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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

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CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA

JUSTIN D. BARKER

Case No.: 3:07-cr-243-J-25TEM
Ct. 1: 18 U.S.C. §1349
Forfeitures: 18 U.S.C. §981(a)(1)(C)
28 U.S.C. §2461(c)

INFORMATION

The United States Attorney charges:

COUNT ONE

A. Introduction

At all times material to this Information, unless otherwise specified:

1. A HUD-1 Settlement Statement is a United States Department of Housing and Urban Development form that is universally used in closings of residential properties in the United States. A HUD-1 is used to identify and allocate the various expenses associated with the sale of residential real estate between the buyer and the seller of the property.

2. A Uniform Residential Loan Application, commonly referred to as a mortgage loan application or a Form 1003, is a universally used mortgage application developed by federal government agencies that is utilized by financial institutions in the mortgage loan approval process. The Form 1003 requires the buyer/borrower to submit his or her financial history, including employment information, monthly income, assets and liabilities, and the specific details of the residential real estate transaction.

3. Purchase and Sale Agreements are written contracts used in the sale of real estate and set forth the terms of the real estate transaction, including identifying the property to be sold, the seller of the property, the buyer of the property, the purchase price, and other conditions of the sale.

4. A property appraisal is an estimate of the value of real estate and is used by lenders in determining the amount of the loan that will be extended on real estate.

5. The term "closing" is used in the real estate industry to refer to the event at which the legal transfer of real estate from seller to buyer takes place and at which funds are transferred between the various parties, such as from lender to buyer and from buyer to seller.

6. The term "lender" is used in this Information to refer to institutions that extended mortgage loans to fund the purchases of properties involved in BARKER's fraudulent scheme.

7. Downs Financial, based in Denver, Colorado, was one of the lenders that extended mortgage loans to fund the purchases of properties involved in BARKER's fraudulent scheme.

8. First Franklin, a division of National City Bank of Indiana, a federally insured financial institution based in Pittsburgh, Pennsylvania, was one of the lenders that extended mortgage loans to fund the purchases of properties involved in BARKER's fraudulent scheme.

B. Charge

From in or about January, 2005, through in or about June, 2006, in Jacksonville, in the Middle District of Florida, and elsewhere,

JUSTIN D. BARKER,

the defendant herein, did knowingly, willfully, and intentionally, combine, conspire, confederate, and agree with other persons known and unknown, to commit the following offenses against the United States, that is:

1. To transmit and cause to be transmitted by wire in interstate commerce writings, signs, signals, pictures, sounds, and communications, having devised and intended to devise a scheme and artifice to defraud, for the purpose of executing such scheme and artifice, and affecting a financial institution, in violation of Title 18, United States Code, Section 1343; and

2. To knowingly execute and attempt to execute a scheme and artifice to defraud a financial institution and to obtain money, funds, credits, assets, and other property owned by, and under the custody or control of, a financial institution, by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

C. Manner and Means

1. It was part of the conspiracy that BARKER negotiated the purchase of residential real estate properties, either on behalf of himself personally, on behalf of an entity he controlled, or on behalf of a third-party buyer. BARKER, the entity, or the buyer entered into a Purchase and Sale Agreement with the owners/sellers of the properties.

2. It was further part of the conspiracy that BARKER retained an appraiser to appraise the property at a significantly inflated price. For example, BARKER would tell the appraiser that he needed the appraisal to come back at 20% more than the price at which the property was purchased. The appraiser would appraise the property at the price that BARKER requested, using inappropriate comparable properties and other fraudulent methods to obtain the price requested.

3. It was further part of the conspiracy that when the property was being purchased by a third-party buyer but the Purchase and Sale Agreement was between the owners/sellers and BARKER or one of the entities he controlled, BARKER would create, or cause to be created, a second Purchase and Sale Agreement between the owners/sellers and the buyer at the higher, fraudulently inflated appraisal price. The owners/sellers usually did not see this second Agreement.

4. It was further part of the conspiracy that, at BARKER's direction, the second Purchase and Sale Agreement listing the higher price was submitted to lenders in support of the buyers' applications for loans based upon the higher price.

5. It was further part of the conspiracy that, at BARKER's direction, false financial information pertaining to the buyers' income and assets, which was specifically designed to mislead financial institutions and other lenders, was submitted in support of the loan applications. For some properties, BARKER caused documents, such as bank statements or payroll records, containing the false financial information to be altered or created for submission to a lender. The purpose of providing the false information was to convince the lenders to loan money on the properties in an amount sought by BARKER.

6. It was further part of the conspiracy that the false financial information and the inflated appraisals were submitted to lenders so that the buyers could obtain mortgage loans in higher amounts than the lender would have approved if the buyers submitted true financial information.

7. It was further part of the conspiracy that, in most instances, BARKER would deposit money in a bank account in the buyer's name for the purpose of representing to the lender that the buyer had that much money as a financial asset.

8. It was further part of the conspiracy that BARKER usually advised third-party buyers that they would not be required to pay any closing costs or fees or that they would receive some or all of these costs and fees back from him after closing.

9. It was further part of the conspiracy that BARKER usually advised buyers that they would receive some funds from him after closing to assist them in making monthly payments on the mortgage loans for a period of time.

10. It was further part of the conspiracy that, at the closing, BARKER or an entity controlled by him would receive the difference between the loan amount and the actual purchase price, usually described with terms such as "assignment fee" or "payoff of second mortgage" or similar terms.

11. It was further part of the conspiracy that, at the closing, BARKER or someone acting on his behalf usually would tell the owners/sellers that the contract sales price listed in the documents was higher than the actual price for which they sold the property because the buyers were required to pay an assignment fee or some other such costs that were added to the sales price.

12. It was further part of the conspiracy that BARKER would intentionally conceal certain material facts from the lender, including that the selling price listed in transaction documents was higher than the actual selling price negotiated with the owner/seller, that there was no money being paid in connection with the closing other than the mortgage proceeds paid by the lender, and that BARKER was giving funds from the mortgage proceeds to the buyer with which to make monthly loan payments.

13. It was further part of the conspiracy that the conspirators would take any and all actions necessary to hide and conceal the existence of the conspiracy.

D. Overt Acts

In furtherance of the conspiracy and to affect the objects thereof, the following overt acts, among others, were committed in the Middle District of Florida and elsewhere:

1. In or about the October, 2005, at Jacksonville, Florida, BARKER reached an agreement with the owners/sellers of a property located at 13782 Sand Pebble Court, Jacksonville, for BARKER to buy the property for \$340,000.

2. In or about the October, 2005, at Jacksonville, Florida, BARKER created or caused to be created a Purchase and Sale Agreement between the owners/sellers and a third-party buyer showing a sales price of \$450,000 for the Sand Pebble property.

3. Between in or about October, 2005, and in or about December, 2005, at Jacksonville, Florida, a licensed property appraiser, at BARKER's direction, fraudulently appraised the Sand Pebble property for the amount of \$450,000.

4. In or about December, 2005, at Jacksonville, Florida, BARKER directed another person to create a fictitious W-2 Wage and Tax Statement reflecting that the

buyer of the Sand Pebble property had earned income of \$75,542.99 from Justrite Rentals, an entity controlled by BARKER, during the year 2004 when in fact the buyer had not earned any income working for BARKER or Justrite Rentals.

5. In or about December, 2005, at Jacksonville, Florida, BARKER directed another person to create a fictitious statement of earnings from JAB Homes, an entity controlled by BARKER, reflecting that the buyer of the Sand Pebble property had earned gross income of \$94,153.84 and net income of \$75,116.16 for the year as of December 4, 2005, when in fact the buyer had not earned any income working for BARKER or JAB Homes.

6. In or about December, 2005, at Jacksonville, Florida, BARKER completed, or caused to be completed, a Uniform Residential Loan Application, or Form 1003, stating that the buyer of the Sand Pebble property was employed by JAB Homes in 2005 and Justrite Rentals in 2004 and stating that the buyer earned the inflated, fictitious income reflected on the statement of earnings and W-2.

7. In or about December, 2005, at Jacksonville, Florida, BARKER sent the fictitious statement of earnings, fictitious W-2, fraudulent Form 1003, and fraudulent appraisal, or caused them to be sent, by facsimile transmission or e-mail, from Jacksonville, Florida, to a mortgage broker in another state.

8. In or about December, 2005, the mortgage broker submitted the fraudulent documents to a lender, Downs Financial, to obtain a first mortgage loan in the amount of \$360,000 and a second mortgage loan in the amount of \$87,648.89 for the Sand Pebble property.

9. In or about December, 2005, or January, 2006, based at least in part on the false information set forth in these documents, Downs Financial approved the loans for the Sand Pebble property.

10. On or about January 18, 2006, at Jacksonville, Florida, a closing on the Sand Pebble property was conducted by a title company and was attended by BARKER.

11. On or about January 18, 2006, Downs Financial disbursed the loan funds for use at the closing on the Sand Pebble property.

12. On or about January 18, 2006, at the closing, the buyer signed a HUD-1 that reflected a "contract sales price" of \$450,000 for the Sand Pebble property, which was not the true sales price of the property.

13. On or about January 18, 2006, at the closing, the title company, as closing agent, issued a check in the amount of \$97,284.48 to Augustine Inc., an entity controlled by BARKER.

14. On or about January 18, 2006, at the closing, the \$97,284.48 paid to BARKER was listed on the HUD-1 as "Payoff of 3rd mtg loan" although no such third mortgage loan existed.

15. On or about January 18, 2006, at the closing, the remaining difference between the actual purchase price and the listed purchase price of the Sand Pebble property, which equals \$12,715.52, was listed as a "Seller's Concession" on the HUD-1. This amount was the exact amount needed so that the buyer would not have to pay any money at the closing.

16. In or about January, 2006, at Jacksonville, Florida, BARKER received the \$97,284.48 check and deposited it into a financial institution account that he controlled.

17. In or about January, 2006, at Jacksonville, Florida, BARKER provided the buyer with \$50,000 to allow her to make mortgage payments on the property for a period of time. BARKER told the buyer that the \$50,000 payment was a way to receive equity "up front" at the closing.

18. In or about December, 2005, and January, 2006, at Jacksonville, Florida, BARKER reached an agreement with the owners/sellers of a property located at 1694 Norton Hill Drive, Jacksonville, for BARKER to buy the property for \$1,045,000.

19. Between in or about December, 2005, and in or about February, 2006, at Jacksonville, Florida, a licensed property appraiser, at BARKER's direction, fraudulently appraised the Norton Hill property for the amount of \$1,250,000.

20. In or about March, 2006, at Jacksonville, Florida, BARKER directed another person to alter bank statements for the months of January and February, 2006, for an account he controlled under the entity name JAB Homes, Inc., to reflect significantly larger cash balances than were actually in the account.

21. In or about March, 2006, at Jacksonville, Florida, BARKER provided the false bank statements and the fraudulent appraisal, or caused them to be provided, to a mortgage broker.

22. In or about March, 2006, the mortgage broker submitted the fraudulent documents to First Franklin, a division of National City Bank of Indiana, a federally insured financial institution, to obtain a first mortgage loan in the amount of \$1,000,000

and a second mortgage loan in the amount of \$245,316.20, in the name of BARKER's wife, for the Norton Hill property.

23. In or about March, 2006, based at least in part on the false information set forth in these documents, First Franklin approved the loans for the Norton Hill property.

24. On or about March 22, 2006, at Jacksonville, Florida, a closing on the Norton Hill property was conducted by a title company and was attended by BARKER.

25. On or about March 22, 2006, First Franklin disbursed the loan funds for use at the closing on the Norton Hill property.

26. On or about March 22, 2006, at the closing, BARKER's wife signed a HUD-1 that reflected a "contract sales price" of \$1,250,000 for the Norton Hill property, which was not the true sales price of the property.

27. On or about March 22, 2006, at the closing, the title company, as closing agent, issued a check in the amount of \$215,450 to Augustine Inc., an entity controlled by BARKER.

28. On or about March 22, 2006, at the closing, the \$215,450 paid to BARKER was listed on the HUD-1 as "Payoff of 2nd mtg loan" although no such second mortgage loan existed and \$10,450 was listed as part of a sales commission to BARKER although BARKER did not act as a buyer's or seller's agent in the transaction.

29. In or about March, 2006, at Jacksonville, Florida, BARKER received the \$215,450 check and deposited it into a financial institution account that he controlled.

All in violation of Title 18, United States Code, Section 1349.

FORFEITURES

1. The allegations contained in Count One of this Information are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. From his engagement in the violations alleged in Count One of this Information, the defendant, JUSTIN D. BARKER, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), all of his interest in any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including but not limited to the following:

- a. A sum of money equal to \$4,420,000 in United States currency, which is equal to the net proceeds obtained as a result of the offense;
- b. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 1694 Norton Hill Drive, Jacksonville, Duval County, Florida 32225;
- c. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 19098 West 164th Terrace, Olathe, Kansas 66062;
- d. 2004 Bentley Continental, VIN# SCBCR63W94C022088 with Florida tag V102DA registered to Ashley Brooke Barker, 1694 Norton Hill Drive, Jacksonville, Florida (purchased on or about 05/31/2006), Asset ID No. 06-FBI-004075;
- e. 2006 Yamaha Motorcycle, VIN# JYARN15E36A000964 with Florida tag 58990K registered to Ashley Brooke Barker, 1694 Norton Hill Drive, Jacksonville, Florida (purchased on or about 05/03/2006), Asset ID No. 06-FBI-004073;

- f. 2001 Yamaha Motorcycle, VIN# JYARN05E41A009000 with Florida tag 67185H registered to Ashley Brooke Barker, 1694 Norton Hill Drive, Jacksonville, Florida (purchased on or about 04/18/2005), Asset ID No. 06-FBI-004127;
- g. 1997 MYCO Trailer, VIN# 4JFBS1918VB003415 with Florida tag R603VW registered to Ashley Brooke Barker, 1694 Norton Hill Drive, Jacksonville, Florida (purchased on or about 07/11/2005);
- h. 1997 19' Wellcraft Boat, HIN# WELDRA881697 with Florida tag FL5931JV registered to Ashley Brooke Barker, 1694 Norton Hill Drive, Jacksonville, Florida (purchased on or about 06/17/2005), Asset ID No. 06-FBI-004070;
- i. 2007 Cadillac, VIN# 1GYFK66807R187731 with Florida tag I71APH registered to Ashley Brooke Barker, 1694 Norton Hill Drive, Jacksonville, Florida (purchased on or about 05/31/2006), Asset ID No. 06-FBI-004074;
- j. 2002 BMW 745Li VIN# WBAGN63472DR03126 with Florida tag T984XV registered to Augustine, Inc., 1694 Norton Hill Drive, Jacksonville, Florida (purchased on or about 11/16/2005), Asset ID No. 06-FBI-004080;
- k. Princess Cut Diamond studs purchased from Elias Jewelry, Inc. by Justin Barker, 7612 Saw Timber Lane, Jacksonville, Florida (purchased on or about 12/01/2005), Asset ID No. 06-FBI-004069;
- l. 2005 Chaparral 330 Signature 36' vessel, VIN# FGBD0312F405 registered to Brandon Gene Lewis, 965 Ponte Vedra Blvd., Ponte Vedra Beach, Florida (purchased on or about 04/01/2006), Asset ID No. 06-FBI-004087;
- m. 2.01 carat, loose Diamond purchased by Justin Barker from Kay Jewelers, Jacksonville, Florida (purchased on or about January 21, 2006), Asset ID No. 06-FBI-004069;
- n. .5 carat Diamond Necklace purchased by Justin Barker from Kay Jewelers, Jacksonville, Florida (purchased on or about December 13, 2005), Asset ID No. 06-FBI-004069;
- o. Two Movado Watches (one man's and one lady's watch) purchased Justin Barker from Kay Jewelers, Jacksonville, Florida (purchased on or about December 13, 2005), Asset ID No. 06-FBI-004069;

- p. 1.0 carat Diamond Necklace purchased by Justin Barker from Kay Jewelers, Jacksonville, Florida (purchased on or about December 13, 2005), Asset ID No. 06-FBI-004069.

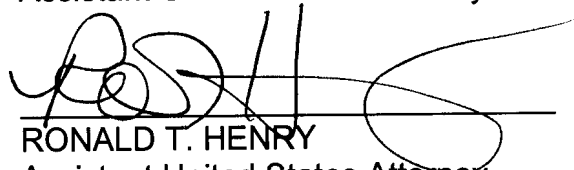
3. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- 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 divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

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By: 
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