

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	No. CR 09-60167-HJ
)	
Plaintiff,)	<u>INDICTMENT</u>
)	
v.)	[18 U.S.C. §§ 371, 1014, 1343,
)	1344, and 2]
TYLER FITZSIMONS,)	
SHANNON EGELAND,)	Conspiracy to Commit Bank Fraud
JEREMY KENDALL,)	
GARRET TOWNE,)	False Statement on Loan
SHAUN LITTLE,)	Application
DEL BARBER, JR.,)	
JEFFREY SPRAGUE,)	Wire Fraud
BARBARA HOTCHKISS, and)	
KEVIN PALOTAY)	Bank Fraud
)	
Defendants.)	

THE GRAND JURY CHARGES:

INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

1. TYLER FITZSIMONS, hereinafter referred to as FITZSIMONS, was president of Desert Sun Development, Inc., (“DSD”), a commercial and residential development and construction company located in Bend, Oregon.
2. SHANNON EGELAND, hereinafter referred to as EGELAND, was vice president and secretary of DSD.
3. JEREMY KENDALL, hereinafter referred to as KENDALL, was the office manager at DSD and took instruction from FITZSIMONS. At the direction of FITZSIMONS, KENDALL submitted documents to lending institutions with which DSD worked, including, among other things, residential loan applications, draw requests, contracts, invoices, and copies of checks.
4. GARRET TOWNE, hereinafter referred to as TOWNE, worked at DSD in various capacities, including marketing director, real estate agent, and employee house program promoter.
5. SHAUN LITTLE, herein after referred to as LITTLE, was a mortgage broker in Bend, Oregon.
6. DEL BARBER, JR., herein after referred to as BARBER, was a mortgage broker in Bend, Oregon.
7. JEFFREY SPRAGUE, hereinafter referred to as SPRAGUE, was a loan officer in Bend, Oregon.

8. BARBARA HOTCHKISS, hereinafter referred to as HOTCHKISS, was a loan processor and worked with SPRAGUE in Bend, Oregon.

9. KEVIN PALOTAY, hereinafter referred to as PALOTAY, partially owned and operated a building supply company in Bend, Oregon.

10. Desert Sun Development offered a real estate investment program to its employees, their friends, and their family. FITZSIMONS, EGELAND, KENDALL, and TOWNE were the primary points of contact at DSD for the real estate investment program. Those participating in the program could take advantage of the burgeoning real estate market in Central Oregon by either buying homes DSD had previously built or hiring DSD to build them a new home at cost. If program participants purchased a previously built home, DSD would assist them with their mortgage payments until the home was sold. At that time, participants would split any profits, less any costs and expenses paid by DSD, with DSD. If program participants opted for a new home, they would purchase lots from DSD's holding company, Desert Sun Holdings, LLC, ("DSH"), and use DSD as their general contractor. Desert Sun Development agreed to build the house at cost, and the program participants agreed to split any profits, less any costs and expenses paid by DSD, with DSD. If the participant chose new construction, DSD agreed to pay all interest payments on the construction loan during construction but told the participants that they could deduct those payments on the participants' taxes. Once construction began, KENDALL submitted draw requests to the lending institution for costs and expenses allegedly occurred in construction of the homes. Desert Sun Development assisted the participants in creating and submitting loan applications and related documents to secure funding for the purchase and construction of the participants' respective lots and homes.

11. West Coast Bank, Community First Bank, Columbia River Bank, Wells Fargo Bank, National City Mortgage Company, SunTrust Mortgage, Inc., and Countrywide Bank, FSB, were financial institutions for purposes of 18 U.S.C. § 1344. West Coast Bank, Community First Bank, Columbia River Bank, Wells Fargo Bank, Countrywide Bank, FSB, were financial institutions for purposes of 18 U.S.C. § 1014.

COUNT ONE

(Conspiracy to Commit Bank Fraud)

OBJECTS OF THE CONSPIRACY

12. Paragraphs 1-11 of the Introductory Allegations are incorporated herein.

13. Beginning in or about January 2003, and continuing through July 2008, in the District of Oregon and elsewhere, defendants FITZSIMONS, EGELAND, KENDALL, TOWNE, LITTLE, BARBER, SPRAGUE, HOTCHKISS, PALOTAY, and others known and unknown to the grand jury, knowingly and willfully conspired, combined, confederated, and agreed together and with each other to commit bank fraud, in violation of 18 U.S.C. § 1344, loan application fraud, in violation of 18 U.S.C. § 1014, and wire fraud, in violation of 18 U.S.C. § 1343.

MANNER AND MEANS AND SCHEME TO DEFRAUD

14. It was part of the manner and means and scheme to defraud that defendants FITZSIMONS, EGELAND, KENDALL, TOWNE, LITTLE, BARBER, SPRAGUE, HOTCHKISS, PALOTAY, and others, known and unknown to the grand jury:

A. Created and submitted and caused the creation and submission of fraudulent home loan applications on behalf of borrowers to lending institutions;

B. Caused large amounts of money to be deposited into borrowers' checking accounts to temporarily inflate the account balances, thereby causing lending institutions to generate bogus verifications of deposit, also referred to as "VODs," that were sent to other lending institutions;

C. Created and submitted and caused the creation and submission of false verification documents, including letters explaining employment, large or recent deposits, and bonuses, that were sent to lending institutions;

D. Forged and caused borrowers' signatures to be forged, including scanned signatures, on documents submitted to lending institutions;

E. Created and submitted and caused the creation and submission of fraudulent invoices and draw requests to lending institutions;

F. Caused the creation of false settlement statements, also referred to as "HUD-1s;" and

G. Based on the fraudulent home loan applications, VODs, verification documents, forgeries, draw requests, and HUD-1s, lending institutions approved loans and advanced loan funds. While DSD constructed some homes, many of those home were foreclosed on by lending institutions due to the borrowers' inability to pay the mortgages. Some homes were only partially constructed, and some homes were never built. As a result of defendants' conduct, various lending institutions loaned more than \$16 million in residential loans and suffered a loss exceeding \$10 million.

OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY

15. In furtherance of the conspiracy and to effect the object of the conspiracy, the following overt acts, among others, were committed in the District of Oregon and elsewhere:

16. On or about February 5, 2007, EGELAND caused \$150,000 from DSD's bank account to be transferred via wire to his personal checking account.

17. On or about February 28, 2007, EGELAND signed a fraudulent home loan application that SPRAGUE and HOTCHKISS prepared and submitted to West Coast Bank.

18. On or about July 11, 2007, KENDALL submitted a fraudulent draw request to West Coast Bank.

19. On or about July 17, 2007, PALOTAY caused the creation of a fraudulent invoice for building materials that was submitted to West Coast Bank.

20. On or about March 28, 2007, T.L., acting at the direction of EGELAND, deposited \$26,000 he received from EGELAND into his personal checking account.

21. On or about March 21, 2007, and again on or about March 22, 2007, TOWNE inserted scanned signatures of T.L. on documents that were submitted to West Coast Bank.

22. On or about May 3, 2007, T.L. signed a fraudulent home loan application that SPRAGUE and HOTCHKISS prepared and submitted to West Coast Bank.

23. On or about May 9, 2007, KENDALL submitted a fraudulent draw request to West Coast Bank.

24. On or about April 25, 2007, N.D., acting at the direction of FITZSIMONS and KENDALL, deposited approximately \$8,650 he received from DSD into his personal checking account.

25. On or about May 4, 2007, N.D. signed a fraudulent home loan application that SPRAGUE and HOTCHKISS prepared and submitted to West Coast Bank.
26. On or about May 9, 2007, KENDALL submitted a fraudulent draw request to West Coast Bank.
27. On or about March 26, 2007, SPRAGUE and HOTCHKISS prepared and submitted a fraudulent home loan application to West Coast Bank.
28. On or about March 29, 2007, K.W., acting at the direction of EGELAND, deposited \$26,000 he received from EGELAND into his personal checking account.
29. On or about April 25, 2007, D.C., acting at the direction of FITZSIMONS and KENDALL, deposited approximately \$8,100 he received from DSD into his personal checking account.
30. On or about May 3, 2007, D.C. signed a fraudulent home loan application that SPRAGUE and HOTCHKISS prepared and submitted to West Coast Bank.
31. On or about May 9, 200~~7~~⁷, KENDALL submitted a fraudulent draw request to West Coast Bank.
32. On or about March 22, 2007, and again on or about March 30, 2007, TOWNE inserted scanned signatures of S.T. on documents that were submitted to West Coast Bank.
33. On or about May 3, 2007, S.T. signed a fraudulent home loan application that SPRAGUE and HOTCHKISS prepared and submitted to West Coast Bank.
34. On or about March 21, 2007, and again on or about March 22, 2007, TOWNE inserted scanned signatures of R.M. on documents that were submitted to West Coast Bank.

35. On or about May 3, 2007, R.M. signed a fraudulent home loan application that SPRAGUE and HOTCHKISS prepared and submitted to West Coast Bank.
36. On or about May 9, 2007, KENDALL submitted a fraudulent draw request to West Coast Bank.
37. On or about September 5, 2006, and again on or about February 2, 2007, TOWNE forged M.T.'s signature on draw requests that were submitted to Community First Bank.
38. On or about August 31, 2007, M.T., acting at the direction of TOWNE, signed and caused the submission of a fraudulent home loan application to Wells Fargo Bank.
39. On or about October 10, 2006, A.E., acting at the direction of FITZSIMONS and KENDALL, deposited \$14,000 from DSD into A.E.'s personal checking account.
40. On or about November 11, 2006, KENDALL created a false letter of employment for A.E.
41. On or about December 22, 2006, LITTLE prepared and caused the preparation of a fraudulent home loan application and caused the submission of that fraudulent home loan application to National City Mortgage Company.
42. On or about May 17, 2007, BARBER submitted and caused the submission of a fraudulent home loan application that he prepared and caused the preparation of to Countrywide Bank, FSB.
43. On or about May 29, 2007, M.W., acting at the direction of FITZSIMONS and KENDALL, deposited \$47,000 from DSD into his joint checking account.
44. On or about May 30, 2007, KENDALL wrote a false letter explaining that the \$47,000 deposit into M.W.'s checking account was a semi-annual bonus from DSD.

All in violation of 18 U.S.C. § 371.

COUNTS TWO THROUGH NINE

(Bank Fraud)

45. Paragraphs 1-11 of the Introductory Allegations and paragraph 14 of the Manner and Means and Scheme to Defraud of Count One are incorporated herein.

46. On or about the dates set forth in each count below, in the District of Oregon and elsewhere, defendants FITZSIMONS, EGELAND, KENDALL, TOWNE, LITTLE, BARBER, SPRAGUE, HOTCHKISS, and PALOTAY, knowingly executed and attempted to execute the scheme and artifice to defraud as to material matters, as described in paragraph 14 of the Manner and Means and Scheme to Defraud of Count One, and to obtain monies and funds owned and under the custody and control of West Coast Bank, Community First Bank, Columbia River Bank, Wells Fargo Bank, National City Mortgage Company, and Countrywide Bank, FSB, by means of material false and fraudulent pretenses, representations, promises, and omissions, as described below:

COUNT	DEFENDANTS	DESCRIPTION OF EXECUTIONS
2	EGELAND, SPRAGUE, and HOTCHKISS	On or about February 28, 2007, EGELAND signed a fraudulent home loan application that SPRAGUE and HOTCHKISS prepared and submitted to West Coast Bank.
3	FITZSIMONS and PALOTAY	On or about July 17, 2007, PALOTAY caused the creation of a fraudulent invoice for building materials that was submitted to West Coast Bank.
4	TOWNE	On or about March 21, 2007, and again on or about March 30, 2007, TOWNE inserted scanned signatures of S.T. on documents that were submitted to West Coast Bank.

5	SPRAGUE and HOTCHKISS	On or about May 3, 2007, S.T. signed a fraudulent home loan application that SPRAGUE and HOTCHKISS prepared and submitted to West Coast Bank.
6	FITZSIMONS and KENDALL	On or about May 9, 2007, a fraudulent draw request was submitted to West Coast Bank.
7	TOWNE	On or about August 31, 2007, M.T., acting at the direction of TOWNE, signed and caused the submission of a fraudulent home application to Wells Fargo Bank.
8	LITTLE	On or about December 22, 2006, LITTLE prepared and caused the preparation of a fraudulent home loan application and caused the submission of that fraudulent application to National City Mortgage Company.
9	BARBER	On or about May 17, 2007, BARBER submitted and caused the submission of a fraudulent home loan application that he prepared and caused the preparation of to Countrywide Bank, FSB.

All in violation of 18 U.S.C. §§ 1344 and 2.

COUNTS TEN THROUGH FOURTEEN

(False Statement on Loan Application)

47. Paragraphs 1-11 of the Introductory Allegations of Count One and paragraph 14 of the Manner and Means and Scheme to Defraud of Count One.

48. On or about the dates set forth below, in the District of Oregon, defendants, as set forth below, knowingly made false statements and reports for the purpose of influencing the action of the FDIC financial institutions, as set forth in each count below, in connection with an application, advance, commitment, and loan, and any change or extension of any of the same, in that defendants, as set forth below, knowingly caused the submission of fraudulent home loan

applications, VODs, verification documents, bogus invoices, and draw requests.

COUNT	DEFENDANTS	SUBMISSION
10	EGELAND, SPRAGUE, and HOTCHKISS	On or about February 28, 2007, EGELAND signed a fraudulent home loan application that SPRAGUE and HOTCHKISS prepared and submitted to West Coast Bank.
11	SPRAGUE and HOTCHKISS	On or about May 3, 2007, S.T. signed a fraudulent home loan application that SPRAGUE and HOTCHKISS prepared and submitted to West Coast Bank.
12	FITZSIMONS and KENDALL	On or about May 9, 2007, a fraudulent draw request was submitted to West Coast Bank.
13	TOWNE	On or about August 31, 2007, M.T., acting at the direction TOWNE, signed and caused the submission of a fraudulent home loan application to Wells Fargo Bank.
14	BARBER	On or about May 17, 2007, BARBER submitted and caused the submission of a fraudulent home loan application to Countrywide Bank, FSB.

All in violation of 18 U.S.C. §§ 1014 and 2.

COUNT FIFTEEN

(Wire Fraud)

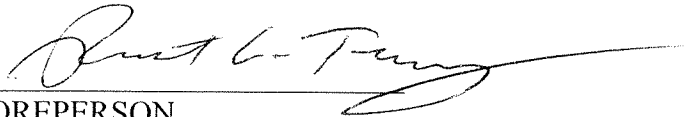
49. Paragraphs 1-11 of the Introductory Allegations and paragraph 14 of the Manner and Means and Scheme to Defraud of Count One are incorporated herein.

50. On or about August 17, 2007, in the District of Oregon and elsewhere, defendants FITZSIMONS and BARBER, for purposes of executing the material scheme to defraud, as described in Count One, and to obtain money by means of materially false and fraudulent pretenses, representations, promises, and omissions of fact, knowingly caused approximately

\$447,876 to be transferred via wire from an account at Countrywide Home Loans, Inc., in Greenwood Village, Colorado to an account at the Bank of the Cascades in Bend, Oregon.

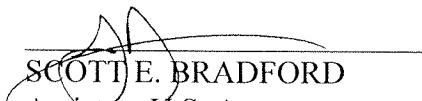
All in violation of 18 U.S.C. §§ 1343 and 2.

DATED this 19 day of November 2009.


FOREPERSON

Presented by:

KENT S. ROBINSON
Acting United States Attorney


SCOTT E. BRADFORD
Assistant U.S. Attorney