

CRIMINAL COURT OF THE CITY OF NEW YORK
NEW YORK COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

THEODORE C. SIHPOL III,
76 Seminary Street
New Canaan, Connecticut
DOB: 08/31/1967

FELONY COMPLAINT
(AAG Kevin Suttlehan 212-416-8741)

Defendant.

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STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

Confidential Investigator HERBERT ANTOMEZ of the Criminal Investigations Bureau of the New York State Attorney General’s Office (“OAG”), being duly sworn, deposes and says that between in or about April of 2001, through in or about July of 2003, at the offices of Bank of America in the County of New York in the State of New York and elsewhere, the defendant committed the offenses of:

GRAND LARCENY IN THE FIRST DEGREE, in violation of Penal Law §155.42, a class B Felony;

A VIOLATION OF GENERAL BUSINESS LAW §352-c(6), a class E Felony;

in that the defendant:

1. Stole property valued in excess of \$1 million; and
2. Intentionally engaged in fraud, deception, concealment, suppression, false pretense and fictitious and pretended purchase and sale, and with intent to deceive and defraud, made material false representations and statements, while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation or purchase within or from New York of a

security, and thereby wrongfully obtained property with a value in excess of \$250.

Defendant committed these crimes as follows:

I am informed by Robert Carroll that he is the Trust Secretary (hereinafter referred to as “the Trust Secretary”) of Nations Funds Trust (“the Trust”), which offers shares in a series of investment portfolios, commonly known as the Nations Funds mutual fund family (hereinafter referred to as “the Mutual Funds”). I am informed by the Trust Secretary that a share of the Mutual Funds is a type of security which is sold to the public. I am further informed by the Trust Secretary that the price of a share of the Mutual Funds, other than money market funds, is determined as of 4:00 pm (Eastern Time) on each typical trading day. All purchase orders received by the distributor, the transfer agent, or their respective agents, at any time before 4:00 pm on a typical trading day are sold at the 4:00 pm price. All purchase orders received after 4:00 pm on a typical trading day must be sold at the next trading day’s price, which is determined as of 4:00 pm (Eastern Time) on a typical trading day.

The practice of placing or accepting trades after 4:00 pm at the expired 4:00 pm price is known as “late trading.” I am informed by the Trust Secretary that no one selling or purchasing Mutual Funds shares has permission or authority from the Trust to engage in late trading. Nor do the terms of any Mutual Funds prospectuses permit or authorize late trading.

Pursuant to SEC Rule 22c-1, promulgated under the Investment Company Act of 1940, 17 CFR § 270.22c-1(a), late trading is prohibited.

I am informed by Edward J. Stern (“Stern”) that he is, and was at all relevant times, the Managing Principal of Canary Capital Partners, LLC and Canary Investment Management, LLC (collectively, “Canary”), and that Canary sold and purchased shares of the Mutual Funds during the time period set forth herein.

I am informed by Andrew Goodwin that he was a trader employed by Canary from 2000 until December of 2001.

I am informed by Stern that, during the times relevant to this complaint, defendant worked for Banc of America Securities, which is a broker-dealer that accepts, executes and clears orders for the Mutual Funds. Defendant's role was to accept orders for Mutual Fund shares and to cause such shares to be transferred in and out of a customer's account.

I am further informed by Stern that Canary routinely engaged in late trading in concert with defendant. Initially defendant placed Canary's trades manually. Later, defendant caused an electronic trading platform to be installed at Canary. This enabled Canary to bypass defendant and place its trades directly, allowing it to engage in late trading more efficiently.

I am informed by Goodwin that before 4:00 pm on days that defendant placed Canary's trades manually, he or another Canary employee whom he directed sent defendant, by e-mail or facsimile, a list of Canary's proposed mutual fund trades for that day. By prearrangement with defendant, every such list of proposed trades sent before 4:00 pm would be followed up by a telephone call after 4:00 pm. In the call, Goodwin or another Canary employee told defendant which of the proposed trades Canary now wanted defendant to place, if any, and which it did not. Goodwin informed me that, by pre-arrangement with defendant, no order was to be placed unless and until defendant received Canary's post-4:00 pm call.

I am informed by Confidential Investigator Brenda Blasie of the Criminal Investigations Bureau of the OAG that she met with defendant on August 6, 2003 and that the defendant made the following statements: defendant stated that he, or an employee whom he directed, received Canary's list of proposed mutual fund trades before 4:00 pm. Upon receipt, defendant or his employee made out an order ticket for each trade and caused it promptly to be stamped with the date and time. Later, by pre-arrangement with Canary, he received a post-4:00 pm call in which

he was told which of the proposed trades Canary now wanted to place, if any, and which it did not.

Defendant stated that he would not place an order on behalf of Canary unless and until he received the post-4 pm call. Defendant further stated that, after the post-4 pm call, he discarded the tickets for the trades Canary no longer wanted. Defendant also stated that, after receiving these calls, he faxed the order tickets for those trades Canary wanted made to the Banc of America Mutual Funds order processing area. Defendant stated that the order tickets he faxed bore the pre-4:00 pm time stamp from earlier in the day.

I am informed by Stern that throughout 2001, 2002 and up until July 2003, Canary -- acting in concert with defendant -- placed late orders for hundreds of mutual fund trades using this arrangement. Canary most often used the electronic trading platform for this purpose, but periodically asked defendant and others who worked for him to enter trades manually, which they did. I am informed by Stern that pursuant to this scheme Canary and defendant, acting in concert, obtained property having a value in excess of a million dollars belonging to Nations Funds Trust.

FALSE STATEMENTS MADE HEREIN
ARE PUNISHABLE AS A CLASS A
MISDEMEANOR PURSUANT TO
SECTION 210.45 OF THE PENAL LAW

HERBERT ANTOMEZ
NEW YORK STATE ATTORNEY GENERAL'S OFFICE