

United States of America
First Circuit Court of Appeals

NO. 2010-2091

UNITED STATES OF AMERICA,

Appellee,

v.

Seng Tan,

Defendant/Appellant

BRIEF OF APPELLANT

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18 U.S.C. § 3742 1

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Annotation, Validity, construction, and application of 18 U.S.C.A. § 1956, which criminalizes money laundering,
121 A.L.R. Fed. 525 (1994) 39

Peter J. Vander and William W. Keep, *Marketing Fraud: An Approach for Differentiating Multilevel Marketing from Pyramid Schemes,*
21 J. Pub. Policy & Marketing 139 (2002) 13

FTC Facts for Consumers, The Bottom Line About Multi-Level Marketing Plans,
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STATEMENT OF JURISDICTION

The First Circuit Court of Appeals has jurisdiction of this appeal pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

On June 27, 2007 Seng Tan was found guilty by a jury in the United States District Court for the District of Massachusetts, of conspiracy, contrary to 18 U.S.C. § 371, mail fraud, contrary to 18 U.S.C. § 1341, and money laundering, contrary to 18 U.S.C. § 1957.

On July 2, 2007, through her trial attorney, Seng Tan filed an appeal of her conviction to this Court. Presumably because Ms. Tan had not yet been sentenced and her case had thus not reached finality, *see Berman v. United States*, 302 U.S. 211 (1937), this Court dismissed it for lack of jurisdiction. *United States v. Tan*, 1st Cir. No. 07-2200 ORDER (Aug. 15, 2007), *Adden*.¹ at 51, and ORDER (Sept. 5, 2007), *Adden*. at 51.

On November 29, 2007, the District Court (*Richard G. Stearns, J.*), sentenced Seng Tan to 20 years incarceration. JUDGEMENT IN CRIMINAL CASE, *Adden*. at 44.

On December 6, 2007, well within 14 days after sentencing, again through her

¹Documents are contained in the Appendix, abbreviated herein as “*Appx.*,” and in the Addendum, abbreviated herein as “*Adden.*” Documents in the record are cited by their caption and their docket entry (DN) number, and to the page where they appear in the appendix. Trial transcripts are cited by the trial day and page number.

trial attorney, Ms. Tan filed a notice of appeal to this Court from both her conviction and sentencing. Although her co-defendant's appeal went forward and reached decision in this court on September 2, 2009, for reasons not disclosed in the record Ms. Tan's appeal languished.

On September 10, 2010, Ms. Tan wrote a letter to this Court inquiring as to the status of her appeal. LETTER FROM SENG TAN TO COURT (Sept. 10, 2010), *Adden.* at 52. On September 16, 2010, this Court docketed Ms. Tan's notice of appeal and issued a case opening notice. CASE OPENING NOTICE (Sept. 16, 2010), *Adden.* at 54.

Seng Tan's notice of appeal was timely filed, thus conferring jurisdiction in this Court. *United States v. Zuleta-Molina*, 840 F.2d 157 (1st Cir. 1988). To the extent this appeal was delayed, it appears to have been no fault of Ms. Tan's, thus not implicating the rules regarding extensions of time for filing an appeal. FRAP 4(b)(4). Further, because in criminal cases "[t]he procedural rules adopted by the Court for the orderly transaction of its business are not jurisdictional and can be relaxed by the Court in the exercise of its discretion when the ends of justice so require," *Schacht v. United States*, 398 U.S. 58, 64 (1970), this Court lawfully exercises its jurisdiction.

STATEMENT OF ISSUES

1. Did the court err in finding Seng Tan guilty of conspiracy, mail fraud, and money laundering, when she did not know and had no reason to suspect that the companies for which she worked were engaged in criminal activity?
2. Did the court err in finding Seng Tan guilty of conspiracy to mail fraud when she was charged with receiving through the mails, not sending; but that the evidence and verdict showed at most an involvement with sending but not receiving?
3. Did the court err in finding Seng Tan guilty of money laundering, when the crime requires a monetary transaction involving the proceeds of mail fraud as the underlying crime, but it was charged as sending but not receiving, and a dividend sent to someone cannot result in a proceed?
4. Did the court err in finding Seng Tan guilty of count 37 when there is no evidence tying her to that money laundering charge, which was a payment to a casino with which she had no involvement?

STATEMENT OF FACTS AND STATEMENT OF THE CASE

I. Background

Because the initial facts relevant to this appeal have already been described by this Court in the co-defendant's appeal, they are quoted here at length:

James Bunchan masterminded a devastating pyramid scheme that stole nearly twenty million dollars from over five hundred people, most of them of Cambodian origin living in the United States. Following a jury trial, he was convicted of conspiracy, sixteen counts of mail fraud, and fifteen counts of money laundering. He was sentenced to a term of imprisonment of thirty-five years and ordered to pay restitution in the amount of \$19,103,121.73.

[James Bunchan] was the founder, owner, and director of two “multilevel marketing companies,” World Marketing Direct Selling (“WMDS”) and Oneuniverseonline (“1UOL”). Bunchan represented to investors that the companies made a profit through selling cosmetics, health and diet supplements, and other products. In reality, the companies sold little of anything and generated money almost exclusively through the recruitment of new investors, or “members.”

[Mr. Bunchan] met co-defendant Seng Tan in 1999, around the

time that he started WMDS, at a WMDS promotional seminar. Tan quickly became the principal recruiter of new investors, and was eventually given the title of “CEO Executive National Marketing Director” on WMDS and 1UOL promotional materials. [Mr. Bunchan] and Tan were married in 2002.

Also in 1999, [Mr. Bunchan] met Christian Rochon, who was a neighbor in his apartment complex. He asked Rochon to help him create promotional materials for WMDS. [Bunchan], who is from Cambodia, said he wanted an “American face” for the company and soon made Rochon “President” of WMDS. (Rochon, who is originally from Canada, is Caucasian.) After taking Rochon to be professionally photographed, [Mr. Bunchan] put Rochon’s photograph on WMDS’s promotional materials. When 1UOL was created in about 2001, Rochon was also made “President” of that company.² Correspondence to investors often carried Rochon’s name and signature, although Rochon was instructed not to interact with investors.

² 1UOL was first presented to investors as the retail-store arm of WMDS’s operation, whereby investors would open stores to sell WMDS products. Toward the end of the pyramid schemes, however, 1UOL was described as a passive investment vehicle, just like WMDS.

[Mr. Bunchan] and Tan, who is also Cambodian, marketed investments in WMDS and 1UOL primarily to members of the Cambodian community living in the United States. Many of the investors spoke poor English and had little formal education. To recruit new investors, [Mr. Bunchan] and Tan held informational seminars, usually hosted by Tan at the homes of investors. They often spoke to the prospective investors in Khmer, the Cambodian language, and emphasized their shared experiences as Cambodian immigrants.

[Mr. Bunchan] and Tan represented that WMDS and 1UOL were profitable because they generated revenues from the sales of products, and that members earned commissions based on their sales. Investors could achieve different levels within the company, either by making sales, providing a lump-sum payment, recruiting new investors, or doing some combination of the three. For example, investors could skip the “Distributor” level-and avoid the requirement of selling products – by investing \$26,347.86 and becoming a “Director I.” “Director I’s” were told that they would receive an immediate “bonus” of \$2,797, followed by a \$300 monthly payment for the rest of their lives and, some were told, through the lives of their children and grandchildren. [Mr.

Bunchan] created a document that described the “Director I” level to distribute at promotional seminars. The document read, in part:

You will get \$300.00 each and every month for the rest of your life and pass on down to your children after your death.... You will see this money working for you while you are sleeping.... Our National Marketing Director of W.M.D.S., Inc., knowing exactly how you feel about your \$26,347.86 which becomes a permanent investment with W.M.D.S....you should not be worry [sic] about loosing [sic] your one [sic] of a life time \$26,347.86 investment at all. W.M.D.S., Inc., has an absolute responsibility to take care you [sic] and your family for life. Your investment can be inherited to your children and their generation to come.... Because you are the owner of the W.M.D.S., Inc., it is completely different from investing in stock that will go up or down and loose [sic] money....Do not forget that you are a special person who has the best opportunity to meet this company first.... W.M.D.S. urges you to sign up now or you will miss your best chance of fulfilling your American Dream.

Investors were also encouraged to become “Gold Directors” by investing \$130,000 to \$160,000. Gold Directors were promised \$2,500 in unending monthly payments.

[Mr. Bunchan] and Tan encouraged people who did not have enough cash to borrow money by taking out second mortgages and home investment loans, and many investors did so. The government submitted at sentencing that more than 150 people had secured mortgages or

borrowed from their retirement accounts to finance their investments in WMDS or 1UOL.

Internal Revenue Service (“IRS”) Special Agent Troy Niro testified at trial that while investors were contributing money to WMDS, [Mr. Bunchan] was using the company coffers like a personal bank account to pay for personal expenses and furnish a lavish lifestyle. He owned several luxury cars, a home in Miami, Florida, and an expensive yacht named after himself (the “James B”). Other expenses reflecting his lavish lifestyle, as testified to by Agent Niro, included: \$5,000 spent on hotel room service for two people in one night, \$150,000 spent on diamonds, and \$23,000 spent on hairpieces.³ Between 2000 and 2005, [Mr. Bunchan] also spent over \$3.8 million at casinos. He often wrote large checks to casinos from company accounts containing investor funds, at one time writing a single check for \$238,370 from the 1UOL

³ [Mr. Bunchan] inappropriately labeled much of his spending, such as his children’s tuition and tennis lessons, gambling, purchases from Louis Vuitton, and his hairpieces, as “business expenses” on company records.

account to a Las Vegas casino.⁴ Agent Niro's investigation revealed that Bunchan appropriated at least \$3.7 million of investors' funds for himself and spent an additional \$280,000 of investor money on his ex-wife and other family members.⁵ [Mr. Bunchan] also kept family members, such as his ex-wife and his son, on the payroll of the company even though they did not work there.

Beginning in early 2005, Bunchan and Tan began having difficulties recruiting enough new members to meet WMDS and 1UOL's obligations to existing members. By June 2005, the companies had altogether ceased making monthly payments to most of their investors, and investors began to complain. On August 15, 2005, Bunchan had a letter sent to investors falsely blaming the delay on technological problems and asking for investors' patience until September. In September, [Mr. Bunchan] directed that another letter be

⁴ About \$500,000 of the money [Mr. Bunchan] spent on casinos came from Bunchan's personal accounts, while the rest came from company accounts containing investor funds. Of the \$3.8 million spent on casinos, \$1.2 million was sent back to [Mr. Bunchan]'s personal bank account from the casinos; [Mr. Bunchan] later put some, but not all, of that money back into the companies' accounts. Agent Niro was not able to identify any source of income to [Mr. Bunchan] during 2000-2005 other than WMDS and 1UOL.

⁵ Approximately \$500,000 of the investor funds went to Seng Tan and \$300,000 to Christian Rochon.

sent to investors, again blaming the delay on technological problems, and explaining that the company was installing “costly” new upgrades to its check-writing technology. Meanwhile, Tan told investors that the delay was caused by computer problems and, later, by a disruption in the companies’ bank accounts caused by Hurricane Katrina. During this time, [Mr. Bunchan] hired attorneys to threaten investors who were complaining about their missed payments. The letters stated, in part, “[Y]our continued interference with WMDS and 1UOL’s business affairs will be met with the full force of the law and WMDS and 1UOL will make you pay for your transgressions with all of your personal assets, including your personal residence.”

In mid-November 2005, [Mr. Bunchan], Tan, and Rochon were arrested by the federal authorities for mail fraud due to their activities with WMDS and 1UOL. While in jail awaiting trial, [Mr. Bunchan] initiated a murder-for-hire plot that targeted people he believed might testify against him, such as Rochon, several investors who had vociferously complained, and eventually the Assistant United States Attorney prosecuting his case. [Mr. Bunchan] discussed his intentions with another inmate, who eventually notified the authorities and agreed to

cooperate as a confidential informant in an undercover investigation. In the course of the investigation, undercover operators gave [Mr. Bunchan] the name of a “hit man,” actually an undercover FBI agent, to whom [Mr. Bunchan] mailed a list of people he wanted killed. He had grouped his targets into three tiers, in order of priority, and included the prices he was willing to pay for each “hit” (ranging from \$10,000 to \$20,000). The FBI also recorded a conversation between the confidential informant and [Mr. Bunchan] in which [Mr. Bunchan] explained that he also wished the hired killer to assassinate the spouses and children of several people named on the list.⁶

A federal grand jury returned a second superseding indictment against [Mr. Bunchan], Tan, and Rochon on August 17, 2006. [Mr. Bunchan] was indicted on all forty counts of the indictment, which included one count of conspiracy in violation of 18 U.S.C. § 371, twenty-four counts of mail fraud in violation of 18 U.S.C. § 1341, and

⁶ On May 4, 2009, following a jury trial, [Mr. Bunchan] was separately convicted in the District Court of Massachusetts of using a facility of interstate commerce to commit murder-for-hire, 18 U.S.C. § 1958, and solicitation of a crime of violence, 18 U.S.C. § 373, for this conduct. He was sentenced to twenty-five years imprisonment, with the first five years of that sentence to be served concurrently with his sentence in this case. *United States v. Bunchan*, 626 F.3d 29 (1st Cir. 2010) *cert. denied*, 131 S. Court. 1579, 179 L. Ed. 2d 482 (U.S. 2011) [*Appx.* at 10].

fifteen counts of engaging in monetary transactions in proceeds of an unlawful activity, a form of money laundering, in violation of 18 U.S.C. § 1957. On June 4, 2007, the first day of trial, Rochon agreed to plead guilty to seven counts of the indictment, including the conspiracy count, some mail fraud counts, and some counts of engaging in monetary transactions in proceeds of an unlawful activity. Rochon testified for the government during the eleven-day jury trial. The jury convicted [Mr. Bunchan] of conspiracy, sixteen counts of mail fraud, and fifteen counts of money laundering. Tan was convicted of conspiracy, sixteen counts of mail fraud, and four counts of money laundering.

United States v. Bunchan, 580 F.3d 66, 66-70 (1st Cir. 2009) *cert. denied*, 130 S. Ct. 439, 175 L. Ed. 2d 300 (U.S. 2009), *Appx.* at 1 (footnotes in original, corrections indicated by “[sic]” in original, footnotes renumbered, minor punctuation altered, citation in footnote 6 updated, other citations omitted, statement of Mr. Bunchan’s appellate issues omitted).

These basic facts as related by this Court’s opinion in Mr. Bunchan’s appeal are not disputed.

II. No Clear Line Between Illegal Pyramid and Legitimate Multilevel

It is difficult to distinguish between a swindler promoting a Ponzi, and a legitimate multi-level marketing company relying on neighbor-to-neighbor promotion. The government and private organizations publish consumer protection information to help people differentiate. See e.g., *FTC Facts for Consumers, The Bottom Line About Multi-Level Marketing Plans*, <<http://business.ftc.gov/documents/inv08-bottom-line-about-multi-level-marketing-plans.pdf>>; Peter J. Vander and William W. Keep, *Marketing Fraud: An Approach for Differentiating Multilevel Marketing from Pyramid Schemes*, 21 J. PUB. POLICY & MARKETING 139 (2002) (suggesting mathematical model to differentiate).

Often considered the seminal legal discussion of whether a multi-level marketing (MLM) plan is a Ponzi scheme, in *Matter of Amway Corp., Inc.*, 93 F.T.C. 618 (1979), the Federal Trade Commission wrote:

Such schemes are characterized by the payment by participants of money to the company in return for which they receive (1) the right to sell a product and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users. . . . As is apparent, the presence of this second element, recruitment with rewards unrelated to product sales, is nothing more than an elaborate chain letter device in which individuals who pay a valuable consideration with the expectation of recouping it to some degree via recruitment are bound to be disappointed.

Matter of Amway, 93 F.T.C. at 69. More recently, the Sixth Circuit held that:

MLM programs survive by making money off product sales, not new recruits. In contrast, “pyramid schemes” reward participants for inducing other people to join the program; over time, the hierarchy of participants resembles a pyramid as newer, larger layers of participants join the established structure. Ponzi schemes operate strictly by paying earlier investors with money tendered by later investors.

United States v. Gold Unlimited, Inc., 177 F.3d 472, 475 (6th Cir. 1999). Demonstrated by both *Amway* and *Gold Unlimited*, the rule is easy to state. Applying it to a particular example, however, is not.

In *Amway*, the FTC found that “[t]he Amway Plan does not contain the essential features . . . , and therefore it is not a scheme which is inherently false, misleading, or deceptive.” This is because in Amway:

a person is not required to pay a headhunting fee or buy a large amount of inventory to become an Amway distributor. The only purchase a new distributor is required to make is a . . . Sales Kit, which contains Amway literature and sales aids; no profit is made in the sale of this Kit, and the purchase price may be refunded if the distributor decides to leave the business. Thus a sponsoring distributor receives nothing from the mere act of sponsoring. It is only when the newly recruited distributor begins to make wholesale purchases from his sponsor and sales to consumers, that the sponsor begins to earn money from his recruit’s efforts. And Amway has prevented inventory loading at this point with its “buy-back rule,” which states that a sponsoring distributor shall “purchase back from any of his personally sponsored distributors leaving the business, upon his request, any unused, currently marketable products.” By this rule, a sponsoring distributor is inhibited from pushing unrealistically large amounts of inventory onto his sponsored distributors in order to increase his Point Value and Business Volume, and thereby increase his Bonus.

Two other Amway rules serve to prevent inventory loading and encourage the sale of Amway products to consumers. The “70 percent rule” provides that “every distributor must sell at wholesale and/or retail at least 70% of the total amount of products he bought during a given month in order to receive the Performance Bonus due on all products bought.” This rule prevents the accumulation of inventory at any level. The “10 customer” rule states that “in order to obtain the right to earn Performance Bonuses on the volume of products sold by him to his sponsored distributors during a given month, a sponsoring distributor must make not less than one sale at retail to each of ten different customers that month and produce proof of such sales to his sponsor and Direct Distributor.” This rule makes retail selling an essential part of being a distributor.

Matter of Amway, 93 F.T.C. at 69-70.

Even when MLM companies have protections in place, the difference between legitimate and illegitimate marketing remains murky:

No clear line separates illegal pyramid schemes from legitimate multilevel marketing programs; to differentiate the two, regulators evaluate the marketing strategy (e.g., emphasis on recruitment versus sales) and the percent of product sold compared with the percent of commissions granted.

United States v. Gold Unlimited, Inc., 177 F.3d 472, 475 (6th Cir. 1999) (emphasis added); *see also, Webster v. Omnitrition Int’l, Inc.*, 79 F.3d 776 (9th Cir. 1996) (company which had *Amway*-type protections in place nonetheless held to be unlawful pyramid scheme because protections not effectively enforced); *Goren v. New Vision Int’l, Inc.*, 156 F.3d 721 (7th Cir. 1998) (RICO not proved where pyramid scheme not fraudulent); *Miron v. Herbalife Int’l, Inc.*, 11 F. App’x. 927 (9th Cir. 2001) (fraud not proved where pyramid scheme not fraudulent).

III. Seng Tan's Success in Multi-Level Marketing Companies

Seng Tan was forced to leave her officer post in the Cambodian Navy, and similar to others who testified, fled the Khmer Rouge genocide in the late 1970s. After surviving Thai refugee camps, she arrived in Minneapolis in 1980. *Day 10* at 85. Within a few days, the Avon lady came to her door, and Seng Tan saw an opportunity. *Day 10* at 85. With Avon Seng Tan learned the MLM model: sponsoring others earns a commission, *Day 6* at 130; *Day 10* at 92, sponsoring five others earns a rank in the organization, *Day 10* at 93, and selling to one's affinity group leads to success. *Day 10* at 95. After three years with Avon, Seng Tan became a district manager, traveled extensively, *Day 10* at 95, and had many people working under her. *Day 10* at 97. She also learned the MLM lingo – those who one sponsors are one's "downline"; the sponsor is the "upline." *Day 11* at 17-18. She learned how to work with her downline, understanding they need to be cultivated, motivated, and compensated. *Day 11* at 27.

Seng Tan hastily learned English and became a bilingual teacher in her community. *Day 10* at 90. Her husband, who happened to be in the United States for professional training when the Khmer Rouge came to power, ended up owning a liquor store in Minneapolis. Working there, she continued her Avon success, and also joined up with Mary Kay, another MLM company. More upscale than Avon, Mary

Kay required an up-front purchase. On her first day Seng Tan earned the rank of “VIP” by inducing others to become distributors. *Day 10* at 100. Within three months Seng Tan earned the pink Cadillac. *Day 10* at 97, 102. Amway later approached her, but she rejected the opportunity because she regarded its cleaning products as somewhat expensive. *Day 10* at 103.

After Seng Tan’s husband died in 1985, she one-by-one opened a chain of flower shops in Minnesota. She continued with both Avon and Mary Kay for several years, but as her floral franchise grew more successful in the 1990s, she focused her energy there. *Day 10* at 105, 109.

IV. Seng Tan Sees WMDS/1UOL as Another MLM Opportunity

When at the suggestion of a friend she attended a marketing meeting put on by Mr. Bunchan in 1999, Seng Tan was ready for another MLM experience. She immediately understood the marketing model, and knew she could excel at both selling the product and sponsoring downline. *Day 10* at 110, 112. At the meeting she met Mr. Bunchan and discussed her earlier experience, saw the newsletter with Mr. Rochon’s president’s picture, and got the WMDS/1UOL⁷ marketing manual. She shortly invested her money, signed up as a member, purchased product to sell, and entered

⁷Because it is not clear to what extent the actors themselves distinguished between WMDS and 1UOL, in this brief unless one or the other is specifically indicated, the entities are collectively referred to as WMDS/1UOL.

an agreement whereby her purchased product would be held at the company warehouse. *Day 10* at 113, 120-21; INDEPENDENT DISTRIBUTOR APPLICATION AGREEMENT, CAREER PACK ORDER, and 1UOL INVENTORY AUTHORIZATION, Exh. 11, *Appx.* at 72.

WMDS/1UOL billed itself as a multi-level marketer, *Day 6* at 39, and it is clear that not only Seng Tan, but also the complaining witnesses understood it was a multi-level marketing organization. *Day 2* at 41-46 (witness Iv Khun Ya); *Day 8* at 121 (witness Peter Henry); *Day 9* at 23 (witness Chon Chim); *Day 10* at 10 (witness Siddi Chem). WMDS/1UOL, Seng Tan, and the complaining witnesses routinely used language associated with multi-level marketing. *Day 4* at 162 (“different downlines”) (witness Sothear Chuong); *Day 8* at 151 (“downline”) (witness Chon Chim); *Day 10* at 10 (“recruiting the downline” and “working like a pyramid”) (witness Siddi Chem).

Upon becoming a member, Seng Tan and others learned that WMDS/1UOL kept track of how much product people sold, whether they met their quotas, *Day 7* at 129, how many sales points they had, group sales volumes in order to calculate commissions, *Day 6* at 128, and the status of their sponsorships. The company maintained a spreadsheet recording these details. *Day 5* at 106. Sample WMDS BUSINESS REPORT, Portion of Exh. 226, *Appx.* at 76 (single random example of hundreds of similar reports).

Seng Tan learned that like all MLMs, there were two avenues to success with WMDS/1UOL – selling product and sponsoring others. *Day 11* at 8. Other members had the same understanding. *Day 6* at 161 (witness Jennifer Kao); *Day 3* at 105 (witness Iv Khun Ya).

Seng Tan understood that WMDS/1UOL members started by buying packages of vitamins in increments of \$4,391, *Day 11* at 8-9, that WMDS/1UOL generally distributed its products in “Career Pack” groups of a half-dozen packages totaling \$26,347.86, *Day 11* at 35, that there was a list-price for the products to be sold, *Day 10* at 113, that sellers got a 50 percent discount and kept the other 50 percent upon sale to consumers, *Day 7* at 87; *Day 11* at 8, and that sellers generally stored their unsold inventory in WMDS/1UOL’s warehouse pending re-sale to consumers. *Day 6* at 18; *Day 10* at 18, 42, 117. Ms. Tan’s entered these arrangements with WMDS/1UOL after signing up as a member. INDEPENDENT DISTRIBUTOR APPLICATION AGREEMENT (Oct. 27, 1999), CAREER PACK ORDER (Aug. 5, 2001), and 1UOL INVENTORY AUTHORIZATION (Aug. 5, 2001), Exh. 11, *Appx.* at 72.

Seng Tan testified it took her about a week to sell her first batch of products, for which she grossed \$8,000. *Day 10* at 114. Also within a few days of joining WMDS/1UOL, Seng Tan sponsored several downline distributors. *Day 10* at 114.

Seng Tan understood that sponsoring people was a way to advance in the

organization. By sponsoring five people one attained the designation of “Director,” *Day 11* at 8-9, and by sponsoring more one attained “Gold Director,” “Diamond Director,” “President’s Club,” “Chairman” and eventually “CEO.” *Day 10* at 92, 110; *Day 10* at 8-9. Other members shared that understanding, and many achieved these designations by sponsoring others. Witness Iv Khun Ya recruited at least one investor and received a commission for it, *Day 2* at 46; *Day 3* at 105, as did witness Wayne Peterson, *Day 8* at 106, and witness Siddi Chem. *Day 10* at 10. Thus the complaining witnesses were often themselves participants in the WMDS/1UOL recruitment program, such that the line between alleged perpetrator and alleged victim is blurry.

Complaining witness Sothear Chuong, for example, was highly successful. He recruited as many as 100 others, *Day 4* at 139; *Day 5* at 26, traveled with Seng Tan on her national recruitment tours, *Day 4* at 72; *Day 5* at 53, hosted recruitment house parties, *Day 4* at 59, made commissions for his recruiting, *Day 4* at 150, took people to banks to help them complete mortgage documents to raise funds for WMDS/1UOL, *Day 5* at 60, became a “Gold Director,” *Day 4* at 61; *Day 5* at 63, and a “Diamond Director.” *Day 5* at 4; “GOLD DIRECTOR” CERTIFICATE (Mar. 15, 2001), Exh. 326, *Appx.* at 78; “DIAMOND DIRECTOR” CERTIFICATE (June 7, 2002), Exh. 327, *Appx.* at 79. He received bonuses of up to \$7,000 upon attaining these designations. *Day 5* at 5-6. He was clearly a part of the marketing scheme, and admitted he considered

himself an important person within the organization. *Day 4* at 159; *Day 5* at 47. Why he was not charged as a co-defendant is unknown.

In this context, Seng Tan was simply the most successful member. Like the complaining witnesses, she put her own money into WMDS/1UOL to become a member. *Day 6* at 86; *Day 11* at 34; *Day 10* at 113. She was obviously a good salesperson, and sold lots of product to lots of people. *Day 11* at 131. All the complaining witnesses trusted Seng Tan, none balked when she told them she did not have financial information concerning WMDS/1UOL, and they were generally content to rely on the company's ostensible prosperity reflected in its stores, publications, and trappings of wealth. *Day 3* at 7, 12, 18, 30, 138-39 (witness Iv Khun Ya); *Day 4* at 65, 82, 85, 98-99 (witness Sothear Chuong); *Day 6* at 170 (witness Jennifer Kao); *Day 8* at 27 (witness Bun Meang Kay); *Day 8* at 73-74, 103 (witness Wayne Peterson); *Day 8* at 158 (witness Chon Chim); *Day 10* at 13, 15 (witness Siddi Chem). Seng Tan worked hard to open WMDS/1UOL stores, *Day 11* at 17, and was an excellent motivator for her downline, *Day 11* at 27-28, even promising to personally guarantee losses. LETTER FROM SENG TAN TO IV KHUN YA, (Mar. 22, 2002), Exh. 450, *Appx.* at 80.

Seng Tan joined WMDS/1UOL, like the other members, as a Distributor. By her efforts she became "Director 1," "Gold Director," and "Diamond Director"; was later

inducted into the “President’s Club” and “Chairman’s Club”; and after three years of work for the company, was awarded the monikers “CEO” and “Marketing Director.” *Day 5* at 89; *Day 7* at 86; *Day 10* at 111; *Day 11* at 131. These were honorifics, not job titles, and others also attained them. *Day 10* at 111; *Day 11* at 90.

V. James Bunchan and Christian Rochon Ran WMDS/1UOL

WMDS/1UOL had an office in Attleboro, Massachusetts with about 10 employees. *Day 7* at 119. As President from 2000 to 2005, Christian Rochon paid the commission checks to members, did the company’s accounting, *Day 5* at 86, 97, and ran the Attleboro operations. The company’s organizational chart did not include Seng Tan. Rather it shows James Bunchan was Owner, Christian Rochon was President, one Mr. Kum Ork was General Manager, and one Kathleen Kelly was Assistant General Manager. WMDS ORGANIZATION STRUCTURE, Exh. 23, *Appx.* at 81; *Day 6* at 23, 93. All employees, including Seng Tan, reported to Mr. Rochon. *Day 5* at 81, 87; *Day 6* at 84; *Day 7* at 91, 120; *Day 11* at 89.

One of these was Lori Paquette, a graphic designer and researcher who was hired by Christian Rochon in 2001. *Day 7* at 83-84. She did not deal with members, accounts, or finances. *Day 7* at 88. Her job was to research, create, and produce brochures and company publications. *Day 7* at 83-85, 94. For the regular monthly newsletter, Ms. Paquette wrote the stories and arranged for the photos, although

newsletter contents were closely overseen by James Bunchan. *Day 7* at 89-91.

Ms. Paquette understood that WMDS/1UOL was in the business of selling health and beauty aids, and dietary and natural supplements. *Day 7* at 87. She knew the company's warehouse in Canton, Massachusetts contained items such as display cases which were used to operate WMDS/1UOL's stores, and also that it was packed with inventory which was regularly shipped out. *Day 7* at 122. One of Ms. Paquette's major projects was researching sources for import of products such as clothes, ties, and shoes, for which she negotiated pricing and acquired samples. *Day 7* at 125. Ms. Paquette was aware that the content of company communication prepared by her under Mr. Bunchan's direction was largely concocted, *Day 7* at 89-91, 96, and was bothered by it. *Day 7* at 102-07. She quit WMDS/1UOL in 2004 when her boyfriend got a job requiring relocation. *Day 7* at 105.

Both Christian Rochon and Lori Paquette knew James Bunchan was the owner and the boss. *Day 5* at 88, *Day 7* at 85. The complaining witnesses understood that as well. *Day 10* at 11. Mr. Rochon and Ms. Paquette testified that Mr. Bunchan controlled the bank accounts, *Day 5* at 97, signed the checks, *Day 6* at 103, determined purchases, *Day 7* at 101, and directed company communications.

Running the office on a daily basis, Mr. Rochon knew starting around 2004 that the company was not being run in an orthodox manner and was losing money.

Day 5 at 103, 143-44. From his perch, he perceived the stores were not profitable, *Day 4* at 101, *Day 5* at 14, *Day 6* at 191-92, 198-99, *Day 7* at 20-21, store operators were buying from other suppliers, there was inconsistent pricing, and the warehouse was overfull of diverse inventory. *Day 6* at 18-21.

Mr. Bunchan spent enormous sums of company cash at casinos and sporting events, and on other personal items including tuition and lessons for his children. The IRS Special Agent forensically testified the extraordinary expenditures were Mr. Bunchan's alone and not Seng Tan's, who did not share the lavish lifestyle.

Mr. Bunchan hid company financials from everybody. *Day 10* at 24. When confronted by Mr. Rochon, Mr. Bunchan gave a number of excuses. *Day 5* at 104.

VI. Seng Tan Didn't Know it was a Scam

Mr. Rochon, who did not like Seng Tan because he thought she yelled at his employees and scared the Cambodians, *Day 6* at 132-34, testified that Seng Tan's job was CEO of sales representatives, *Day 5* at 89. Ms. Paquette testified she did not know Seng Tan well because Ms. Tan was rarely in the office, perhaps once a month or every few weeks. *Day 7* at 86, 134. Seng Tan's job responsibilities, according to both Mr. Rochon and Ms. Paquette, was out in the field, recruiting people for the company and bringing in revenue. *Day 6* at 98, 126; *Day 7* at 134. Seng Tan similarly testified her job consisted of traveling in order to find customers, contract with

downline distributors, *Day 10* 124-25; *Day 11* at 3-4, and to “send the money to the company.” *Day 11* at 38. According to Mr. Rochon, Seng Tan was not paid on a commission basis, *Day 6* at 131-32, but was paid by a direct deposit from the company, plus traveling expenses. *Day 11* at 13, 137.

Given her out-of-office duties, Seng Tan’s role in operations was limited.

Mr. Rochon understood that Seng Tan was not involved in running the company, its administration, or its day-to-day activities. *Day 6* at 84, 93. Ms. Paquette confirmed that Seng Tan was not involved in setting company policies. *Day 7* at 135. Although Mr. Rochon testified that Seng Tan had a say in who got paid, the government did not produce any document showing her involvement. Rather Mr. Rochon acknowledged that Seng Tan did not control how money was spent, did not write checks, did not sign checks, and would not have had authority to do so. *Day 6* at 98. The Special Agent from the IRS testified that Seng Tan was not a signatory to any checks originating from WMDS, 1UOL, or anywhere else associated with the companies. *Day 9* at 152. Mr. Rochon testified that Seng Tan did not have access to the company books and would not have known if the company were in trouble. *Day 6* at 98.

Mr. Rochon also testified that although Seng Tan may have had a role in determining who got commissions based on their sales, *Day 5* at 99, Seng Tan did not

sign the certificates when members reached sales goals or honorary ranks within the company, the letters praising them for their achievements, nor the commensurate commissions. *Day 6* at 124-25. Complaining witnesses confirmed this. *Day 3* at 51, 55 (witness Iv Khun Ya); *Day 5* at 65 (witness Sothear Chuong); “GOLD DIRECTOR” CERTIFICATE (witness Sothear Chuong), Exh. 326, *Appx.* at 78; “DIAMOND DIRECTOR” CERTIFICATE (witness Sothear Chuong), Exh. 327, *Appx.* at 79. Seng Tan also was not involved in other administration or operations tasks such as sending products to customers or preparing company literature. *Day 11* at 24-25.

Although Seng Tan said she was aware of the company’s accountant and recollects meeting him once, she had no business dealings with him. *Day 11* at 14. Mr. Rochon confirmed that Seng Tan took no part in decisions or correspondence regarding lawyers and accountants, delaying or excusing payments, or demanding certain sales by members. *Day 6* at 5-9, 94, 122, 125-26. The complaining witnesses did not see Seng Tan’s signature on any correspondence. *Day 5* at 75-76; *Day 3* at 31-32 (witness Iv Khun Ya); *Day 4* at 75 (witness Sothear Chuong).

Seng Tan married James Bunchan shortly after she became involved with WMDS/1UOL because she was lonely, CERTIFICATE OF MARRIAGE (Dec. 6, 2000), Exh. 7, *Appx.* at 82, and then moved in with him in Attleboro. *Day 11* at 10-11, 31-32. Although the two traveled together for business before marriage, afterwards they did

not. *Day 11* at 13. Seng Tan testified that in Cambodian culture, it is disgraceful to remarry, even after the death of a spouse, *Day 11* at 13-14, 133-34, and it is not the place of women to discuss their husband's business. *Day 11* at 11-12, 89. Thus she kept the fact of her marriage private, even from her family, *Day 8* at 53 (testimony of brother-in-law Wayne Peterson), and did not disclose it until around 2005. *Day 11* at 134.

Thus it was reasonable for those who saw them together, such as office staff and members, to not have perceived they were married. *Day 4* at 100 (witness Sohear Chuong). Although Christian Rochon knew Mr. Bunchan and Seng Tan were coupled, *Day 5* at 89, Lori Paquette stumbled on the fact but was never sure. *Day 7* at 101-02. Ms. Paquette testified that on the few occasions she saw them together, Seng Tan and Mr. Bunchan were merely respectful and cordial toward each other. *Day 7* at 102.

Because of cultural taboos, Seng Tan never discussed with Mr. Bunchan problems at work, *Day 11* at 14, complaints she heard from members, *Day 11* at 103, or WMDS/1UOL issues generally. *Day 11* at 11-12. Seng Tan testified that it was not until later in their relationship that Mr. Bunchan even told her WMDS/1UOL was his idea, that he founded it, or that he had significant assets. *Day 11* at 32-34. She testified she didn't discuss business with her first husband either. *Day 11* at 12. Thus

marriage did not provide her knowledge of the company's operations.

Seng Tan was nonetheless indicted. SECOND SUPERSEDING INDICTMENT, DN 65, *Appx.* at 17. Upon learning of the charges, she drove to Massachusetts from Minnesota and turned herself in. DN 49. After an 11-day trial she was found guilty of conspiracy, sixteen counts of mail fraud, and four counts of money laundering. She was later sentenced to 20 years in prison. JUDGEMENT IN CRIMINAL CASE, *Adden.* at 44.

SUMMARY OF ARGUMENT

Seng Tan first notes that all three crimes for which she was convicted have a *mens rea* of at least knowledge. She argues that her job within the companies for which she worked involved sales and not operations, and thus she was unaware, and not capable of becoming aware, that it was engaged in criminal activity.

Seng Tan then points out that on the conspiracy to mail fraud charges, she was charged with receiving through the mails, not sending; but that the evidence and verdict showed at most an involvement with sending but not receiving. Based on this she argues that the variance between the indictment, evidence, and verdict must result in reversal of her convictions.

Third, Seng Tan notes that a conviction for money laundering requires a monetary transaction involving the proceeds of an underlying crime, and that mail fraud is the charged underlying crime. She again points out that she was charged with sending but not receiving mail. She argues that sending a dividend to someone cannot result in a proceed, thus making the underlying crime an illogical predicate and requiring reversal.

Finally, Seng Tan argues that there is no evidence tying her to one of the money laundering charges, which is a payment to a casino with which she had no involvement.

ARGUMENT

I. Defendant Must Have Knowledge to be Guilty of Conspiracy, Mail Fraud, and Money Laundering

Seng Tan was charged and convicted of conspiracy, mail fraud, and money laundering. All three turn on the allegation that she at least had knowledge of Mr. Bunchan's unforthright deeds and an intent to further them.

Conspiracy requires proof of knowledge of the conspiracy, proof of intent to conspire, and proof of intent to bring about the object of the conspiracy. *United States v. Morales-Rodriguez*, 467 F.3d 1, 8-9 (1st Cir. 2006) (conviction of conspiracy requires government prove “beyond a reasonable doubt the existence of a conspiracy, the defendant’s knowledge of it, and his voluntary participation in it. To prove voluntary participation, the government must prove that the defendant had an intent to agree and an intent to effectuate the object of the conspiracy.”) (quotations and citations omitted) (portion of decision not relevant here undermined by *Regalado Cuellar v. United States*, 553 U.S. 550 (2008)).

Mail fraud requires proof of an intent to “devise a[] scheme or artifice to defraud.” 18 U.S. C. § 1341. “[T]he scheme must be intended to deceive another, by means of false or fraudulent pretenses, representations, promises, or other deceptive conduct.” *McEvoy Travel Bureau, Inc. v. Heritage Travel, Inc.*, 904 F.2d 786, 791

(1st Cir. 1990); *Windsor v. United States*, 384 F.2d 535 (9th Cir. 1967) (defendant's knowing participation in a scheme to defraud is essential element of conspiracy to commit mail fraud).

Money laundering requires proof the defendant knew the allegedly laundered funds were criminally derived. 18 U.S.C. § 1957(a) (“knowingly engages ... in a monetary transaction in criminally derived property”); *United States v. Gabriele*, 63 F.3d 61, 65 (1st Cir. 1995) (“A defendant may not be convicted under section 1957(a) unless he knew that the transaction involved ‘criminally derived’ property.”). “[T]o obtain a conviction for conspiracy to commit money laundering, the government ha[s] to establish the existence of two mental states: (A) [defendant’s] knowledge that the money ... represented the proceeds of some form of unlawful activity; and (B) [defendant’s] intent to promote that unlawful activity.” *United States v. Cedenoperez*, 579 F.3d 54, 58 (1st Cir. 2009) (quotations and citation omitted). Conspiracy to money laundering requires at least the same mental intent as the underlying crime. *United States v. Corchado-Peralta*, 318 F.3d 255, 257 (1st Cir.2003).

Although purposeful ignorance does not excuse knowledge, it only occurs where the defendant “forced her suspicions aside and deliberately avoided confirming for herself that she was engaged in criminal activity.” *United States v. Ramirez*, 574 F.3d 869, 877 (7th Cir. 2009) (quotations and citations omitted).

II. Seng Tan Had no Knowledge or Intent

Seng Tan's early career success was in multi-level marketing companies, and when she was presented an opportunity to work with another, she joined. Given the language WMDS/1UOL routinely used, its apparent business model, and her background, Seng Tan was reasonable in believing the company was just another MLM.

Seng Tan's sales and marketing activities were her job undertaken on behalf of WMDS/1UOL, and were the same as she had conducted for MLMs before. She sold people personal products, and sponsored a downline salesforce. Whatever she told people about the company, she read in company publications. Getting called "CEO" was an attainment of success, just like a pink Cadillac.

Seng Tan was justified thinking WMDS/1UOL was profitable. She was aware of the several retail stores and full warehouse, which outwardly appeared prosperous. She read company publications, which extolled success. Mr. Bunchan wore nice clothes and drove nice cars. Employees were apparently happy, and the entities appeared solvent. Seng Tan worked closely and traveled with fellow promoters, who had the same information and apparently shared her assumptions. As long as everybody appeared to be making money, she had no reason to question or suspect.

Seng Tan's job was on the road, and rarely in the office. She did not own the company, and she was not involved in running it. Christian Rochon was already

installed as President with his rented suit before Seng Tan joined.

Seng Tan was not part of office operations: she did not do purchasing, watch expenditures, handle shipping, worry over publications, or manage personnel. She had no control over company accounts or books, and no role regarding accountants or lawyers. She had nothing to do with sales data. Seng Tan had no background in finance, and no access to financial information. She was not in a position, unlike Mr. Rochon who conducted day-to-day operations, to perceive discrepancies. She had no reason, nor any basis, to form a suspicion that anything was rotten. Mr. Rochon confirmed that Seng Tan would not have known if the company were in trouble.

Because of the nature of her job, the evidence also does not show deliberate ignorance. Unlike, for instance, *United States v. Gabriele*, 63 F.3d 61, 67 (1st Cir. 1995), Seng Tan did not willfully ignore obvious signs of underhand activity such as “government surveillance, large stores of cash, [or the] use of coded language.”

Seng Tan was duped by Mr. Bunchan, same as the others. Just like the complaining witnesses, she lost her personal investment. Even more than them, he duped her into marrying and moving in with him, while he spent a fortune benefitting his former wife and extended family, acquiring expensive toys, and gambling at casinos. The record shows she married him out of loneliness, not to gain business intelligence. Mr. Bunchan hid his misdeeds from Seng Tan, relying on Cambodian

marriage tradition that she would not ask; and she had no reason to question.

Thus the evidence does not show Seng Tan had knowledge of Mr. Bunchan's scheme nor an intent to further it. Consequently, Seng Tan should not have been found guilty of conspiracy, mail fraud, or money laundering.

III. Seng Tan is Not Guilty of Conspiracy to Mail Fraud Because of Variances Between Indictment, Evidence, and Verdict

The mail fraud statute makes it a crime for anyone who, “having devised ... any scheme or artifice to defraud,... for the purpose of executing such scheme or artifice ... places in any post office or authorized depository for mail ..., or takes or receives therefrom, any such matter or thing.” 18 U.S.C. 1341. Thus, if part of a scheme, it is a crime to either *put* items in the mail or *take* items out from the mail.

In its conspiracy to mail fraud indictment, the Government alleged Seng Tan “took and received matters and things sent and delivered via United States Postal Service.” SECOND SUPERSEDING INDICTMENT ¶ 71(a) (Count 1) DN 65, *Appx.* at 17. The indictment alleges she *took* things out of the mail that were sent, but it does not charge her with having *put* anything in the mail. Thus it charges her with *receiving*, but not *sending*.

Seng Tan was convicted of sixteen counts of mail fraud and found not guilty of five. VERDICT SLIP, DN 138, *Appx.* at 67 (guilty on counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 19, 20, and 22) (not guilty on counts 17, 21, 23, 24, and 25). All the counts of which she was convicted involve letters of checks “mailed *from* 1UOL” “mailed *from* WMDS,” or “mailed *from* 1UOL and WMDS” to various alleged victims. VERDICT SLIP, DN 138, *Appx.* at 67 (emphasis added). The verdict says Seng

Tan was convicted of *putting* things in the mail, not *taking* them out of the mail. Thus she was found guilty of *sending* but not *receiving*. See *United States v. Spirk*, 503 F.3d 619 (7th Cir. 2007) (distinguishing evidence of sending and receiving).

The instructions given to the jury broadly explained that the statute “prohibits the use of the mails,” and broadly defined mail fraud as causing the postal system “to be used,” for unlawful purposes. DN 269 at 20, 24. The instruction is accurate insofar as it goes, but does not distinguish between the two directions – sending and receiving.

The evidence shows that complaining witnesses received items from both IOUL and WMDS, but did not show Seng Tan anywhere near a mailbox or any postal facility, whether sending or receiving. Even if Seng Tan can be tagged with the *sending* from WMDS/IOUL as part of the conspiracy, the allegation is that she conspired to *receive* but not send, while the evidence shows the conspiracy *sent* checks to investors.

In any event, Seng Tan was convicted of engaging in acts for which she was not charged. Thus there is a variance between the indictment and the evidence, *United States v. Trainor*, 477 F.3d 24 (2007); between the indictment and the instructions, and between the indictment and the verdict. *United States v. Edelkind*, 467 F.3d 791 (1st Cir. 2006).

Variations between the indictment and the evidence must result in dismissal of charges when there is prejudice to the defendant. *Id.* Here the indictment did not properly inform Seng Tan of what the Government intended to prove, and the Government did not prove what it claimed. As a result, Seng Tan was sentenced for conspiracy of sixteen underlying acts of mail fraud for which she was improperly convicted. Had she not been convicted of conspiracy to mail fraud, it can be anticipated that her sentence would have been less severe.

Variations between the indictment and the verdict result in dismissal when no guilty verdict is delivered on the charges. Minor issues, such as the mis-naming of a victim, are not prejudicial. *See e.g., United States v. Edelkind*, 467 F.3d 791 (1st Cir. 2006). Ambiguities on a special verdict form can be repaired by polling the jury after its verdict. *Id.* The errors here however, are neither minor nor reparable. The special verdict form held her guilty of *sending* but not *receiving*, precisely the opposite of the indictment, which charged her with *receiving*, but not *sending*.

Accordingly, the conspiracy to mail fraud conviction must be reversed.

IV. Mail Fraud Checks Were Mr. Bunchan's Alone

As noted, Seng Tan did not have sufficient knowledge or intent to be guilty of conspiracy. Because of that, she is not criminally responsible for the actions of the conspiracy. Moreover, “[a] multi-member mail fraud is itself treated like a conspiracy” requiring each member participate in the common scheme with an intent to commit fraud.” *United States v. Yefsky*, 994 F.2d 885, 893 (1st Cir. 1993) (citation omitted).

All the checks referenced in the mail fraud counts were signed by Mr. Bunchan; none by Seng Tan. The only connection Seng Tan had to those particular checks is as a member of the alleged conspiracy. Because Seng Tan had insufficient knowledge to connect her with the checks, she cannot be liable for mail fraud.

Although there was testimony suggesting Seng Tan had a hand in determining which checks went out from WMDS/1UOL, there was no evidence connecting Seng Tan to the determination to send out the particular checks forming the mail fraud convictions.

Accordingly, the checks were the action of Mr. Bunchan alone, and Seng Tan's convictions for mail fraud should be reversed.

V. Money Laundering Convictions Cannot be Predicated on Mail Fraud Conviction for Sending Mail

The money laundering statute provides that it is illegal to “knowingly engage[] ... in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity.” 18 U.S.C. § 1957(a).

Conviction for money laundering requires the “government [must] prove that the money involved in the alleged laundering transactions was the *proceeds* of a separate specified unlawful activity.” *United States v. Castellini*, 392 F.3d 35, 46 (1st Cir. 2004) (emphasis added). “A money launderer must obtain proceeds before laundering can take place.” *United States v. Carucci*, 364 F.3d 339, 345 (1st Cir. 2004) (quotation omitted). The law requires that in order to launder, the defendant must already possess dirty money. The statute “was intended to combat criminal activities, such as drug trafficking, that generate large amounts of cash income.” Annotation, *Validity, construction, and application of 18 U.S.C.A. § 1956, which criminalizes money laundering*, 121 A.L.R. Fed. 525, 525 (1994).

Here the underlying unlawful activity was mail fraud. SECOND SUPERSEDING INDICTMENT ¶ 78 DN 65, *Appx.* at 17. As noted, all the underlying mail fraud indictments and convictions were for sending checks to various victims.

If the underlying mail fraud were for receiving checks, which Seng Tan then used in a monetary transaction, her money laundering convictions may be valid. But Seng Tan did not, and could not logically, use in a monetary transaction a check that was sent. Payment of a dividend cannot result in a proceed; only receipt of money can result in a proceed. Thus sending mail cannot form the predicate convictions from which money laundering proceeds can be derived.

Accordingly, Seng Tan's money laundering convictions must be reversed.

VI. Seng Tan is Not Guilty of Count 37 Money Laundering Because No Evidence Supports her Involvement with Check to Casino

Count 37 alleges that Seng Tan negotiated a check in the amount of \$255,090 payable to Caesar's casino drawn on a 1UOL account at Sovereign Bank. CHECK 0741 FROM 1UOL TO CAESARS (Dec. 10, 2004), Portion of Exh. 224, *Appx.* at 83. Ms. Tan was found guilty of that charge of money laundering.

It is inconceivable that Seng Tan had anything to do with this conduct. No evidence connected her with any of Mr. Bunchan's lavish living, and none connected her with his casino expenditures. The IRS Special Agent testified that Seng Tan was not the signatory to *any* checks from either WMDS or 1UOL. *Day 9* at 152. The check itself is signed by Mr. Bunchan, and bears nothing connecting Seng Tan to it.

Because there no evidence to support the conviction, it must be reversed.

CONCLUSION

In accord with the forgoing, Seng Tan respectfully requests this Court to reverse her convictions for conspiracy, mail fraud, and money laundering.

Ms. Tan requests her attorney be allowed to present oral argument.

Respectfully submitted,

Seng Tan
By her Attorney,

Law Office of Joshua L. Gordon

/s/

Dated: August 2, 2011

Joshua L. Gordon, Esq.
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I hereby certify that on August 2, 2011, a copy of the foregoing will be forwarded to Dina Chaitowitz, Esq., AUSA, United States Attorney's Office, District of Massachusetts.

Dated: August 2, 2011

/s/

Joshua L. Gordon, Esq.

I hereby certify that this brief complies with the type-volume limitations contained in F.R.A.P. 32(a)(7)(B), that it was prepared using WordPerfect version X4, and that it contains no more than 8,672 exclusive of those portions of the brief which are exempted.

Dated: October 16, 2009

/s/

Joshua L. Gordon, Esq.

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UNITED STATES DISTRICT COURT

District of MASSACHUSETTS

UNITED STATES OF AMERICA V.

SENG TAN, a/k/a Seng Kim Tam

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 06CR10004-02-RGS

USM Number: 25885-038

JAMES DILDAY, ESQ.

Defendant's Attorney

Date of Original Judgment: 12/10/2007 (Or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
Reduction of Sentence for Changed Circumstances (Fed R. Crim. P. 35(b))
Correction of Sentence by Sentencing Court (Fed R. Crim. P. 35(a))
Correction of Sentence for Clerical Mistake (Fed R. Crim P 36)

- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
Direct Motion to District Court Pursuant to 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- pleaded guilty to count(s)
pleaded nolo contendere to count(s) which was accepted by the court.
was found guilty on count(s) 1-14; 19; 20; 22; 26; 37; 39; 40 OF SECOND SUPERSEDING INDICTMENT after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Table with 4 columns: Title & Section, Nature of Offense, Offense Ended, Count. Rows include 18 USC 1341 (MAIL FRAUD) and 18 USC 1957 (MONETARY TRANSACTIONS/UNLAWFUL ACTIVITY).

The defendant is sentenced as provided in pages 2 through 16 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) 17SS,21SS,23-25SS, 27-36SS; 38SS
Count(s) 15SS,16SS,18SS is/are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

1/18/2007 Date of Imposition of Judgment
Richard G. Stearns Signature of Judge
RICHARD G. STEARNS USDJ Name of Judge Title of Judge
2/14/2008 Date

AO 245B(05-MA) (Rev. 06/05) Judgment in a Criminal Case
Sheet 2 - D. Massachusetts - 10/05

Judgment - Page 2 of 16

DEFENDANT: **SENG TAN**
CASE NUMBER: **1: 06 CR 10004 - 02 - RGS**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **20** year(s)

(SEE NEXT PAGE).

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AO 245B(05-MA) (Rev. 06/05) Judgment in a Criminal Case
Sheet 2A - D Massachusetts - 10/05

Judgment—Page 3 of 16

DEFENDANT: **SENG TAN**
CASE NUMBER: **1: 06 CR 10004 - 02 - RGS**

ADDITIONAL IMPRISONMENT TERMS

THE COURT IMPOSED A TOTAL OF 20 YEARS TO BE SERVED AS FOLLOWS:

COUNTS 2SS-14SS; 20SS; 22SS - 240 MONTHS TO BE SERVED ON EACH COUNT,
CONCURRENT WITH EACH OTHER;
COUNTS 1SS & 19 SS - 60 MONTHS TO BE SERVED ON EACH COUNT, CONCURRENT
WITH EACH OTHER AND CONCURRENT WITH SENTENCE IMPOSED ON COUNTS
2SS-14SS; 20SS; 22SS;
COUNTS 26SS, 37SS, 39SS, 40SS - 120 MONTHS TO BE SERVED ON EACH COUNT,
CONCURRENT WITH EACH OTHER AND CONCURRENT WITH SENTENCES IMPOSED
ON COUNTS 2SS-14SS; 20SS; 22SS; 1SS; AND 19SS. FOR A TOTAL SENTENCE OF
240 MONTHS TO BE SERVED (20 YEARS).

DEFENDANT: **SENG TAN**
CASE NUMBER: **1: 06 CR 10004 - 02 - RGS**

SUPERVISED RELEASE

See continuation page

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **2** year(s)

TWO (2) YEARS ON EACH COUNT, CONCURRENT WITH EACH OTHER.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed 104 tests per year, as directed by the probation officer.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

AO 245B(05-MA) (Rev 06/05) Judgment in a Criminal Case
Sheet 4A - Continuation Page - Supervised Release/Probation - 10/05

Judgment—Page 5 of 16

DEFENDANT: **SENG TAN**
CASE NUMBER: **1: 06 CR 10004 - 02 - RGS**

ADDITIONAL SUPERVISED RELEASE PROBATION TERMS

1. WITHIN 72 HOURS OF RELEASE FROM IMPRISONMENT, THE DEFENDANT SHALL REPORT IN PERSON TO THE DISTRICT TO WHICH SHE IS RELEASED;
2. THE DEFENDANT SHALL NOT COMMIT ANOTHER FEDERAL, STATE OR LOCAL CRIME AND SHALL NOT ILLEGALLY POSSESS A CONTROLLED SUBSTANCE;
3. THE DEFENDANT SHALL SUBMIT TO THE COLLECTION OF A DNA SAMPLE AS DIRECTED BY THE U. S. PROBATION OFFICER;
4. THE DEFENDANT SHALL NOT PURCHASE OR POSSESS A FIREARM, DESTRUCTIVE DEVICE, OR ANY OTHER DANGEROUS WEAPON;
5. THE DEFENDANT IS PROHIBITED FROM INCURRING ANY NEW CREDIT CHARGES OR OPENING ANY ADDITIONAL LINES OF CREDIT WITHOUT THE PRIOR WRITTEN APPROVAL OF THE U. S. PROBATION OFFICER WHILE ANY FINANCIAL OBLIGATIONS REMAIN OUTSTANDING;
6. THE DEFENDANT SHALL PROVIDE THE U. S. PROBATION OFFICER ANY AND ALL ACCESS TO REQUESTED FINANCIAL INFORMATION WHICH MAY BE SHARED WITH THE FINANCIAL LITIGATION UNIT OF THE UNITED STATES ATTORNEY'S OFFICE;

Continuation of Conditions of Supervised Release Probation

7. THE DEFENDANT SHALL MAKE RESTITUTION IN AN AMOUNT NOT LESS THAN \$13,728,985.52 WHICH SHALL BE PAID JOINTLY AND SEVERALLY WITH ANY ORDER OF RESTITUTION IMPOSED ON CO-DEFENDANTS JAMES BUNCHAN AND CHRISTIAN ROCHON. THE TOTAL AMOUNT OF RESTITUTION TO BE PAID WILL BE DETERMINED AT A FURTHER COURT HEARING TO BE HELD WITHIN THE NEXT 90 DAYS;
8. IF ORDERED DEPORTED, THE DEFENDANT SHALL LEAVE THE UNITED STATES OF AMERICA AND NOT RETURN WITHOUT THE PRIOR WRITTEN PERMISSION OF THE SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY;
9. THE DEFENDANT SHALL PAY A SPECIAL ASSESSMENT IN THE AMOUNT OF \$2100 FORTHWITH.

DEFENDANT: SENG TAN, a/k/a Seng Kim Tam
CASE NUMBER: 06CR10004-02-RGS

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	* <u>Restitution</u>
TOTALS	\$ 2,100.00	\$	\$ 19,103,121.73

The determination of restitution is deferred until _____ . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
SEE GOVT'S SUBMISSION FILED UNDER SEAL		\$19,103,121.73	

TOTALS \$ _____ \$ _____

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

the interest requirement is waived for fine restitution.

the interest requirement for fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: SENG TAN, a/k/a Seng Kim Tam
CASE NUMBER: 06CR10004-02-RGS

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A Lump sum payment of \$ 2,100.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C. D. E. or F below; or
- B Payment to begin immediately (may be combined with C. D. or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
 - * RESTITUTION IN THE AMOUNT OF \$19,103,121.73 SHALL BE PAID IMMEDIATELY OR ACCORDING TO A COURT-ORDERED SCHEDULE.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

SENG TAN - CR 06-10004-02-RGS
JAMES BUNCHAN - CR 06-10004-01-RGS
CHRISTIAN ROCHON - CR 06-10004-03-RGS

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:
SEE ATTACHED "ORDER OF FORFEITURE".

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Selected docket entries for case 07-2200

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Filed	Document Description	Page	Docket Text
08/15/2007			<p>ORDER ENTERED: Upon review of the record in this case, it appears that this court may not have jurisdiction to consider this appeal because the verdict entered on June 28, 2007 in CR. No. 06-10004 (D. Mass.) is not a final judgment in a criminal case. 28 U.S.C. 1291. Accordingly, defendant-appellant is ordered either to move for voluntary dismissal of Appeal No. 07-2200 pursuant to Fed. R. App. P. 42(b), or to show cause, in writing, why this appeal should not be dismissed. The failure to take either action by August 29, 2007 will result in dismissal of Appeal No. 07-2200 for lack of diligent prosecution. See Loc. R. 3.0(b). [07-2200] (LM)</p>
09/05/2007			<p>JUDGMENT ENTERED: Upon consideration of appellant's motion, it is hereby ordered that this appeal be voluntarily dismissed pursuant to Fed. R. App. P. 42(b). Mandate to issue forthwith. [20] [07-2200] (LM)</p>

07-2200
LM
AS

Seng Tan 25885-038

FBI Danbury

Danbury, CT 06811

The Honorable Judge Richard G. Stearns
One Courthouse Way
Suite 2500
Boston, MA 02210

RE: U.S. vs. James Bunchan and Seng Tan.

Dear Clerk of Courts,

I am writing regarding the status of my appeal. According to appeal records of Mr. James Bunchan my appeal was dismissed on September 5, 2007 citing Federal Rule of Appellate Procedure 42. It also states this was done at my request. I would like my file to be noted that I never authorize Mr. James Diddy (my attorney) to dismiss my appeal. In fact I contacted him on many occasions requesting documentation and a status update. Mr. Diddy would tell me he would send me the brief. Until I read my codefendant, Mr. James Bunchan's appeal I had no idea that my appeal had been dismissed.

Please forward all documentation you

2010 SEP 10 AM 11:4
FILING OFFICE
U.S. COURT OF APPEALS
FOR THE FIRST CIRCUIT

Have regard my appeal and it's status
to me at the address listed above.

Thank you,
Seng tan
25885-038.

cc: James J. Silday
2700 SCHOOL ST #40.
Boston, MA 02101

United States Court of Appeals For the First Circuit

No. 10-2091

UNITED STATES

Appellee

v.

SENG TAN, a/k/a Seng Kim Srun, a/k/a Seng Srunk

Defendant - Appellant

CASE OPENING NOTICE

Issued: September 16, 2010

The above-captioned appeal was docketed in this court today pursuant to Rule 12 of the Federal Rules of Appellate Procedure. The above case number and caption should be used on all papers subsequently submitted to this court. If any party disagrees with the clerk's office's designation of the parties on appeal, it must file a motion to amend the caption with any supporting documentation attached. Absent an order granting such a motion, the parties are directed to use the above caption on all pleadings related to this case.

Appellant must complete and return the following forms to the clerk's office by **October 5, 2010** to be deemed timely filed:

- [Transcript Report/Order Form](#) (Please carefully read the instructions for completing and filing this form.)
- [Docketing Statement](#)

These forms are available on the court's website at www.ca1.uscourts.gov, under "Forms & Notices." Failure to comply with the deadlines set by the court may result in dismissal of the appeal for lack of diligent prosecution. See 1st Cir. R. 3.0, 10.0, and 45.0.

Upon confirmation by the circuit clerk that the record is complete either because no hearing was held, no transcript is necessary, or the transcript is on file, the clerk's office will set the briefing schedule and forward a scheduling notice to the parties.

Within seven days of filing the notice of appeal, appellant must pay the filing fee to the district court clerk. An indigent appellant who seeks to appeal in forma pauperis must file a motion and financial affidavit in the district court in compliance with Fed. R. App. P. 24. Unless this court is provided with notice of paying the filing fee to the clerk of the district court or filing a motion seeking in forma pauperis status within fourteen days of the date of this notice, this appeal may be dismissed for lack of prosecution. 1st Cir. R. 3.0(b).

An appearance form should be completed and returned immediately by any attorney who wishes to file pleadings in this court. 1st Cir. R. 12.0(a) and 46.0(a)(2). *Pro se* parties are not required to file an appearance form. Any attorney who has not been admitted to practice before the First Circuit Court of Appeals must submit an application and fee for admission with the appearance form. 1st Cir. R. 46.0(a)(2).

Dockets, opinions, rules, forms, attorney admission applications, the court calendar and general notices can be obtained from the court's website at www.ca1.uscourts.gov. Your attention is called specifically to the notice(s) listed below:

- [Notice to Counsel and Pro Se Litigants](#)
- [Transcript Notice](#)

If you wish to inquire about your case by telephone, please contact the case manager at the direct extension listed below.

Margaret Carter, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
John Joseph Moakley
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210
Case Manager: Todd Smith - (617) 748-4273