

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

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UNITED STATES OF AMERICA)	INDICTMENT
)	
v.)	Case No. 3:20CR48
)	
)	18 U.S.C. §§ 1343, 152(2)
EARL D. MILLER)	15 U.S.C. §§ 78j(b), 78ff(a)
)	17 C.F.R. § 240.10b-5.

THE GRAND JURY CHARGES:

Introduction

Beginning in or around 2014, and continuing through and including about August 2015, in the Northern District of Indiana, and elsewhere, the defendant,

EARL D. MILLER,

and others known and unknown to the grand jury, having devised or intending to devise any scheme or artifice to defraud for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, knowing transmitted or caused to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, picture or sounds for the purpose of executing such scheme or artifice, all in violation of Title 18, United States Code, Sections 1343 and 2.

Nature of the Scheme or Artifice

1. It was the nature of the scheme that the defendant and others would make material misrepresentations made to investors and perpetrated a fraudulent scheme by using two or more private investment vehicles that he controlled including 5 Star Commercial, LLC (“5 Star Commercial”) and 5 Star Capital Fund, LLC (“5 Star Capital”).

2. Defendant Earl Miller had been in the real estate business since about 2008. In approximately 2012, Miller began raising money for a new private investment fund, 5 Star Commercial, which was supposed to invest investors’ money in various real estate projects. Miller gained sole control of 5 Star Commercial in July 2014, and continued to solicit investor funds. In February 2015, Miller branched out and created 5 Star Capital which was supposed to invest in “green energy saving product (sic) that save the average American consumer hundreds of dollars each year.”

3. Miller recruited investors for 5 Star Commercial, 5 Star Capital and his other real estate entities from a network of predominantly novice investors, including members of the Amish community located in the Northern District of Indiana and elsewhere. Miller was very successful at gaining the trust of, and recruiting investors from the local Amish community. He advertised his investment services in local Amish newspapers, touted his Amish heritage, and arranged community meetings

with local Amish families to discuss his investment “opportunities.”

4. Miller exploited this investor network. From at least June 1, 2014 to August 2015, he had raised at least \$4.3 million from at least 70 investors for his 5 Star Commercial and 5 Star Capital entities.

5. In order to raise those funds, Miller repeatedly lied to prospective investors, specifically including but not limited to two critical instances. First, he falsely told investors that he would not get paid anything for managing their funds when, in truth, he misappropriated over \$1 million from 5 Star Commercial investors for his personal use and to pay off a former business partner. Second, Miller and 5 Star Commercial informed investors that their money would be invested exclusively in real estate when, in truth, he invested and/or transferred over \$391,000 of investor’s funds into highly speculative, fledgling companies that purportedly made and marketed “green products.”

6. Miller similarly defrauded prospective investors in 5 Star Capital, the fund that he represented was supposed to invest in the purported “green” companies. Miller told investors that 5 Star Capital owned patents on many of the “green” products that he would invest their money. Miller also assured investors that he would “manage risks” on behalf of 5 Star Capital and represented to at least one investor that their money would be invested in real estate like Miller’s other entities.

7. None of those representations was true. In truth, 5 Star Capital owned no “green product” patents. Miller performed virtually no due diligence into the purported “green” companies before placing his investors’ assets. And, contrary to his oral representations to certain investors, the overwhelming majority of 5 Star Capital’s assets were not invested in real estate.

8. The majority of these investments were paid to Miller or entities he controlled by personal check, which cleared the banking system by wire in and through interstate commerce. Investments in 5 Star Commercial and 5 Star Capital were solicited and obtained through instrumentalities of interstate commerce. Investors came from at least eight states and sent their funds to Miller, or sent their funds at Miller’s direction, through a variety of means, including wire transfer and the U.S. Mail. Miller communicated to investors through a variety of means including the telephone.

9. By making material misrepresentations and omissions to investors, Miller and others committed wire fraud in violation of Title 18 U.S.C. § 1343 and committed securities fraud in violation of Title 15 U.S.C. § 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5] and Section 17(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)].

10. Miller, through 5 Star Commercial and 5 Star Capital, benefited

financially from defrauding his investors. By recruiting investors through fraudulent offering materials, he raised \$2.7 million and \$1.63 million respectively between June 1, 2014 and August 2015. Also, from July 29, 2014 to July 1, 2015, Miller personally took at least \$1 million from 5 Star Commercial and used it to pay himself and to pay off a personal debt to a former business partner.

11. In exchange for their investments, Miller, 5 Star Commercial and 5 Star Capital gave investors a promissory note with a fixed-rate of return ranging from 8% to 12% per year and paid monthly, a rate far in excess of then-prevailing rates for bank deposits, CDs and other fixed-return investment vehicles.

12. All of the investment interests in 5 Star Commercial and 5 Star Capital offered and sold by Miller were “securities” as that term is defined in Exchange Act Section 3(a)(10) [15 U.S.C. § 78c(a)(10)] and Securities Act Section 2(a)(1) [15 U.S.C. § 77b(a)(1)].

Miller’s Fraudulent 5 Star Commercial Offering

13. Beginning in about July 2014, Miller gained sole control of 5 Star Commercial, and continued raising money for purported real estate investments. After June 2014, 5 Star Commercial issued promissory notes to investors and was supposed to use the proceeds from the notes to invest in residential and commercial real estate.

14. To recruit investors, Miller, on behalf of 5 Star Commercial, made oral representations to investors and also gave prospective investors written marketing materials relating to the company, including a Private Placement Memorandum (“PPM”) for the purpose of soliciting investment funds.

15. Since July 2014, Miller was the sole manager and owner of 5 Star Commercial and he had authority over all statements made in the 5 Star Commercial PPM. Miller was responsible for the content of the PPM and he signed the promissory notes issued by 5 Star Commercial to investors.

16. The 5 Star Commercial PPM contained multiple misrepresentations about his compensation and use of funds.

17. First, in the PPM, Miller and 5 Star Commercial falsely represented that he “shall not be paid a salary or wages of any type by the Company.” The PPM defined “The Company” as 5 Star Commercial. In truth and fact, Miller took payments of at least \$365,435 from 5 Star Commercial between July 29, 2014 and July 1, 2015.

18. Second, 5 Star Commercial and Miller also misrepresented and omitted to state the true use of investor funds. Neither 5 Star Commercial nor Miller disclosed that between July 29, 2014 and June 26, 2015, Miller used \$895,815.67 of 5 Star Commercial’s assets to pay his personal debt to a former business partner. Rather than use his own assets to make the

payments, Miller misappropriated at least \$895,815.67 in funds from 5 Star Commercial to make the installment payments owed to the former business partner.

19. Miller accomplished this by transferring funds from 5 Star Commercial's bank account in the form of cashier's checks or wire transfers to the former business partner. In one instance, Miller funneled the monies through his personal account in an attempt to hide that he was stealing 5 Star Commercial's assets to pay his personal debt.

20. Third, 5 Star Commercial and Miller falsely represented throughout the PPM that investor funds would be used for the purchase and development of residential and commercial real estate. In truth and fact approximately \$391,000 of investor funds were transferred to and used to make highly risky investments in small, developmental stage companies that purportedly manufactured and sold "green products." These are the same investments made on behalf of Miller's separate investment fund, 5 Star Capital, described below. But, unlike the prospectus for 5 Star Capital, the 5 Star Commercial prospectus did not mention that investors would be investing some of their principal with fledgling "green product" companies rather than real estate.

21. As described in more detail below, Miller's "green product" investments were made without even the most basic due diligence and the

vast majority of those investments have defaulted in a short period of time.

22. The misrepresentations and omissions identified in this indictment were material. In making an investment decision, a reasonable investor would consider it important that Miller was not working without compensation. Rather, Miller used over \$1 million from 5 Star Commercial for his own personal benefit. In addition, investors would find it important that at least \$895,815.67 of the funds Miller misappropriated was used to pay off the former business partner, who as of July 29, 2014, was no longer an owner of 5 Star Commercial.

23. In addition, in making their investment decisions, reasonable investors would consider it important that a portion of their investment was not used as represented (*i.e.*, to purchase and develop real estate), but rather was being transferred to or invested in, at best, speculative “green product” ventures.

The Fraudulent 5 Star Capital Offering

24. In February 2015, Miller created a new investment vehicle, 5 Star Capital. 5 Star Capital was a departure for Miller. Rather than investing in real estate, 5 Star Capital was supposed to invest its funds “into green energy saving product (*sic*) that save the average American consumer hundreds of dollars per year.”

25. At the time of the 5 Star Capital offering, Miller was under

investigation by the State of Indiana Securities Division for offering and selling unregistered securities. In April 2015, Miller entered into a consent decree and agreed to pay a \$5,000 civil penalty.

26. From February 1, 2015 to August 2015, Miller and 5 Star Capital raised at least \$1.63 million from at least 28 investors in three states. Prospective investors in 5 Star Capital were not told that Miller was the subject of an investigation into potential securities law violations by the State of Indiana or that he entered a consent decree in response to charges that he violated state securities law.

27. Following the same model as 5 Star Commercial, Miller and his unnamed coconspirators recruited investors through oral representations and also gave prospective investors written marketing materials relating to the Fund, including a PPM.

28. Miller was the founder and sole owner of 5 Star Capital, and as such he had ultimate authority over all statements made in the 5 Star Capital PPM and its content.

29. The 5 Star Capital PPM contained multiple misrepresentations. The PPM misrepresented that “[t]he company owns patents on many of these products and will distribute them through large chain stores such as Bed Bath and Beyond.”

30. The PPM also assured investors that while their investment

presented risks, 5 Star Capital managed by Miller “will do its best to manage these risks.”

31. Miller also made oral misrepresentations to prospective investors about 5 Star Capital’s use of investors’ funds. Miller told at least one investor in 5 Star Capital that – contrary to the 5 Star Capital PPM – their funds would be used to purchase real estate (as they had with investments in Miller’s real estate entities). Miller led those investors to believe that investors would personally receive a secured interest (similar to a lien) in any purchased real estate as a guarantee of their investment.

32. The representations identified above were false when made. Despite 5 Star Capital’s and Miller’s claims, 5 Star Capital never owned any patent for any products, let alone “green products” that will be distributed “through large chain stores such as Bed Bath and Beyond.”

33. Contrary to the PPM’s representation that Miller and 5 Star Capital would attempt to “manage risk,” Miller and 5 Star Capital Fund failed to take even the most rudimentary steps necessary to vet and secure investments made on behalf of investors.

34. For example – for 5 Star Capital’s primary investments – Miller directed approximately \$1.1 million in investor assets to fledgling “green” companies with little or no track record. The entities were purportedly developing products ranging from a pedal operated wheelchair to energy

efficient wash machines.

35. Miller and 5 Star Capital performed virtually no due diligence on the “green” companies. Miller and 5 Star Capital transferred or invested \$1.1 million of investor funds despite receiving no financial statements for the entities, no detailed business plans, no sales statistics, contracts evidencing customer orders, or any other documents detailing the financial condition of the entities.

36. Miller failed to even memorialize all of 5 Star Capital’s investments in these companies. Out of the \$1.1 million that 5 Star Capital invested with those companies, Miller failed to obtain a debt or equity instrument in return for \$400,000 of 5 Star’s Capital’s investments. In short, Miller handed over \$400,000 of 5 Star Capital’s money and did not receive any paperwork in return evidencing, or governing the terms of, that investment.

37. Contrary to oral representations to certain investors, the overwhelming majority of 5 Star Capital’s assets were also not invested in real estate, and investors did not personally receive any form of security interest securing their investments.

38. The misrepresentations identified above were material. In making their investment decisions, reasonable investors would consider it important that:

- a. contrary to the PPM, 5 Star Capital did not own any patents, let alone patents for “green products” poised for distribution through big-box retailers;
- b. rather than taking prudent steps to “manage risk,” Miller had transferred or invested at least \$1.1 million of the fund’s assets to fledgling companies that had provided no detailed business plan or financial projections, and that for \$400,000 of 5 Star Capital’s investments, failed to properly memorialize the investments.

39. In making the misrepresentations and omissions identified above, Miller and 5 Star Capital acted knowingly. Miller knew that he had not performed a background check on the principals of the companies to whom he delivered investors’ funds. Miller performed virtually no due diligence into the “green product” entities before transferring investors’ funds. Miller knew 5 Star Capital did not own any patents on any “green energy saving product.” Miller knew, contrary to oral representations made to certain investors, 5 Star Capital invested primarily in the “green product” entities rather than real estate.

*The Purported “Green Product” Investments Fail and
5 Star Capital Stops Paying Its Investors*

40. The vast majority of 5 Star Capital’s “investments” in the “green

product” companies failed almost as soon as they were made and the rest never generated any return. Of the \$1.15 million that 5 Star Commercial and 5 Star Capital transferred as purported investments, most were in the form of “loans” that were supposed to generate monthly interest payments.

Between March 2015 and July 2015, those payments were only \$3,500 per month, and then the payments stopped entirely. All of those loans defaulted. Even when payments were being made, the investments never generated income sufficient to meet 5 Star Capital’s interest obligations to investors after March 2015.

41. As alleged above, certain of 5 Star Capital’s investments were not memorialized and the terms governing those investments are unknown. In addition, the undocumented investments never generated any revenue.

42. In July 2015, in the wake of the failure of 5 Star Commercial and 5 Star Capital’s purported investments with failed entitles, 5 Star Capital stopped making interest payments that were required under the terms of the investors’ promissory notes.

43. On or about July 20, 2015 Miller vacated his 5 Star office and moved all of his personal property out of the office.

44. Miller wasn’t heard from again by investors until late August, 2015 when they received a letter dated August 14, 2015, which made several false statements about the value of the companies when he acquired them

and advised investors that interest payments were “temporarily” suspended. Interest payments never resumed after this date.

Execution of the Scheme

45. In order to execute the above described scheme, the defendant would cause individual investors to deliver funds to others to acquire real estate, including but not limited to the following instances.

- a. On or about June 19, 2015 Miller and his coconspirators persuaded M.Y. to invest \$40,000 by check from his Interra Credit Union account, which was cleared by interstate wire;
- b. On or about June 26, 2015 Miller and his coconspirators persuaded N.W. to invest \$100,000 by check from his Sidney State Bank account, which was cleared by interstate wire;
- c. On or about June 26, 2015 Miller and his coconspirators persuaded N.W. to invest \$100,000 from his parents’ trust account with Macatawa Bank by check which cleared by interstate wire;
- d. On or about July 1, 2015 Miller and his coconspirators persuaded W.W. to invest \$100,000 by check from his Lake City Bank account, which cleared by interstate wire;
- e. On or about July 14, 2015 Miller and his coconspirators persuaded A.G. to invest \$25,000 by check from his Grabill

Bank account, which cleared by interstate wire;

- f. On or about July 16, 2015 Miller and his coconspirators persuaded J.E. to invest \$50,000 by check from his Interra Credit Union account, which cleared by interstate wire.

THE GRAND JURY FURTHER CHARGES:

Counts 1 – 6

(Wire Fraud)

The representations and allegations contained in the above paragraphs are incorporated herein as if set forth fully.

On or about each of the dates set forth below, in the Northern District of Indiana and elsewhere, the defendant,

EARL D. MILLER

for the purpose of executing the scheme described above, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below for each count, each transmission constituting a separate count:

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	June 26, 2015	A check of \$100,000 from N.W.'s Sidney State Bank account to Five Star which cleared by wire.
2	June 26, 2015	A check of \$100,000 from A.W. and E.W.'s Macatawa Bank account to Five Star which cleared by wire.
3	July 1, 2015	A check of \$100,000 from W.W.'s Lake City Bank account to Five Star which cleared by wire.
4	July 14, 2015	A check of \$25,000 from A.G.'s Grabill Bank to 5 Star which cleared by wire.

- 5 July 16, 2015 A check for \$50,000 from J.E.'s Interra Credit Union account to 5 Star which cleared by wire.
- 6 June 19, 2015 A check for \$40,000 from M.Y.'s Interra Credit Union account to 5 Star which cleared by wire.

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

THE GRAND JURY FURTHER CHARGES:

Count 7

The representations and allegations contained in the above paragraphs are incorporated herein as if set forth fully.

From on or about July 2014 to on or about August 2015, in the Northern District of Indiana and elsewhere, the defendant,

EARL D. MILLER,

in connection with the purchase and sale of a security, by the use of means and instrumentalities of interstate commerce, did knowingly and willfully use and employ manipulative and deceptive devices and contrivances in contravention of federal law, by making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.10b-5.

THE GRAND JURY FURTHER CHARGES:

Count 8

The representations and allegations contained in the above paragraphs are incorporated herein as if set forth fully.

On or about February 29, 2016, in the Northern District of Indiana,

EARL D. MILLER,

defendant herein, knowingly and fraudulently made a false material statement under oath in and relation to a proceeding brought under Title 11 of the United States Code, by falsely testifying under oath before the United States Trustee at a Meeting of Creditors that he received \$43,375 from 5 Star Commercial LLC in 2015 when in fact the defendant knew that he received additional funds.

All in violation of Title 18, United States Code, Section 152(2).

Forfeiture

The allegations contained in Counts 1 through 7 of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

Upon conviction of the offense or offenses in violation of Title 18, United States Code, Section 1341 set forth above, the defendant,

EARL D. MILLER

shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offense(s).

If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute

property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

Dated: June 10, 2020

A TRUE BILL:

/s/ Foreperson
Foreperson

APPROVED BY:

THOMAS L. KIRSCH, II
UNITED STATES ATTORNEY

By: /s/ John M. Maciejczyk
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