

**IN THE UNITED STATE DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
(KANSAS CITY DOCKET)**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No.: 14-20042-CM/DJW</b>
<b>v.</b>	)	
	)	
<b>TIMOTHY P. FITZGERALD,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

**INFORMATION**

The United States Attorney for the District of Kansas charges:

At all times relevant to the charges in this Information:

**INTRODUCTION**

1. Defendant Timothy P. Fitzgerald was the Chief Financial Officer of KC United, LLC ("KC United"), a holding company for five construction services companies that was located in Kansas City, Kansas.

2. KC United was owned by C.J. and K.J., and it was a loan customer of Bank of Blue Valley. Bank of Blue Valley, headquartered in Overland Park, Kansas, was a financial institution as defined in Title 18, United States Code, Section 20, and its deposits were insured by the Federal Deposit Insurance Corporation ("FDIC").

3. The United States Treasury Department's Troubled Asset Relief Program ("TARP") 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 CPP applied through their primary bank regulator, and both an institution's eligibility and the amount of the CPP investment depended, in part, upon information reflected in the institution's financial statements.

4. On or about December 5, 2008, Blue Valley Ban Corp., the holding company for Bank of Blue Valley, received \$21,750,000 in TARP funding under the CPP. The United States Department of Treasury received preferred stock in the holding company, and Blue Valley Ban Corp. was required to pay quarterly dividends to the United States Treasury until the preferred shares were redeemed.

5. Between December 5, 2008, and September 30, 2013, Blue Valley Ban Corp. failed to make 18 required quarterly dividend payments to the United States Treasury, totaling \$4,893,750. On or about October 21, 2013, the United States Treasury sold its preferred stock in Blue Valley Ban Corp. for \$21,263,018, resulting in an additional shortfall of \$486,982 from the original investment.

**COUNT 1**

6. Paragraphs 1 through 5 are realleged and incorporated herein.

7. Beginning in or about December 2008, and continuing until in or about April 2011, the exact dates being unknown to the United States Attorney, in the District of Kansas and elsewhere, the defendant,

**TIMOTHY P. FITZGERALD,**

did knowingly combine, conspire, confederate, agree, and have a tacit understanding with K.J., and with other persons known and unknown to the United States Attorney, to commit bank fraud, by knowingly executing and attempting to execute a scheme and

artifice to defraud Bank of Blue Valley and to obtain money, credits, assets, securities, and other property owned by and under the custody and control of Bank of Blue Valley, by means of materially false and fraudulent pretenses, representations, and promises, and by the omission of material facts, in violation Title 18, United States Code, Section 1344.

8. The objects of the conspiracy were for Defendant Fitzgerald and his co-conspirators to procure and maintain lines of credit from Bank of Blue Valley by hiding and falsely representing the failing financial condition of KC United. Through these fraudulent transactions, Defendant Fitzgerald and his co-conspirators caused a loss of \$877,382.95 to Bank of Blue Valley.

#### **MANNER AND MEANS**

9. In 2008, K.J. knew that KC United was losing money from its operations. K.J. told Defendant Fitzgerald that KC United needed to show a profit in order to maintain its banking and bonding relationships. K.J. instructed Defendant Fitzgerald to manipulate the company's quarterly financial statements to falsely reflect a profit. Defendant Fitzgerald adjusted figures on the financial statements in order to make it appear that KC United was operating at a profit rather than a loss.

10. In November 2008, KC United had several business loans held by Bank of Blue Valley. The business loan agreements entered by the owners of KC United required the company to submit to Bank of Blue Valley quarterly balance sheets and profit and loss statements, as well as annual financial statements reviewed by a certified public accountant satisfactory to the bank. Defendant Fitzgerald was in part responsible for providing these materials to Bank of Blue Valley on behalf of KC United.

11. On or about November 7, 2008, Defendant Fitzgerald delivered to Bank of Blue Valley a quarterly balance sheet and profit and loss statement for the period ending September 30, 2008, that contained falsified information.

12. On or about January 31, 2009, KC United obtained a renewal of its business line of credit from Bank of Blue Valley and an increase in the credit limit to \$2,800,000. In deciding to renew the line of credit, Bank of Blue Valley relied on the falsified financial statement provided by KC United.

13. In or about December 2008, Defendant Fitzgerald and K.J. determined that if KC United had its outside accounting firm, review the company's annual financial statement, the accountants would easily discover the alterations that had been made to the quarterly financial statements. K.J. instructed Defendant Fitzgerald to prepare an annual financial statement that incorporated the previously falsified profits, as well as a cover letter stating that the accounting firm had reviewed the annual financial statement. They agreed that the cover letter would be placed on the letterhead of the outside accounting firm without the accounting firm's review or consent.

14. On or about March 23, 2009, Defendant Fitzgerald delivered to Bank of Blue Valley the falsified financial statement, accompanied by a letter on the letterhead of the outside accounting firm stating that the firm had reviewed the financial statement. In reality, the outside accounting firm did not review the 2008 financial statement of KC United and did not prepare the cover letter.

15. On or about May 27, 2009, Bank of Blue Valley consolidated and renewed several outstanding loans of KC United totaling \$1,097,294. In deciding to consolidate

and renew the loans, Bank of Blue Valley relied on the falsified financial statements of KC United.

16. At K.J.'s direction, Defendant Fitzgerald prepared falsified KC United quarterly financial statements and delivered them to Bank of Blue Valley on or about August 14, 2009, December 4, 2009, February 17, 2010, May 18, 2010, August 12, 2010, November 16, 2010, and March 9, 2011.

17. On or about May 28, 2010, Bank of Blue Valley renewed KC United's line of credit with a limit of \$2,800,000. In making this decision, Bank of Blue Valley relied on the falsified financial statements of KC United.

18. On or about July 16, 2010, Defendant Fitzgerald and K.J. prepared a 2009 year end financial statement for the company and a falsified cover letter from the outside accounting firm. Defendant Fitzgerald delivered these documents to Bank of Blue Valley.

19. In or about April 2011, Defendant Fitzgerald's employment at KC United ended.

20. As KC United continued to fail to report and pay payroll taxes, its financial condition worsened. On or about April 28, 2011, three of the companies owned by KC United filed Chapter 11 bankruptcy.

21. On or about March 29, 2012, Bank of Blue Valley sold its position in its remaining outstanding loan to KC United and sustained a loss of \$877,382.95.

22. This was all in violation of Title 18, United States Code, Section 1349.

**BARRY R. GRISSOM**  
**United States Attorney**  
**District of Kansas**

s/Jabari B. Wamble  
*Jabari B. Wamble #22730*  
*Assistant United States Attorney*  
*500 State Avenue, Suite 360*  
*Kansas City, KS 66101*  
*(913) 551-6730*  
*(913) 551-6541 (fax)*

**PENALTIES**

**Count 1 (Conspiracy to Commit Bank Fraud)**

- NMT 30 years imprisonment;
- NMT \$1,000,000 fine;
- NMT 5 years supervised release;
- \$100 special assessment.