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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

September 2013 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL J. STEWART and JOHN J. PACKARD,

Defendants.

CR No. 14 SACR14-00014

I N D I C T M E N T

[18 U.S.C. § 1341: Mail Fraud; 18 U.S.C. § 1344: Bank Fraud; 18 U.S.C. § 152(1): Fraudulent Concealment of Bankruptcy Assets; 18 U.S.C. § 152(7): Fraudulent Transfer of Bankruptcy Assets; 18 U.S.C. § 2: Aiding and Abetting]

The Grand Jury charges:

COUNTS ONE THROUGH ELEVEN

[18 U.S.C. § 1341]

I. INTRODUCTION

At all times relevant to this Indictment:

1. PPA Holdings LLC ("PPA Holdings") was a California limited liability corporation and conducted its business from offices located in Irvine and Long Beach, California. Through family trusts, defendants MICHAEL J. STEWART ("STEWART") and

JOHN J. PACKARD ("PACKARD") each owned 50 percent of PPA Holdings.

2. Pacific Property Assets LLC ("PPA LLC") was a California limited liability corporation and conducted its business from offices located in Irvine and Long Beach, California. Through family trusts, defendants STEWART and PACKARD each owned 50 percent of PPA LLC.

3. PPA Holdings and PPA LLC each owned various limited liability corporations (collectively, the "Property LLCs"). The Property LLCs, in turn, owned real estate properties. Many of the Property LLCs owned only a single real estate property apiece, while some of the Property LLCs owned more than one real estate property.

4. PPA Holdings, PPA LLC, and the Property LLCs collectively did business, and held themselves out to investors and creditors, as "PPA." Defendants STEWART and PACKARD, as co-founders, owners, and principals of the PPA companies, together exercised control over those companies.

5. From 1999 through 2009, through the constituent companies of PPA, defendants STEWART and PACKARD engaged in the business of purchasing, renovating, renting, refinancing, and selling real estate, primarily residential apartment complexes in southern California and Arizona. Typically, PPA Holdings would borrow money from a bank to buy a property, with the bank receiving a first deed of trust on the property. PPA Holdings would then borrow money from individual investors, purportedly to renovate the property, by conducting an offering of promissory notes. One of the Property LLCs would be created to

hold title to the property. The property would then be renovated and managed as a rental property, with PPA LLC collecting rents. Eventually, when the property had increased in value, PPA Holdings would sell the property or refinance it with a new and larger bank loan, which would generate additional funds. Over the course of their existence from 1999 through 2009, PPA Holdings and the other PPA companies directly or indirectly acquired over 100 separate real estate properties, and conducted dozens of promissory note offerings to investors.

6. Aside from the loans used to purchase the properties, PPA had four primary sources of funds: (1) proceeds from bank refinancings; (2) proceeds from sales of properties; (3) rent and other payments from the residents of its apartment buildings; and (4) proceeds from individual investor loans. From at least 2002 onward, the rental payments were inadequate to cover PPA's operating costs, administrative expenses, and the costs of making payments on the bank and individual investor loans. Accordingly, PPA used funds from property sales, refinancings, and new individual investor loans to cover its expenses, including salary and other payments to defendants STEWART and PACKARD.

7. Defendants STEWART and PACKARD had distinct but overlapping roles in PPA. Defendant STEWART, who worked mainly in the Irvine office, was responsible for raising funds from individual investors, including creating the private placement memoranda (PPMs) and other materials used to solicit funds from those investors. Defendant PACKARD, who worked mainly in the

Long Beach office, was responsible for arranging bank financing and overseeing management of PPA's properties.

8. Defendants STEWART and PACKARD determined the compensation that they would receive from PPA. From 2002 to 2007, each received an annual salary ranging from approximately $400,000 to approximately $660,000. From 2008 to June 2009, they increased their annual salaries to approximately $750,000. In addition, up to and including June 2009, each received over $3 million in additional net payments from PPA.

9. On June 26, 2009, PPA Holdings, PPA LLC, and a number of the Property LLCs filed voluntary petitions for bankruptcy. As of that date, PPA owed over $91.6 million in outstanding principal to individual investors, and over $96 million in outstanding principal to banks. In the course of the bankruptcy proceeding, the companies' assets were liquidated or abandoned.

II. <u>THE FRAUDULENT SCHEME</u>

10. Beginning on a date unknown but at least as early as in or about January 2008, and continuing through at least in or about January 2010, in Orange and Los Angeles Counties, within the Central District of California, and elsewhere, defendants STEWART and PACKARD, knowingly and with intent to defraud, devised, participated in, and executed a scheme to defraud as to material matters, and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises, and the concealment of material facts.

11. The fraudulent scheme was carried out, in substance, in the following ways, among others:

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Concealment of PPA's Poor Financial Condition

a. Beginning in 2007, the real estate market began to decline significantly. At the same time, banks and other lenders began to restrict credit, and were particularly reluctant to extend loans to finance or refinance purchases of real estate. This development undermined PPA's business model, which relied on increases in its properties' value and the proceeds of sales and refinancings of those properties to fund its operations and repay its outstanding debts. As both defendants STEWART and PACKARD knew, the value of PPA's own properties had fallen dramatically. After in or about November 2007, despite defendant STEWART's and defendant PACKARD's efforts, PPA was unable to raise money by refinancing any of its properties. In addition, after November 2007, PPA failed to sell any of its properties for more than the amount of the outstanding loans on those properties, with the exception of sales of several smaller properties that netted only several million dollars in proceeds.

b. As a result of these market changes and the decline in the value of its properties, and as both defendants STEWART and PACKARD were well aware, PPA's financial condition worsened considerably. PPA's net income had been increasingly negative since at least 2004, resulting in a net loss of over $13 million in 2007. While PPA had previously been able to maintain a positive cash flow by continuing to borrow money from banks, the market declines made this more difficult. By early 2008, the funds in PPA's various bank accounts were dwindling, and PPA was struggling to make payments to vendors, employees, and creditors. PPA thus became dependent on loans from new individual investors to pay its expenses; without such loans, PPA would have begun defaulting on its debts and could not have continued to operate.

c. Accordingly, throughout 2008 and the first four months of 2009, defendants STEWART and PACKARD continued to raise over $35 million in funds from individual investors through a series of ten offerings of promissory notes issued by PPA. They used the proceeds of those offerings to pay PPA's expenses, including monthly payments to the individual investors who had made previous loans, as well as monthly payments on outstanding bank loans.

d. In soliciting individual investors' funds through those offerings, defendants STEWART and PACKARD made false and misleading statements regarding PPA's financial status. In particular, among other things, defendants STEWART and PACKARD represented that:

i. Throughout 2008 and the first four months of 2009, PPA's financial position was strong, it had substantial capital and cash flow, and it was having success in arranging further bank refinancing of its properties, when in truth and in fact, and as defendants STEWART and PACKARD well knew, PPA during that period was experiencing cash flow shortages, was unable to refinance its properties, and was dependent on continually obtaining new loans from individual investors to pay its outstanding debts and continue operating.

ii. Over the first six months of 2008, the various PPA entities combined had obtained over $15 million in "refinancing proceeds," defined as "[n]et proceeds from institutional and private refinancing of real property," when in truth and in fact, and as defendants STEWART and PACKARD well knew, they had been unable to obtain any refinancing during that period.

e. Further, in soliciting new investors' funds through those offerings, and in communicating with prior investors, defendants STEWART and PACKARD omitted material information regarding PPA's financial status. In particular, among other things, defendants STEWART and PACKARD concealed that:

i. After November 2007, PPA had been unable to raise funds through bank refinancing of its properties.

ii. After November 2007, PPA was dependent on obtaining new loans from individual investors to pay its outstanding debts and continue operating.

iii. After November 2007, payments of purported "interest" that existing PPA individual investors were receiving came entirely from the proceeds of new individual investor loans, rather than from operating profits.

iv. After in or about November 2007, PPA had difficulty paying its monthly expenses, such as payments to vendors, creditors, and employees.

f. While making these misrepresentations and omissions, defendants STEWART and PACKARD continued to accept investors' funds up to and including April 24, 2009. On or about May 1, 2009, defendants STEWART and PACKARD informed investors that they would no longer be making monthly payments on the investors' loans to PPA. Less than two months later, various PPA companies filed for bankruptcy protection.

False and Misleading Statements and Omissions Regarding Use of Investors' Funds

a. PPA's last offering, the "Opportunity Fund," took place from January through April 2009. During that time, defendants STEWART and PACKARD raised over $9 million from individual investors by selling promissory notes issued by PPA Holdings. Investors in the Opportunity Fund were told that their funds would be used "to acquire, renovate and operate additional workforce level apartment properties" and that the investors would "be relying on the management of the Company [PPA Holdings] to prudently invest the proceeds of th[e] Offering to acquire, renovate, and operate" such properties.

b. In truth and in fact, and as defendants STEWART and PACKARD well knew -- but did not disclose to the investors -- the proceeds of the Opportunity Fund offering were not used for the purposes promised. By 2009, PPA was unable to rely on property sales or refinancings to pay its debts and other expenses, and was desperate to raise cash from individual investors. The proceeds of the Opportunity Fund were used to make monthly payments to earlier individual investors and to banks, to cover PPA's operating expenses, and to renovate properties PPA had purchased earlier.

c. In particular, a substantial portion of the Opportunity Fund proceeds was used to pay defendants STEWART and PACKARD. Throughout the first four months of 2009, both defendants STEWART and PACKARD continued to collect salaries equivalent to $750,000 on an annual basis. In addition, during that period, defendants STEWART and PACKARD received from PPA further payments of approximately $850,000 and $396,000, respectively. Defendant PACKARD received a payment of $165,000 on June 11, 2009, more than a month after PPA had suspended payments to investors, approximately two weeks after PPA had retained bankruptcy attorneys, and approximately two weeks before the various PPA companies filed for bankruptcy.

d. Other funds were used to pay PPA's bankruptcy attorneys. Specifically, on or about May 28, 2009, approximately $1 million of the Opportunity Fund proceeds were transferred to a client trust account controlled by PPA's bankruptcy counsel, as a retainer for legal services.

III. THE EFFECT OF THE SCHEME TO DEFRAUD

12. From in or about January 2008 through April 2009, through the above-described scheme to defraud, defendants STEWART and PACKARD induced approximately 647 victim-investors to entrust, or continue to entrust, approximately $91.6 million to them to be invested through PPA. When the scheme collapsed and PPA defaulted on the investors' loans in or about May 2009 and filed for bankruptcy in or about June 2009, the investors lost all of those funds.

IV. USE OF THE MAILS

13. On or about the dates set forth below, within the Central District of California and elsewhere, defendants STEWART and PACKARD, assisted by others known and unknown to the Grand Jury, for the purpose of executing and attempting to execute the above-described scheme to defraud, caused the following items to

be placed in an authorized depository for mail matter to be sent and delivered by the U.S. Postal Service, and to be deposited with and delivered by a commercial interstate carrier, according to the directions thereon:

COUNT	DATE	ITEM
ONE	January 20, 2009	Letter from N.G. to R.R., enclosing Opportunity Fund Private Placement Memorandum
TWO	January 29, 2009	Letter from N.G. to M.S. and K.S., enclosing Subscription Agreement, Promissory Note, Pledge Agreement, Assignment of Collateral, and Membership Certificate
THREE	January 30, 2009	Letter from defendant STEWART to B.H., confirming investment in Opportunity Fund
FOUR	February 5, 2009	Letter from N.G. to A.R., enclosing Subscription Agreement, Promissory Note, Pledge Agreement, Assignment of Collateral, and Membership Certificate
FIVE	February 12, 2009	Letter from N.G. to J.B., enclosing Subscription Agreement, Promissory Note, Pledge Agreement, Assignment of Collateral, and Membership Certificate
SIX	February 20, 2009	Letter from N.G. to J.V., enclosing Subscription Agreement, Promissory Note, Pledge Agreement, Assignment of Collateral, and Membership Certificate
SEVEN	March 10, 2009	Letter from N.G. to J.V., enclosing Subscription Agreement, Promissory Note, Pledge Agreement, Assignment of Collateral, and Membership Certificate

EIGHT	March 16, 2009	Letter from N.G. to S.P., enclosing Opportunity Fund Private Placement Memorandum
NINE	April 22, 2009	Letter from N.G. to J.V., enclosing Subscription Agreement, Promissory Note, Pledge Agreement, Assignment of Collateral, and Membership Certificate
TEN	April 23, 2009	Check from M.B. to PPA
ELEVEN	April 23, 2009	Check from J.M. to PPA

COUNTS TWELVE THROUGH FOURTEEN

[18 U.S.C. § 1344]

I. INTRODUCTION

14. Paragraphs one through nine of the Indictment, including all subparagraphs, are re-alleged as if fully set forth herein.

15. At all times relevant to this Indictment, Vineyard Bank, National Association ("Vineyard Bank") was a federally-insured financial institution, whose business included making mortgage loans and commercial loans to businesses.

16. From June 2005 through February 2007, Vineyard Bank provided over $28 million in mortgage financing to PPA (primarily through PPA Holdings and PPA LLC), in order to enable PPA to purchase 15 apartment complexes in Long Beach and Riverside, California and in Mesa, Arizona. Vineyard Bank also provided a $3 million line of credit to finance PPA's operations.

17. In applying for the loans from Vineyard Bank, PPA Holdings and PPA LLC were required to provide financial statements reflecting the financial condition of PPA generally.

18. Under the terms of their loan agreements with Vineyard Bank, PPA Holdings and PPA LLC were required to provide to Vineyard Bank regular, financial statements, prepared in accordance with Generally Accepted Accounting Principles (GAAP) and certified as accurate, reflecting the financial condition of PPA generally and of the operations of each of the apartment complexes that Vineyard Bank was financing.

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II. THE FRAUDULENT SCHEME

19. Beginning on a date unknown, but at least as early as in or about August 2006, and continuing through in or about June 2009, in Orange and Los Angeles Counties, within the Central District of California, and elsewhere, defendants STEWART and PACKARD, together with others known and unknown to the Grand Jury, aiding and abetting one another, knowingly and with intent to defraud, devised, participated in, and executed a scheme to defraud Vineyard Bank as to material matters and to obtain money, funds and credits owned by and under the custody and control of Vineyard Bank by means of materially false and fraudulent pretenses, representations, and promises, and the concealment of material facts.

III. MEANS TO ACCOMPLISH THE FRAUDULENT SCHEME

20. In carrying out the fraudulent scheme, defendants STEWART and PACKARD engaged in and caused others to engage in fraudulent and deceptive acts, practices, and devices including, but not limited to, the following:

a. Beginning no later than in or about August 2006, and continuing through at least in or about early 2009, defendants STEWART and PACKARD provided to Vineyard Bank financial statements containing material false information regarding the financial condition of PPA and the operations of the apartment complexes that Vineyard Bank was financing.

b. Among other things, the financial statements substantially overstated the rental revenue PPA was collecting. The financial statements made it appear that PPA's apartment rental operations were profitable, when in fact, and as defendants STEWART and PACKARD well knew but concealed, those operations were losing money. The financial statements also substantially overstated the amount of cash PPA held and the value of its real estate assets, and listed as "income" funds received from investors, which were actually loan proceeds.

c. Defendants STEWART and PACKARD signed and provided to Vineyard Bank certifications purporting to confirm that the information contained in the financial statements that they were providing to Vineyard Bank was accurate.

21. The facts that defendants STEWART and PACKARD misrepresented and failed to disclose were material in that, had Vineyard Bank known the true facts, it would not have provided or continued to provide credit to PPA, and would have declared default sooner on its outstanding loans to PPA and sought to recover its loan principal.

IV. EXECUTION OF THE FRAUDULENT SCHEME

22. On or about the following dates, in Orange and Los Angeles Counties, within the Central District of California, and elsewhere, defendants STEWART and PACKARD committed and willfully caused others to commit the following acts, each of which constituted an execution of the fraudulent scheme:

COUNT	DATE	ACT
TWELVE	September 19, 2006	Defendants PACKARD's and STEWART'S signing of consolidated financial statements of PPA companies
THIRTEEN	April 16, 2007	Provision of Consolidated Financial Statements of PPA companies to Vineyard Bank

FOURTEEN	January 15, 2009	Provision of Consolidated Financial Statements of PPA companies to Vineyard Bank

COUNT FIFTEEN

[18 U.S.C. §§ 152(7), 2]

24. Paragraphs one through nine of the Indictment, including all subparagraphs, are re-alleged as if fully set forth herein.

25. On or about June 11, 2009, in Orange and Los Angeles Counties, within the Central District of California, and elsewhere, defendants STEWART and PACKARD, aiding and abetting each other, in their personal capacities and as agents and officers of the various PPA companies, in contemplation of a case under Title 11 of the United States Code, and with intent to defeat the provisions of Title 11, knowingly and fraudulently transferred, and caused to be transferred, property of those companies. Specifically, on or about June 11, 2009, after the PPA companies had defaulted on their loans from creditors and retained bankruptcy counsel, and approximately 15 days before those companies filed bankruptcy petitions, defendants STEWART and PACKARD caused approximately $165,000 to be wired from the bank account of a PPA company to defendant PACKARD's personal bank account.

COUNT SIXTEEN

[18 U.S.C. §§ 152(1), 2]

I. INTRODUCTION

26. Paragraphs one through nine of the Indictment, including all subparagraphs, are re-alleged as if fully set forth herein.

27. On an unknown date before 2009, defendants STEWART and PACKARD used approximately $200,000 of PPA funds to make a deposit on a property in Arizona (the "Arizona Property") that they planned to acquire for PPA. The transaction was never completed. In or about mid-2009, the intended seller of the property agreed to return the majority of the deposited funds to defendant PACKARD.

II. FRAUDULENT TRANSFER AND CONCEALMENT

28. From in or about November 2009 to in or about February 2010, in Orange County, within the Central District of California, and elsewhere, defendants STEWART and PACKARD, aiding and abetting each other, knowingly and fraudulently concealed and caused to be concealed from creditors and the United States Trustee property belonging to the estate of a debtor, that is, approximately $131,000 in funds that the intended seller of the Arizona Property provided as a refund of PPA's down payment on that property. Specifically, in or about November 2009, defendants STEWART and PACKARD caused to be transferred the $131,000 in PPA funds from the intended seller of the Arizona Property to an account controlled by the personal attorneys of defendants STEWART and PACKARD, then caused those funds to be transferred from the attorneys' account to a bank

account held by Apartments America, LLC, a company formed, owned and controlled by defendants STEWART and PACKARD. Defendants STEWART and PACKARD then caused $27,500 of those funds to be transferred to defendant STEWART's personal bank account, $27,500 to be transferred to defendant PACKARD's personal bank account, and $16,000 to be transferred to a law firm to pay for legal services aimed at protecting defendant STEWART's and defendant PACKARD's personal assets from creditors. Neither defendant STEWART nor defendant PACKARD disclosed those funds or transfers to PPA's creditors, the United States Trustee, or the bankruptcy court.

A TRUE BILL

/s/

Foreperson

ANDRÉ BIROTTE JR.
United States Attorney

Dennise D. Willett

ROBERT E. DUGDALE
Assistant United States Attorney
Chief, Criminal Division

DENNISE D. WILLETT
Assistant United States Attorney
Chief, Santa Ana Branch Office

JOSEPH E. MCNALLY
Assistant United States Attorney
Deputy Chief, Santa Ana Branch Office

JOSHUA M. ROBBINS
Assistant United States Attorney