

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	CRIM. NO. 08-300 ²⁷ -MAP
)	
v.	)	VIOLATIONS:
)	
MICHAEL J. ARMITAGE,	)	Title 18, United States Code,
	)	Section 1014 - False Statements To A
	)	Federally Insured Financial Institution
Defendant.	)	(Counts 1 - 3)
)	
	)	Title 18, United States Code,
	)	Section 1344 - Bank Fraud
	)	(Counts 4 - 6)
)	
	)	Title 18, United States Code,
	)	Sections 1957(a) and 2 - Engaging In
	)	Monetary Transactions In Property Derived
	)	From Specified Unlawful Activity
	)	(Count 7)

INDICTMENT

The Grand Jury charges that:

Parties, Persons And Entities

At all times relevant to this Indictment:

1. The defendant MICHAEL J. ARMITAGE (“ARMITAGE”), defendant herein, was an individual residing at 44 Longhill Drive, Somers, Connecticut or 1 Eastbrook Lane, Pittsfield, Massachusetts.

2. United Bank, formerly known as United Cooperative Bank, was a financial institution with accounts insured by the Federal Deposit Insurance Corporation, with offices in West Springfield, Massachusetts.

3. Power Development Co., LLC (“PDC”) was a power generation development business operated and partially owned by ARMITAGE, with offices at 440 Commercial Street,

Boston, Massachusetts, 12727 Kimberly Lane, Houston, Texas, and 1900 West Loop South, Houston, Texas.

4. Venture Properties, LLC (“VP”) was a commercial real estate business operated and/or partially owned by ARMITAGE, with offices at 254 Worthington Street, Springfield, Massachusetts.

5. Electrator, LLC (“Electrator”) was a battery development company operated by and indirectly owned by ARMITAGE, with offices at 333 West Street, Pittsfield, Massachusetts.

The Fraud Schemes

6. As detailed below, between in or around February 2001 through on or about April 24, 2006, ARMITAGE executed a series of schemes to defraud United Bank and to obtain the funds of United Bank by false and fraudulent pretenses, representations, and promises concerning material facts and matters.

7. The purpose of the schemes was to obtain the following loans: a \$975,000 commercial loan for VP in 2001; a \$170,000 commercial loan for VP in 2002; and a \$400,000 personal residential mortgage for ARMITAGE and his wife, Melissa J. Armitage, in 2003.

8. The primary means by which ARMITAGE accomplished these schemes was to execute or submit to United Bank various false or fraudulent documents that misrepresented his finances and concealed the fact that he had embezzled more than \$1 million from PDC, owed substantial amounts of money to PDC as a result of this misappropriation, failed to file personal federal income tax returns from 1993 through 2006, and owed substantial amounts of money to the IRS for tax years 1995, 1996, and 1998.

9. The false or fraudulent documents submitted by ARMITAGE to United Bank included, among other things, a 2001 personal financial statement that omitted any debts he owed to PDC or the IRS and that claimed his taxes were settled through 1999; two guaranties in 2001 and 2002 that warranted that his financial statements and other financial information provided were true and correct in all material respects; a 2001 personal federal income tax return that ARMITAGE and his wife, Melissa J. Armitage, signed and dated but never filed with the IRS; and a 2003 loan application that omitted any liabilities owed by ARMITAGE to PDC or the IRS.

ARMITAGE's Embezzlement From PDC, And Ensuing Debt

10. From in and around 1993 until in and around September 1999, as PDC's Chief Executive Officer, ARMITAGE controlled PDC's finances, including its checkbook, and maintained its books and records.

11. In and around June 1999, ARMITAGE's fellow partners at PDC discovered that he had misappropriated substantial sums of money from PDC, including approximately \$340,000 in checks written to ARMITAGE, his wife, or cash, but falsely listed in PDC's check register as paid to other payees, such as PDC's law firm or engineering firm.

12. PDC retained a forensic accounting firm to determine the extent of ARMITAGE's misappropriation of funds. In or around September 1999, the accounting firm concluded that ARMITAGE owed PDC in excess of \$1 million.

13. On or about September 22, 1999, ARMITAGE agreed to pay PDC approximately \$1.08 million as an "initial repayment." Following some additional adjustments contemplated by ARMITAGE at the time of his agreement, PDC ultimately recorded the debt resulting from ARMITAGE's misappropriation of funds on its books as a Note Receivable.

14. From 1999 through 2002, during the times when ARMITAGE obtained the 2001 and 2002 commercial loans from United Bank for VP, he owed PDC approximately \$1.13 million to repay the misappropriated funds.

15. PDC had agreed that ARMITAGE could repay his debt by crediting the company's payments that would otherwise be due to him to the outstanding debt. In addition to regular distributions of company income provided to each member, ARMITAGE was also owed approximately \$500,000 in deferred compensation. On December 31, 2002, PDC applied this approximately \$500,000 in deferred compensation to the debt, leaving a balance of over \$600,000 (plus interest) in 2003, when ARMITAGE obtained his residential loan from United Bank.

16. On or after December 31, 2002, PDC issued ARMITAGE a tax form, a so-called Schedule K-1, that listed his PDC income that the company would report to the IRS for 2002 (the "2002 PDC K-1"). The 2002 PDC K-1 reflected that ARMITAGE received "ordinary income" (i.e., his share of the company's profits) of \$208,345 and "guaranteed payments" (i.e., his salary, including his deferred compensation) of \$606,288.

17. From 2003 until October 17, 2006, PDC issued ARMITAGE a series of distributions that it retained in order to reduce ARMITAGE's misappropriation debt. On October 17, 2006, ARMITAGE's debt was reduced from approximately \$475,000 to zero based upon a final distribution from PDC.

ARMITAGE's Non-Payment Of Income Tax, And Ensuing Debt

18. At all times material to this Indictment, ARMITAGE failed to file federal income tax returns for tax years 1993 through 2006 and did not pay any federal income tax for those tax years.

19. Based upon information in its system, the IRS calculated and assessed ARMITAGE's federal income tax balances due for tax years 1995, 1996, and 1998.

20. Starting in approximately 1998, the IRS sent ARMITAGE a series of standard form letters for tax years 1995, 1996, and/or 1998, that, among other things: (1) informed him that the IRS had not received a tax return, had prepared a substitute return for him based upon its own calculations, and advised him that if he did not respond the IRS would assess a tax due based upon its calculations; (2) provided him with a notice of his tax deficiency; and/or (3) provided him with a notice of its intent to levy and file a federal tax lien.

21. On the following dates, ARMITAGE owed the following balances on his federal taxes, including interest and penalties, for the following tax years:

<u>Date</u>	<u>TY 1995</u>	<u>TY 1996</u>	<u>TY 1998</u>	<u>Total</u>
04/24/01	\$7,418.07	\$37,473.77	\$ 71,328.52	\$116,220.36
04/24/02	\$7,933.02	\$40,007.89	\$ 80,443.91	\$128,384.82
02/25/03	\$8,321.91	\$41,921.66	\$ 85,634.60	\$135,878.17
04/24/06	\$9,803.54	\$49,263.20	\$100,507.52	\$159,574.26

ARMITAGE's United Bank Loans

ARMITAGE's First Commercial Loan For Venture Properties

22. In or around February 2001, ARMITAGE applied for an approximately \$900,000 loan from United Bank for his real estate business, VP, to refinance the development of three properties in Springfield's downtown entertainment district. United Bank required ARMITAGE to act as a personal guarantor for the loan and to secure the loan with his personal residence, then located at 44 Longhill Drive, Somers, Connecticut.

23. On or about March 2, 2001, United Bank issued ARMITAGE a term letter, requiring him as a guarantor to provide a personal financial statement and two years of tax returns before the loan closing.

24. On or about March 23, 2001, ARMITAGE completed and submitted United Bank's standard Personal Financial Statement (the "PFS"). In the PFS, ARMITAGE signed a certification in which he warranted that the information provided "is true and complete and that you may consider this statement as continuing to be true and correct until a written notice of a change is given" and that he understood the bank was "relying" on this information "in deciding to grant or continue credit."

25. In the liabilities section of the PFS, ARMITAGE falsely stated that he owed only a total of \$932,600, consisting of the prior \$900,000 loan that he was seeking to refinance and an additional \$32,600 auto loan, and that he had no unpaid income tax. ARMITAGE thus fraudulently omitted his PDC debt and his tax liabilities from the PFS.

26. In another section of the PFS, ARMITAGE also falsely stated that his income tax was settled through 1999.

27. Lastly, ARMITAGE falsely claimed in the PFS to have earned \$252,492 in real estate income from VP for tax year 2000. However, according to a VP income tax return for tax year 2000 that ARMITAGE submitted to United Bank, ARMITAGE did not receive any income from VP in that year, but instead registered a loss of \$35,491.

28. On April 24, 2001, unaware of ARMITAGE's PDC misappropriation and ensuing debt and unaware of his non-filing of tax returns and ensuing tax liabilities, United Bank issued VP a five-year loan in the amount of \$975,000.00. At the closing, ARMITAGE executed VP's loan documents, including a loan agreement and a guaranty.

29. In executing the guaranty, ARMITAGE falsely warranted that his financial statements and other financial information provided to United Bank were “true and correct in all material respects” and “fairly, completely, and accurately represent[ed]” his financial condition, and that there were no federal liens filed or threatened against him or his assets.

30. Pursuant to the loan agreement, ARMITAGE agreed to furnish annual personal financial statements and federal and state tax returns within 30 days of filing.

31. ARMITAGE never submitted the required annual personal financial statements to United Bank.

32. Between approximately March 13, 2002 and approximately February 25, 2003, in an attempt to disguise his failure to file tax returns, ARMITAGE provided United Bank with a self-prepared tax year 2001 joint federal income tax return, signed by himself and his wife, Melissa J. Armitage, and dated March 13, 2002. ARMITAGE did not file this return with the IRS.

33. On April 24, 2006, the first commercial loan for VP came up for renewal. Still unaware of ARMITAGE’s PDC misappropriation and ensuing debt as well as his non-filing of tax returns and ensuing tax liabilities, United Bank renewed the loan.

ARMITAGE’s Second Commercial Loan For Venture Properties

34. In approximately April 2002, ARMITAGE sought a second commercial loan for VP in the amount of \$170,000 to purchase a fourth property in downtown Springfield. United Bank again required ARMITAGE to act as a guarantor for the loan. In approving the loan, United Bank again relied on the March 2001 PFS previously supplied by ARMITAGE in connection with the first commercial loan for VP.

35. On April 24, 2002, still unaware of ARMITAGE's PDC debt or tax liabilities, United Bank issued VP a five-year loan in the amount of \$170,000.00. At the closing, ARMITAGE executed loan documents, including a loan agreement and a guaranty containing the same basic terms as in the 2001 loan agreement and guaranty.

ARMITAGE's Residential Loan

36. On or about February 25, 2003, ARMITAGE sought a \$400,000 mortgage to purchase a residence at 1 Eastbrook Lane, Pittsfield, Massachusetts (the "Pittsfield Residence"). During an in-person interview at United Bank's office, the residential loan officer informed ARMITAGE that he needed certain financial information, including ARMITAGE's two most recent federal tax returns, bank statements, list of outstanding loans, and other documents. ARMITAGE had brought no documents with him, but he assured the loan officer that the tax returns and other financial information were in the bank's commercial loan files for VP.

37. The loan officer then interviewed ARMITAGE in order to fill out a standard Fannie Mae Uniform Residential Loan Application (the "Loan Application"), which ARMITAGE signed after the interview. In signing the Loan Application, ARMITAGE acknowledged that "the information provided in this application is true and correct" and that "any intentional or negligent misrepresentation(s) contained in this application may result in civil liability and/or criminal penalties" Before ARMITAGE signed, the officer discussed this acknowledgment with him.

38. In the Loan Application, ARMITAGE falsely claimed to receive \$15,000 in monthly income from Electrator. Although ARMITAGE served as Electrator's CEO, he had been largely deferring his monthly salary of \$12,500. Accordingly, ARMITAGE received from Electrator no

compensation in 2002 and only three salary payments in 2001 (for a total of \$37,500 or approximately \$3,125 per month over the twelve months).

39. The Loan Application also required ARMITAGE to list “all outstanding debts,” and the loan officer accordingly asked ARMITAGE to provide all of his liabilities. ARMITAGE told the loan officer about United Bank’s two prior commercial loans to VP, but he did not disclose the misappropriation debt owed to PDC or his IRS liabilities.

40. The Loan Application also asked ARMITAGE, “Are you presently delinquent or in default on any Federal debt . . . ?” ARMITAGE responded no.

41. On or about March 4, 2003, ARMITAGE obtained a \$390,000 personal mortgage for the Pittsfield Residence from Richard L. Bready, the operator of a company called CRB Holdings, LLC. On or about March 6, 2003, Bready assigned ARMITAGE’s promissory note to BankNorth, N.A. (“BankNorth”).

42. During United Bank’s subsequent underwriting process, the bank’s underwriter attempted to obtain documentation from ARMITAGE to support the income claimed by ARMITAGE in his 2001 tax return and in his Loan Application. ARMITAGE never provided the underwriter with documentation to support the income claimed in the 2001 tax return, and never provided the underwriter with any documentation to support any claimed income from Electrastor.

43. On or about May 8, 2003, ARMITAGE caused the 2002 PDC K-1 to be sent to the bank’s underwriter. On or about that date, ARMITAGE falsely told the underwriter that his salary from PDC was reflected in the ordinary income section, rather than the guaranteed payments section. By fraudulently misdirecting the underwriter away from his 2002 guaranteed payments (which he

had used to offset a portion of his misappropriation debt), ARMITAGE continued to conceal from United Bank his embezzlement of funds from PDC.

44. Unaware of ARMITAGE's PDC embezzlement and resulting debt, his failure to file the 2001 tax return or any other tax return, and his federal tax liabilities, the bank's underwriter and loan officer recommended ARMITAGE's \$400,000 loan, which the bank's Security Committee approved on May 22, 2003.

45. On July 16, 2003, ARMITAGE and his wife, Melissa J. Armitage, closed on the loan and executed a final version of the Loan Application that ARMITAGE had initially signed on February 25, 2003. The final Loan Application still fraudulently omitted any money owed by ARMITAGE to PDC and the IRS.

46. According to United Bank's Settlement Statement dated July 16, 2003, the \$400,000 loan proceeds were used to payoff CRB Holdings, which was owed \$427,758.52. United Bank's Settlement Agent was the law firm of Raipher D. Pellegrino & Assoc., P.C. ("RPA").

47. On or about July 21, 2003, United Bank wired the proceeds of the loan (less prepaid interest) totaling \$399,388.89 to RPA's bank account. On or about July 29, 2003, RPA issued Check No. 3125 to BankNorth in the amount of \$394,765.86 with the memo "Armitage / One Eastbrook Ln. / Refi." On or about July 29, 2003, BankNorth credited Check No. 3125 to an account in the name of Richard L. Bready as a payoff for the loan.

COUNTS ONE THROUGH THREE:

False Statements To A Federally Insured Financial Institution (18 U.S.C. § 1014)

The Grand Jury further charges that:

48. The allegations contained in paragraphs 1 through 47 are realleged and incorporated herein.

49. On or about the dates set forth below in the District of Massachusetts and elsewhere,

MICHAEL J. ARMITAGE,

defendant herein, did knowingly make false statements and reports for the purpose of influencing the action of United Bank, a bank with deposits insured by the Federal Deposit Insurance Corporation, upon an application, commitment, and loan, as set forth below:

<u>Count</u>	<u>Closing Date</u>	<u>Borrower(s)</u>	<u>Amount</u>
1	04/24/2001	Venture Properties, LLC	\$975,000.00
2	04/24/2002	Venture Properties, LLC	\$170,000.00
3	07/16/2003	MICHAEL J. ARMITAGE and Melissa J. Armitage	\$400,000.00

All in violation of Title 18, United States Code, Section 1014.

COUNTS FOUR THROUGH SIX: Bank Fraud (18 U.S.C. § 1344)

The Grand Jury further charges that:

50. The allegations contained in paragraphs 1 through 47 are realleged and incorporated herein.

51. On or about the dates set forth below, in the District of Massachusetts and elsewhere,

MICHAEL J. ARMITAGE,

defendant herein, did knowingly execute and attempt to execute a scheme and artifice to defraud a financial institution, and to obtain and attempt to obtain monies, funds, and credits owned by and under the custody and control of a financial institution by false and fraudulent pretenses, representations, and promises concerning material facts and matters, to wit: by executing and submitting false and fraudulent documents to United Bank in connection with the following loans:

<u>Count</u>	<u>Closing Date</u>	<u>Borrower(s)</u>	<u>Amount</u>
4	04/24/2001	Venture Properties, LLC	\$975,000.00
5	04/24/2002	Venture Properties, LLC	\$170,000.00
6	07/16/2003	MICHAEL J. ARMITAGE and Melissa J. Armitage	\$400,000.00

All in violation of Title 18, United States Code, Section 1344.

COUNT SEVEN:

Engaging In Monetary Transactions In Property Derived
From Specified Unlawful Activity (18 U.S.C. § 1957)

The Grand Jury further charges that:

52. The allegations contained in paragraphs 1 through 47 are realleged and incorporated herein.

53. On or about July 29, 2003, in the District of Massachusetts and elsewhere,

MICHAEL J. ARMITAGE,

defendant herein, did knowingly engage and attempt to engage in a monetary transaction in criminally derived property of a value in excess of \$10,000, affecting interstate and foreign commerce, and which involved the proceeds of specified unlawful activity, that is false statements to a federally insured financial institution in violation of 18 U.S.C. § 1014 and bank fraud in violation of 18 U.S.C. § 1344, to wit, Check No. 3125 written by Raipher Pellegrino & Associates, P.C. to BankNorth in the amount of \$394,765.86 with the memo "Armitage / One Eastbrook Ln. / Refi," which was credited to an account at BankNorth in the name of Richard L. Bready.

All in violation of Title 18, United States Code, Section 1957 and 2.

A TRUE BILL

Quinn T. Lyons
FOREPERSON OF THE GRAND JURY

Steven H. Breslow
STEVEN H. BRESLOW
ASSISTANT U.S. ATTORNEY

DISTRICT OF MASSACHUSETTS:

Returned into the District Court by the Grand

Jurors and filed on May 29, 2008.

10:50 AM

John C. Gluckstein
DEPUTY CLERK OF COURT

Criminal Case Cover Sheet

U.S. District Court - District of Massachusetts

Place of Offense: W. Spfld., MA Category No. 2 Investigating Agency IRS, CI

City West Springfield, MA Related Case Information:

County Hampden Superseding Ind./ Inf. -- Case No. --
Same Defendant -- New Defendant --
Magistrate Judge Case Number --
Search Warrant Case Number 07-MJ-634, 06-MJ-629 KPN
R 20/R 40 from District of --

Defendant Information:

Defendant Name Michael J. Armitage Juvenile Yes No

Alias Name N.A.

Address 19260 La Serena Drive, Fort Myers, FL 33967

Birth date (Year only): 1953 SSN (last 4 #): 6511 Sex M Race: White Nationality: USA

Defense Counsel if known: Brad Bailey, Esq. Address: 4 Longfellow Place, 35th Floor
Boston, MA 02114

Bar Number: N.A.

U.S. Attorney Information:

AUSA Steven H. Breslow Bar Number if applicable N.A.

Interpreter: Yes No List language and/or dialect: N.A.

Victims: Yes No If Yes, are there multiple crime victims under 18 U.S.C. §3771(d)(2) Yes No

Matter to be SEALED: Yes No

Warrant Requested Regular Process In Custody

Location Status:

Arrest Date: Self-surrender

Already in Federal Custody as _____ in _____

Already in State Custody _____ Serving Sentence Awaiting Trial

On Pretrial Release: Ordered by _____ on _____

Charging Document: Complaint Information Indictment

Total # of Counts: Petty _____ Misdemeanor _____ Felony 7

Continue on Page 2 for Entry of U.S.C. Citations

I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.

Date: 05-28-08

Signature of AUSA: Steven H. Breslow

District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant _____

	<u>Index Key/Code</u>	<u>U.S.C. Citations</u> <u>Description of Offense Charged</u>	<u>Count Numbers</u>
Set 1	<u>18 USC § 1014</u>	<u>False Statements To A Federally Insured Bank</u>	<u>1-3</u>
Set 2	<u>18 U.S.C. §1344</u>	<u>Bank Fraud</u>	<u>4-6</u>
Set 3	<u>18 U.S.C. § 1957</u>	<u>Money Laundering</u>	<u>7</u>
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set	_____	_____	_____
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Set	_____	_____	_____

ADDITIONAL INFORMATION: