

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No.
)
) Violations: Title 18, United States Code,
ANTHONY A. DEMASI) Section 1343 and Title 7, United
) States Code, Section 13 (a)(1)

COUNT ONE

The SPECIAL JANUARY 2009 GRAND JURY charges:

1. At times material to this indictment:

 a. Tsunami Capital, LLC (“Tsunami Capital”) was incorporated in 2002 and was located at 455 North Cityfront Plaza Drive in Chicago, Illinois. The company was in the business of offering and selling investments in commodity pools to the public, including Tsunami Lakeshore Integrated Fund, LLC (“Tsunami Lakeshore”) and Tsunami Venture Fund, LLC (“Tsunami Venture”). Tsunami Capital was registered with the Commodity Futures Trading Commission (“CFTC”) as a commodity pool operator and as a commodity trading advisor from April 2003 until July 2005.

 b. Defendant ANTHONY A. DEMASI incorporated Tsunami Capital and held himself out as its “managing member.” Defendant DEMASI managed the day-to-day operations of Tsunami Capital, Tsunami Lakeshore, and Tsunami Venture, including soliciting prospective investors for commodity pool investments, overseeing the trading in the commodity pools, issuing periodic account statements to investors concerning the value of their commodity pool investments, and managing the funds raised for investment in the commodity pools.

 c. The commodity pools, Tsunami Lakeshore and Tsunami Venture, engaged in the purchase and sale, also known as trading, of commodity futures contracts. Commodity

futures contracts were standardized, legally binding agreements to buy or sell a specific product or financial instrument in the future. The buyer and seller of a commodity futures contract agreed on a price today for a product or financial instrument to be delivered or settled in cash at a future date. The movement of the market price for the particular product or financial instrument determined whether a profit or loss was made on the purchase or sale of a commodity futures contract.

d. Tsunami Capital, through defendant DEMASI, offered and sold interests in its commodity pools, usually for at least \$20,000. Each investment entitled an investor to a pro rata share of the trading profits in Tsunami Capital's commodity pools. Investors received periodic account statements purportedly showing the value of their investments. Tsunami Capital and defendant DEMASI were not entitled to receive any compensation for managing the commodity pools unless the commodity pools made a trading profit.

e. During the period from in or about 2002 to in or about 2007, defendant DEMASI's trading of commodity futures contracts on behalf of Tsunami Capital's commodity pools was not profitable. At no point during this period of time was the aggregate performance of the commodity pools profitable.

2. Beginning in or about 2002 and continuing to in or about April 2007, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

ANTHONY A. DEMASI,

defendant herein, devised and intended to devise, and participated in a scheme and artifice to defraud and to obtain money and property from investors and prospective investors in Tsunami Capital's commodity pools, by means of materially false and fraudulent pretenses, representations and promises and by means of material omissions, which scheme to defraud is

further described below.

3. It was part of the scheme to defraud that defendant DEMASI fraudulently obtained and retained more than \$4,700,000 from approximately 27 investors in Tsunami Capital's commodity pools, primarily by making and causing to be made material misrepresentations about the profitability of the commodity futures trading, the expected return on an investment, the risk involved in an investment, the use of funds raised from investors, and the status of investments. The defendant misappropriated a substantial portion of the \$4,700,000 raised from investors for his own benefit as well as to continue the scheme by making ponzi-type payments to investors. That is, the defendant used funds he misappropriated from later investors to pay purported returns on investments to earlier investors.

4. It was further part of the scheme to defraud that defendant DEMASI, during the period from in or about 2002 to in or about April 2007, misrepresented and caused others to misrepresent to prospective investors and investors in Tsunami Capital's commodity pools the profitability of the commodity futures trading and the returns prospective investors and investors could expect on the trading. The defendant consistently falsely represented both orally and in written trading track records that Tsunami Capital's commodity futures trading was profitable, when at no time was the aggregate trading of commodity futures contracts profitable. For example, defendant DEMASI distributed a trading track record to investors and prospective investors which falsely reported that Tsunami Capital's commodity pool trading had resulted in a 172% profit between January 2004 and May 2006, when the commodity pool trading had not been profitable throughout the entire period. As another example, defendant DEMASI falsely represented to Investor B that the commodity pool trading had generated approximately a 10%

profit during the fourth quarter of 2006, when the defendant knew that there had been no trading activity since August 2006. As still another example, defendant DEMASI falsely represented to Investor D in or about June 2006 that the lowest quarterly trading outcome of the commodity pools was a 1% profit, when the defendant knew that the commodity pool trading actually had unprofitable quarters in all but one quarter.

5. It was further part of the scheme to defraud that defendant DEMASI, during the period from in or about 2002 to in or about April 2007, misrepresented and caused others to misrepresent to prospective investors and investors in Tsunami Capital's commodity pools the risk involved in an investment. For instance, defendant DEMASI falsely represented to investors and prospective investors such things as: there was zero risk; there had been no losing months; the commodity pools never really lost any money; you cannot lose more than 3% of principle; and, the worst quarterly return was 1%. As defendant DEMASI knew, Tsunami Capital's commodity pools continually lost money trading commodity futures contracts, the defendant misappropriated investors' funds for his own benefit, and the defendant needed to use funds from new investors to pay purported returns to earlier investors in ponzi-type payments.

6. It was further part of the scheme to defraud that defendant DEMASI, during the period from in or about 2002 to in or about April 2007, falsely represented and caused others to falsely represent to prospective investors and investors in Tsunami Capital's commodity pools that the funds they invested would be used to buy and sell commodity futures contracts and that neither Tsunami Capital nor defendant DEMASI would receive any compensation unless the trading was profitable. However, the defendant used less than \$1,000,000 of the \$4,700,000 raised from investors to trade commodity futures contracts. The defendant misappropriated the

remainder to make ponzi-type payments to investors and to benefit himself, including the payment of his gambling debts and expenses, the funding of two unrelated night clubs, the payment of Tsunami Capital business expenses, and the payment of the defendant's personal living expenses.

7. It was further part of the scheme to defraud that in order to attract new investors, to retain current investors, and to conceal the unprofitability of Tsunami Capital's commodity pool trading, defendant DEMASI made approximately \$1,900,000 of ponzi-type payments of purported principle and profits to investors. The defendant intentionally did not disclose the ponzi nature of these payments.

8. It was further part of the scheme to defraud that defendant DEMASI created and distributed to investors materially false periodic account statements, all of which falsely reported that investors were making money. For example, defendant DEMASI provided a periodic account statement to Investor A in early 2007, which falsely reported that Investor A's investment had increased in value in each quarter of 2006 as follows: 7.83% in the first quarter; 10.65% in the second quarter; 11.61% in the third quarter; and 9.85 % in the fourth quarter. The defendant, however, knew that the trading had not been profitable, that there had been no trading since August 2006, and that the defendant had misappropriated Investor A's funds for his own benefit.

9. It was further part of the scheme to defraud that defendant DEMASI misrepresented, concealed, hid and caused to be misrepresented, concealed and hidden the purposes of and acts in furtherance of the fraud scheme, including, among other things, falsely reporting to certain investors that there was a potential buyer interested in purchasing the assets

of Tsunami Capital's commodity pools, which would result in a premium payment to current investors.

10. As a further part of the scheme, defendant DEMASI used and caused the use of the United States mail and interstate wire transmissions to communicate with prospective investors and investors and to obtain and use funds raised from investors.

11. As a result of his scheme to defraud, defendant DEMASI fraudulently obtained approximately \$4,700,000 from approximately 27 investors. As part of his scheme, defendant DEMASI made ponzi-type payments back to investors of approximately \$1,900,000. Therefore, in principle alone, investors lost approximately \$2,800,000.

12. On or about March 23, 2007, in the Northern District of Illinois, Eastern Division, and elsewhere,

ANTHONY A. DEMASI,

defendant herein, for the purpose of executing the above-described scheme, and attempting to do so, did knowingly cause to be transmitted by means of wire communication in interstate commerce a writing, sign and signal, the wire transfer of \$35,000 from the bank account of Investor A at Citizen Bank of Mukwonago, Wisconsin, to the Tsunami Lakeshore Integrated account at Signature Bank in Chicago, Illinois;

In violation of Title 18, United States Code, Section 1343.

COUNT TWO

The SPECIAL JANUARY 2009 GRAND JURY further charges:

1. Paragraphs 1 through 11 of Count One of the Indictment are realleged and incorporated as if fully set out.

2. On or about September 22, 2006, in the Northern District of Illinois, Eastern Division, and elsewhere,

ANTHONY A. DEMASI,

defendant herein, for the purpose of executing the aforesaid scheme to defraud, and attempting to do so, did knowingly cause to be transmitted by means of wire communication in interstate commerce a writing, sign and signal, a wire transfer of \$100,000 from the home equity line-of-credit of Investor C at Washington Mutual Bank in Stockton, California to Tsunami Capital's bank account at New Century Bank in Chicago, Illinois;

In violation of Title 18, United States Code, Section 1343.

COUNT THREE

The SPECIAL JANUARY 2009 GRAND JURY further charges:

1. Paragraphs 1 through 11 of Count One of the Indictment are realleged and incorporated as if fully set out.

2. On or about August 3, 2006, in the Northern District of Illinois, Eastern Division, and elsewhere,

ANTHONY A. DEMASI,

defendant herein, for the purpose of executing the aforesaid scheme to defraud, and attempting to do so, did knowingly cause to be transmitted by means of wire communication in interstate commerce a writing, sign and signal, a wire transfer of \$75,000 from Investor D's bank account at USAA Bank in San Antonio, Texas to Tsunami Lakeshore's bank account at New Century Bank in Chicago, Illinois;

In violation of Title 18, United States Code, Section 1343.

COUNT FOUR

The SPECIAL JANUARY 2009 GRAND JURY further charges:

1. Paragraphs 1 through 11 of Count One of the Indictment are realleged and incorporated as if fully set out.

2. On or about April 17, 2006, in the Northern District of Illinois, Eastern Division, and elsewhere,

ANTHONY A. DEMASI,

defendant herein, being an agent of an entity required to be registered with the CFTC, did steal, and with criminal intent convert to his use, money and property having a value in excess of \$100, namely, \$100,000, which the defendant had received from Investor E, a customer and client, for investment in one of Tsunami Capital's commodity pools. Defendant DEMASI did not invest the funds in Tsunami Capital's commodity pools. Instead, the defendant sent \$60,000 to the Mandalay Bay Casino in Las Vegas, Nevada for his own personal benefit and diverted the remainder to pay his personal and business expenses;

In violation of Title 7, United States Code, Section 13 (a)(1).

COUNT FIVE

The SPECIAL JANUARY 2009 GRAND JURY further charges:

1. Paragraphs 1 through 11 of Count One of the Indictment are realleged and incorporated as if fully set out.

2. On or about October 13, 2005, in the Northern District of Illinois, Eastern Division, and elsewhere,

ANTHONY A. DEMASI,

defendant herein, being an agent of an entity required to be registered with the CFTC, did steal, and with criminal intent convert to his use, money and property having a value in excess of \$100, namely, \$200,000, which the defendant had received from Investor F, a customer and client, for investment in one of Tsunami Capital's commodity pools. Defendant DEMASI did not invest the funds in Tsunami Capital's commodity pools. Instead, the defendant used \$150,000 to pay back an earlier investor in Tsunami Capital's commodity pools and diverted the remainder to pay his personal and business expenses;

In violation of Title 7, United States Code, Section 13 (a)(1).

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY