

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

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|-------------------------|---|-------------------------------------|
| JEFFREY A. MARTINOVICH, |) | |
| Petitioner, |) | Case Nos. 4:12cr101 |
| |) | 4:15cr50/4:18cv27 |
| |) | |
| v. |) | Honorable Chief Judge Mark S. Davis |
| |) | |
| |) | |
| UNITED STATES, |) | |
| Respondent |) | |

**SUPPLEMENT TO REPLY TO GOVERNMENT’S REPSONSE TO PETITIONER’S MOTION
FOR COMPASSIONATE RELEASE AND/OR IN THE ALTERNATIVE FOR SENTENCE
REDUCTION OR REDUCTION TO TIME-SERVED PURSUANT TO 28 U.S.C. SEC. 2255 IN
SUPPORT OF ALL STAKEHOLDERS’ OBJECTIVES**

NOW HERE COMES Jeffrey A. Martinovich, proceeding pro se and in forma pauperis, in a Supplement to Petitioner’s Reply to Government’s Response to Motion for Compassionate Release or in the alternative to Reduce Sentence to Time-Served as opposed to five more years on Home Confinement [Doc. 159]. Mr. Martinovich’s previous Reply, Document #161 (12/09/2020) is herein incorporated by reference.

Mr. Martinovich apologizes to the Court for not also including the supporting evidence applicable to the true origins of Case 4:15cr50 (Case 2). As stated previously, since the current Honorable District Court was not present for the foundation of this case and the years of litigation, Mr. Martinovich, respectfully, presents a subset of evidence previously introduced in multiple court records. Mr. Martinovich herein submits that this compelling evidence, all documented on the court record, at a minimum provides uncertainty to these outcomes and allows for consideration of a comprehensive remedy today in favor of the stakeholders’ restoration:

CASE 4:15CR50 FACTUAL EVIDENCE AND DOCUMENTATION

The government alleged that Mr. Martinovich unilaterally accessed MICG hedge fund accounts pursuant to the funds' indemnification provisions to fund unauthorized legal fees, as well as management and expert fees. The government further alleged that Mr. Martinovich had tricked and manipulated the six law firms which were hired to independently represent the funds and shareholders, as well as conceal from trial defense attorneys the source of the legal fee payments.

The government alleged that Mr. Martinovich acted on his own, illegally accessed funds, tricked attorneys, and "papered over" his illegal trail. When presented with this superseding indictment, the following information was provided to court-appointed counsel, Mr. Woodward:

- 1) Attorney Andrew Shilling Opinion Letter, representing MICG Venture Strategies Fund, obtained by MICG lead business attorney Mr. Todd Lynn of Patten Wornom Hatten & Diamonstein, Newport News, Virginia.
- 2) Attorney Katherine Klocke Opinion Letter, representing MICG Partners Fund, obtained by MICG securities attorney Mr. Benjamin Biard of Wilson Elser, New York, New York.
- 3) Consulting Engagement Contract listed as the Indemnification Collateral at the request of attorney Mr. Shilling of Shilling, Pass and Barlow, Chesapeake, Virginia.
- 4) Assignment of Consulting Revenue Agreement listed as Indemnification Collateral at request of attorney Mr. Shilling.
- 5) Wells Fargo MICG Hedge Fund Check Copies previously presented to the District Court by attorney James Broccoletti of Zoby Broccoletti, Virginia Beach, Virginia.
- 6) MICG Partners Fund to MICG Venture fund Payments Tax Ledger prepared and presented by Harbinger PLC accounting and audit firm, Norfolk, Virginia.
- 7) Tax and Accounting Ledger of payments to attorneys from MICG Venture and Partners Funds, prepared and presented by Harbinger PLC.

8) Martinovich letter to David, Kamp & Frank Law Firm documenting liability to Partners Fund. [Atchs. 1-8 Doc. 74, Aff. Doc. 90].

The following paragraphs summarize the additional evidence provided to Mr. Woodward through meetings, documents, and email correspondence with the Affidavit and Attachment references referring to the Case 4:15cr50 Martinovich Amended Affidavit [Doc. 90] and the submitted Exhibits [Doc. 74]. Trial defense counsel, Mr. Broccoletti, called Mr. Martinovich prior to the Case No. 4:12cr101 sentencing to let him know that there was a problem with the indemnification payments for Mr. Broccoletti's fees. The federal agents had visited Mr. Andrew Shilling, the attorney representing MICG Venture Strategies Fund, and Mr. Shilling had for unknown reasons told the agents that he wasn't aware of exactly how the legal fees were paid, or how the proper documentation was executed. [Atchs. 3,6,9, Aff. #57]. Mr. Martinovich drove straight to Mr. Todd Lynn's office, MICG's lead business attorney at Patten Wornom Hatten & Diamonstein (PWHD). After Mr. Martinovich relayed the message, Mr. Lynn led Martinovich to PWHD's large conference room and phoned Mr. Shilling. Mr. Lynn questioned Mr. Shilling about the encounter, then became agitated and asked him why he hadn't just told the agents the truth, that all the documentation and authorizations were in place. He continued, "Of course, you knew the arrangement. That's the whole reason you were hired!" Mr. Lynn ended the call, looked at Martinovich across the conference table and said, "He's lying. He's scared. He misspoke talking to the feds and now he's scared to change his story!" Mr. Martinovich responded with a great number of expletives to be translated as, "What more could go wrong now?" Mr. Lynn stated that he would follow up with Mr. Shilling and fix the error. [Atchs. 3,6,9, Aff. #58].

In the beginning, following Mr. Martinovich's initial arrest in Case 4:12cr101, Martinovich was released on bond and traveled to the offices of PWHD in Newport News, Virginia, to meet with his lead legal counsel, Mr. Todd Lynn. Mr. Lynn had provided legal counsel for MICG funds for many years, including handling client claims, errors and omissions insurance

procedures, indemnification clauses, documentation, and regulatory issues. Mr. Lynn set in motion the procedures and paperwork to invoke the indemnification clause for payment of legal expenses and coordination among the MICG funds for coverage of expenses. This had been completed numerous times before, involving standard fund expenses as well as errors and omissions claims, client suits, significant attorney fees, and accounting and audit fees.

The MICG hedge funds operated with the industry-standard indemnification clause as detailed in the Private Placement Memorandums (PPM) provided to investors and regulators. This legal protection is implemented by most every hedge fund and mutual fund operated in the United States. This legal structure, among other provisions, authorizes the fund to pay for the defense of claims and procedures against individuals managing or operating the fund, unless there is a final conviction of fraud against said individual, at which point those expenses are then due back to the fund [see *XL Specialty Ins. Co. v. Level Global Inv.*, (2nd Cir. 2012)]. Due to non-stop legal actions in the investment industry, no individual could ever personally assume the legal liability to manage any investment fund without the indemnification structure. This legal clause was written and implemented for MICG by the international law firm of Troutman Sanders, with offices in Virginia Beach, Virginia. Mr. Lynn worked closely with Mr. Benjamin Biard, Esq., of Wilson Elser Moskowitz & Dicker Law firm in New York to provide enhanced expertise in securities law for operations, errors and omissions, legal claims, indemnification, and regulatory work.

To ensure all MICG funds, entities, and individuals received independent representation and that no conflicts of interests were permitted, Mr. Lynn and Mr. Biard further engaged two more legal firms. Mr. Andrew Shilling of Shilling, Pass & Barlow, Chesapeake, Virginia, was engaged to independently represent the MICG Venture Strategies Fund. Mr. Shilling had been Mr. Lynn's roommate at the University of Richmond Law School. Ms. Katherine Klocke, of law firm Akerman, Florida, was engaged to independently represent the MICG Partners Fund. Mr. E.D. David of law firm David Kamp & Frank, Newport News, Virginia, provided representation

for MICG Anchor Strategies Fund at this time. Mr. Lynn orchestrated most procedures among these law firms and was the primary contact for Mr. Martinovich. [Atchs. 1,5,21, Aff. #59].

Venture Strategies Fund was mostly illiquid with anticipated upcoming substantial capital gains. Partners Fund had significant cash reserves due to earlier liquidity events and had invested approximately a 23% investment position in the Venture Fund in order to capitalize on Venture's upcoming events. Partners Fund was also to soon receive a significant investment return from its earlier investment in Tiptree Financial Fund, now in a public transaction. The Anchor Strategies Fund had also taken a substantial position in Tiptree Financial. Partners and Anchor were processing an approximate \$4 million return of funds and shares to MICG investors.

With the increased regulatory, legal, and civil expenses after the 2008 Financial Crisis, the noted legal firms provided documentation and legal opinions for the Partners fund to cover the expenses of the Venture Fund in order to preserve, and not dilute, its investment positions [see Documentation]. Partners Fund was flush with low-yielding cash while the Venture fund awaited a significant return of capital gains. All transactions and documentation were authorized and transparent to independent auditors, independent accountants, and each fund's independent legal representation [see Documentation]. Mr. Lynn coordinated with Mr. Shilling to provide opinion letters and authorizations for the payments to defense counsel, Mr. Broccoletti. During this period, Mr. Lynn had multiple conversations directly with Mr. Broccoletti, and Mr. Shilling provided Mr. Lynn with executed authorizations [Atch. 6, Aff. #60]. During this period, Mr. Martinovich and his assistant, Ms. Stafford, were present with Mr. Lynn at PWHD's office for a conference call on speaker phone with Mr. Shilling. Mr. Lynn and Mr. Shilling discussed that they had not yet also created a promissory note document for these payments between the Partners Fund and Venture Fund. Mr. Lynn asked Mr. Shilling to prepare this note since Mr. Lynn had multiple conflicts due to his representation of MICG. Mr. Shilling asked Mr.

Lynn to have Mr. Biard or Ms. Klocke prepare this note since his fund was the actual recipient of these transfers [Atch. 3, Aff. #61].

Mr. Michael Umscheid of Harbinger PLC, Norfolk, Virginia, served as tax accountant for the Venture and Partners Funds. Mr. Umscheid kept a running "Due to - Due from" ledger for these payments between Partners and Venture Funds and fully-documented the liability in the tax preparation for both funds [see Doc., Atchs. 4,8, Aff. #62].

Mr. Shilling subsequently asked Mr. Lynn and Mr. Martinovich to provide further assurance that, in the case of a negative legal outcome, there be written documentation of collateral or future income which would be assigned to repay the legal fees, per the indemnification provision. Mr. Shilling reviewed the current business activities of Mr. Martinovich and his small staff and selected the assignment of a potential future commission from the marketing and sales engagement of a hotel business in Virginia Beach, Virginia. One of Mr. Lynn's law partners at PWHD, Mr. Seward Lawlor, was also an owner in the hotel property, and together the two attorneys edited the engagement contract. Also, once the legal administration of the MICG Partners Fund had transitioned to Mr. E.D. David of David, Kamp & Frank, Mr. Martinovich personally sent documentation to Mr. David to explain that, in the event of a fraud final conviction, Martinovich would need to reimburse the fees back to the MICG Partners Fund. [Atchs. 3,9, Aff. #64].

This detailed documentation and involvement of six law firms could only be interpreted as full transparency with an overwhelming commitment to compliance and disclosure [Atchs. 2,6, Aff. #63]. When trial defense counsel, Mr. Broccoletti, told Mr. Martinovich that the government was upset that the funds were still available for the defense and that Mr. Shilling was having these conversations with the agents, Martinovich drove to Mr. Lynn's office for the telephone conference noted at the beginning of this summary, in which attorney Mr. Lynn emphatically declared that Mr. Shilling was lying.

Subsequently, a hearing was scheduled before trial Judge Doumar. When the government first claimed that Mr. Martinovich secretly and illegally gained control of the Partners Fund cash account, Mr. Broccoletti simply presented evidence that the previous custodian, First Clearing Corp's, contract had terminated with MICG, and at their request the account was transferred to Wells Fargo Bank, their parent company. This account retained the same titling, the same control provisions, and the same check writing authorizations. Later, Mr. Martinovich's assistant, Ms. Stafford, was added to the account authorizations list for simple efficiency of administration. All of these same procedures occurred with the MICG Venture Strategies cash account [Atchs. 3,9,21, Aff. #65].

The government then presented a Director of Wells Fargo's Fraud Department who, under oath, described to Judge Doumar that Martinovich had withdrawn large amounts of cash from the hedge fund money market accounts, sometimes \$50,000 or \$75,000 per withdrawal. This preposterous allegation attempted to describe these actions with the Wells Fargo system of journal entries and professional checks. This Director of Fraud claimed that they could not locate corresponding check copies in their system which meant Martinovich must have withdrawn the amounts in cash. Fortunately, Mr. Martinovich's small consulting team had kept perfect records, and now Mr. Broccoletti presented the "missing check copies" to the court. He stated, paraphrasing, "Please tell me why Mr. Martinovich has copies of every authorized payment in question, and a Director of Wells Fargo cannot find these same copies? How is that possible?" Clearly, this witness was improperly coached by the prosecution and committed multiple acts of perjury while on the stand, to which Mr. Martinovich has already prepared civil actions. Despite these obvious facts, all accounts were frozen and this alleged relevant conduct was added to Judge Doumar's sentencing calculus.

All management fees were authorized by the team of attorneys, and over three years the actual fees paid were approximately one third of what was legally authorized. Following the 2008 Financial Crisis and regulatory aftermath, Mr. Martinovich notified the fund investors, with

the authorization of Mr. Lynn and Mr. Biard, that MICG would suspend the management fee for Venture and Partners Funds during this period, and that MICG would allocate its significant infrastructure and personnel to cover these duties and responsibilities. After the closure of MICG and the fallout effects to Mr. Martinovich, he personally could no longer fund this administration and management in total, and he informed Mr. Lynn of the circumstances. Mr. Lynn scheduled a conference call with Mr. Lynn, Mr. Biard, Ms. Klocke, and Mr. Martinovich to address the issue. Ms. Klocke, Partners Fund counsel, authorized the payment of fees and expense reimbursement, and stated that she did not need to provide further opinion letters, reiterating that all valid expenses of Venture or Partners Fund were to be covered by Partners. Also, due to the unpredictability of the current MICG Limited Liability Company entities, these payments were directed to be paid to Mr. Martinovich and for Mr. Martinovich to pay the assistants directly with documentation, which is exactly how these expenses were administered, with 1099 documentation included [see Documentation, Atchs. 1,2,4,8, Aff. #66].

During this same period, attorneys Mr. Lynn, Mr. Biard, Mr. Shilling, and Ms. Klocke continued to receive substantial legal fee payments from the MICG Funds, with the Partners Fund openly paying these attorney fees for the Venture Fund at the attorneys' direction and with complete transparency and audit and tax reporting [Atch. 5, Aff. #67].

In a subsequent phone call, Ms. Klocke reconfirmed to Mr. Martinovich that no further documentation was required yet claimed that the MICG Funds had not paid her most recent bill. After confirming her recent check had already cleared, Martinovich's assistant, Ms. Brooke Stafford, returned the call to Ms. Klocke confirming the check had cleared the Partners Fund [Atch. 8, Aff. #105].

When the drama was initiated by attorney Mr. Shilling allegedly giving federal agents the incorrect information, Mr. Martinovich participated in another conference call with attorneys Mr. Lynn and Mr. Biard. Mr. Biard, who had first arranged for attorney Ms. Klocke to represent the

Partners Fund, stated on the call, "Don't worry. I know Kathy well. She will step up and stand behind her authorizations [Atch. 7, Aff. #104].

Mr. Broccoletti stated that Mr. Shilling also advised federal agents that he did not authorize the payments to the legal experts requested by Mr. Broccoletti. Mr. Broccoletti had called Mr. Martinovich at his condo office, with two assistants present, to request payments for the trial legal experts he had engaged. Mr. Martinovich and his assistant then phoned Mr. Shilling to confirm these were covered by the indemnification and to ask if any further paperwork or opinion letters were necessary. Mr. Shilling clearly confirmed the authorization and stated he did not need to provide further paperwork. That same afternoon, Martinovich's assistant, Ms. Brooke Stafford, then processed the checks and traveled to Wells Fargo to pick up each payment for Mr. Broccoletti [see Phone records. Required testimony verification, Atchs. 2,6,9, Aff. #68].

District Court Judge Wright Allen was clearly misled about the facts, the nature, the actions, the authorizations, and the intent involved in the issue of indemnification payments for Case 4:15cr50. The lying to federal agents, and likely lying to a grand jury, by Mr. Shilling, along with the dismissal and quashing of a long list of exculpatory evidence by officers of the court, to include court-appointed counsel, severely prejudiced and committed fraud on the Court. Clearly, the Court was not made aware of the numerous transactions, multiple parties, and substantial documentation presented to the officers of the court by Mr. Martinovich [see Sent. tr.]. At the initial sentencing for Case 4:15cr50, the government stated to the Court, "The layers of fraud that are involved in that criminal legal defense payment are just shocking. Not only do you have him deceiving Mr. Broccoletti, you have him deceiving another attorney, Andrew Shilling... Martinovich tried to paper over his use of these funds by getting opinion letters from attorneys, saying, "It's all okay." [Tr. p. 86]. "Mr. Shilling is relying on representations by Mr. Martinovich." [p. 87]. "We hadn't pulled those cashier's checks, talked to Mr. Broccoletti." [p. 89].

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The Honorable Judge Wright Allen stated in response to the false information, "You poured dirty money in this federal court...threading criminal proceeds throughout that trial...when the Feds roll up on somebody, people stop breaking the law." [p. 91]. "He sucked in James Broccoletti into this drama. For those of you who don't know Mr. Broccoletti, if he's not the best attorney in Virginia, he's one of the best — and I would venture to say across the United States of America." [p. 92]. "He had to testify in a Federal grand Jury. Honorable public servants, or retained, for that matter, should not be in front of a Federal Grand Jury so they can ferrett out whether or not Mr. Broccoletti knew that these moneys were dirty." [p. 93]. "I don't know about Mr. Shilling. If it was in the materials, I missed it." [p. 94]. Judge Wright Allen didn't even know who was the lead attorney processing and authorizing the payments. How was that even possible? Obviously, court-appointed attorney Mr. Woodward and the government had not delivered one ounce of the voluminous evidence provided by Mr. Martinovich [Aff. #53]. Mr. Woodward and the government had misled Judge Wright Allen and left her to beliefs and assertions one hundred and eighty degrees contrary to the truth. The preposterous, simplistic allegations of Martinovich tricking six law firms and "papering over" transactions manipulated Judge Wright Allen, severely affecting the initial sentencing for Case 4:15cr50, as well as severely affecting the resentencing for Case 4:12cr101 which fully considered the conduct of Case 4:15cr50.

CONCLUSION AND REMEDY

Herein, Mr. Martinovich, proceeding pro se and in forma pauperis, again respectfully requests this Honorable Court GRANT Compassionate Release, and/or in the alternative a Reduction or Time Served pursuant to 28 U.S.C. Sec. 2255 or other authority and discretion of this Honorable District Court. The Government and Court have implemented tremendous punishment and deterrence, well beyond the three separate plea agreements offered by the Government and well beyond an innumerable number of sentences of similar conduct, and now

Mr. Martinovich again appeals for the restoration of all stakeholders, to include himself and his family. As noted in his Motion, Mr. Martinovich has complied with and accomplished everything the Government and Court have asked of him, plus so much more, and he respectfully entreats the Government and this Honorable Court to act in the best interests of the Government, Court, Employees, Clients, Shareholders, and United States Taxpayers.

With Great Respect,

Date: 12/14/2020


Jeffrey A. Martinovich, pro se

AFFIDAVIT AND CERTIFICATE OF SERVICE

I, Jeffrey A. Martinovich, proceeding pro se, submit under the penalty of perjury pursuant to 28 U.S.C. Sec 1746, that the above is true and correct to the best of my knowledge, and that a true and correct copy of this Motion has been mailed with sufficient first-class postage on

12/14/20 to:

U.S. Attorneys Office
Attn: Mr. Brian Samuels, AUSA
101 W. Main St., Suite 8000
Norfolk, VA 23510

Date: 12/14/2020


Jeffrey A. Martinovich