (operating) account indicates that it was used for the purchase of a Cristofori piano from a retailer located in Chicago.

b. As another example, a copy of a check dated December 10, 2008, payable in the amount of \$25,879.00, was written against the NextStep Medical Staffing (operating) account payable Laurel Audi. Records maintained by the Illinois Secretary of State (SOS) indicate that a 2009 Audi Quattro vehicle, VIN WAULF78K69A135403, Illinois license no. X825578, was registered to Kaylie Nelson (Hernandez's 23 year old step-daughter), after being purchased on December 10, 2008.³

³Although Kaylie is the daughter of Hernandez's current wife from a prior marriage, Hernandez stated in a filing in his prior criminal case that he had become Kaylie's "true father" over time. Records from Marquette Bank show that Kaylie Nelson is a co-signatory on an account with Hernandez and lists them at the same home address.

c. As another example, a copy of a check dated December 21, 2008, payable in the amount of \$30,000, was written against the NextStep Medical Staffing (operating) account payable to Gina Hernandez, who is the wife of David J. Hernandez. That check was deposited into an account at Marquette Bank in the name of Gina Hernandez and cleared the account on December 23, 2008. Records maintained by the SOS indicate that a 2007 Mercedes Benz sport utility vehicle (VIN 4JGBB86E97A212495) was purchased by Gina Hernandez on December 23, 2008. Although the government does not yet have a copy of the check, the statement for Gina Hernandez's account at Marquette Bank reflects that a check in the amount of \$30,409.09 cleared her account on December 30, 2008. Based upon the foregoing, I believe the NextStep Medical Staffing (operating) account check payable to Gina Hernandez was the source of a check used to pay for the Mercedes Benz vehicle purchased by Gina Hernandez on December 23, 2008. David J. Hernandez is also a signatory on the Gina Hernandez account at Marquette Bank.

Public Records Relating to NextStep Entities

26. According to information obtained from the Illinois Secretary of State, as compiled by Westlaw, the following entities were incorporated in the state of Illinois by David J. Hernandez on the following dates: (i) "NextStep Financial Services, Inc." on December 7, 2001; (ii) "NextStep Medical Staffing IL, Inc." on February 11, 2008; (iii) "NextStep Holdings, Inc." on October 28, 2008; (iv) "Spectrum Entertainment Group, Inc." on December 4, 2008; and (v) the "The Illumina Group, Inc." on October 28, 2008.

Execution of Search Warrants

27. On June 12, 2009, FBI Special Agents traveled to 225 W. Washington Street, Chicago, Illinois, and executed search warrants at the NextStep Financial Services offices located on the 22nd floor; and the NextStep Medical Staffing offices located on the 16th floor. A number of GICs were recovered from the NextStep office but, aside from promotional materials like those previously described above, no business records were located which indicate that NextStep Financial Services or Hernandez own or finance any Check 'N Go or Payday Advance stores.

28. On June 15, 2009, the SEC filed a complaint in the Northern District of Illinois (09 CV 3587) against DAVID J. HERNANDEZ, also doing business as "NextStep Financial Services, Inc.," alleging that HERNANDEZ has been engaging in various fraudulent practices in violation of federal securities law since at least February 2008. The complaint further alleges that HERNANDEZ raised more than \$11,000,000 from investors in at least 12 states.

29. On June 16, 2009, the government learned that DAVID J. HERNANDEZ's wife reported him as missing to the Downers Grove Police Department.

30. Based on the information set forth herein, there is probable cause to believe that DAVID J. HERNANDEZ devised and participated in a mail fraud scheme in violation of 18 USC 1341.

Mark D. Stakem
Special Agent, FBI

SUBSCRIBED and SWORN TO before
me this 17th day of June, 2009

A handwritten signature in black ink, appearing to read 'Susan Cox', is written over a horizontal line.

SUSAN COX
United States Magistrate Judge