

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
COVINGTON

Eastern District of Kentucky
FILED

JUL 14 2016

UNITED STATES OF AMERICA

AT COVINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

V.

INDICTMENT NO. 2:16-cr-28 ART-CJS

MICHAEL P. KENNEDY

* * * * *

THE GRAND JURY CHARGES:

COUNTS 1- 4
18 U.S.C. § 1344(2)

1. On or about January 2011, and continuing through on or about August 2012, in Kenton County, in the Eastern District of Kentucky, and elsewhere,

MICHAEL P. KENNEDY

did knowingly devise and execute a scheme to obtain money owned by, or in the custody or control of, Fifth Third Bank, the deposits of which were insured by the Federal Deposit Insurance Corporation, by means of material false or fraudulent pretenses, representations and promises, in violation of 18 U.S.C. § 1344(2), that is, **MICHAEL P. KENNEDY**, submitted false affidavits, entitled "Lien Waiver and Contractor's Affidavit" to Fifth Third Bank for the purpose of receiving money through incremental construction draws, which he wrongfully diverted to pay others and for his own benefit. Said scheme and artifice to defraud is set out more fully as follows:

INTRODUCTION

2. At all times material hereto, **MICHAEL P. KENNEDY** was a part owner/manager of Kennedy Homes LLC (Kennedy Homes), a business located in Fort Mitchell, Kentucky, which contracted to construct new homes in the Northern Kentucky and Cincinnati, Ohio area.

3. On or about January 17, 2011, a partner of **MICHAEL P. KENNEDY**, on behalf of Kennedy Homes, entered into a Construction Management Contract to build a new single family home on Grandin Riverview, Cincinnati, Ohio. According to the terms of the agreement, Kennedy Homes was to provide the material, labor and tools necessary to build the home. A family member agreed to obtain a construction loan in the amount of \$2.8 million dollars which was to be used to cover the costs of the labor, materials, tools, and a manager's fee.

4. On or about March 1, 2011, a family member obtained a construction loan from Fifth Third Bank, which was insured at the time by the Federal Deposit Insurance Corporation.

5. Fifth Third Bank agreed to release funds to Kennedy Homes incrementally upon the submission of a draw request form, a customer authorization form, and contractor's affidavit entitled "Lien Waiver and Contractor's Affidavit." The affidavit was to certify that Kennedy Homes as Contractor had paid in full for all labor and work performed and for all materials furnished by Contractor and all subcontractors,

materialmen and laborers prior to the date of the closing of the purchase of the subject property, or during and prior to the payment/draw period. The only exception included claims specifically listed on the Lien Waiver and Contractor's Affidavit, which **MICHAEL P. KENNEDY**, or another acting on his behalf, attested would be paid with the proceeds of the requested draw. No subsequent requests for draws were to be made or approved by the bank until all prior subcontractors and materialmens' work had been paid.

6. For purposes of receiving funds, **MICHAEL P. KENNEDY** emailed, or caused another to email, the affidavits from the business of Kennedy Homes in Fort Mitchell, Kentucky to Fifth Third Bank located in Grand Rapids, Michigan. Upon processing the request for release of funds, an individual at Fifth Third Bank caused an electronic deposit into an account of Kennedy Homes at the Bank of Kentucky.

SCHEME AND ARTIFICE TO DEFRAUD

7. On or about January 2011, and continuing through August 2012, **MICHAEL P. KENNEDY** submitted false affidavits swearing that he had paid subcontractors, materialmen and laborers to date, except for those listed, which he falsely swore he would pay with the proceeds of the draw request, when he knew, in fact, that subcontractors, materialmen and laborers had not been paid in full or would not be paid as represented on the affidavit. Instead, **MICHAEL P. KENNEDY**, used all or part of the draw money to pay subcontractors, materialmen and laborers on other projects and/or to pay salaries to himself, and other partners of Kennedy Homes, leaving certain subcontractors, materialmen or laborers, unpaid.

EXECUTION OF THE SCHEME

8. For the purpose of executing the scheme to obtain money owned by, or under the custody or control of Fifth Third Bank, by means of material false or fraudulent pretenses, representations and promises, on or about the dates set forth below, in the amounts described, **MICHAEL P. KENNEDY** emailed, or caused to be emailed, false construction affidavits from his office in Fort Mitchell, Kenton County, Kentucky to Fifth Third Bank in Grand Rapids, Michigan, for the purpose of obtaining money to which he was not entitled and which he wrongfully diverted, all in violation of 18 U.S.C. § 1344(2).

Count	Draw Number and Date	Amount
1	Draw 9 - 5/14/12	\$102,016.95
2	Draw 10 - 6/6/12	\$102,682.46
3	Draw 11- 7/10/12	\$64,443.91
4	Draw 12- 8/16/12	\$220,571.48

Each Count in violation of 18 U.S.C. § 1344(2).

COUNTS 5-8
18 U.S.C. § 1344(2)

1. On or about July 2011, and continuing through on or about July 2012, in Kenton County, in the Eastern District of Kentucky, and elsewhere,

MICHAEL P. KENNEDY

did knowingly devise and execute a scheme to obtain money owned by, or under the custody or control of Guardian Savings Bank, the deposits of which were insured by the Federal Deposit Insurance Corporation, by means of material false or fraudulent pretenses, representations and promises, in violation of 18 U.S.C. § 1344(2), that is, **MICHAEL P. KENNEDY**, submitted false affidavits, entitled "Affidavit of Original Contractor", to Guardian Savings Bank for the purpose of receiving money through incremental construction draws which he wrongfully diverted to pay others and for his own benefit. Said scheme and artifice to defraud is set out more fully as follows:

INTRODUCTION

2. At all times material hereto, **MICHAEL P. KENNEDY** was a part owner/manager of Kennedy Homes LLC (Kennedy Homes), a business located in Fort Mitchell, Kentucky, which contracted to construct new homes in the Northern Kentucky and the Cincinnati, Ohio area.

3. On or about July 25, 2011, **MICHAEL P. KENNEDY**, on behalf of Kennedy Homes, entered into a Building Construction Agreement to build a new single family home on Serenity Way in Edgewood, Kentucky, for \$975,000. According to the terms of the agreement, Kennedy Homes was to provide the labor, material and tools necessary to build the home. The owners agreed to obtain a construction loan to be used to cover those costs.

4. On July 25, 2011, the homeowners did obtain a construction loan from Guardian Savings Bank in the amount of \$925,000. The bank was insured at the time by

the Federal Deposit Insurance Corporation. The homeowners also paid Kennedy Homes a \$50,000 deposit.

5. Under the terms of the Construction Loan Agreement, funds were to be released to Kennedy Homes incrementally upon inspection of the home and the submission by **MICHAEL P. KENNEDY** of Affidavits of Original Contractor which averred that all subcontractors and materialmen had been paid for their work. No subsequent requests for draws were to be made or approved by the bank until all prior subcontractors and materialmens' work had been paid.

6. Upon inspection of the property and delivery of the Affidavits of Original Contractor to Guardian Savings Bank in Fort Wright, Kentucky, a check was drawn by the bank and **MICHAEL P. KENNEDY** caused the check to be deposited into an account he controlled.

SCHEME AND ARTIFICE TO DEFRAUD

7. On or about July 2011, and continuing through July 2012, **MICHAEL P. KENNEDY** executed false affidavits at his business in Fort Mitchell, Kentucky and caused the false affidavits to be submitted to Guardian Savings Bank. On each affidavit, he falsely swore that he had paid all materialmen and subcontractors in full and that no other claims for payment existed at the time his request for funding was made, when he knew, in fact, that certain subcontractors and materialmen were not being paid as required. Upon disbursement of funds by Guardian Savings Bank, based upon the false

representations, **MICHAEL P. KENNEDY** used all or part of the draw money to pay materialmen and subcontractors on other unrelated construction projects and/or to pay salaries to himself, and other partners of Kennedy Homes.

EXECUTION OF THE SCHEME

8. For the purpose of executing the scheme to obtain money owned by, or under the custody or control of Guardian Savings Bank, by means of material false or fraudulent pretenses, representations and promises, on or about the dates set forth below, in the amounts described, **MICHAEL P. KENNEDY** submitted or caused to be submitted false Affidavits of Original Contractor to Guardian Savings Bank, located in Kenton County, Kentucky, for the purpose of obtaining money to which he was not entitled and which he wrongfully diverted, as set forth below:

Count	Draw Number and Date	Amount
5	Draw 5 - 2/24/12	\$130,000
6	Draw 6 - 3/19/12	\$130,000
7	Draw 7 - 4/23/12	\$60,000
8	Draw 8 - 7/10/12	\$70,000

Each Count in violation of 18 U.S.C. § 1344(2).

FORFEITURE ALLEGATION
18 U.S.C. § 982(a)(2)(A)

In committing the felony offenses alleged in this Indictment, each punishable by imprisonment for more than one year, **MICHAEL P. KENNEDY** shall forfeit to the

United States pursuant to 18 U.S.C. § 982(a)(2)(A), any property constituting, or derived from, proceeds obtained directly or indirectly, as the result of such violations, including but not limited to:

MONEY JUDGMENT:

\$357,337.11, representing the approximate amount of proceeds derived from bank fraud.


SUBSTITUTE ASSETS:

If any of the property listed above, as a result of any act or omission of the defendant,

- (1) cannot be located upon the exercise of due diligence
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States to seek the forfeiture of any other property in which the above defendant has an interest, up to the value of the judgment described above and pursuant to 21 U.S.C. § 853(p), as incorporated in 18 U.S.C. § 982(b)(1).

A TRUE BILL


KERRY B. HARVEY
UNITED STATES ATTORNEY

PENALTIES

COUNTS 1-8: Not more than 20 years imprisonment, \$250,000 fine, and 3 years supervised release.

PLUS: Mandatory special assessment of \$100 per count.

PLUS: Restitution, if applicable.

PLUS: Forfeiture as listed.