

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

JUN 05 2013

CHRIS R. JOHNSON, Clerk  
By

Deputy Clerk

UNITED STATES OF AMERICA	)	
	)	
V.	)	No. 5:13CR50004 - 001 thru 004
	)	
BRANDON LYNN BARBER,	)	
JEFF WHORTON,	)	18 U.S.C. § 1344
BRANDON RAINS, and	)	18 U.S.C. § 1349
DAVID FISHER	)	18 U.S.C. § 1957

**SUPERSEDING INDICTMENT**

The Grand Jury charges:

**BACKGROUND**

At all times relevant to the indictment:

1. The Defendant, **BRANDON LYNN BARBER**, (hereinafter Barber), resided in Fayetteville, Arkansas, which is in the Western District of Arkansas.
2. The Defendant, **JEFF WHORTON**, (hereinafter Whorton), resided in Springdale, Arkansas, which is in the Western District of Arkansas.
3. The Defendant, **BRANDON RAINS**, (hereinafter Rains), resided in Fayetteville, Arkansas, which is in the Western District of Arkansas.
4. The Defendant, **DAVID FISHER**, (hereinafter Fisher), resided in Rogers, Arkansas, which is in the Western District of Arkansas.
5. First Federal Bank is a financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC).

6. Executive Plaza, LLC and Whorton Construction of N.W. Arkansas, Inc. were entities owned in whole or in part by Whorton.

7. Executive Plaza, LLC owned property known as Executive Plaza located on Whorton Lane in Springdale, Arkansas and described as Market Square, Lots 7A1, 7C1, 7D, 7E, 7F, and 7G (hereinafter referred to as "Executive Plaza").

8. BR Commercial Properties, LLC was an entity owned in whole or in part by Rains.

9. Old Missouri Office Building, LLC was an entity owned in whole or in part by Barber.

10. Old Missouri Office Building, LLC owned property located at 2921 S. Old Missouri Road (hereinafter "the Old Missouri property"), that contained an office building that housed several tenants, including Barber's offices and the offices of the Barber Group, an entity owned in whole or in part by Barber.

11. Whorton and another individual known to the Grand Jury owned and resided at a residence located at 3250 Willow Bend, Springdale, Arkansas (hereinafter "the Whorton House").

12. Barber and another individual known to the Grand Jury owned and resided at a residence located at 3122 Township Street, Fayetteville, Arkansas (hereinafter "the Barber House").

13. Barber owed First Federal Bank \$1,047,704.23 in connection with loan number 718158958, which was secured by a second mortgage on the Barber House.

14. From at least in or about August, 2008 through on or about October 7, 2008, the loan to Barber from First Federal Bank secured by the second mortgage on the Barber House was in default.

15. Barber owed Citigroup Commercial Mortgage Trust \$1,650,000 in connection with loan number 30257316, which was secured by a mortgage on 2921 S. Old Missouri Road, Springdale, Arkansas.

16. From in or about August, 2008 to in or about October, 2008, Barber proposed and commenced negotiations to sell the Barber House to Whorton.

17. In or about August or September, 2008, Whorton indicated to Barber that Whorton would only purchase the Barber House if Whorton could obtain good financing, could sell the Executive Plaza property for an acceptable price and if Whorton could sell the Whorton House for an acceptable price.

18. In or about August or September, 2008, Barber served as an intermediary between Whorton, as seller of Executive Plaza, and Rains and a person known to the Grand Jury, as buyers of separate lots of Executive Plaza. One of the buyers of the separate lots of Executive Plaza, who is a person known to the Grand Jury, was represented by his attorney, Fisher, in this transaction.

19. In or about August or September of 2008, Barber served as an intermediary between Whorton, as seller of the Whorton House, and First Federal Bank as buyer of the Whorton House.

20. In or about August or September, 2008, Barber proposed to and negotiated with First Federal Bank for First Federal Bank to loan funds to BR Commercial Properties, LLC, owned by Rains, and an entity known by the Grand Jury, owned by a person known to the Grand Jury in order for them to buy respective portions of Executive Plaza. Barber also proposed to and negotiated with First Federal Bank for First Federal Bank to loan funds to Whorton Construction of N.W. Arkansas, LLC, owned by Whorton to purchase the Old Missouri Property and to Whorton individually to purchase the Barber House.

21. On October 1, 2008, Whorton applied for a loan with First Federal Bank in the amount of \$1,000,000 to purchase the Barber House, and applied for a second loan, through Whorton Construction of N.W. Arkansas, LLC, in the amount of \$2,100,000 with First Federal Bank to purchase and to be secured by the Old Missouri property. First Federal Bank approved the loans on October 6, 2008.

22. On October 1, 2008, Rains applied for a loan with First Federal Bank in the total amount of \$1,000,000 to purchase and to be secured by the property located at Market Square, Lot 7A1, Whorton Lane, Springdale, Arkansas, also known as a lot within Executive Plaza, and to provide funds to finish construction of a partially-completed building on that lot. First Federal Bank approved the loan, loan number 5263512, on October 6, 2008.

23. Rains represented to and agreed with First Federal Bank in applying for and obtaining the loan that the purchase price of the property was \$745,000 and that Rains would place a sum of at least \$100,000 into a deposit account at First Federal to provide additional security for interest costs and other costs associated with the loan. First Federal Bank relied on this representation and agreement in approving the loan and in securing the loan with a mortgage on the property.

24. On or about October 1, 2008, an individual known to the Grand Jury through an entity known by the Grand Jury, applied for a loan with First Federal Bank in the amount of \$2,750,000 to purchase and to be secured by the property located at Market Square, Lots 7C1, 7D, 7E, 7F, and 7G, Whorton Lane, Springdale, Arkansas, also known as lots within Executive Plaza, and to provide funds for construction costs associated with buildings on those lots. Fisher represented this known individual in his dealings with First Federal Bank in this transaction. First Federal Bank approved the loan, loan number 5264866, on October 6, 2008.

25. The individual known to the Grand Jury, with the assistance of Fisher, represented to First Federal Bank in applying for the loan to purchase Lots 7C1, 7D, 7E, 7F, and 7G of Executive Plaza that the purchase price of the property was \$2,155,000. First Federal Bank relied on this representation in approving the loan and in securing the loan with a mortgage on the property.

26. On or about October 7, 2008, Barber sold the Barber House to Whorton for \$1,550,000 and that transaction was funded, in part, with loan number 5263488 from First Federal to Whorton in the amount of \$1,000,000. First Federal secured the loan with a mortgage on the Barber House.

27. On or about October 7, 2008, Barber sold the Old Missouri Property to Whorton Construction of N.W. Arkansas, Inc. for \$1,650,000 and that transaction was funded, in part, with loan number 5263470 from First Federal to Whorton Construction of N.W. Arkansas, Inc. in the amount of \$2,100,000, which included the \$1,650,000 sales price. First Federal secured the loan with a mortgage on the Old Missouri Property and Whorton personally guaranteed the loan. First Federal's loan funds were used to pay off Barber's \$1,650,000 loan from Citigroup Commercial Mortgage Trust, secured by the Old Missouri property.

28. On or about October 7, 2008, Whorton sold the Whorton House to First Federal Bank for \$550,000.

29. On or about October 7, 2008, Whorton sold Lot 7A1 of Executive Plaza to BR Commercial Properties, LLC for \$745,000 and that transaction was funded with loan number 5263512 from First Federal to BR Commercial Properties, LLC in the amount of \$1,000,000, of which \$745,000 was for the purchase of the property and the remainder was for construction costs and other costs associated with the property. Rains personally guaranteed the loan, and First Federal secured the loan with a mortgage on Lot 7A1 of Executive Plaza.

30. On or about October 7, 2008, Whorton sold lots 7C1, 7D, 7E, 7F, and 7G of Executive Plaza to an entity known to the Grand Jury and owned, in whole or in part, by a person known to the Grand Jury for \$2,155,000. This transaction was facilitated by Fisher's representation of the person known to the Grand Jury and funded with loan number 5264866 from First Federal to the entity known by the Grand Jury in the amount of \$2,755,000, of which \$2,155,000 was for the purchase of the property and the remainder was for construction costs and other costs associated with the property. A person known to the Grand Jury personally guaranteed the loan, and First Federal secured the loan with a mortgage on lots 7C1, 7D, 7E, 7F, and 7G of Executive Plaza.

### COUNT 1

#### Conspiracy to Commit Bank Fraud

**(18 U.S.C. § 1349 - CONSPIRACY and 18 U.S.C. § 1344 - BANK FRAUD)**

31. The Grand Jury repeats and re-alleges the allegations contained in paragraphs 1 through 30 of this Indictment, as though fully set forth herein.

32. From on or about August 2008 through on or about December 2008 in the Western District of Arkansas, Fayetteville Division, and elsewhere, the defendants, **BRANDON LYNN BARBER, JEFF WHORTON, BRANDON RAINS, DAVID FISHER**, and persons known to the Grand Jury, did knowingly and intentionally combine, conspire, confederate, and agree with each other and with others known and unknown to the Grand Jury to defraud First Federal Bank and to obtain funds under the custody and control of First Federal Bank by means of materially false and fraudulent pretenses, representations, and promises.

All in violation of 18 U.S.C. §§ 1349 and 1344.

## MANNER AND MEANS OF THE CONSPIRACY

33. It was the purpose of the conspiracy that Barber, Whorton, Rains, Fisher and a person known to the Grand Jury, acting on behalf of themselves, entities owned in whole or in part by them, or on behalf of persons they represented, would make false and fraudulent representations to First Federal Bank in order to obtain higher loans from First Federal Bank and that they would structure the multi-party, multi-property set of real estate transactions so that excess funds could be obtained from the total loan funding advanced by First Federal Bank at closing, and that the excess funds would be divided between Barber, Rains, Whorton and a person known to the Grand Jury and that they would conceal the cash kickbacks from First Federal Bank.

34. As part of the conspiracy, Barber, Whorton, Rains, Fisher and a person known to the Grand Jury conspired and agreed that they would make false and fraudulent representations to First Federal Bank that the purchase price of the Executive Plaza property was higher than the actual purchase price in order to obtain a higher amount of loan funding and thereby generate excess cash to be divided between Barber, Rains, and a person known to the Grand Jury. Fisher furthered the conspiracy by drafting a side agreement that memorialized the way the excess cash was to be disbursed and concealed the existence of the side agreement when interacting with First Federal Bank on behalf of the person known to the Grand Jury.

35. As part of the conspiracy, Whorton, Rains, and a person known to the Grand Jury assisted by Fisher, on behalf of entities owned in whole or in part by them, executed contracts for the purchase and sale of Executive Plaza representing the false purchase prices, which were higher than the actual purchase prices.

36. As part of the conspiracy, Whorton, Rains, and a person known to the Grand Jury, by and through Fisher, made application to First Federal Bank for loans to fund the transactions and, in connection with such applications, communicated the falsely higher purchase prices.

37. As part of the conspiracy, Barber, Whorton, Rains, Fisher, and a person known to the Grand Jury falsely and fraudulently represented to First Federal Bank that the purchase prices of the Executive Plaza lots were the falsely higher purchase prices and concealed from First Federal Bank the actual, lower purchase prices and their intent to divide the cash generated as a result of the difference in prices. Fisher furthered the conspiracy by drafting a side agreement that memorialized the way the excess cash was to be disbursed and concealed the existence of that side agreement when interacting with First Federal Bank on behalf of the person known to the Grand Jury.

38. As part of the conspiracy, Barber, Whorton, Rains, and a person known to the grand jury, represented by Fisher, executed loan documents, including loan agreements, notes, and mortgages that were prepared by First Federal Bank in reliance on the falsely higher purchase prices.

39. As part of the conspiracy, Barber, Whorton, Rains and a person known to the Grand Jury signed and executed documents necessary to close the real estate transactions for the purchase and sale of the Barber House, the Old Missouri property, and Executive Plaza. These closing documents were based upon and referenced the falsely higher purchase prices and included Settlement Statements, also known as "HUD-1" statements, detailing the exchange of funds between the Buyers, Sellers, and First Federal Bank. The closing documents were reviewed by Fisher and did not reference the cash payments to Barber, Rains, and a person known to the Grand Jury.

40. As part of the conspiracy, Barber, Whorton, Rains, and a person known to the Grand Jury agreed to divide up the excess cash obtained as a result of the loan amounts advanced by First



Federal Bank being higher than the actual purchase prices. The agreement to divide up the excess cash between Whorton, Barber, and a person known to the Grand Jury was prepared by Fisher.

41. As part of the conspiracy, Whorton prepared and disbursed checks and wire transfers of the excess funds, that were falsely and fraudulently obtained from First Federal Bank, to Barber, Rains, and a person known to the Grand Jury.

All in violation of 18 U.S.C. §§ 1349 and 1344.

## COUNT 2

### **(18 U.S.C. § 1957 - MONEY LAUNDERING - Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity)**

42. Between on or about September 29, 2008 through on or about October 15, 2008, in the Western District of Arkansas, Fayetteville Division, the defendant **JEFF WHORTON**, did knowingly engage in a monetary transaction through a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, by causing \$550,000 to be transferred from the Whorton Construction Account, number xxxx-4979, held at Legacy Bank in Fayetteville, to an account in the name of an entity known by the Grand Jury, owned by a person known to the Grand Jury, account number xxx-1665, at Signature Bank, such proceeds having derived from a specified unlawful activity, that is bank fraud, in violation of 18 U.S.C. § 1344.

All in violation of 18 U.S.C. § 1957.

**COUNT 3**

**(18 U.S.C. § 1957 - MONEY LAUNDERING - Engaging in  
Monetary Transactions in Property Derived  
From Specified Unlawful Activity)**

43. Between on or about September 29, 2008 through on or about October 14, 2008, in the Western District of Arkansas, Fayetteville Division, the defendant **BRANDON RAINS**, did knowingly engage in a monetary transaction through a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is, by causing \$100,000 to be transferred from the Brandon Rains Account, number xxxx-7107, held at Arvest Bank in Fayetteville, to the Brandon Rains Account, number xxx-5277, at First Federal Bank, such proceeds having derived from a specified unlawful activity, that is bank fraud, in violation of 18 U.S.C. § 1344.

All in violation of 18 U.S.C. § 1957.

**NOTICE OF INTENT TO SEEK CRIMINAL FORFEITURE**

44. The United States re-alleges and incorporates by reference herein paragraphs 1 - 43. As a result of committing the offenses as alleged in this Indictment, each defendant shall forfeit to the United States, pursuant to 18 U.S.C. §§ 981(a)(1)(c), 982(a)(2) and 28 U.S.C. § 2461, all property involved in or traceable to property involved in the offenses, including proceeds directly or indirectly from the offenses.

Moreover, if any property subject to forfeiture, as a result of any act or omission by any 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 subdivided without difficulty;

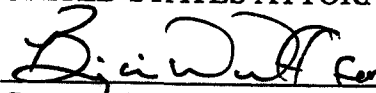
the defendants shall forfeit to the United States any other property of the defendants up to the value of the forfeitable property, or a sum of United States currency, in the form of a money judgment, representing the amount of proceeds obtained by the defendants as a result of the offense described in this Indictment. The money judgment will be later executed against any other property held by the defendants.

A True Bill.

*/s/ Grand Jury Foreperson*  
Grand Jury Foreperson

CONNER ELDRIDGE  
UNITED STATES ATTORNEY

By:

  
\_\_\_\_\_  
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