

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,)	Criminal File No. 13-35 (PJS/SER)
)	
Plaintiff,)	SECOND SUPERSEDING
)	INDICTMENT
v.)	
)	(18 U.S.C. § 1014)
(1) JEFFREY ALLEN GARDNER, and)	(18 U.S.C. § 1341)
(2) STUART ALAN VOIGT,)	(18 U.S.C. § 1344)
)	(18 U.S.C. § 1349)
Defendants.)	
)	

THE UNITED STATES GRAND JURY CHARGES:

1. From in or about 2005 and lasting until in or about 2010, defendant JEFFREY ALLEN GARDNER (“GARDNER”) devised and executed a scheme and artifice to defraud in connection with a number of entities, including but not limited to HENNESSEY FINANCIAL LLC (“HENNESSEY”), by means of materially false and fraudulent pretenses, representations, and promises, and omissions of material fact.

2. From sometime in 2005 until sometime in 2008, GARDNER and others working in concert with GARDNER solicited and raised funds from private investors and other sources for the stated purpose of engaging in commercial real estate financing and related projects. Investors were told that their funds would be applied toward real estate transactions and projects expected to generate profits from which investor returns would be paid. The promised returns were between 10 and 20 percent annually.

3. Information regarding the assets and true financial circumstances of GARDNER and HENNESSEY, the sources of funds for investor returns, and plans for HENNESSEY’s assets and business, was material information to investors. However,

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during the course of the scheme, GARDNER and others working in concert with GARDNER misrepresented and failed to disclose the truth about these subjects to investors.

4. For example, instead of utilizing HENNESSEY's funds substantially as promised, GARDNER and others acting at his direction applied the funds toward other purposes, including but not limited to diverting the funds for uses not approved by investors, such as repayment of prior investors and preexisting debts incurred by GARDNER and his companies. HENNESSEY was not a profitable ongoing business as investors were being told, but instead amounted to a Ponzi scheme.

5. Further, at a time in which GARDNER knew that HENNESSEY was failing as a business and was unlikely to meet its obligations including repayment of investor funds, GARDNER and others acting at his direction and control continued to represent to investors that their investments had a positive value and were expected to continue to yield previously promised returns. At a time when GARDNER knew that valuable assets of HENNESSEY were being transferred for the benefit of others, GARDNER failed to inform HENNESSEY investors that assets and value underlying and supporting their investments would be relinquished. This conduct had the effect of not only reducing the value and security of the investments even more, but making it less likely that investors would be able to recoup some or all of their investments when HENNESSEY collapsed.

6. It was further part of the scheme to defraud that GARDNER represented to investors in 2008 that a new corporation would be created to attempt to generate profits

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for investors in return for abandoning their claims related to HENNESSEY when, in fact, the new venture was merely a bank account from which GARDNER returned a fraction of amounts owed to investors to give the impression that the investment was performing and to lull the investors into not investigating possible misuse of their funds and valuable assets and claims to property formerly held by HENNESSEY.

7. It was further part of the scheme to defraud that between the fall of 2007 and sometime in 2010 GARDNER, aided and abetted by others working in concert with GARDNER, created new companies, opened bank accounts including accounts in the names of the new companies, transferred funds from HENNESSEY accounts, and took other steps to hide income and assets from investors, others creditors, and the government.

COUNTS 1-4
(Mail Fraud)
18 U.S.C. § 1341

8. The grand jury realleges and incorporates paragraphs 1-7.

9. On or about the following dates, in the State and District of Minnesota and elsewhere, the defendant,

JEFFREY ALLEN GARDNER,

aided and abetted by others known and unknown to the grand jury, did knowingly devise and intend to devise the above-described scheme and artifice to defraud and to obtain money and property through material false statements and misrepresentations and omissions of material fact, and for the purpose of executing the scheme and artifice, did cause to be sent and delivered by the United States Postal Service and interstate

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commercial carrier the following matters and things:

COUNT	DATE	MAILED MATTER
1	02/29/2008	Monthly statement and letter to investors
2	03/31/2008	Monthly statement and letter to investors
3	05/01/2008	Letter to investors
4	05/14/2008	Letter to investors

10. All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 5

(Conspiracy to Commit Mail Fraud)
18 U.S.C. § 1349

11. From in or about 2005 to in or about February 2010, in the State and District of Minnesota and elsewhere, the defendant,

JEFFREY ALLEN GARDNER,

did knowingly and willfully combine, conspire, and agree with others known and unknown to the Grand Jury, to commit offenses against the United States, that is, mail fraud as described in Counts 1 through 4 above, all in violation of Title 18, United States Code, Sections 1341 and 1349.

MANNER AND MEANS

12. The conspiracy included the manner and means described in paragraphs 1 through 7 of the Indictment, which are hereby re-alleged and incorporated herein.

13. All in violation of Title 18, United States Code, Section 1349.

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COUNTS 6-9
(Bank Fraud)
18 U.S.C. § 1344

14. The grand jury realleges and incorporates paragraphs 1-7.

15. At all times material to the following counts of this indictment, First Commercial Bank (“FCB”) was a federally-insured financial institution and STUART ALAN VOIGT (“VOIGT”) was chairman of the board of FCB.

16. In order to keep HENNESSEY afloat and to provide funds to be funneled back to VOIGT, GARDNER and VOIGT secured loans for HENNESSEY from FCB without disclosing the truth about GARDNER’s finances and creditworthiness and plans for the borrowed funds. GARDNER and VOIGT engaged in a scheme to defraud FCB through false and fraudulent pretenses, representations, promises, and omissions of material facts by submitting loan applications and personal financial statements to FCB that omitted debts owed to VOIGT and other debts guaranteed by GARDNER.

17. It was part of the scheme to defraud FCB that GARDNER, aided and abetted by others known and unknown to the grand jury, filed security interests and other documentation to allow another company to obtain HENNESSEY assets that GARDNER had presented as security for the loans from FCB, thereby depriving FCB of collateral and reducing the likelihood that FCB would be made whole on the loans received by GARDNER.

18. On or about the following dates, in the State and District of Minnesota and elsewhere, the defendants,

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aided and abetted by each other and others known and unknown to the grand jury, did knowingly and intentionally devise and engage in and attempt to engage in a scheme and artifice to defraud and to obtain funds from First Commercial Bank, a financial institution whose deposits were then insured by the Federal Deposit Insurance Corporation, by means of false and fraudulent pretenses, representations, promises, and omissions of material facts, as follows:

COUNT	DATE	ACT IN FURTHERANCE OF THE SCHEME
6	02/04/2005	GARDNER submits personal financial statement that does not disclose debts owed by GARDNER to VOIGT, personal guarantees issued by GARDNER to other creditors and HENNESSEY investors, and the use of borrowed funds to repay debts owed to VOIGT
7	04/19/2006	GARDNER obtains a term extension and increase in the loan and does not disclose debts owed by GARDNER to VOIGT, personal guarantees issued by GARDNER to other creditors and HENNESSEY investors, and the use of borrowed funds to repay debts owed to VOIGT
8	09/10/2007	GARDNER directs the filing of documents to permit another entity he controls to obtain HENNESSEY assets that had been presented as collateral to FCB
9	06/12/2008	GARDNER, through another company he controls, forecloses on HENNESSEY assets that GARDNER had presented as collateral for the loans from FCB

19. All in violation of Title 18, United States Code, Sections 1344 and 2.

COUNTS 10-12

(False Statement in a Loan Application)

18 U.S.C. § 1014

20. At all times material to the following counts of this indictment, First Commercial Bank (“FCB”) was a federally-insured financial institution and VOIGT was

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chairman of the board of FCB.

21. On or about the following dates, in the State and District of Minnesota and elsewhere, the defendant,

**JEFFREY ALLEN GARDNER and
STUART ALAN VOIGT,**

aiding and abetting each other, did knowingly make a false statement for the purpose of influencing the action of First Commercial Bank, a financial institution whose deposits were then insured by the Federal Deposit Insurance Corporation, in connection with an application, advance, loan, extension, and renewal of a loan, as follows:

COUNT	DATE	FALSE STATEMENT
10	02/04/2005	GARDNER submits personal financial statement that does not disclose debts owed by GARDNER to VOIGT, personal guarantees issued by GARDNER to other creditors and HENNESSEY investors, and the use of borrowed funds to repay debts owed to VOIGT
11	08/31/2005	GARDNER submits personal financial statement that does not disclose debts owed by GARDNER to VOIGT, personal guarantees issued by GARDNER to other creditors and HENNESSEY investors, and the use of borrowed funds to repay debts owed to VOIGT
12	03/08/2006	GARDNER submits personal financial statement that does not disclose debts owed by GARDNER to VOIGT, personal guarantees issued by GARDNER to other creditors and HENNESSEY investors, and the use of borrowed funds to repay debts owed to VOIGT

22. All in violation of Title 18, United States Code, Sections 1014 and 2.

FORFEITURE ALLEGATIONS

As the result of the offenses alleged in Counts 1-12 of this Indictment, the defendant,

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JEFFREY ALLEN GARDNER,

shall forfeit to the United States pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(2)(A), and Title 28, United States Code, Section 2461(c), any property constituting, or derived from, proceeds traceable to the violations of Title 18, United States Code, Sections 1014, 1341, 1344, and 1349.

As the result of the offenses alleged in Counts 6-12 of this Indictment, the defendant,

STUART ALAN VOIGT,

shall forfeit to the United States pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(2)(A), and Title 28, United States Code, Section 2461(c), any property constituting, or derived from, proceeds traceable to the violations of Title 18, United States Code, Sections 1014 and 1344.

If any of the above-described forfeitable property is unavailable for forfeiture, the United States intends to seek the forfeiture of substitute property as provided for in 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).

All in violation of Title 18, United States Code, Sections 981(a)(1)(C), 982(a)(1), 982(a)(2)(A), 1014, 1341, 1344, and 1349, and Title 28, United States Code, Section 2461(c).

A TRUE BILL

UNITED STATES ATTORNEY

FOREPERSON