

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

UNITED STATES OF AMERICA	:	
v.	:	CRIM. NO. 15-398
WAYDE MCKELVY	:	

ORDER

AND NOW, on this _____ day of _____ upon consideration of the government's unopposed Motion to Take the Deposition of Steven Granoff, it is hereby ORDERED that the government's motion is granted.

IT IS FURTHER ORDERED, that the video deposition of Steven Granoff be taken on August 30, 2018, at 10:00 a.m., at the U.S. Attorney's Office, 615 Chestnut Street, Suite 1250, Philadelphia, PA. The government shall bear the costs of taking the deposition.

IT IS FURTHER ORDERED, that the defendant and defense counsel will be permitted to attend and participate in the deposition. The government shall make telephone communication available to the defendant and defense counsel should they wish to participate by telephone.

BY THE COURT:

HONORABLE JOEL H. SLOMSKY
Judge, United States District Court

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

UNITED STATES OF AMERICA	:	
v.	:	CRIM. NO. 15-398
WAYDE MCKELVY	:	

**GOVERNMENT'S UNOPPOSED MOTION TO TAKE
THE VIDEO DEPOSITION OF STEVEN GRANOFF**

I. Introduction

The United States of America, through its attorneys, William M. McSwain, United States Attorney, and Robert J. Livermore and Sarah M. Wolfe, Assistant United States Attorneys, respectfully moves the Court pursuant to Federal Rule of Criminal Procedure 15(a) to allow the government to take the video deposition of Steven Granoff on August 30, 2018, at 10:00 a.m., at the U.S. Attorney's Office, 615 Chestnut Street, Suite 1250, Philadelphia, PA. Counsel for the defendant have indicated to the government that they do not oppose this motion and are available at the date and time indicated.

II. Factual Background

On September 2, 2015, a federal grand jury in the Eastern District of Pennsylvania returned a ten-count indictment charging TROY WRAGG, AMANDA KNORR, and WAYDE MCKELVY with one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 371, seven counts of wire fraud, in violation of 18 U.S.C. § 1343, one count of conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and one count of securities fraud, in violation of 15 U.S.C. §§ 78j(b), 78ff and 17 C.F.R. § 240.10b-5.

The facts of the case, as alleged in the indictment, are quite simple. Co-defendants TROY WRAGG, AMANDA KNORR, and WAYDE MCKELVY raised \$54 million in unregistered securities offerings for a company called Mantria, which they told investors earned substantial income generated by Mantria from various real estate and green energy projects. In truth, the government's evidence will prove that Mantria was a classic Ponzi scheme which simply used new investor money to pay "earnings" to earlier investors.

The witness at issue here, Steven Granoff, was Mantria's in-house accountant. Granoff prepared Mantria's internal financial reports, such as Mantria's internal profit and loss statements. Granoff is expected to testify that Mantria was a start-up company and did not earn any profits and had little revenue, contrary to the defendants' assertions to investors. Granoff will testify that almost all new funds coming into Mantria came from new investors. Granoff will also testify that any "earnings" used to pay earlier investors came from the new investor funds - corroborating the government's allegation that Mantria was a Ponzi scheme. As such, Granoff is a critical witness for the government.

The trial in this case is scheduled to begin on September 24, 2018. The government anticipates that its case-in-chief will last for approximately two weeks. Mr. Granoff has a pre-paid family vacation to Europe planned during that time period. Therefore, he is unavailable to testify during the trial time period.

III. Discussion

Rule 15(a) of the Federal Rules of Criminal Procedure provides that "[w]hen due to exceptional circumstances of the case it is in the interests of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion

of such party and notice to the parties order that testimony of such witnesses be taken by deposition” Fed. R. Crim. P. 15(a); United States v. Ismaili, 828 F.2d 153, 159 (3d Cir. 1987). In determining whether “exceptional circumstances” justify the taking of a deposition pursuant to Rule 15(a), the court must consider whether (i) the witness is unavailable to testify at trial; and (ii) the witness’ testimony is material to the moving party. See Ismaili, 828 F.2d at 153; Johnpoll, 739 F.2d at 709; United States v. Singleton, 460 F.2d 1148, 1154 (2d Cir. 1972); United States v. Sun Myung Moon, 93 F.R.D. 558, 559 (S.D.N.Y. 1982). The moving party bears the burden of establishing the existence of “exceptional circumstances” that justify the taking of the deposition. See United States v. Drogoul, 1 F.3d 1546, 1552 (11th Cir. 1993); United States v. Fuentes-Galido, 929 F.2d 1507, 1510 (10th Cir. 1991).

In this case, Mr. Granoff will be out of the country and unavailable to testify at trial. As described above, Mr. Granoff’s testimony is material to the government’s case to establish that Mantria was, in fact, a Ponzi scheme, as alleged in the indictment.

The government has conferred with counsel for MCKELVY. Counsel for MCKELVY indicated that they have no objection to this motion. The parties jointly agreed that August 30, 2018, at 10:00 a.m., at the U.S. Attorney’s Office, 615 Chestnut Street, Suite 1250, Philadelphia, PA would be a mutually convenient time and place to hold the deposition. As the government is the moving party, the government has agreed to bear the costs of the deposition. The parties further agreed that any objections to the testimony will be preserved on the transcript and videotape and the witness will be instructed to answer the question. Any objections ultimately sustained by this Court will be redacted from the transcript and videotape presented to the jury.

Defense counsel did request and the government agreed to establish a telephone connection so that either defense counsel or the defendant may participate in the deposition by telephone if they so desire.

IV. Conclusion

For the reasons set forth above, the government respectfully requests that this Court grant its unopposed motion to take the pretrial deposition of Steven Granoff.

Respectfully submitted,

WILLIAM M. McSWAIN
United States Attorney

s/ Robert J. Livermore
ROBERT J. LIVERMORE
Assistant United States Attorney

s/ Sarah M. Wolfe
SARAH M. WOLFE
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon the following:

Walter Batty, Esq.
William Murray, Esq.
Counsel for WAYDE MCKELVY

s/ Robert J. Livermore
ROBERT LIVERMORE
Assistant United States Attorney