

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

WAYDE McKELVY

CRIMINAL No. 15-398-3

**REPLY BRIEF IN SUPPORT OF DEFENDANT'S
MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS**

Defendant Wayde McKelvy ("McKelvy"), by and through his attorneys Walter S. Batty, Jr. and William J. Murray, Jr., hereby submits this reply brief in support of his motion to compel the production of documents.

In its response to the motion to compel, the government acknowledges the importance of the emails sought by McKelvy since November 2015. However, the government simply states that it does not have and cannot obtain the emails requested by McKelvy. While McKelvy understands the government's representations, he has not given up hope that missing emails may be recovered and, in any event, requests an explanation of what the United States Securities and Exchange Commission ("SEC") and Federal Bureau of Investigation ("FBI") have done in the past to obtain such emails. His request for this Court to enter an Order to produce such records is a reasonable one, given the magnitude of this case, the allegations that McKelvy engaged in a conspiracy with Troy Wragg ("Wragg") and Amanda Knorr ("Knorr") to commit securities fraud and wire fraud, and that Wragg and Knorr are now cooperating against McKelvy.

The government suggests that the SEC, which first investigated Mantria, did not obtain any of the emails at issue because its investigation of Mantria was abbreviated since it was able to quickly obtain a temporary injunction and, shortly thereafter, a permanent injunction.

However, the SEC served a subpoena dated October 6, 2009, upon Speed of Wealth which

sought, *inter alia*, all communications between Speed of Wealth and Mantria, including emails. See Email from Allison Lee, Esquire of the SEC to Donna McKelvy dated October 20, 2009, attached hereto as Exhibit A. The SEC followed up with Speed of Wealth when it did not initially produce emails in response to the subpoena. See Exhibit A. Counsel for McKelvy submits that the SEC would have served a similar, if not identical, subpoena upon Mantria, and certainly would have followed-up to obtain the emails of Wragg and Knorr as it did with Speed of Wealth. Also, during the enforcement action, the SEC alleged that Wragg attempted to transfer assets of Mantria (the autoclaves) that were subject to an asset freeze under the preliminary injunction issued by the court, and sought to hold Wragg in contempt of court for violating the court order freezing assets. See Cover Page of Transcript of Hearing on Plaintiff's Motion for an Order to Show Cause Why Defendants Troy Wragg and Mantria Corporation Should Not be Held in Contempt of Court in the matter of *SEC v. Mantria Corp. et al.*, dated March 26, 2010 attached hereto as Exhibit B. Therefore, it seems that the SEC would have moved to compel the production of Wragg and Knorr's emails in that enforcement action if Mantria failed to produce those emails.

Subsequent to the SEC investigation, the FBI and the U.S. Attorney's Office in Denver, Colorado began an investigation of Mantria. While the government contends that the FBI in Denver did not contain the emails at issue, the FBI conducted interviews of numerous individuals including Wragg, Knorr and McKelvy. It is not clear to counsel for McKelvy whether the FBI served grand jury subpoenas upon Mantria for the emails, and why it would not do so if the SEC had not provided the emails to the FBI.

The fact that this matter was investigated by the SEC, and the FBI and U.S. Attorney's office out of the District of Colorado prior to the filing of the indictment in this district should

not excuse the failure of the government to secure discovery as critical as the emails of two of the alleged co-conspirators. Moreover, the government has been on notice since August 21, 2014, that Wragg may have attempted to delete emails in the course of the SEC's investigation, when Donna Jarock (McKelvy) discussed this during an interview with the FBI. The government also notes that the FBI sent storage devices to its laboratory for a forensic analysis and that the search of the hard drive did not reveal any emails and that there was little data on the drive. This may be the result of Wragg deleting emails.

The government has an affirmative duty to seek out and learn of any exculpatory material in the possession of anyone else acting on the government's behalf. See Youngblood v. West Virginia, 547 U.S. 867 (2006); Kyles v. Whitley, 514 U.S. 419, 437-38 (1995). Accordingly, McKelvy respectfully requests that the Court require the government to demonstrate the attempts to obtain the emails for Troy Wragg, Amanda Knorr, Dan Rink and Chris Flannery including providing a detail of all contacts the SEC and the FBI made in attempting to obtain the emails requested by McKelvy.

Dated: August 10, 2017

Respectfully submitted,

/s/ wjm 409

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Counsel for Defendant Wayde McKelvy

Donna McKelvy

To: Lee, Allison H.
Subject: RE: In the Matter of Mantria Corporation (D-3096)

From: Lee, Allison H. [mailto:LeeAH@SEC.GOV]
Sent: Tuesday, October 20, 2009 2:38 PM
To: dmckelvy@comcast.net
Cc: Gottschall, Kurt L.
Subject: In the Matter of Mantria Corporation (D-3096)

10/20/2009

Ms. McKelvy:

Thank you for the document production made by Speed of Wealth pursuant to the staff's subpoena dated October 6, 2009. Below is a list of documents that are missing from the production

B.1. Item B.1. of subpoena calls for documents evidencing the formation, structure, organization, ownership, members, stockholders, profit interest holders, officers, directors, employees, representatives, specialists, team members, placement agents, finders, students, sales people and agents of a number of entities. The production does not contain these documents for the following entities:

Just hired our first employee October 1, for the front desk, handles mail and phones.

Included are all W9 from all finders, however a W9 does not mean they earned anything, so I also included a quickbook printout of any fees paid to a finder.

- Speed of Wealth, LLC Included
- Retirement TRACS, LLC Included
- Trust Deed Group I (some investment documents were produced, but no Operating Agreement or bank records). was not handling any of this at the time Wayde had a partner with Alternative Investment Strategies, Ian Jouett, I have gathered the best and only available records I have and included.

Please produce all such documents for the above entities. In addition, among the various Operating Agreements you produced for the other entities are frequent references to partnership agreements (in addition to the Operating Agreement). With the exception of a Partnership Agreement for SOW Hard Money Loans Investment Club, LLC, no other Partnership Agreements were produced. Please produce any and all additional partnership agreements in the possession of Speed of Wealth and the various entities. More forthcoming.

B.3. Item B.3. of the subpoena calls for contracts or agreements of any kind between Speed of Wealth entities and Mantria entities. If such documents exist, please produce them. None exist, verbally agreed.

B.4. Item B.4. of the subpoena is broader than Item B.3 and calls for any documents relate or refer to the business relationship between Speed of Wealth and Mantria even if they are not contracts or agreements. If such documents exist, please produce them. None.

B.5. Item B.5 of the subpoena calls for all communications between Speed of Wealth and Mantria, including emails, correspondence, faxes, etc. No such documents were produced. Please produce all such documents, and particularly emails. Included for Donna, Wayde said he would provide you access to his email log in?

B.7. Item B.7 of the subpoena calls for all placement memoranda and other promotional or offering materials related to all Mantria programs. No such documents were produced. Please produce all such documents. None that I am aware of other than the package offerings which are being copied.

B.9. Item B.9 of the subpoena calls for all documents reviewed by you or Mr. McKelvy in performing due diligence regarding Mantria. No such documents were produced. If such documents exist, please produce them. None, it was a visit in person to their offices originally by Wayde and Ian Jouett.

B.13. Item B.10 of the subpoena calls for bank records for Speed of Wealth entities. Please produce such documents for the following entities:

- Speed of Wealth, LLC Included
- Retirement TRACS, LLC Included
- Trust Deed Group I (some investment documents were produced, but no Operating Agreement or bank records) Included

B.14. Item B.14 of the subpoena calls for accounting records showing receipt of funds from Investors and payments to Investors. No such documents were produced. Please produce all such documents. Excel spreadsheets were provided last week with the actual LLC docs for each LLC

B.16. Item B.16 of the subpoena calls for documents reflecting uses of Investor funds, including transfers to any third parties. If Speed of Wealth transferred any funds to "specialists," or "affiliates" as part of the "referral and reward program," please produce documents reflecting these payments.

Same as B1, spreadsheet attached

B.17-B.20 – These items call for financial statements and business plans for both Speed of Wealth entities and Mantria entities. If any such documents exist, please produce them. No business plan per Wayde

In the paragraphs above, I have paraphrased the language in the subpoena. This paraphrasing does not alter or circumscribe in any way the original language of the subpoena. As I continue to review the documents, I may identify additional areas that require follow up. If so, I will let you know. Meanwhile, please do not hesitate to contact me at (303) 844-1055 or at this e-mail address should you have any questions.

Thank you,

Allison Herren Lee, Esq.

Attorney, Division of Enforcement

Securities and Exchange Commission

1801 California Street, Suite 1500

Denver, Colorado 80202

Phone (303) 844-1055

Fax (303) 844-1052

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLORADO

3 Civil Action No. 09-cv-02676-CMA-MJW

4 SECURITIES AND EXCHANGE COMMISSION,

5 Plaintiff,

6 vs.

7 MANTRIA CORPORATION, TROY B. WRAGG, AMANDA E. KNORR, SPEED OF
8 WEALTH, LLC, WAYDE M. McKELVY, and DONNA M. McKELVY,

9 Defendants.

10 REPORTER'S TRANSCRIPT
11 HEARING ON PLAINTIFF'S MOTION FOR AN ORDER TO SHOW CAUSE WHY
12 DEFENDANTS TROY WRAGG AND MANTRIA CORPORATION SHOULD NOT BE
13 HELD IN CONTEMPT OF COURT

14 Proceedings before the HONORABLE CHRISTINE M.
15 ARGUELLO, Judge, United States District Court for the District
16 of Colorado, commencing at 1:30 p.m., on the 26th day of March,
17 2010, in Courtroom A601, Alfred A. Arraj United States
18 Courthouse, Denver, Colorado.

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22
23
24 Proceeding Reported by Mechanical Stenography, Transcription
25 Produced via Computer by Kara Spitler, RMR, CRR,
901 19th Street, Denver, CO, 80294, (303) 623-3080