

FILED

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA 2010 JAN 28 P 4: 38

Richmond Division

U.S. DISTRICT COURT  
RICHMOND, VIRGINIA

UNITED STATES OF AMERICA )

v. )

ROBERT S. CAPEHART, )

CRIMINAL NO. 3:10-CR-022 (JRS)

18 U.S.C. § 1341

Mail Fraud

CRIMINAL INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT:

At all times material herein:

A. Introduction

1. The defendant, ROBERT S. CAPEHART, a resident of Richmond, Virginia, was a promoter of real estate ventures, owning a convenience store and multiple pieces of real estate which he purchased for rental and investment purposes.

2. The defendant's initial business plan was to purchase real estate in a rising real estate market while putting little or no money down and taking out a large mortgage-backed loan. After the property appreciated, he would refinance the loan. Thus he would obtain another loan based on the appreciated value, payoff the first mortgage loan, and use the excess funds for business and personal

purposes. In or about 2006, he solicited investments from private investors in the form of a promissory note program carrying high interest rates such as 20% over three months equating to an annual rate of 80%.

3. Retirement Investment Group (RIG) was a limited liability corporation organized under the laws of Virginia which CAPEHART used in his real estate and investment business.

4. BYB Investments was a limited liability company organized under the laws of Virginia which CAPEHART also used in his real estate and investment business.

5. Wachovia Bank NA, J. P. Morgan Chase Bank, and Suntrust Bank were federally insured financial institutions.

B. The Scheme

6. From in or about 2003 to 2008, in the Eastern District of Virginia and elsewhere, the defendant, ROBERT STEPHEN CAPEHART, unlawfully, willfully, and knowingly did devise a scheme and artifice to defraud and for obtaining money and property from Wachovia Bank NA, J. P. Morgan Chase Bank, Suntrust Bank and approximately twenty-two investors by means of materially false and fraudulent pretenses, representations, and promises, as more particularly set forth herein.

D. Manner and Means of the Scheme

Mortgage Fraud

7. It was part of the scheme that from approximately 2003 until 2006, the defendant purchased approximately forty rental properties with little or no down payment and a large mortgage-backed loan. In obtaining the loans from banks, he did not fully disclose all of his real estate loan liabilities and other real estate holdings. As time passed he would obtain new appraisals and refinance the properties based on the appreciated value of the property, without disclosing all of his liabilities and real estate holdings. After paying off the original loan, he would use the excess funds for business and personal purposes. Wachovia Bank NA, J. P. Morgan Chase Bank, Suntrust Bank lost an approximate total of \$252,000.

Investment Fraud

8. As the real estate appreciation slowed down or disappeared in or about 2006, CAPEHART could not generate additional funds by simply refinancing the properties. Therefore, he turned to private investors whom he solicited with a promissory note program carrying high interest rates, such as 20% over three months, equating to an annual rate of 80%. He represented that he would be able to pay such high rates of interest because he was investing in a variety of properties, such as the Sans Souci Hotel and Apartment Complex in Buckroe

Beach, Virginia, a beach house in Kure Beach, North Carolina, a convenience store in Richmond, Virginia, and various other properties in Newport News and Hampton, Virginia. This program, however, quickly became a Ponzi scheme in which he “robbed Peter to pay Paul,” with the hope that a real estate market with appreciating values would return.

9. It was thus part of the scheme that the defendant solicited money from approximately 22 potential investors and induced them to invest approximately \$2.053 million by making materially false, fraudulent and misleading representations.

10. It was further part of the scheme that the defendant obtained money from investors by falsely and fraudulently representing, among other things, that:

(a) his real estate activities were generating a profit and that he was able to pay very high rates of return on promissory notes;

(b) he would place investors’ funds in escrow pending the acquisition of certain real estate deals;

(c) investors’ investment principal would be returned to investors upon the expiration or maturity of their investment terms.

11. It was further part of the scheme that the defendant did not place investors’ money into escrow accounts, but instead diverted investors’ funds (a)

for his own personal use and benefit; and (b) for periodic "interest" and "principal" payments to previous investors, in order to (i) lull the previous investors into a false sense of security about their investment, (ii) encourage them to make future investments, and (iii) keep them from generating adverse information about their "investment" program and prematurely ending his scheme. The defendant's program was a Ponzi scheme, in which early investors are paid with the contribution of later investors rather than the profit from an underlying business activity.

12. It was further part of the scheme that the defendant made his program appear legitimate, safe and secure by, among other ways, giving investors "Promissory Notes."

13. It was further part of the scheme that defendant lulled investors into believing that their "investment" funds had been and would be safe and secure, in order to prevent the discovery of the true use of investors' funds, and forestall legal action by investors by encouraging investors not to seek the immediate return of funds but to "roll over" their investments and thereby purportedly earn even greater profits.

14. It was further part of the scheme that defendant failed and refused to return money to investors causing them economic harm and losses of, in some

cases, all or substantially all of the money the investors placed with the defendant.

15. It was a further part of the scheme that in or about late 2006 and early 2007 in order to continue to buy time by “Robbing Peter to Pay Paul,” the defendant began kiting hundreds of thousands of dollars of checks between First Market Bank, Village Bank and First Capital Bank.

E. The Mailings

16. From 2003 to 2007, in the Eastern District of Virginia and elsewhere, the defendant, ROBERT S. CAPEHART, for the purpose of executing such scheme and artifice and attempting so to do, knowingly mailed and caused to be mailed by the United States Postal Service, various letters to and from his victims. (In violation of Title 18 United States Code, Sections 1341 and 2.)

NEIL H. MACBRIDE  
UNITED STATES ATTORNEY

By: David T. Maguire  
David T. Maguire  
Assistant United States Attorney

Criminal Case Cover Sheet

U.S. District Court

Place of Offense: \_\_\_\_\_

City: Richmond, Virginia

County/Parish \_\_\_\_\_

**Case Information:**

Criminal Information X

Same Defendant \_\_\_\_\_ New Defendant \_\_\_\_\_

Magistrate Judge Case No. 3:10CR

Search Warrant Case No. \_\_\_\_\_

R 20/R 40 from District of \_\_\_\_\_

**Defendant Information:**

This case is related to other proceedings in this Court: YES \_\_\_ NO X If yes, docket No. \_\_\_\_\_

Defendant Name: Robert S. Capehart

Alias Name: \_\_\_\_\_

Address \_\_\_\_\_

Birthdate: \_\_\_\_\_ SSN #: \_\_\_\_\_ Sex: M Race: \_\_\_\_\_

Counsel for Defendant: Amy Austin, Esq, Assistant Federal Public Defender  
701 East Broad Street, Suite 3000, Richmond, VA 23219

**U.S. Attorney Information:**

AUSA: David T. Maguire Bar #: 29323

Interpreter: x No \_\_\_ Yes \_\_\_ List language and/or dialect: \_\_\_\_\_

**Location Status:**

Has Not Been Arrested

\_\_\_ Already in Federal Custody as of \_\_\_\_\_

\_\_\_ Already in State Custody  Defendant is available for court proceedings in this District

\_\_\_ On Pretrial Release

\_\_\_ Fugitive

\_\_\_ Unknown

\_\_\_ Bond

**U.S.C. Citations**

Total # of Counts: 1 \_\_\_ Petty \_\_\_ Misdemeanor X Felony

Statute	Description of Offense Charged	Count(s)
18 U.S.C. § 1341	Mail Fraud	1

Date: X 11/28/10

Signature of AUSA X David T. Maguire

District Court Case No. (to be filled in by deputy clerk): \_\_\_\_\_