

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No.
v. : 18 U.S.C. §§ 641,
BARRY SUSSMAN : 1503(a) and 2

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey,
sitting in Newark, charges that:

COUNT ONE
(Theft of Government Property)

1. On or about May 12, 2003, the Federal Trade Commission ("FTC") filed a complaint in the United States District Court for the District of New Jersey ("District Court") captioned Federal Trade Commission v. Check Investors, Inc. et al., Civil No. 03-2115 (JMB). The complaint charged that defendant BARRY SUSSMAN, and his co-defendants, including certain of his companies and corporate counsel Charles Hutchins, engaged in a scheme to obtain millions of dollars from consumers nationwide by falsely threatening them with arrest and prosecution unless the consumers paid monies the consumers did not, in most instances, owe. The FTC, a department of the United States, alleged that defendant BARRY SUSSMAN and his

co-defendants engaged in deceptive, abusive, and unfair debt collection practices in the collection of payments for checks returned by financial institutions for non-sufficient funds, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

2. On or about August 14, 2003, the District Court entered a preliminary injunction in Federal Trade Commission v. Check Investors, Inc. et al., Civil No. 03-2115 (JMB)(the "Preliminary Injunction"). Pursuant its terms, defendant BARRY SUSSMAN and his co-defendants were barred from transferring, concealing, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets, wherever located which were owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by, or belong to defendant BARRY SUSSMAN. The Preliminary Injunction further directed any financial institution, including the Bank of New York (now known as J.P. Morgan Chase Bank, but herein referred to as "Bank of New York") and its branch in Secaucus, New Jersey, or any person or other entity served with the preliminary injunction to "deny access to any safe deposit boxes" that are either (1) titled in the name of any defendant; or (2) subject to access by any defendant.

3. On or about October 14, 2003, an FTC attorney and an attorney for defendant BARRY SUSSMAN went to the Bank of New York branch located in Secaucus, New Jersey and, in the presence of defendant BARRY SUSSMAN and officers of the Bank of New York, cataloged the contents of safe deposit box number 338 (the "Safe Deposit Box"), which was titled in the name of defendant BARRY SUSSMAN and his wife, Elisabeth. The Safe Deposit Box, which was a subject of the Preliminary Injunction, was found to contain gold coins, namely 314 antique \$20 gold coins and 55 gold coins stamped "Weiner Philharmoniker." After the inventory was completed, defendant BARRY SUSSMAN's attorney and the FTC attorney signed a document memorializing the contents of the Safe Deposit Box, and the coins were put back inside the Safe Deposit Box and returned to the custody of Bank of New York officials. The purpose of this inventory was to catalogue and secure the gold coins for use as partial payment to the FTC in the event the FTC prevailed in the District Court case.

4. On or about July 18, 2005, the District Court in Federal Trade Commission v. Check Investors, Inc. et al., Civil No. 03-2115 (JMB), entered a Final Order ("Final Order") finding that defendant BARRY SUSSMAN and his co-defendants deceived, abused, and harassed consumers, as the FTC's complaint alleged. Among other things, the Final Order entered a monetary judgment

against defendant BARRY SUSSMAN and his co-defendants in the amount of \$10,204,445. To partially satisfy the monetary judgment, the Final Order directed the Bank of New York, in particular, to transfer to the FTC the contents of the Safe Deposit Box.

5. On or about August 8, 2005, the FTC served a copy of the Final Order by facsimile on defendant BARRY SUSSMAN at his residence in Israel.

6. On or about August 17, 2005, defendant BARRY SUSSMAN and his companies filed a Notice of Appeal, but did not file for a stay of the Final Order.

7. On or about September 8, 2005, defendant BARRY SUSSMAN was personally served with a copy of the Final Order at his residence in Israel, through the Hague Convention service.

8. On or about October 4, 2006, the Court of Appeals for the Third Circuit (the "Third Circuit") heard oral argument on defendant BARRY SUSSMAN's appeal. On or about September 6, 2007, the Third Circuit upheld the Final Order.

9. On or about October 22, 2007, defendant BARRY SUSSMAN filed a motion for an extension of time to file a petition for rehearing, which was granted by the Third Circuit on or about November 29, 2007.

10. On or about December 7, 2007, defendant BARRY SUSSMAN filed a petition for rehearing before the original panel of the Third Circuit.

11. On or about December 7, 2007, Charles Hutchins filed a petition for rehearing en banc with the Third Circuit.

12. On or about December 10, 2007, defendant BARRY SUSSMAN joined Charles Hutchins's petition for rehearing en banc.

13. On or about February 6, 2008, the Third Circuit denied both of defendant BARRY SUSSMAN's rehearing petitions.

14. The following day, on or about February 7, 2008, defendant BARRY SUSSMAN entered the Bank of New York branch in Secaucus, New Jersey, and in direct violation of the Final Order and the Preliminary Injunction, sought access to the Safe Deposit Box. After being initially denied access to the Safe Deposit Box by a bank employee, defendant BARRY SUSSMAN stated, in substance, that he knew there was a problem with the box, but that his lawyer had taken care of everything. After gaining access to the Safe Deposit Box, defendant BARRY SUSSMAN transferred all the gold coins from the Safe Deposit Box into a satchel that he had brought with him, then left the bank with the gold coins which were concealed in the satchel.

15. On or about February 7, 2008, defendant BARRY SUSSMAN did knowingly steal and convert for his own use, and, without authority, convey and dispose of a thing of value of the United States and a department thereof, namely, approximately approximately 314 \$20 gold coins and approximately 55 gold coins stamped "Weiner Philharmoniker," with an approximate market value of \$335,000.

All in violation of Title 18, United States Code, Sections 641 and Section 2.

COUNT TWO

(Obstruction of Justice)

1. Paragraphs 1 through 14 of Count One this Indictment are realleged as if set forth in full herein.

2. On or about February 7, 2008, defendant

BARRY SUSSMAN

did knowingly and corruptly endeavor to influence, obstruct and impede the due administration of justice.

In violation of Title 18, United States Code, Section 1503(a) and 2.

A TRUE BILL

FOREPERSON

RALPH J. MARRA, JR.
Acting United States Attorney

