

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

FORT MYERS DIVISION

CASE NO. _____

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ANTHONY SIROTKA,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Securities and Exchange Commission alleges as follows:

I. Introduction

1. This case concerns a multi-year accounting fraud orchestrated by senior executives of FTE Networks, Inc. (“FTE” or “the Company”), a Naples-based, publicly traded company that provided networking infrastructure to the technology and telecommunications industries. Michael Palleschi, FTE’s Chief Executive Officer, David Lethem, FTE’s Chief Financial Officer, and Defendant Anthony Sirotko, FTE’s Chief Administrative Officer and President, engaged in a scheme to fraudulently inflate FTE’s revenues and paint a false picture of the Company’s finances.

2. From early 2016 through November 2018, Sirotko worked with

Palleschi and Lethem to essentially invent approximately \$12.5 million of revenue and related accounts receivable from purportedly completed construction projects that had not yet been billed and from contracts for projects that purportedly had been completed and billed but not yet paid. In fact, FTE had not performed the underlying work, and the revenue was fictitious.

3. As part of the scheme, Sirotko helped Palleschi and Lethem doctor and forge documents and signatures to mislead FTE's auditor, certain FTE board members and employees, and FTE's shareholders. For example, Sirotko, Palleschi, and Lethem jointly drafted and provided a memorandum to FTE's auditor that explained that the unbilled revenues and receivables were real work but could not be billed due to contractual terms with FTE's customer. The memorandum was entirely false.

4. By late 2018, the scheme and other fraudulent actions by Palleschi and Lethem came to light when an FTE employee provided information to FTE's only independent director about the true nature of FTE's finances. FTE launched an internal investigation in March 2019.

5. The investigation ultimately led to FTE in May 2020 restating various quarterly and annual financial statements for 2016, 2017, and 2018. The restated financial statements showed FTE had overstated its revenues in some quarterly and annual periods in 2017 and 2018 by as much as 108

percent.

6. By engaging in the conduct described herein, Sirotko directly violated or is liable for aiding and abetting numerous anti-fraud, accounting, and books-and-records provisions of the federal securities laws as described in more detail below. The Commission seeks injunctive relief, a civil penalty, and an officer-and-director bar against Sirotko.

II. Defendant and Related Individuals and Entity

7. **Sirotko**, 55, is a resident of New York, New York. Before November 2017, Sirotko served as FTE's Chief Business Development Officer. In November 2017, Sirotko became FTE's Chief Administrative Officer and President. On January 19, 2019, he became the interim CEO of FTE. FTE later placed him on administrative leave because of the conduct described in this Complaint, and Sirotko resigned from FTE on October 2, 2019.

8. **Palleschi**, 46, is a resident of Naples, Florida. Palleschi was FTE's CEO and Chairman of the Board from January 2014 until January 19, 2019, when FTE placed him on unpaid leave. On May 11, 2019, Palleschi resigned from his positions at FTE.

9. **Lethem**, 63, is a resident of Fort Myers, Florida. During the events alleged in this Complaint, Lethem was FTE's CFO and reported to Palleschi. He resigned from FTE on March 11, 2019.

10. **FTE** is a Nevada corporation currently headquartered in New

York, New York and previously headquartered in Naples, Florida. FTE's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78l(b)] and traded on the New York Stock Exchange under the ticker symbol FTNW from December 14, 2017 until December 17, 2019. Prior to that, FTE's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act [15 U.S.C. § 78l(g)] and traded on OTC Pink as FTNW. From September 12, 2014 until May 16, 2015, the Commission revoked the registration of FTE's shares pursuant to Section 12(j) of the Exchange Act [15 U.S.C. § 78l(j)] for failure to file periodic reports with the Commission for more than two years. Currently, FTE's common stock is not publicly traded on any exchange nor quoted on OTC Pink. However its common stock remains registered pursuant to Section 12(g) of the Exchange Act.

III. Jurisdiction and Venue

11. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act of 1933 [15 U.S.C. §§ 77t(b), 77t(d) and 77v(a)] ("Securities Act"), and Sections 21(d), 21(e) and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa(a)].

12. This Court has personal jurisdiction over Sirotko and venue in this District is proper under Section 22 of the Securities Act and Section 27 of the Exchange Act because FTE's headquarters were located in this District during

the events in question and Sirotko frequently visited and worked at FTE's headquarters where he attended board of director meetings, and met with Palleschi and investors, among others. Sirotko also regularly exchanged emails and took part in telephone calls with FTE officers, directors, and employees located at FTE's headquarters or otherwise in this District. Furthermore, Sirotko took the actions described in this Complaint and committed the violations alleged in this Complaint on behalf of FTE and while working as an officer of FTE.

13. Sirotko, directly and indirectly, made use of means or instruments of transportation or communication in interstate commerce, or of the mails, or of any facility of a national securities exchange in connection with the acts, practices, and courses of business alleged herein.

IV. Facts

A. Background

14. The federal securities laws required FTE, as a registered company, to file periodic reports with the Commission, including annual (Forms 10-K) and quarterly (Forms 10-Q) reports. FTE was required, among other things, to include financial statements in its quarterly and annual reports that accurately and fairly reflected FTE's financial condition. Those financial statements had to comply with Generally Accepted Accounting Principles ("GAAP"), also known as the Accounting Standards Codification ("ASC"). The

Company's annual financial statements also had to be audited. Once filed, FTE's periodic reports and accompanying financial statements became available to the investing public.

15. Sirotko knew FTE filed financial statements in its quarterly and annual reports. He also knew FTE's financial statements needed to be truthful, accurate, and prepared in accordance with GAAP.

B. The Fraudulent Revenue and Receivables Scheme

16. From early 2016 through late 2018, FTE, with the participation of Sirotko, recognized approximately \$12.5 million of revenue and related accounts receivable from purportedly completed construction projects for which the Company had not yet billed ("Unbilled Work") and from contracts for projects that the Company allegedly had completed and billed for, but which had not yet been paid ("Receivables"). In fact, FTE had not performed the claimed work, and the revenue and receivables were wholly fictitious.

17. Of the \$12.5 million, \$10 million was for the Unbilled Work, which FTE began to recognize in 2016 to boost its poor performance. For the year ended December 31, 2016, FTE's recognition of \$5.8 million of the Unbilled Work in its financial statements resulted in the Company overstating its revenue by 108 percent and its accounts receivable by 477 percent. Without the Unbilled Work, FTE's auditor would have likely called into question whether FTE was a "going concern"—in other words, whether FTE was

financially stable enough to meet its obligations and continue its business for the foreseeable future.

18. Throughout 2017 and 2018, with Sirotko's participation and knowledge, FTE continued to add more fictitious revenue to the Unbilled Work balance, entirely for purported work done for one particular customer ("Customer A"). In 2017, FTE added another \$4.2 million in Unbilled Work. Palleschi and Lethem did this even though Customer A had informed FTE in early 2017 that it would no longer hire FTE to do lucrative construction projects. In fact, Palleschi told Sirotko that FTE would have a "\$5 million hole" in its revenue because Customer A would not use FTE anymore.

19. At the same time, FTE also improperly recognized an additional \$2.5 million in Receivables, predominantly comprised of construction projects for Customer A. This revenue was also wholly fictitious. After Lethem placed the Receivables on FTE's books, an FTE accounting employee reversed the revenue because it was completely unsupported—only to have Lethem overrule him and order the revenue placed back on FTE's books.

20. During FTE's periodic and year-end audits, FTE's auditor repeatedly questioned the validity of the Unbilled Work and the Receivables. In response, Palleschi, Lethem, and Sirotko provided the auditor with numerous false or doctored documents and explanations to justify the fraudulently recognized revenue.

21. Beginning in early 2017, FTE employees, at the direction of Palleschi and Lethem, provided FTE's auditor with fake spreadsheets that were supposed to provide support for the \$5.8 million in Unbilled Work for 2016. Palleschi and Lethem also had numerous conversations with the auditor to sell the validity of the Unbilled Work for the Company's 2016 year-end audit.

22. The Unbilled Work continued to be at the forefront of the auditor's questions and generated conflict between FTE and the auditor each quarter after that. Palleschi and Lethem continued to have FTE provide false materials to the auditor, all the while knowing the Unbilled Work was false and recognizing revenue from it was illegitimate.

23. By FTE's 2018 annual audit, the Unbilled Work balance had grown to approximately \$10 million. Internally, FTE's accounting personnel voiced concerns about the validity of the Unbilled Work and objected to being involved in providing the materials to the auditor to justify it. At that point, Palleschi and Lethem looped in Sirotka, who claimed that he found a "treasure trove" of Unbilled Work from Customer A that FTE could provide to the auditor. This prompted Palleschi to crack that without the "treasure trove," FTE would go out of business.

24. Together, the three provided, or directed others to provide, additional support for the Unbilled Work, which included false invoices and purchase orders from significantly smaller construction jobs that they

represented were legitimate invoices and purchase orders from Customer A. The three also drafted a memorandum summarizing FTE's relationship with Customer A, which provided a false explanation of why FTE was unable to bill Customer A under the terms of its contract.

25. As for the Receivables, Palleschi, Lethem, and Sirotko together doctored an unrelated email from an employee of Customer A into an email purporting to confirm the validity of the Receivables. Sirotko and Lethem then each sent the doctored email to FTE's auditor to support FTE claiming the Receivables as revenue.

26. Palleschi, Lethem, and Sirotko knew that the Unbilled Work and the Receivables were not real sources of revenue and accounts receivable, that they had caused FTE to improperly recognize revenue, and that the documents and materials they had FTE provide to FTE's auditor were false. They therefore also knew FTE's public filings and financial statements were materially inaccurate because they included the Unbilled Work and the Receivables.

E. FTE's Restatement

27. In May 2020, following its internal investigation, FTE filed its Form 10-K for the year ended December 31, 2018 that restated financial statements for the yearly and quarterly periods for 2016, 2017, and 2018 (the "Restatement").

28. As a result of the revenue transactions described in this Complaint, the Restatement reduced revenue and accounts receivable for the year ended December 31, 2016 by \$5.8 million, representing reductions of 47 percent and 83 percent, respectively, from originally reported amounts. Additionally, as a result of the revenue transactions for the year ended December 31, 2017 and the quarterly periods ended March 31, June 30 and September 30, 2018, accounts receivable were reduced by between 16 percent and 54 percent from originally reported amounts.

V. Claims For Relief

COUNT I

Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(a)

29. The Commission realleges Paragraphs 1 through 28 and incorporates them by reference herein.

30. From early 2016 through November 2018, Sirotko, in connection with the purchase and sale of securities, by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of a national securities exchange, directly or indirectly, knowingly or severely recklessly, used and employed devices, schemes and artifices to defraud.

31. By reason of the foregoing, Sirotko violated, and, unless enjoined, is reasonably likely to continue to violate, Section 10(b) of the Exchange Act

[15 U.S.C. § 78j(b)] and Rule 10b-5(a) [17 CFR § 240.10b-5(a)] thereunder.

COUNT II

Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(b)

32. The Commission realleges Paragraphs 1 through 28 and incorporates them by reference herein.

33. From early 2016 through November 2018, Palleschi, and Lethem, in connection with the purchase and sale of securities, by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of a national securities exchange, directly or indirectly and knowingly or severely recklessly made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

34. Sirotko knowingly or recklessly provided substantial assistance to Palleschi and Lethem in their violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) [17 CFR § 240.10b-5(b)] thereunder.

35. By reason of the foregoing, Sirotko, directly or indirectly violated, and, unless enjoined, is reasonably likely to continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) [17 CFR § 240.10b-5(b)] thereunder.

COUNT III

Violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5(c)

36. The Commission realleges Paragraphs 1 through 28 and incorporates them by reference herein.

37. From early 2016 through November 2018, Sirotko, in connection with the purchase and sale of securities, by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of a national securities exchange, directly or indirectly, knowingly or severely recklessly, engaged in acts, practices and courses of business which operated as a fraud and deceit upon any person.

38. By reason of the foregoing, Sirotko violated, and, unless enjoined, is reasonably likely to continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(c) [17 CFR § 240.10b-5(c)] thereunder.

COUNT IV

Violations of Section 17(a)(1) of the Securities Act

39. The Commission realleges Paragraphs 1 through 28 and incorporates them by reference herein.

40. From early 2016 through November 2018, Sirotko, in the offer and sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, directly or

indirectly, knowingly or severely recklessly, employed devices, schemes and artifices to defraud.

41. By reason of the foregoing, Sirotko violated, and, unless enjoined, is reasonably likely to continue to violate, Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT V

Violations of Section 17(a)(3) of the Securities Act

42. The Commission realleges Paragraphs 1 through 28 and incorporates them by reference herein.

43. From early 2016 through November 2018, Sirotko, in the offer and sale of securities, by the use of means or instruments of transportation or communication in interstate commerce, or by use of the mails, directly or indirectly, negligently engaged in transactions, practices, and courses of business that operated as a fraud or deceit upon purchasers of securities.

44. By reason of the foregoing, Sirotko violated, and, unless enjoined, is reasonably likely to continue to violate, Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)].

COUNT VI

Aiding and Abetting FTE's Violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, 13a-11 and 13a-13

45. The Commission realleges Paragraphs 1 through 28 and

incorporates them by reference.

46. From early 2016 through November 2018, FTE failed to file, in accordance with such rules and regulations as the Commission prescribes as necessary or appropriate, such information and documents as the Commission requires to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l], or such annual, quarterly, or other reports as the Commission prescribes, or failed to include, in addition to the information expressly required to be included in any statement or report filed pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] such further material information, if any, as may have been necessary to make the required statements, in the light of the circumstances under which they were made, not misleading.

47. Sirotka knowingly or recklessly provided substantial assistance to FTE in its violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 [17 CFR § 240.12b-20], 13a-1 [17 CFR § 240.13a-1], 13a-11 [17 CFR § 240.13a-11] and 13a-13 [17 CFR § 240.13a-13] thereunder.

48. By reason of the foregoing, Sirotka aided and abetted FTE's violations of the foregoing statutes and rules, and, unless enjoined, is reasonably likely to continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20 [17 CFR § 240.12b-20],

13a-1 [17 CFR § 240.13a-1], 13a-11 [17 CFR § 240.13a-11] and 13a-13 [17 CFR § 240.13a-13] thereunder.

COUNT VII

Aiding and Abetting FTE's Violations of Section 13(b)(2)(A) of the Exchange Act

49. The Commission realleges Paragraphs 1 through 28 and incorporates them by reference.

50. From early 2016 through November 2018, FTE failed to make and keep books, records and accounts that in reasonable detail accurately and fairly reflected its transactions and disposition of assets.

51. Sirotko knowingly or recklessly provided substantial assistance to FTE in its violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

52. By reason of the foregoing, Sirotko aided and abetted FTE's violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] and, unless enjoined, is reasonably likely to continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

COUNT VIII

Aiding and Abetting FTE's Violations of Section 13(b)(2)(B) of the Exchange Act

53. The Commission realleges Paragraphs 1 through 28 and incorporates them by reference.

54. From early 2016 through November 2018, FTE failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that: transactions were executed in accordance with management's general or specific authorization; transactions were recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and to maintain accountability for assets; access to assets were permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

55. Sirotko knowingly or recklessly provided substantial assistance to FTE in its violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

56. By reason of the foregoing, Sirotko aided and abetted FTE's violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] and, unless enjoined, is reasonably likely to continue to aid and abet violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

COUNT IX

Violations of Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-1

57. The Commission realleges Paragraphs 1 through 28 and

incorporates them by reference.

58. From early 2016 through November 2018, Sirotko circumvented and/or failed to implement a system of internal accounting controls and knowingly falsified or caused to be falsified FTE's books, records and accounts as those terms are used in Section 13(b)(2) of the Exchange Act [15 U.S.C. § 78m(b)(2)].

59. By reason of the foregoing, Sirotko violated, and, unless enjoined, is reasonably likely to continue to violate, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 [17 CFR § 240.13b2-1] thereunder.

COUNT X

Violations of Rule 13b2-2 of the Exchange Act

60. The Commission realleges Paragraphs 1 through 28 and incorporates them by reference.

61. From early 2016 through November 2018, Sirotko, directly or indirectly, made and caused to be made, materially false and misleading statements, and omitted to state, and caused others to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with audits and reviews of financial statements and the preparation and filing of documents and reports required to be filed with the Commission.

62. By reason of the foregoing, Sirotko violated, and, unless enjoined, is reasonably likely to continue to violate, Exchange Act Rule 13b2-2 [17 CFR § 240.13b2-2].

VI. Relief Requested

WHEREFORE, the Commission respectfully requests the Court find that the Defendant committed the violations of the federal securities laws alleged in this Complaint and:

A. Permanent Injunction

Issue a Permanent Injunction, enjoining Sirotko, his agents, servants, employees, attorneys, and representatives, and all persons in active concert or participation with them, and each of them, from violating the provisions of the securities laws as alleged against Sirotko in this Complaint.

B. Civil Penalty

Issue an Order directing Sirotko to pay a civil money penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

C. Officer And Director Bar

Issue an Order barring Sirotko from serving as an officer or director of any public company pursuant to Section 21(d) of the Exchange Act and Section 305(b)(5) of the Sarbanes-Oxley Act.

D. Further Relief

Granting such other and further relief as this Court may deem just and appropriate.

E. Retention Of Jurisdiction

Further, the Commission respectfully requests that the Court retain jurisdiction over this action and over the Defendant in order to implement and carry out the terms of all orders and decrees that may hereby be entered, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VII. Jury Trial Demand

The Commission hereby demands a trial by jury on any and all issues in this action so triable.

Respectfully submitted,

June 2, 2022

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