IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	Criminal Action No. 04-61-KAJ
GEORGE BLOOD, Defendant.	)	

MEMORANDUM ORDER

This matter is before me on defendant's motion to suppress evidence. (Docket Item ["D.I."] 11; the "Motion".) The defendant asserts that evidence from the Government's search of offices he used, a search conducted pursuant to a warrant, must be suppressed because (1) "the search warrant affidavit was so conclusionary [sic] in nature as to lack probable cause" (D.I. 11 at ¶ 4), and (2) "the warrant was obtained without a proper presentation of facts to support probable cause" (*id*. at ¶ 8).

As to the first issue, the sufficiency of the affidavit, the Supreme Court has instructed judges reviewing search warrant affidavits to "make a practical, common sense decision whether, given all the circumstances set forth in the affidavit ... there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). When a judge is required, as I am in this instance, to review the determination of another judge on the sufficiency of a search warrant affidavit, the standard I must apply is whether the judge who issued the warrant had a substantial basis for making his or her determination. *See id.* at 238-39. In other words, "a reviewing court is to uphold the warrant as long as there is a substantial basis for a fair probability that evidence will be found." *United States v. Conley*, 4 F.3d 1200,

1205 (3d Cir. 1993). The search warrant affidavit "must be read in its entirety and in a common sense and non-technical manner." (*Id*. at 1206.)

The search warrant in this case was supported by the affidavit of Special Agent Thomas J. Winterbottom of the Internal Revenue Service, an agent with approximately 12 years of experience, including experience in investigating securities fraud, Ponzie schemes, and money laundering cases. (*See* D.I. 11 at Ex. A, Affidavit at ¶¶ 1-2.) The affidavit sets forth in 53 numbered paragraphs, not including subparagraphs, the bases for Special Agent Winterbottom's assertion that there was probable cause to believe evidence associated with federal crimes would be found at the premises identified in the warrant.

Among other things, the affidavit describes how, in approximately February, 2000, the Delaware Division of Securities received a complaint against Millennium Strategies International, LLC ("MSI") and the principals of that company, the defendant George W. Blood and an associate names William J. Vanden Eynden. *Id*. at ¶5. The complaint described how Blood and Vanden Eynden encouraged an individual to invest $5,000 in a program administered by MSI which was promised to yield a $900,000 return for the investor. The complainant in fact delivered a cashier's check in the amount of $5,000 to Blood and, when the complainant later attempted to redeem the investment and profits was told by Blood that the funds were unavailable. (*Id*.)

The affidavit then details how Special Agent Winterbottom became involved in the investigation, examining documents provided by the complainant, as well as bank records obtained by subpoena from the Delaware Security Commissioner relating to MSI's banking activity. The banking records led to further documentation, including

corporate documents associated with two other companies in which the defendant has an interest, namely Beneficial Growth Systems, Inc. ("BGS") and Greystone International, Ltd. ("GIL"). (*See id.* at ¶¶ 11, 18.) Special Agent Winterbottom determined from the bank records that MSI was likely to be a pyramid scheme designed to give the appearance of being a multilevel marketing program that offered discount travel packages to participating investors. (*Id*. at ¶ 8.) The Special Agent noted that this so-called investment program bore the classic hallmarks of a pyramid or Ponzie scheme in that it promised inordinately high returns on a minimal investment over a very short period of time for doing nothing more than recruiting new participants. (*See id*. at ¶ 7.) According to the affidavit, the bank records offered "no evidence to suggest that a discount travel program actually existed," and the records further demonstrated that "Blood and Vanden Eynden used investor's funds to pay personal expenditures such as auto leases and loan repayments." (*Id*. at ¶ 10.)

Records associated with BGS and GIL, including bank records for those companies (*see id.* at ¶ 27), indicate that those entities too were responsible for a "failure to invest participants' funds in legitimate financial institutions coupled with the use of new investors' funds to pay pre-existing investors... ." In short, the records provided "evidence of a Ponzie scheme operation." (*Id*. at ¶ 28.) Certain wire transfers associated with MSI, BGS, and GIL all indicated to the affiant, Special Agent Winterbottom, that violations of the federal wire fraud statute, 18 U.S.C. § 1343, and money laundering statute, 18 U.S.C. §1956(a)(1)(a)(I), were committed by the defendant.

In further support of Special Agent Winterbottom's conclusion that criminal fraud was being committed by the defendant, he noted that "Blood and Vanden Eynden have prior criminal histories that resulted in their simultaneous detention" at a federal prison in 1986, where they shared a dorm room in the detention facility. (*Id*. at ¶ 29.) Blood was at that time in prison for embezzlement, tax evasion, and filing false tax returns (*id*. at ¶ 30), and Vanden Eynden was incarcerated for a conspiracy to defraud the United States and interstate transportation of stolen money, among other crimes. (*Id*. at ¶ 31.)

Based on the information he had received and his experience in investigating crimes of this nature, Special Agent Winterbottom concluded that copies of fraudulent promotion material and fraudulent investment contracts and other pertinent materials would still be in the possession of Blood and his alleged co-conspirators. (*Id*. at ¶¶ 32-34.) More specifically, he believed that those records would be found at 1005 Elkton Road, in Newark, Delaware, as it is the address that was utilized by MSI, BGS, and GIL, according to tax return information on file with the IRS and the Delaware Division of Revenue. (*See id.* at ¶ 37.) Information from a utilities provider also indicated that the defendant was the current subscriber for utilities supplied to that address. (*Id*. At ¶ 38.) A cooperating informant further provided information indicating that he had been to that address and had seen computers maintained by the defendant on the second floor. (*Id*. at ¶ 43.) Records obtained from a Maryland CPA who had been employed by the defendant indicated that accounting for MSI had been done on a computer using Peachtree Accounting software, for which MSI claimed depreciation. (*Id*. at ¶ 42.) Investigation also revealed that MSI, at one time had used an internet website to promote its alleged investment/pyramid scheme. (*Id*. at ¶39.) That website

disappeared as of April, 2002. (*Id*. at ¶ 40.) Thus, the Special Agent concluded that documentation and computers should be seized from that address and opportunity should be given to the Government to review them for evidence of criminal activity.

Having viewed the affidavit in its entirety, and in a common sense and non-technical manner, I am compelled to agree with the Government (D.I. 16 at ¶ 7) that while Special Agent Winterbottom reached certain conclusions in his affidavit, the affidavit is not conclusory. At a minimum, there was "a substantial basis for a fair probability that evidence [would] be found" on the premises to be searched. *Conley*, 4 F.3d at 1205-06. Moreover, the defendant's motion to suppress evidence on this ground must be denied because it cannot be said that the investigating agent's reliance upon the Magistrate Judge's determination that probable cause existed was objectively unreasonable. *See, United States v. Hodge*, 246 F.3d 301, 307-08 (3d Cir. 2001) ("the mere existence of a warrant typically suffices to prove that an officer conducted a search in good faith and justifies application of the good faith exception.").

Turning to the second aspect of the defendant's motion to suppress, namely the assertion that the "search warrant ... was obtained without a proper presentation of facts to support probable cause, and ... the affidavit for the search warrant neglected to state facts that clearly would not have supported the issuance of a search warrant" (D.I 11 at ¶ 8), what the defendant seems to be seeking is a hearing to demonstrate that the affidavit was deliberately false or made in reckless disregard of the truth. *See Franks v. Delaware*, 438 U.S. 154, 155-56 (1978). However, no such hearing is available unless the defendant makes a "substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the

affiant in the warrant affidavit," and that the "allegedly false statement is necessary to the finding of probable cause... ." *Id.* at 155. Ironically, given the nature of the defendant's assertions about the affidavit being conclusory, the problem with the defendant's accusation that the affidavit is deliberately misleading is that it is wholly conclusory. The law requires that a *Franks* hearing request be supported by some offer of proof pointing to specific aspects of the affidavit claimed to be false. (*See id*.) The defendant's motion in this regard is inadequate. There is no offer of proof; there is not even an allegation of lying or reckless disregard of the truth. The most the defendant seems to say is that the affiant should have said more, or differently arranged the facts provided. That is simply insufficient under *Franks* and its progeny to warrant a hearing, let alone suppression of the evidence.

Accordingly, IT IS HEREBY ORDERED that the defendant's motion to suppress (D.I. 11) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

February 22, 2005
Wilmington, Delaware