

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

NO. 5:12-CR-340-1

FILED

OCT 04 2012

JULIE A. RICHARDS, CLERK
US DISTRICT COURT, EDNC
BY KM DEP CLK

UNITED STATES OF AMERICA)

v.)

DARREN K. PHILLIPS,)

Defendant.)

Filed:

Violation: 18 U.S.C. § 1349
(Conspiracy to Commit Mail Fraud
Affecting a Financial Institution)

CRIMINAL INFORMATION

The United States of America, acting through its attorneys, charges:

1. DARREN K. PHILLIPS is hereby made a defendant on the charge stated below.

BACKGROUND

2. When North Carolina homeowners default on their mortgages, the mortgage holder, some of whom are financial institutions, can institute foreclosure proceedings through a judicial public real estate foreclosure auction (“public auction”). These public auctions typically take place at the State courthouse in the county where the property is located. At the end of the public auction, the trustee files a Report of Sale with the Clerk for Special Proceedings listing the name and contact information for the highest bidder as well as the highest bid amount. Under State law, the bid must remain open for ten days to allow other bidders the opportunity to file an “upset bid” on the property. If an upset bid is filed, the public auction remains open for another ten-day period. If no one files a subsequent upset bid, the last person to bid wins the property. The law does not limit the number of upset bids that can be filed. Proceeds from the sale are then used to pay off the mortgage and other debt attached to the property. Any remaining proceeds are paid to the homeowner.

3. During the period covered by this Information, certain real estate speculators agreed to suppress and restrain competition by rigging bids to obtain selected properties offered at public auctions in the Eastern District of North Carolina (“selected properties”).

DEFENDANT AND CO-CONSPIRATORS

4. During the period covered by this Information, the defendant was engaged in the business of buying real estate at public auctions in the Eastern District of North Carolina and rehabilitating, selling, or renting the foreclosure properties for an economic benefit.

5. Various entities and individuals, not made defendants in this Information, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

COUNT ONE

CONSPIRACY TO COMMIT MAIL FRAUD
AFFECTING A FINANCIAL INSTITUTION

(18 U.S.C. § 1349)

6. Each and every allegation contained in Paragraphs 1-5 of this Information is hereby realleged as if fully set forth in this Count.

DESCRIPTION OF THE OFFENSE

7. Beginning at least as early as February 2001, and continuing thereafter until at least May 2004, the exact dates being unknown to the United States, in the Eastern District of North Carolina and elsewhere, the defendant DARREN K. PHILLIPS and co-conspirators did willfully and knowingly conspire, combine, and agree with each other to violate Title 18, United States Code, Section 1341, namely, to knowingly devise and intend to devise and participate in a scheme and artifice to defraud financial institutions, homeowners, and others with a legal interest in selected properties, and to obtain money and property from financial institutions,

homeowners, and others with a legal interest in selected properties by means of materially false and fraudulent pretenses and representations. The combination and conspiracy charged in this Count was carried out, in part, within the ten years preceding the filing of this Information.

8. The objects of the conspiracy were, among other things, to fraudulently acquire title to selected properties at artificially suppressed prices; to make payoffs to and receive payoffs from co-conspirators; and to divert money away financial institutions, homeowners, and others with a legal interest in selected properties.

MEANS AND METHODS OF THE CONSPIRACY

9. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

- a. purchasing selected properties through public auctions at artificially suppressed prices;
- b. negotiating payoffs with one or more co-conspirators in exchange for agreements not to compete during the public auction process;
- c. in some cases, transferring title to selected properties into the names of co-conspirators who issued payoffs in exchange for agreements not to compete;
- d. distributing payoffs to co-conspirators that otherwise would have gone to financial institutions, homeowners, and others with a legal interest in the selected properties, in an amount based on a predetermined formula agreed upon by members of the conspiracy or through direct negotiations between co-conspirators;

e. making and causing to be made materially false and misleading pretenses or representations to trustees and others involved in the auction and sale of the selected properties; and

f. causing artificially suppressed purchase prices to be reported and paid to financial institutions and others with a legal interest in selected properties.

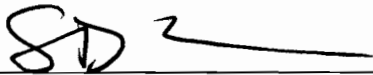
10. For the purpose of executing the scheme and artifice to defraud and attempting to do so, the defendant and co-conspirators knowingly used and caused to be used the United States Postal Service and private and commercial interstate carrier, in violation of Title 18, United States Code, Section 1349. For example, the defendant and co-conspirators did, among other things, cause foreclosure deeds and other documents granting title to selected properties to be sent and delivered by the United States Postal Service and private and commercial interstate carriers. Mailings such as these were knowingly caused by the defendant and his co-conspirators and were foreseeable to the defendant and his co-conspirators in the ordinary course of business.

OVERT ACTS

11. In furtherance of the conspiracy and to effect the illegal objects thereof, the defendant and co-conspirators committed overt acts in the Eastern District of North Carolina and elsewhere, including, but not limited to, those acts stated in Paragraphs 9 and 10 of this Information.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1349.

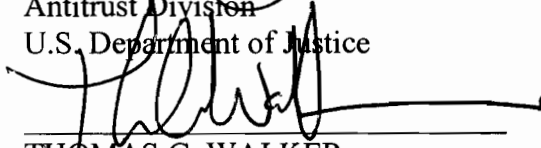
Date: 10/3/2012



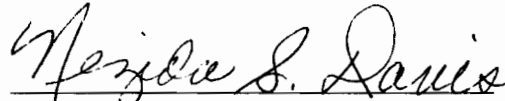
SCOTT D. HAMMOND
Deputy Assistant Attorney General for
Criminal Enforcement



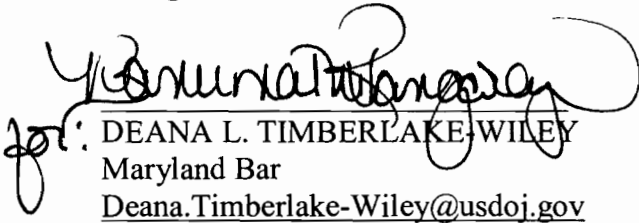
JOHN F. TERZAKEN
Director of Criminal Enforcement
Antitrust Division
U.S. Department of Justice



THOMAS G. WALKER
United States Attorney
Eastern District of North Carolina



NEZIDA S. DAVIS
Chief, Atlanta Field Office
Georgia Bar No. 642083



DEANA L. TIMBERLAKE-WILEY
Maryland Bar
Deana.Timberlake-Wiley@usdoj.gov

CHINITA M. SINKLER
Maryland Bar
Chinita.Sinkler@usdoj.gov

Karen E. Steiner
Pennsylvania Bar No. 45314
Karen.Steiner@usdoj.gov

Trial Attorneys
Atlanta Field Office
Antitrust Division
U.S. Department of Justice
75 Spring Street, S.W., Suite 1176
Atlanta, GA 30303
Tel: (404) 331-7100
Fax: (404) 331-7110