

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:05-CR-226-1H3

NO. 5:05-CR-226-2H3

UNITED STATES OF AMERICA)
)
 v.)
)
 JAMES THOMAS DAVIS)
 DAVID L. LAYTON)

I N D I C T M E N T
(SUPERSEDING)

The Grand Jury charges that:

Overview of the Scheme to Defraud

1. Defendants JAMES THOMAS DAVIS and DAVID L. LAYTON, and others both known and unknown to the Grand Jury, engaged in an extensive scheme to defraud involving residential real estate.

2. Defendant JAMES THOMAS DAVIS lived in the Raleigh, North Carolina area. DAVIS operated and promoted entities called Easy Financial Services and Eagle Investments Club, a/k/a Eagle Investors Club. These entities were purportedly in the business of arranging financing to purchase houses.

3. Defendant DAVID L. LAYTON lived in Raleigh, North Carolina. LAYTON was a general contractor who built houses in the Raleigh, North Carolina area and sold them.

4. The essence of the defendants' scheme was the use of

false and misleading statements and omissions to trick mortgage lenders into making loans to borrowers recruited by DAVIS. These statements and omissions concealed numerous important facts about these loan transactions from the mortgage lenders, including: (a) the true role of the borrower in the transaction, including the borrower's relationship to DAVIS and the intended use of the house being purchased in the transaction; (b) the true value of the house being purchased; (c) the true amount of money received by LAYTON, as the seller of the house, as part of the transaction; (d) the true amount of money received by the borrower as part of the transaction; (e) the true amount of money received by DAVIS as part of the transaction; and (f) the true role of DAVIS in arranging the transaction.

Statutory Allegations

COUNT ONE: Conspiracy (18 U.S.C. § 371)

1. Beginning in or about June, 2004, and continuing through the date of this Indictment, in the Eastern District of North Carolina and elsewhere, defendants JAMES THOMAS DAVIS and DAVID L. LAYTON, and others both known and unknown to the Grand Jury, did knowingly and unlawfully combine, conspire, agree, and confederate with each other to commit offenses against the United States, specifically:

a. the making and use of false writings and documents, knowing the same to contain materially false, fictitious, and

fraudulent statements and entries, in a matter within the jurisdiction of the executive branch of the Government of the United States, in violation of Title 18, United States Code, Section 1001;

b. the use of wire communications in interstate commerce for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of materially false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1343; and

c. the use of the mail for the purpose of executing a scheme and artifice to defraud, and for obtaining money by means of materially false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1341.

Overt Acts

2. In furtherance of the conspiracy and in order to effect its unlawful objectives, DAVIS, LAYTON, and others, committed and caused to be committed overt acts in the Eastern District of North Carolina and elsewhere, including, but not limited to, the following:

a. On or about June 14, 2004, a borrower recruited by DAVIS ("Borrower 1") signed a false and misleading loan application for a house located at 5505 Simmons Road, Garner, North Carolina ("5505 Simmons Road").

b. On or about July 2, 2004, Borrower 1 and LAYTON signed a false and misleading settlement statement and addendum concerning the loan transaction for 5505 Simmons Road.

c. On or about July 6, 2004, DAVIS provided LAYTON with a receipt for \$32,300 in United States currency.

d. On or about June 8, 2005, an individual paid \$1,000 to DAVIS to become a member of DAVIS's Eagle Investors Club.

e. On or about June 24, 2005, a borrower recruited by DAVIS ("Borrower 2") signed a false and misleading loan application, certification, and affidavit for a house located at 9024 Mustard Seed Lane, Garner, North Carolina ("9024 Mustard Seed Lane").

f. On or about June 24, 200~~4~~⁵, Borrower 2 and LAYTON signed a false and misleading settlement statement concerning the loan transaction for 9024 Mustard Seed Lane.

g. On or about June 29, 2005, DAVIS prepared and signed an "Investor's Disclosure Notice" for the loan transaction for 9024 Mustard Seed Lane.

h. On or about June 29, 2005, DAVIS provided Borrower 2 with \$3,214.37 in United States currency.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO AND THREE: False Documents (18 U.S.C. §§ 1001 and 2)

On or about the dates set forth below, each date constituting a separate count of this Indictment, in the Eastern District of

North Carolina and elsewhere, defendants JAMES THOMAS DAVIS and DAVID L. LAYTON, and others both known and unknown to the Grand Jury, aiding and abetting each other, in a matter within the jurisdiction of the executive branch of the Government of the United States, that is, U.S. Department of Housing and Urban Development settlement statements, knowingly and willfully made and used false writings and documents, knowing the same to contain materially false, fictitious, and fraudulent statements and entries.

Count	Date	False Document
TWO	July 2, 2004	Settlement Statement (HUD 1) and Addendum for 5505 Simmons Road, Garner, NC loan transaction
THREE	June 24, 2005	Settlement Statement and Certification Addendum for 9024 Mustard Seed Lane, Garner, NC loan transaction

Each count in the above table constituting a separate violation of Title 18, United States Code, Sections 1001 and 2.

COUNT FOUR: Wire Fraud (18 U.S.C. §§ 1343 and 2)

On or about July 2, 2004, in the Eastern District of North Carolina and elsewhere, defendants JAMES THOMAS DAVIS and DAVID L. LAYTON, and others both known and unknown to the Grand Jury, aiding and abetting each other, having devised a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, as described in the Overview of this Indictment, did for the purpose

of executing such scheme and artifice transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures, and sounds, specifically, the wire transfer of \$279,243.41 by a mortgage lender for the sale of the house at 5505 Simmons Road, Garner, North Carolina, in violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS FIVE AND SIX: Mail Fraud (18 U.S.C. §§ 1341 and 2)

On or about the dates set forth below, each date constituting a separate count of this Indictment, within the Eastern District of North Carolina and elsewhere, defendants JAMES THOMAS DAVIS and DAVID L. LAYTON, and others both known and unknown to the Grand Jury, aiding and abetting each other, having devised a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, as described in the Overview of this Indictment, did for the purpose of executing such scheme and artifice cause the following items to be delivered by mail and commercial interstate carrier according to the direction thereon.

Count	Date	Mailing
FIVE	June 27, 2005	\$236,242.31 check and related documents sent by commercial interstate carrier to pay off LAYTON's construction loan for 9024 Mustard Seed Lane in Garner, North Carolina

Count	Date	Mailing
SIX	September 7, 2005	Documents sent by U.S. Mail to LAYTON re: construction loan for 9024 Mustard Seed Lane in Garner, North Carolina

Each count in the above table constituting a separate violation of Title 18, United States Code, Sections 1341 and 2.

FORFEITURE NOTICE

Defendants JAMES THOMAS DAVIS and DAVID L. LAYTON are given notice that, under the provisions of Title 18, United States Code, Section 981, Title 18, United States Code, Section 982, and Title 28, United States Code, Section 2461, all of his interest in all property specified herein is subject to forfeiture.

As a result of the foregoing offense in this indictment, the defendants shall forfeit to the United States (i) any and all property constituting, or derived from, any proceeds defendants obtained directly or indirectly as a result of the offenses; and (ii) any and all property used or intended to be used in any manner or part to commit and to facilitate the commission of the offenses, any and all property involved in such offenses, and any property traceable to such property.

The forfeitable property includes, but is not limited to:

- (1) real property;
- (2) personal property; and
- (3) the gross proceeds of the defendants' illegal acts.


If any of the above-described forfeitable property, as a

result of any act or omission of a defendant (a) cannot be located upon the exercise of due diligence; (b) has been transferred or sold to, or deposited with, a third person; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; or (e) has been commingled with other property which cannot be subdivided without difficulty, it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

A TRUE BILL

FRANK D. WHITNEY
United States Attorney

BY:


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