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Magistrate Judge Mary Alice Theiler

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD A. FINGER, JR.

Defendant.

CASE NO. **MJ11-424**

COMPLAINT for VIOLATION

Title 18, United States Code,  
Sections 1343 and 2

BEFORE the Honorable Mary Alice Theiler, United States Magistrate Judge,  
Seattle, Washington.

**COUNT 1**  
**(Wire Fraud)**

**A. INTRODUCTION**

1. At all material times, RICHARD A. FINGER, JR., was a registered representative and broker in Washington State doing business through broker-dealers registered with the Financial Industry Regulatory Authority (FINRA) and the U.S. Securities and Exchange Commission (SEC), including his own firms, Black Diamond Capital Management, LLC and Black Diamond Securities, LLC, (collectively, "Black Diamond") in Kirkland, Washington.

**B. THE SCHEME AND ARTIFICE TO DEFRAUD**

2. Beginning at a date uncertain, but no later than February 2011, and continuing through in or about August 2011, within the Western District of Washington and elsewhere, the defendant, RICHARD A. FINGER, JR., knowingly devised a scheme and artifice to defraud

1 investors and to obtain money and property by means of false and fraudulent pretenses,  
2 representations, and promises.

3         3.         The essence of the scheme and artifice to defraud was that RICHARD A.  
4 FINGER, JR. acted as a broker and financial adviser for a number of individuals. During his  
5 scheme to defraud, RICHARD A. FINGER, JR. induced these individuals to invest significant  
6 sums of money in accounts managed by RICHARD A. FINGER, JR. at broker-dealers in  
7 Washington, including Black Diamond. When trading the accounts on behalf of the clients,  
8 RICHARD A. FINGER, JR. generated significant trading losses and diverted funds for his  
9 personal benefit and use by charging excessive commissions. To conceal these trading losses  
10 and commissions from his clients, RICHARD A. FINGER, JR. provided the victim investors  
11 with statements which falsely reflected that his trading had generated positive returns and that he  
12 had charged minimal commissions. During the course of the scheme, RICHARD A. FINGER,  
13 JR. defrauded at least ten investors of millions of dollars.

14         4.         It was a part of the scheme and artifice to defraud that in or about 2009, RICHARD  
15 A. FINGER, JR., while working at a broker-dealer located in Seattle, Washington, induced J.M.S.  
16 to provide him with approximately \$670,000 for RICHARD A. FINGER, JR. to manage. Within  
17 months of soliciting J.M.S. to place his money with him, RICHARD A. FINGER, JR. began to  
18 incur significant trading losses in J.M.S.'s account. During the fall of 2009, RICHARD A.  
19 FINGER, JR. began telling J.M.S. that his account was doing well when, in fact, RICHARD A.  
20 FINGER, JR. was generating significant trading losses in the account.

21         5.         It was further part of the scheme and artifice to defraud that in or about February  
22 2011, RICHARD A. FINGER, JR. moved from the Seattle-based broker-dealer and began  
23 operating his own registered broker-dealer, Black Diamond. At that time, RICHARD A.  
24 FINGER, JR. solicited his clients, including J.M.S., to transfer his accounts from the Seattle-  
25 based broker-dealer to Black Diamond.

26         6.         It was further part of the scheme and artifice to defraud that to further conceal the  
27 trading losses he incurred in J.M.S.'s account at the Seattle-based broker-dealer, RICHARD A.  
28 FINGER, JR. gave J.M.S. a fraudulent spreadsheet which showed that the account being

1 transferred to Black Diamond was worth in excess of \$1.2 million. In reality, J.M.S.'s account  
2 was worth less than \$5,500.

3 7. It was a part of the scheme and artifice to defraud that in or about the second week  
4 of June 2011, RICHARD A. FINGER, JR. induced victim investor E.H. to provide him with  
5 approximately \$1,000,000 in cash and other assets for RICHARD A. FINGER, JR. to manage.  
6 By the end of June 2011, RICHARD A. FINGER, JR. had suffered trading losses of  
7 approximately \$160,000 and generated commissions in excess of \$400,000 in E.H.'s account,  
8 resulting in a month end balance of approximately \$404,000. By July 13, 2011, E.H.'s account  
9 was worth less than \$225,000 due to RICHARD A. FINGER, JR.'s significant trading losses and  
10 excessive commissions.

11 8. It was a further part of the scheme and artifice to defraud that RICHARD A.  
12 FINGER, JR. caused significant trading losses and charged excessive commissions in excess of  
13 ten client accounts held at Black Diamond, including the accounts of J.M.S. and E.H. To conceal  
14 his fraudulent trading in his client accounts, RICHARD A. FINGER, JR. emailed false account  
15 statements to at least ten victim investors which falsely reflected that RICHARD A. FINGER,  
16 JR.'s trading was profitable and generating small commissions. To give them the appearance of  
17 legitimacy, RICHARD A. FINGER, JR. modeled these fraudulent account statements on the  
18 actual account statements that RICHARD A. FINGER, JR. received from Black Diamond's  
19 clearing firm.

20 9. After generating excessive commissions in his client accounts, RICHARD A.  
21 FINGER, JR. withdrew a portion of the money from Black Diamond by wiring or causing to be  
22 wired the money from the clearing firm located outside Washington to bank accounts controlled  
23 by RICHARD A. FINGER, JR. in Washington.

24 **C. EXECUTION OF THE SCHEME AND ARTIFICE TO DEFRAUD**

25 10. On or about April 20, 2011, within the Western District of Washington and  
26 elsewhere, RICHARD A. FINGER, JR., for the purpose of executing this scheme and artifice to  
27 defraud investors and for obtaining money and property by false and fraudulent pretenses,  
28 representations, and promises and attempting to do so, did knowingly transmit and cause to be

1 transmitted writings, signs, signals and sounds by means of wire, radio, and television  
2 communication in interstate commerce, namely, a wire transfer from RICHARD A. FINGER,  
3 JR.'s individual account number ending in 8081 at Black Diamond's clearing firm located outside  
4 Washington to RICHARD A. FINGER, JR.'s checking account number ending in 6575 at Bank of  
5 America's Metropolitan Branch in Seattle, Washington, in the amount of \$200,000.00.

6 All in violation of Title 18, United States Code, Sections 1343 and 2.

7 The undersigned complainant, being duly sworn, states:

8 1. I, Mark J. Nakatsu, am a special agent for the Federal Bureau of Investigation. I  
9 have been a special agent for the past 23 years. For 20 of those years, I have investigated and  
10 received extensive training in various white collar crime matters. I am currently assigned to a  
11 white collar crime squad and I am responsible for the investigation of various financial crimes,  
12 including mortgage fraud, health care fraud, and investment fraud. The information in this  
13 affidavit is based on my personal knowledge, interviews with witnesses, and review of documents  
14 and other evidence.

#### 15 SUMMARY OF INVESTIGATION

16 2. I believe that the investigation leading to the filing of this affidavit has established  
17 probable cause to believe that RICHARD A. FINGER, JR. has engaged in wire fraud by  
18 concealing significant losses in his client accounts while simultaneously embezzling large  
19 amounts of money from his clients through charging excessive commissions. While concealing  
20 his trading losses, RICHARD A. FINGER, JR. diverted the excessive commissions for his own  
21 benefit and sent false account statements to the victim investors to lull the victims into believing  
22 that their money was secure and that he was generating trading profits.

#### 23 DETAILS OF INVESTIGATION

24 3. A review of the Washington Secretary of State's corporate records database  
25 revealed that Black Diamond Capital Management LLC was founded on December 15, 2010, with  
26 the managing member listed as "RICHARD FINGER." Black Diamond Securities LLC is listed  
27 as being founded in the state of Virginia, with a Washington state filing date of August 10, 2011.  
28

1 4. According to FINRA, RICHARD A. FINGER, JR. is employed by and registered  
2 with Black Diamond Securities LLC, 516 6th Street, Suite 200, Kirkland, WA, since February 17,  
3 2011.

4 5. Black Diamond (which was formerly known as Hivetraders, LLC) was an  
5 introducing broker who utilized the clearing services of a clearing firm headquartered in  
6 Greenwich, Connecticut. An introducing broker is a broker-dealer that contracts with a clearing  
7 firm to handle the execution and settlement of orders that the introducing broker receives from its  
8 clients or its own proprietary trading desk. The clearing firm receives payments and securities  
9 from clients, maintains custody of the these cash and securities, and handles record keeping.

10 **A. INTERVIEWS OF VICTIMS**

11 6. On August 19, 2011, I interviewed J.M.S., who advised he has known and invested  
12 with RICHARD A. FINGER, JR. for the past 6 to 7 years.

13 7. During the period from 2008 through 2010, J.M.S. invested approximately  
14 \$670,000 with RICHARD A. FINGER, JR. while RICHARD A. FINGER, JR. was employed as a  
15 registered representative with a Seattle-based broker-dealer.

16 8. In or about December 2010, J.M.S. agreed to transfer his investment account from  
17 the Seattle-based broker-dealer to a new broker-dealer purchased by RICHARD A. FINGER, JR.,  
18 which RICHARD A. FINGER, JR. renamed Black Diamond. According to J.M.S., RICHARD A.  
19 FINGER, JR. told him that at the time RICHARD A. FINGER, JR. transferred the account to  
20 Black Diamond, J.M.S.'s account was worth approximately \$1.3 to 1.4 million.

21 9. In or about December 2010, J.M.S., at the direction of RICHARD A. FINGER,  
22 JR., transferred a 401k account of approximately \$190,000 and another \$90,000 account  
23 containing pre-taxed retirement funds into an Individual Retirement Account (IRA) at Black  
24 Diamond .

25 10. In 2011, RICHARD FINGER frequently provided J.M.S. with text message  
26 updates as to the progress of J.M.S.'s investment accounts, and he met with J.M.S. at Black  
27 Diamond's offices to discuss J.M.S.'s accounts. According to J.M.S., on at least two occasions,  
28

1 RICHARD A. FINGER, JR. purported to display J.M.S.'s account on the computer screen and  
2 showed J.M.S. his account balance.

3 11. RICHARD A. FINGER, JR. also emailed J.M.S.'s account statements for his  
4 Black Diamond accounts from an email address of [contact@blackdiamondsec.com](mailto:contact@blackdiamondsec.com). The  
5 statements made reference to both Black Diamond's clearing firm and Black Diamond. J.M.S.  
6 provided a copy of the latest statements for the month ended June 30, 2011, which showed an  
7 individual broker client account cash balance of \$1,565,139.65 and an IRA broker client account  
8 cash balance of \$272,351.33.

9 12. According to J.K., Black Diamond's Chief Compliance Officer from in or about  
10 late 2010 until he resigned on August 19, 2011, the email address [contact@blackdiamondsec.com](mailto:contact@blackdiamondsec.com)  
11 is not an authorized email address and no Black Diamond brokerage business should have been  
12 conducted through that email address.

13 13. In August 2011, J.M.S. began to have difficulty reaching RICHARD A. FINGER,  
14 JR.. Furthermore, he did not receive any account statements for July 2011. On August 18, 2011,  
15 J.M.S. finally decided to call Black Diamond's clearing firm to check the status of his accounts.  
16 During the call, J.M.S. discovered that, contrary to the fictitious statements he had been receiving  
17 by email from RICHARD A. FINGER, JR., his IRA account held only approximately \$24,000 and  
18 that no other account existed in the amount of \$1,565,139.65.

19 14. On August 24, 2011, I re-interviewed J.M.S., who was shown a copy of a letter  
20 dated May 3, 2011, purportedly from J.K., the former Chief Compliance Officer of Black  
21 Diamond Securities, to J.M.S. regarding one of J.M.S.'s accounts. According to the letter, during  
22 the period of April 7 through 26, 2011, J.M.S.'s account accumulated losses totaling \$163,818.15  
23 related to trading in options, including commissions, which totaled \$67,051.72. The letter  
24 purportedly bore the signature of J.M.S. on May 7, 2011, attesting to his knowledge of the losses  
25 and commissions. During the interview, J.M.S. stated: (1) his signature was forged, (2) he never  
26 received this letter, and (3) he was never informed by RICHARD A. FINGER, JR. or anyone else  
27 at Black Diamond of losses or commissions in his accounts.

1 15. On September 1, 2011, I interviewed E.H., who advised he started investing with  
2 RICHARD A. FINGER, JR. four to five years ago. E.H. has invested with RICHARD A.  
3 FINGER, JR. at a number of the different broker-dealers where RICHARD A. FINGER, JR. has  
4 been employed. On or about June 6, 2011, E.H. authorized RICHARD A. FINGER, JR. to  
5 transfer about \$1 million to Black Diamond from the Seattle-based broker-dealer where  
6 RICHARD A. FINGER, JR. worked prior to starting Black Diamond. E.H. instructed RICHARD  
7 A. FINGER, JR. to manage these funds with an investment strategy he described as "modestly  
8 conservative." E.H. and RICHARD A. FINGER, JR. reached a verbal agreement whereby  
9 commissions and fees would be set at 30% of any profits RICHARD A. FINGER, JR. generated  
10 in the account.

11 16. After the account was transferred to Black Diamond, RICHARD A. FINGER, JR.  
12 sent E.H. account statements by email from the [contact@blackdiamondsec.com](mailto:contact@blackdiamondsec.com) email address.  
13 According to E.H., the accounts statements looked good, and E.H. completely trusted RICHARD  
14 A. FINGER, JR..

15 17. On or about August 22, 2011, E.H. had a meeting with RICHARD A. FINGER,  
16 JR., who advised that he lost a lot of money for a lot of people and he wanted E.H.'s assistance in  
17 providing him money, which would be an equity interest in Black Diamond or a loan. During this  
18 meeting, RICHARD A. FINGER, JR. admitted that he had lost approximately \$6.4 million.

19 18. During the next day or two, RICHARD A. FINGER, JR. confessed to E.H. that  
20 RICHARD A. FINGER, JR. had lost about \$800,000 in E.H.'s account, and that the account  
21 statements he had sent to E.H. were fraudulent. RICHARD A. FINGER, JR. also said something  
22 to the effect that he was guilty, and he was going to confess everything and tell the whole story.

23 19. On September 1, 2011, I interviewed S.K. who advised he had an investment  
24 account with RICHARD A. FINGER, JR. at Black Diamond. According to S.K., he opened the  
25 Black Diamond account in February 2011, by transferring approximately \$69,000 in cash and  
26 securities from the Seattle-based broker-dealer where RICHARD A. FINGER, JR. previously  
27 worked to Black Diamond.

1           20.     In or about May 2011, RICHARD A. FINGER, JR. sent S.K. an account statement  
2 from the contact@blackdiamondsec.com account for the month ending April 2011. According to  
3 S.K., who had online access to his account through Black Diamond's clearing firm, S.K. noticed  
4 that the account statement sent by RICHARD A. FINGER, JR. showed more assets than the  
5 account statement maintained by the clearing firm. S.K. called RICHARD A. FINGER, JR. who  
6 told S.K. that the clearing firm's account statement was inaccurate because certain of the assets  
7 had been transferred out to a master trading account, and those assets were not reflected on the  
8 clearing firm's statement.

9           21.     On or about August 23, 2011, RICHARD A. FINGER, JR. met with S.K. in S.K.'s  
10 office in Kirkland, Washington. During this meeting, RICHARD A. FINGER, JR. admitted that:  
11 (1) he had incurred significant trading losses in S.K.'s account, (2) the account value in the  
12 clearing firm account statements were, in fact, accurate, and (3) the account statements he had  
13 sent to S.K. were fraudulent.

14 **B.     REVIEW OF DOCUMENTS**

15           22.     During the investigation, I received documents from FINRA and the SEC,  
16 including accurate account statements from Black Diamond's clearing firm for the accounts  
17 controlled by RICHARD A. FINGER, JR., including his client accounts, Black Diamond's master  
18 account, and RICHARD A. FINGER, JR.'s personal brokerage account.

19           23.     I also received documents from RICHARD A. FINGER, JR., including copies of  
20 the emails sent from contact@blackdiamondsec.com with the fraudulent account statements  
21 attached.

22           24.     In comparing these account statements, it appears that RICHARD A. FINGER, JR.  
23 sent fraudulent account statements to approximately ten clients to conceal trading losses and  
24 excessive commissions in the client accounts.

25           25.     During the investigation, I received copies of a personal joint checking account for  
26 RICHARD A. FINGER, JR. at Bank of America, account number ending in 6575. A review of  
27 the account revealed there were wire transfers made into the account on April 20, 2011, in the  
28 amount of \$200,000; on June 15, 2011, in the amount of \$175,000; on June 30, 2011, in the

1 amount of \$100,000; and on July 5, 2011, in the amount \$100,800. The investigation has revealed  
2 that these transfers were made up by the commissions RICHARD A. FINGER, JR. charged his  
3 Black Diamond clients.

4 26. These wire transfers into RICHARD A. FINGER, JR.'s personal Bank of America  
5 account correspond directly to wire transfers out of RICHARD A. FINGER, JR.'s personal  
6 brokerage account at Black Diamond's clearing firm. RICHARD A. FINGER, JR. transferred a  
7 percentage of this money from his personal bank account to Black Diamond's business bank  
8 account to pay for the operation of the business. RICHARD A. FINGER, JR. also used hundreds  
9 of thousands of these ill-gotten gains to pay for various personal expenses including credit card  
10 bills, gas, clothing, food, and entertainment.

11 27. During the investigation, I received copies of a business checking account for  
12 Black Diamond Capital Management at Bank of America, account number ending in 8407. This  
13 account showed transfers of funds from the above noted personal account. This account was used  
14 to pay for business expenses such as payroll, fees and taxes.

15 **C. INTERVIEW OF FINGER**

16 28. On September 6, 2011, I interviewed RICHARD A. FINGER, JR.. During the  
17 interview, RICHARD A. FINGER, JR. admitted to engaging in a wide-ranging scheme to defraud  
18 his clients by covering up significant trading losses in their accounts. In particular, RICHARD A.  
19 FINGER, JR. admitted to, among other things:

20 a. making oral misrepresentations to J.M.S. concerning the value of J.M.S.'s  
21 account at the Seattle-based broker-dealer where RICHARD A. FINGER, JR. previously worked;

22 b. giving J.M.S. a fraudulent spreadsheet which falsely showed that in or  
23 about February 2011, J.M.S.'s account was worth approximately \$1.2 million;

24 c. misrepresenting to at least three clients the true value of the accounts being  
25 transferred from the Seattle-based broker-dealer to Black Diamond;

26 d. causing significant trading losses in his Black Diamond client accounts;


27 e. creating an independent email address, contact@blackdiamondsec.com, for  
28 the purpose of sending his clients fraudulent account statements;

1 f. from in or about March 2011, to in or about August 2011, sending monthly  
2 fraudulent account statements to approximately ten clients, including J.M.S., E.H., and S.K. to  
3 conceal the growing trading losses in the client accounts; and

4 g. using approximately \$300,000 to \$400,000 in commissions for his personal  
5 use during the period when he was sending his clients fraudulent account statements.

6 **CONCLUSION**

7 29. The above facts are true and correct to the best of my knowledge and belief. Based  
8 on the above, I believe there is probable cause to believe that RICHARD A. FINGER, JR. has  
9 committed acts in violation of Title 18, United States Code, Sections 1343 and 2 as alleged in this  
10 Complaint and Affidavit.

11  
12   
13 MARK J. NAKATSU  
14 Special Agent  
15 Federal Bureau of Investigation

16 Based on the Complaint and Affidavit sworn to before me, and subscribed in my presence,  
17 the Court hereby finds that there is probable cause to believe the defendant committed the offense  
18 set forth in the Complaint.

19 Dated this 8 day of September, 2011.

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21   
22 MARY ALICE THEILER  
23 United States Magistrate Judge  
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