

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

APR - 2 2014

JAMES W. McDERMACK, CLERK
By:  DEP. CLERK

UNITED STATES OF AMERICA)
)
v.)
)
GARY ALAN RICKENBACH)
)
)

No. 14-CR 00068 KGB

18 U.S.C. § 371
18 U.S.C. § 1956(h)
18 U.S.C. § 982

INDICTMENT

THE GRAND JURY CHARGES THAT:

COUNT ONE

Part A: Introduction

1. At all times relevant to this Indictment, One Bank & Trust, N.A., doing business as Onebank, was a nationally chartered financial institution headquartered in Little Rock, Arkansas, the accounts of which are insured by the Federal Deposit Insurance Corporation (FDIC). Onebank was regulated by both the FDIC and the Office of the Comptroller of the Currency (OCC), which are agencies of the United States government responsible for preserving the integrity of the banking system. Onebank was a wholly owned subsidiary of One Financial Corporation (OFC), a bank holding company regulated by the Federal Reserve Board. As such, Onebank was a financial institution within the meaning of Title 18, U.S.C. §20, and had branches in the Eastern District of Arkansas.

2. Onebanc was required to file a Report of Conditions of income, commonly referred to as a “Call Report” at the end of each banking quarter. Call reports set forth financial data about a bank’s financial condition as a result of its operations for that quarter. Onebanc was also required to submit to periodic examinations by the OCC. During these examinations, the OCC reviewed Onebanc’s books and records to ensure that the bank’s activities were accurately recorded and that the bank’s lending practices were safe and sound.
3. At all times relevant to this Indictment, GARY ALAN RICKENBACH, the defendant, was an Executive Vice President and Senior Executive Vice President of Onebanc and One Financial Corporation until about February 2013. As such, RICKENBACH had many responsibilities, including making and approving loans, supervising loan officers and other personnel, and serving on the Loan Committee and the Executive Loan Committee. RICKENBACH was part of the group of senior management of Onebanc.
4. In late 2006 or early 2007, RICKENBACH, through a Onebanc customer, became acquainted with A.S., who is known to the Grand Jury, who was a resident of Jacksonville, Florida. A.S. was associated with automobile engines and automobile racing.
5. In early 2007, RICKENBACH travelled to Jacksonville, Florida, to meet with A.S. to inspect his business. In February 2007, Exodus, LLC invested \$25,000 in CET Racing, a company controlled by A.S. According to the Arkansas Secretary of State’s Office, GARY ALAN RICKENBACH was the registered agent for Exodus, LLC.

6. On or about April 9, 2007, A.S. applied for a one year personal line of credit from Onebanc in the amount of \$1,500,000. The stated purpose of the line of credit was for business/investment. RICKENBACH recommended approval of the line of credit and arranged for other Onebanc executives, who are known to the Grand Jury, to approve this line of credit without it going through the formal approval process of Onebanc's Loan Committee.
7. As a result of the actions of RICKENBACH, Onebanc funded the line of credit and provided discretionary use of the funds to A.S.
8. After receiving the proceeds from the line of credit, A.S. never made a payment on the line of credit to Onebanc, but persuaded D.C., another investor and Onebanc customer who is known to the Grand Jury, to make one interest payment for A.S. later in 2007.
9. A.S. did not pay back the line of credit causing Onebanc to sue him. In the Summer of 2008, Onebanc received a judgment in the amount of approximately \$1,500,000, but was not able to collect any money from A.S., and as RICKENBACH later stated in an email, "I consider it remote that we will ever recover anything from [A.S]."
10. On October 23, 2008, One Financial Corporation (OFC) completed an application for TARP monies requesting \$10,000,000 from the United States Treasury Department's Troubled Asset Relief Program (TARP), which was created by the Emergency Economic Stabilization Act of 2008 and was designed to restore liquidity and stability to the financial system in the wake of the financial crisis. One of the sub-programs created under TARP was the Capital Purchase Program (CPP), in which government funds were invested in financial institutions in exchange for preferred shares in those institutions.

Financial institutions seeking TARP funds under the Capital Purchase Program applied through their primary bank regulator, and both the institution's eligibility and the amount of CPP investment depended upon information reflected in the institution's financial statements.

11. In early 2009, Ox Investments LLC and Financial One Leasing were both created by Coconspirator Z.
12. Crestwood Investments LLC was created earlier, but was brought back into good standing in early 2009 by Coconspirator Z.

Part B: The Conspiracy

From in or about December 2007 through in or about the September 2012, in the Eastern District of Arkansas and elsewhere,

GARY ALAN RICKENBACH

the defendant voluntarily and intentionally conspired and agreed with others, known to the Grand Jury, to commit offenses against the United States, that is:

- (a) To knowingly execute and attempt to execute a scheme and artifice to defraud Onebanc and its shareholders in violation of Title 18 U.S.C. § 1344;
- (b) Being an officer and employee of a Federal reserve bank, member bank and insured bank, to willfully misapply money, funds, and credits of Onebanc in violation of Title 18 U.S.C. § 656;
- (c) To make and cause to be made any false entries in any book, report, and statement of Onebanc to deceive the Comptroller of the Currency (OCC) and

the Federal Deposit Insurance Corporation (FDIC) and any agents and examiners appointed to examine the affairs of Onebank, in violation of Title 18 U.S.C. § 1005;

- (d) To knowingly make false statements, for the purpose of influencing the actions of Onebank, the accounts of which are insured by the FDIC, on any application, loan, change, extension and renewal in violation of Title 18 U.S.C. § 1014; and
- (e) To corruptly obstruct and attempt to obstruct any examination of a financial institution by an agency of the United States with jurisdiction to conduct an examination of Onebank, in violation of Title 18 U.S.C. § 1517.

Part C: Objects of the Conspiracy

The object of the conspiracy was to falsify the nature and scope of loans to Ox Investments LLC, Crestwood Investments LLC, and a line of credit to D.C. in order to pay off the line of credit made to A.S., and subsequent inability to collect, and to prevent the examiners of the FDIC and the OCC from discovering the \$1,500,000 loss that was an uncollectable debt of Onebank.

Part D: Manner and Means

It was part of the conspiracy that RICKENBACH and others known to the Grand Jury falsified loan documents, created new entities to apply for loans, and made bank loans and lines of credit to these entities to hide Onebank's loss of \$1,500,000, and make it appear that the bank's losses were less than they reported. It was also part of the conspiracy that RICKENBACH and others known to the Grand Jury misled the non-bank members of

Onebanc's Board of Directors, who owned shares of One Financial Corporation, the holding company of Onebanc, concerning some of the transactions. Further it was part of the conspiracy that, from time to time, RICKENBACH and other coconspirators known to the Grand Jury would misapply monies that were due and owing to the bank and divert the monies to pay on the loans as described herein and in Count Two.

OVERT ACTS

In furtherance of the conspiracy and to affect the illegal objects of the conspiracy, the following overt acts, among others, were committed in the Eastern District of Arkansas:

1. On December 28, 2007, RICKENBACH wrote a memorandum to Onebanc's Executive Loan Committee acknowledging that A.S.'s line of credit was in arrears, and that the collateral used to secure the loan was significantly impaired. RICKENBACH stated that he had talked with A.S., and the line of credit would be paid off before the end of January, which was before the call report had to be made to the FDIC.
2. On January 19, 2009, RICKENBACH emailed Coconspirators A, B, C, and D in which RICKENBACH outlined "Significant Issues/Decisions Regarding Overall [A.S.'s] Plan" which included One Financial Corporation, the bank holding company, loaning \$380,000 to [D.C.] although "OFC may not have enough cash to do this until receipt of TARP funds" and an "OBT [Onebanc] Loan to "Recovery, LLC" \$1,220,000 (name is for discussion purposes only; we will utilize something more discreet)". These two loans would pay off A.S.'s debt to the bank.

3. On January 19, 2009, Coconspirator A emailed RICKENBACH and copied Coconspirators B, C, and D stating, “Gary – I know that your [sic] busting your *** on this mess – But you can’t be involved in the murder and also solve the crime.”
4. On January 21, 2009, RICKENBACH met with Coconspirators B and Z to discuss the plan to disguise A.S.’s bad loan from regulators.
5. On January 26, 2009, Ox Investments LLC was incorporated with the Arkansas Secretary of State’s office by Coconspirator Z.
6. On January 29, 2009, RICKENBACH signed a secured loan on behalf of Onebank, as Executive Vice President, to Ox Investments LLC in the amount of \$459,075.20 for “development investments.” The loan was secured in part by “all sums due from [A.S.] for a loan in the original amount of \$1,500,000 . . .” and a Judgment against A.S. in the amount of \$1,598,958.85.
7. On January 29, 2009, RICKENBACH signed a secured loan on behalf of Onebank, as Executive Vice President, to Crestwood Investments LLC which was signed by Coconspirator Z in the amount of \$1,125,000 for “funds for development activity.” The loan was secured by three lots owned by Crestwood Investments LLC.
8. On February 4, 2009, RICKENBACH sent an email to Coconspirators A, B, C, and D stating, “ I’ve been focused on cleaning up the documentation on the other 2 deals so we can get them booked. Documents with revisions went to [Coconspirator Z] yesterday so I think those are close. I will hot step with [D.C.] to get the other part done. It was considered most important to get the Crestwood/Ox loans done to clear the deck and when [D.C.’s] deal gets done it will just reduce the Ox loan . . . I will do better at keeping everyone up to speed.”

9. On or about February 7, 2009, RICKENBACH directed Coconspirator Z to create a new corporation which would subsequently be called Financial One Leasing and purportedly owned by D.C.
10. On February 11, 2009, RICKENBACH signed an unsecured note on behalf of One Financial Corporation, as Executive Vice President, to D.C. for \$380,000.00 to “provide funds for investments.” The loan was approved by RICKENBACH, and Coconspirators B and C, and was “being made at OFC due to lending limit constraints at OB&T” while the stated purpose of the loan was to “provide funds for investments.”
11. On February 27, 2009, RICKENBACH arranged for \$150,000 of proceeds from D.C.’s \$380,000 line of credit with OFC to be transferred from OFC to Ox Investments LLC, and then transferred \$100,000 from Ox Investments LLC to Financial One Leasing.
12. On March 20, 2009, RICKENBACH arranged for the remaining \$230,000 of proceeds from D.C.’s \$380,000 line of credit to be transferred from OFC to Ox Investments LLC. Then, ten days later, Ox Investments LLC used the money to pay its loan at Onebank.
13. In or about May 2009, Coconspirator B requested an increase of TARP monies to \$17,300,000. That request was granted and, as a result, on June 5, 2009, OFC received \$17,300,000 from TARP Capital Purchase Program. Prior to this money being deposited into the OFC bank account, OFC had a balance of \$5,741.63.
14. On May 9, 2009, RICKENBACH replied to an email inquiry from Coconspirator A about the Ox Investments loan by stating, “Those funds were established for OX Investments when we closed the \$380,000 deal with [D.C.] and are to be used for expenses and debt service on the Crestwood loan.”

15. On December 29, 2009, RICKENBACH endorsed a cashier's check in the amount of \$503,593.21 made payable to One Bank & Trust N.A. The check consisted of proceeds from the sale of "Bradshaw Property", which was foreclosed by Onebank. The next day, \$468,341.69 of this money was diverted to OFC by the conspirators, and \$35,251.52 of this money was diverted to Ox Investments LLC.
16. On January 29, 2010, RICKENBACH signed on behalf of Onebank, as Executive Vice President, a loan to Ox Investments LLC for \$227,075.20 with the purpose listed as to "renew loan".
17. On November 8, 2010, RICKENBACH sent an email Coconspirator D entitled "Slushy fund" stating, "One thing we need to keep in mind and perhaps "reserve" some of the interest recovery and/or the gain that we have parked out there is the interest renewal of the Crestwood Investment loan. It won't mature until January 2011, but that is about \$30,000 of interest needed for renewal if [Person X, who is known to the Grand Jury] and I don't come up with a solution by then. I don't have much left in my funds we created for that deal and the leasing company deal."
18. On January 29, 2011, RICKENBACH signed a loan on behalf of Onebank, as Executive Vice President, to Ox Investments LLC in the amount of \$490,000.00 with the purpose listed as to "renew and increase loan".
19. On September 30, 2011, RICKENBACH arranged for \$53,000 to be transferred from Ox Investments LLC to One Financial Corporation (OFC) by filling out a withdrawal slip and noting "Loan Payment" on the withdrawal slip. The money came from a \$60,000 check dated two days earlier made out to "One Banc, c/o Gary Rickenbach", which was

deposited into the Ox Investments LLC checking account, and which were the proceeds of a settlement of an uncollectable loan made by Onebanc.

20. On January 29, 2012, RICKENBACH signed a loan on behalf of Onebanc, as Senior Executive Vice President, to Ox Investments LLC in the amount of \$490,000.00 with the purpose listed as to “renew line of credit”. On this loan, a new person, Person X, signed as President on behalf of Ox Investments LLC.
21. On or about March 30, 2012, RICKENBACH diverted \$47,447.07 from Onebanc to the Ox Investments LLC account, This money came from checks made payable to Onebanc and Onebank & Trust, N.A., attn: Gary Rickenbach,
22. On or about March 30, 2012, RICKENBACH made withdrawals two from the Ox Investments LLC account in the amount of \$21,798.83 and \$25,648.24 to make interest payments on the Ox Investments LLC loan and the Crestwood Investments LLC loan. The two withdrawals equaled the amount diverted.
23. On September 30, 2012, RICKENBACH wrote a memorandum to Onebanc’s Board of Directors stating that the true purpose of the loans to Ox Investments LLC, Crestwood Investments LLC and D.C. was disguised in order hide the problem loan made to A.S. that RICKENBACH had made.

All in violation of Title 18, U.S.C. §371.

COUNT TWO

1. Paragraph One through Twelve of Part A of Count One is incorporated by reference as if set forth fully herein.
2. Beginning in or about January 2009 and continuing through in or about September 2012, in the Eastern District of Arkansas,

GARY ALAN RICKENBACH,

the defendant, voluntarily and intentionally conspired with others known to the Grand Jury to commit money laundering, that is, they conspired to engage in and to cause financial transactions, knowing that the property involved in these financial transactions represented the proceeds of some form of unlawful activity, that is, bank fraud, Title 18 U.S.C. § 1344, and misapplication of bank funds, Title 18 U.S.C. § 656, which, in fact, involved the proceeds of that specified unlawful activity, (1) with the intent to promote the carrying on of that specified unlawful activity, in violation of Title 18, U.S.C. §1956(a)(1)(A)(i) and (2) knowing that the financial transactions were designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership and control of the proceeds of specified unlawful activity, in violation of Title 18, U.S.C. §1956(a)(1)(B)(i).

3. In furtherance of the conspiracy, the following occurred:

- a. On January 29, 2009, RICKENBACH, signed on behalf of Onebanc, as Executive Vice President, a loan in the amount of \$459,075.20 to Ox Investments LLC.
- b. On January 29, 2009, RICKENBACH, signed on behalf of Onebanc, as Executive Vice President, a loan in the amount of \$1,125,000 to Crestwood Investments LLC, with another person known to the Grand Jury signing on behalf of Crestwood Investments LLC.
- c. On February 11, 2009, RICKENBACH, signed on behalf of One Financial Corporation, as Executive Vice President, an unsecured loan of \$380,000 to a Onebanc customer.

4. As a further part of this conspiracy, on or about the following dates, in the Eastern District of Arkansas, the following financial transactions occurred with the proceeds of bank fraud and misapplication of bank funds:

Date	Source of Money	Recipient	Amount
February 27, 2009	One Financial Corp.	Ox Investments LLC	\$150,000
February 27, 2009	Ox Investments LLC	Financial One Leasing	\$100,000
March 20, 2009	One Financial Corp.	Ox Investments LLC	\$230,000
March 30, 2009	Ox Investments LLC	Onebank for Ox Investments LLC loan	\$230,000
July 15, 2009	Ox Investments LLC	Onebank for Crestwood Inv. LLC loan	\$27,893.83
January 29, 2010	Ox Investments LLC	Onebank for Ox Investments LLC loan	\$13,244.17
January 29, 2010	Ox Investments LLC	Onebank for Crestwood Inv. LLC loan	\$28,356.16
August 9, 2010	Financial One Leasing	Ox Investments LLC	\$19,000
August 9, 2010	Ox Investments LLC	Onebank for Crestwood Inv. LLC loan	\$27,893.84
March 31, 2011	Ox Investments LLC	Onebank for Crestwood Inv. LLC loan	\$140,856.16
March 31, 2011	Ox Investments LLC	Onebank for Ox Investments LLC loan	\$11,353.76
August 15, 2011	Financial One Leasing	Ox Investments LLC	\$5,000

August 19, 2011	Ox Investments LLC	Onebank for Crestwood Inv. LLC loan	\$6,000
September 30, 2011	Ox Investments LLC	One Financial Corp.	\$53,000
March 30, 2012	Ox Investments LLC	Onebank for Crestwood Inv. LLC loan	\$25,648.24
March 30, 2012	Ox Investments LLC	Onebank for Ox Investments LLC loan	\$21,798.83

All in violation of Title 18, United States Code § 1956(h).

FORFEITURE ALLEGATION ONE

Upon conviction of the offenses alleged in Counts One and Two, the defendant, GARY ALAN RICKENBACH, shall forfeit to the United States, under 18 U.S.C. § 982(a)(2) and 28 U.S.C. § 2461(c), all property constituting, or derived from, proceeds obtained directly or indirectly from the offenses.

FORFEITURE ALLEGATION TWO

Upon conviction of the offense alleged in Count Two the defendant, GARY ALAN RICKENBACH, shall forfeit to the United States, under 18 U.S.C. § 982(a)(1) and 28 U.S.C. § 2461(c), all property, real or personal, involved in the offense, and any property traceable to such property. If any of the forfeitable property, 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 with difficulty;

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c).

End of Text. Signature page attached.