



U.S. Department of Justice

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January 24, 2006

By ECF

The Honorable John P. Fullam
United States District Court
U.S. Courthouse
601 Market Street, Room 15614
Philadelphia, PA 19106-1780

**Re: United States v. Sherry L. Freebery,
Criminal Action No. 05-541-2-JF**

Dear Judge Fullam:

I am writing to advise the Court that today a grand jury in the District of Delaware returned a superseding indictment against Defendant Sherry Freebery. The superseding indictment replaces Counts X and XI (the Wells Fargo counts) of the original indictment returned on May 26, 2004. The seven-count superseding indictment charges Freebery with five counts of wire fraud (delineated Counts 10-14), one count of mail fraud (Count 15), and one count of making a false statement to a federally-insured bank in connection with a loan application (Count 16). I have enclosed a courtesy copy of the superseding indictment.

Counts 10 through 14 allege separate wire fraud counts for each of the five Wells Fargo loan applications that were the subject of Counts X and XI of the original indictment. Counts 10, 12, and 14 relate to the Wilson Dunes (beachfront) property (a purchase and two refinances); Counts 11 and 13 relate to the Crimson Drive (Hockessin) property (a purchase and a refinance). As the Court will recall, during the recent trial of the Wells Fargo counts, the jurors sent out a question relating to whether they had to find that fraud occurred with all five loan applications, or just with respect to the two applications that were charged. See Trial Transcript, Jan. 13, 2006 at 6-8. The superseding indictment eliminates any possibility of confusion on this point.

Counts 15 and 16 relate to Freebery's defrauding of Commerce Bank in connection with her application for \$200,000 of cash-out refinancing on her property located on Dandenog Drive in Delaware. On the Commerce Bank applications (as on the Wells Fargo applications), Freebery failed to disclose the existence of the \$2,300,000 she owed Lisa Dean Moseley; she also failed to disclose the annual interest payments of \$135,700 she owed Moseley. While the Wells Fargo applications

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were submitted by phone – with the loan originator taking the information from Freebery by phone and then transmitting the information on her behalf – Freebery submitted the Commerce Bank application by mail. Prior to the closing, Freebery initialed or signed each page of the Commerce loan application and made a spelling correction; she did not, however, correct the liabilities section to include her legal obligations to Moseley. (The government obtained this document approximately one month before the January 9, 2006 trial.) Commerce Bank mailed the loan proceeds to Freebery's attorney. This conduct forms the basis for a mail fraud count (Count 15). Because Commerce Bank, unlike Wells Fargo, is FDIC-insured, this conduct also forms the basis for a Section 1014 false statement count (Count 16).

At trial, the Court granted Defendant's motion *in limine* to preclude the government from introducing the Commerce Bank evidence. The government believed at the time that the Court's decision had a significant impact on the trial. After the Court granted Freebery's unopposed motion for a mistrial, due to the hung jury, the government had the opportunity to speak with the jurors, including one of the two who had not voted to convict. The government confirmed its belief regarding the importance of the Commerce Bank evidence when that juror stated that he likely would have voted to convict had he known that Freebery had submitted a loan application by mail, prior to closing, that did not disclose the Moseley liabilities. The superseding indictment eliminates any dispute that the Commerce Bank evidence is admissible.

The superseding indictment does not contain the allegation that Freebery made a false statement when she answered "No" to the question whether she was a "co-maker or endorser" on a note. As the government has explained, this allegation was not necessary to obtain the original indictment and proof of it would not have been necessary to obtain a conviction under the original indictment. *See* Govt. Response to Freebery's Rule 29 Motion (D.I. #92). The allegation (and evidence) that Freebery failed to disclose the \$2,300,000 and \$135,700 annual liabilities to Moseley was sufficient. In reliance on the Court's statement that it would not submit the indictment to the jury, the government did not supersede the original indictment prior to trial. *See* Trial Transcript, January 11, 2006 at 7-8. Having decided to supersede following the mistrial, the government has eliminated the unnecessary co-maker/endorser allegations.


The superseding indictment does not affect Counts I through IX of the original indictment. Nor does it have any impact on Defendants Thomas Gordon or Janet Smith (neither of whom were charged in Counts X and XI).

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The government is available to discuss these matters at the Court's convenience.

Respectfully submitted,

COLM F. CONNOLLY
United States Attorney

BY: 
Leonard P. Stark
Assistant United States Attorney

LPS:taj
Enclosure

cc: Elizabeth G. Taylor, Esq. **(by ECF)**
Ronald H. Levine, Esq. **(by ECF)**
Joseph A. Hurley, Esq. **(by hand)**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	D. Del. Crim. Act. No. 04-63-2-JF
)	E.D. Pa. Crim. Act. No. 05-541-2-JF
SHERRY L. FREEBERY,)	
)	
Defendant.)	

SUPERSEDING INDICTMENT AS TO COUNTS X AND XI

The Grand Jury for the District of Delaware charges that:

Counts 10 to 14

Introduction

1. On or about January 26, 2001, Defendant Sherry L. Freebery executed a Negotiable Promissory Note in the amount of \$2,300,000, payable upon demand to L.D.M. The Negotiable Promissory Note was unsecured, did not require any scheduled repayment of principal, and required an annual interest payment at 5.9% (\$135,700) payable on December 31st of each year.
2. On or about February 15, 2002, Defendant Sherry L. Freebery paid L.D.M. \$126,405 in prorated interest for calendar year 2001.
3. On or about May 1, 2002, Defendant Sherry L. Freebery filed with the New Castle County Ethics Commission a Statement of Financial Interests for calendar year 2001, stating that she “had received a loan from a longtime, personal friend, [L.D.M.]” She further described the loan as “a commercially reasonable loan made in the ordinary course of business.”

4. On or about April 29, 2003, Defendant Sherry L. Freebery filed with the New Castle County Ethics Commission a Statement of Financial Interests for calendar year 2002, stating the she "owed a debt in excess of \$5,000" to L.D.M.

5. On or about May 20, 2003, Defendant Sherry L. Freebery paid L.D.M. \$135,700 in interest for calendar year 2002.

Scheme and Artifice to Defraud

6. From on or about May 2001 and continuing to on or about November 17, 2003, Defendant Sherry L. Freebery did knowingly devise and intend to devise a scheme and artifice to defraud and to obtain money from mortgage lenders by means of false and fraudulent pretenses, representations and promises.

7. Throughout the loan application processes, Defendant Sherry L. Freebery would and did fail to disclose to mortgage lenders, including in the Uniform Residential Loan Applications she executed, the existence of the Negotiable Promissory Note in the amount of \$2,300,000, payable on demand to L.D.M., as well as her obligation to make annual interest payments to L.D.M. of 5.9% of the amount of the loan (\$135,700).

The Wilson Dunes Property

8. It was part of the scheme and artifice to defraud that:

A. Defendant Sherry L. Freebery would and did apply to Wells Fargo Home Mortgage, Inc. ("Wells Fargo") for a loan in the principal amount of \$637,500, secured by, and for the purpose of purchasing, real property located at 201 Wilson Dunes, Dewey Beach, Delaware.

B. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Wells Fargo, including in the Uniform Residential Loan Application she executed on or about May 24, 2001, the existence of the Negotiable Promissory Note in the amount of \$2,300,000, payable on demand to L.D.M., in order to obtain from Wells Fargo the \$637,500 loan described above.

C. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Wells Fargo, including in the Uniform Residential Loan Application she executed on or about May 24, 2001, her obligation to pay interest to L.D.M. in the prorated amount of \$126,405 for calendar year 2001 and in the amount of \$135,700 for each year thereafter, in order to obtain from Wells Fargo the \$637,500 loan described above.

9. It was further part of the scheme and artifice to defraud that:

A. Defendant Sherry L. Freebery would and did apply to Wells Fargo for a refinancing loan in the principal amount of \$634,000, secured by real property located at 201 Wilson Dunes, Dewey Beach, Delaware.

B. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Wells Fargo, including in the Uniform Residential Loan Application she executed on or about August 19, 2002, the existence of the Negotiable Promissory Note in the amount of \$2,300,000, payable on demand to L.D.M., in order to obtain from Wells Fargo the \$634,000 refinancing loan described above.

C. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Wells Fargo, including in the Uniform Residential Loan Application she executed on or about August 19, 2002, her obligation to pay interest to L.D.M. in

the amount of \$135,700 for calendar year 2002 and for each year thereafter, in order to obtain from Wells Fargo the \$634,000 refinancing loan described above.

10. It was further part of the scheme and artifice to defraud that:

A. Defendant Sherry L. Freebery would and did apply to Wells Fargo for a refinancing loan in the principal amount of \$623,200, secured by real property located at 201 Wilson Dunes, Dewey Beach, Delaware.

B. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Wells Fargo, including in the Uniform Residential Loan Application she executed on or about June 16, 2003, the existence of the Negotiable Promissory Note in the amount of \$2,300,00, payable on demand to L.D.M., in order to obtain from Wells Fargo the \$623,200 refinancing loan described above.

C. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Wells Fargo, including in the Uniform Residential Loan Application she executed on or about June 16, 2003, her obligation to pay interest to L.D.M. in the amount of \$135,700 for calendar year 2003 and for each year thereafter, in order to obtain from Wells Fargo the \$623,200 refinancing loan described above.

The Crimson Drive Property

11. It was further part of the scheme and artifice to defraud that:

A. Defendant Sherry L. Freebery would and did apply to Wells Fargo for a loan in the principal amount of \$504,000, secured by, and for the purpose of purchasing, real property located at 13 Crimson Drive, Hockessin, Delaware.

B. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Wells Fargo, including in the Uniform Residential Loan Application she executed on or about December 27, 2001, the existence of the Negotiable Promissory Note in the amount of \$2,300,000, payable on demand to L.D.M., in order to obtain from Wells Fargo the \$504,000 loan described above.

C. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Wells Fargo, including in the Uniform Residential Loan Application she executed on or about December 27, 2001, her obligation to pay interest to L.D.M. in the prorated amount of \$126,405 for calendar year 2001 and in the amount of \$135,700 for each year thereafter, in order to obtain from Wells Fargo the \$504,000 loan described above.

12. It was further part of the scheme and artifice to defraud that:

A. Defendant Sherry L. Freebery would and did apply to Wells Fargo for a refinancing loan in the principal amount of \$504,000, secured by real property located at 13 Crimson Drive, Hockessin, Delaware.

B. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Wells Fargo, including on the Uniform Residential Loan Application she executed on or about August 19, 2002, the existence of the Negotiable Promissory Note in the amount of \$2,300,000, payable on demand to L.D.M., in order to obtain from Wells Fargo the \$504,000 refinancing loan described above.

C. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Wells Fargo, including in the Uniform Residential Loan

Application she executed on or about August 19, 2002, her obligation to pay interest to L.D.M. in the amount of \$135,700 for calendar year 2002 and for each year thereafter, in order to obtain from Wells Fargo the \$504,000 refinancing loan described above.

The Dandenog Drive Property

13. It was further part of the scheme and artifice to defraud that:

A. Defendant Sherry L. Freebery would and did apply to Commerce Bank, NA ("Commerce Bank") for a refinancing loan in the principal amount of \$200,000, secured by real property located at 600 Dandenog Drive, Wilmington, Delaware.

B. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Commerce Bank, including in the Uniform Residential Loan Applications she executed on or about October 3, 2003 and on or about November 12, 2003, the existence of the Negotiable Promissory Note in the amount of \$2,300,000, payable on demand to L.D.M., in order to obtain from Commerce Bank the \$200,000 loan described above.

C. Throughout the loan application process, Defendant Sherry L. Freebery would and did fail to disclose to Commerce Bank, including in the Uniform Residential Loan Applications she executed on or about October 3, 2003 and on or about November 12, 2003, her obligation to pay interest to L.D.M. in the amount of \$135,700 for calendar year 2003 and for each year thereafter, in order to obtain from Commerce Bank the \$200,000 loan described above.

Charging Paragraph

14. On or about the dates set forth below, in the State and District of Delaware, and elsewhere, Sherry L. Freebery, defendant herein, having devised and having intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and

fraudulent pretenses, representations and promises, as more fully set forth in paragraphs 6 through 13 of this Superseding Indictment, incorporated herein by reference, did transmit and cause to be transmitted by means of a wire communication in interstate commerce certain writings, signs, and signals for the purpose of executing such scheme and artifice, as set forth below, in violation of 18 U.S.C. Sections 1343 and 2:

<u>Count</u>	<u>Date</u>	<u>Description of Wire Communication</u>
10	May 25, 2001	wire transfer of \$637,500 from Wells Fargo Bank, N.A. in Minneapolis, Minnesota to Wilmington Trust Company in Wilmington, Delaware for the purchase of 201 Wilson Dunes
11	December 28, 2001	wire transfer of \$504,000 from Wells Fargo, N.A. in Minneapolis, Minnesota to Wilmington Trust Company in Wilmington, Delaware for the purchase of 13 Crimson Drive
12	August 20, 2002	wire transfer of \$634,000 from Wells Fargo, N.A. in Minneapolis, Minnesota to Wilmington Trust Company in Wilmington, Delaware for the refinancing of 201 Wilson Dunes
13	August 20, 2002	wire transfer of \$504,000 from Wells Fargo, N.A. in Minneapolis Minnesota to Wilmington Trust Company in Wilmington, Delaware for the refinancing of 13 Crimson Drive
14	June 16, 2003	wire transfer of \$623,200 from Wells Fargo, N.A. in Minneapolis, Minnesota to Wilmington Trust Company in Wilmington, Delaware for the refinancing of 13 Crimson Drive

Count 15

On or about November 11, 2003, in the State and District of Delaware, and elsewhere, Sherry L. Freebery, defendant herein, having devised and having intended to devise a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses and representations, as more fully set forth in paragraphs 6 through 13 of Counts 10 through 14 of this Superseding Indictment, incorporated herein by reference, did knowingly cause to be delivered a matter and thing by Federal Express, a commercial interstate carrier, according to the direction thereon, that is, a letter addressed to Phillips Goldman & Spence, P.A. from Commerce Bank, NA, containing a check in the amount of \$198,495.89, representing net loan proceeds for a refinancing loan for real property located at 600 Dandenog Drive, Wilmington, Delaware, for the purpose of executing such scheme and artifice, in violation of 18 U.S.C. Sections 1341 and 2.

Count 16

On or about November 12, 2003, in the State and District of Delaware and elsewhere, Sherry L. Freebery, defendant herein, did knowingly make a false statement for the purpose of influencing the action of Commerce Bank, NA, an institution the accounts of which were insured by the Federal Deposit Insurance Corporation, in connection with her mortgage refinancing loan application for real property located at 600 Dandenog Drive, Wilmington, Delaware in that she certified that the listing of liabilities in the Uniform Residential Loan Application she executed on or about November 12, 2003 was true and correct, when in truth and in fact, as the defendant well knew, she had not disclosed in the above described listing of liabilities the following liabilities: (1) a Negotiable Promissory Note in the amount of \$2,300,000, payable upon demand

to L.D.M.; and (2) her obligation to pay annual interest payments to L.D.M. in the amount of \$135,700, in violation of 18 U.S.C. Sections 1014 and 2.

A TRUE BILL:

Foreperson

COLM F. CONNOLLY
United States Attorney

BY: _____
Ferris W. Wharton
Leonard P. Stark
Assistant United States Attorneys

Dated: January 24, 2006