

CRIMINAL COURT OF THE CITY OF NEW YORK  
NEW YORK COUNTY

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THE PEOPLE OF THE STATE OF NEW YORK

-vs-

**FELONY COMPLAINT**  
(AAG Felice Sontupe 212-416-6179)

JAMES P. CONNELLY JR.,

DOB: 03/15/1963

Defendant.

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STATE OF NEW YORK    )  
                                  )  
COUNTY OF NEW YORK )

Confidential Investigator John McManus, Shield Number 103, of the Criminal Investigations Bureau of the New York State Attorney General’s Office (“OAG”), being duly sworn, deposes and says that between on or about August 21, 2003 and on or about September 16, 2003, at the offices of Fred Alger & Company, Inc., in the County of New York and elsewhere, the defendant committed the offense of:

**TAMPERING WITH PHYSICAL EVIDENCE**, in violation of Penal Law § 215.40(2), a Class E Felony;

in that the defendant,

believing that certain physical evidence was about to be produced and used in an official proceeding and a prospective official proceeding, and intending to prevent such production and use, suppressed it by an act of concealment, alteration and destruction, and by employing force, intimidation, and deception against another person.

Defendant committed the crime as follows:

Deponent states that he is informed by Assistant Attorney General Marc Minor that on August 20, 2003, pursuant to General Business Law § 352, the OAG served a Subpoena Duces Tecum (“Subpoena”) on Fred Alger & Company, Inc. (“Alger”). I have reviewed said Subpoena. The Subpoena demanded information relating to the identity of clients that had engaged in “late trading” with Alger and production of all documents, including e-mails, relating to late trading at Alger. The Subpoena defined late trading as “orders, instructions or communications to purchase, sell (redeem) or exchange Mutual Fund shares received after 4:00 p.m. (Eastern Standard Time) on a given day which receive that day’s net asset value per share (as opposed to the next day’s net asset value per share).” The Subpoena was returnable September 3, 2003.

I am informed by an Alger employee, who at all times herein reported to defendant (hereinafter referred to as “Employee # 1”), that on or about August 22, 2003, she informed defendant that she had received an e-mail on that date from another Alger employee inquiring whether an Alger client known as “Veras” could continue to place trades with Alger as late as 4:30 p.m..

I am informed by an attorney at a law firm known to the OAG that serves as outside counsel to Alger (hereinafter referred to as “outside counsel”), that on September 3, 2003, defendant, outside counsel, and others discussed Alger’s reply to the Subpoena, and that defendant stated in sum and substance that Alger did not have any clients engaged in late trading as defined in the Subpoena.

I am informed by Employee # 1 that on September 4, 2003, defendant directed her to delete certain e-mails called for by the Subpoena. I am further informed by Employee # 1 that defendant directed her to instruct three other Alger employees who reported to defendant to delete said e-

mails.

I am informed by outside counsel that on September 12, 2003, in reliance on defendant's representations, he sent Alger's reply to the Subpoena to the OAG. That reply, which I have examined, stated: "Alger has no reason to believe that Late Trading occurred in its fund portfolios." Moreover, relying on defendant's representations, Alger produced no documents related to late trading.

I am further informed by outside counsel that on September 15, 2003, defendant again stated to outside counsel that Alger did not have any clients with which it engaged in late trading.

I am informed by a second Alger employee, who at all times herein reported to defendant (hereinafter Employee # 2), that on September 16, 2003, defendant directed Employee # 2 to tell outside counsel that defendant did not learn about late trading by Veras until September 16, 2003.

I am further informed by outside counsel that on or after September 16, 2003, outside counsel first received documents from Alger pertaining to late trading by Veras.

FALSE STATEMENTS MADE HEREIN  
ARE PUNISHABLE AS A CLASS A  
MISDEMEANOR PURSUANT TO  
SECTION 210.45 OF THE PENAL LAW

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JOHN MCMANUS  
NEW YORK STATE ATTORNEY GENERAL'S OFFICE