

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
NO. 5:15-CR-92-1 (2)

FILED IN OPEN COURT  
ON 3/18/15 *JH*  
Julie Richards Johnson, Clerk  
US District Court  
Eastern District of NC

UNITED STATES OF AMERICA            )  
  )  
                  v.                    ) INDICTMENT  
  )  
RODNEY S. DAW                        )  
  )

The Grand Jury charges that:

COUNT ONE  
*(conspiracy to commit mail fraud  
affecting a financial institution,  
in violation of 18 U.S.C. § 1349)*

BACKGROUND

1. At all times relevant herein, RODNEY S. DAW, defendant herein, was a resident of Raleigh, North Carolina.
2. During the period covered by this Indictment, when North Carolina homeowners defaulted on their mortgages, the mortgage holders, many of whom were financial institutions, could institute foreclosure proceedings through a judicial process. Once a foreclosure auction was approved by the Court, the property was subjected to a public real estate foreclosure auction ("public auction"). These public auctions took place at the State courthouse in the county where the property was located. At the end of the public auction, the trustee or auctioneer filed a Report of Sale with the Clerk for Special Proceedings ("SP") listing the name and contact information for the highest bidder as well as the highest bid amount. Under

State law, the public auction bid remained open for ten days to allow other bidders the opportunity to file an "upset bid" on the property. If an upset bid was filed, the foreclosure auction remained open for another ten-day bid period. If no one filed a subsequent upset bid, the last person to bid won the property. The law did not limit the number of upset bids that could be filed, in order to allow the foreclosing creditor to receive the highest possible auction price after the conclusion of the auction process.

3. At the end of the final ten-day upset bid period, the final auction winner had the right to purchase the property by participating in a formal closing for the auction sale. Proceeds from the sale were supposed to be used to pay off the debt of the foreclosing creditor, generally a financial institution. Any surplus funds were supposed to be deposited with the court for distribution to other interested parties such as junior lien holders (generally second mortgages held by banks) and homeowners.

4. During the period covered by this Indictment, certain real estate speculators agreed to suppress competitive bidding, restrain competition, and otherwise corrupt the North Carolina auction process to obtain selected properties offered at public auctions in the Eastern District of North Carolina ("selected properties") at artificially suppressed prices.

5. During the period covered by this Indictment, the Defendant was engaged in the business of buying real estate through the auction process in the Eastern District of North Carolina and rehabilitating, renting, or selling the foreclosure properties for an economic benefit.

6. Various entities and individuals, not made defendants in this Indictment, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

DESCRIPTION OF THE OFFENSE

7. Beginning at least as early as December 2002, and continuing thereafter until at least April 2005, the exact dates being unknown to the Grand Jury, in the Eastern District of North Carolina and elsewhere, RODNEY S. DAW, defendant herein, and others known and unknown to the Grand Jury, did willfully and knowingly combine, conspire, and agree with each other to violate Title 18, United States Code, Section 1341, namely, to knowingly devise and intend to devise and participate in a scheme and artifice to defraud financial institutions, homeowners, and others with a legal interest in selected properties, and to obtain money and property from financial institutions, homeowners, and others with a legal interest in selected properties by means of materially false and fraudulent pretenses, representations, and promises, and for the purpose of

executing, and attempting to execute the scheme to defraud, to knowingly place in any post office and authorized depository for mail matter, any matter to be sent and delivered by the Postal Service and by any private or commercial interstate carrier, and to knowingly cause such matter to be delivered by mail and by any private and such carrier according to the direction thereon. The combination and conspiracy charged in this Count was carried out, in part, within the ten years preceding the filing of this Indictment.

8. The objects of the conspiracy were, among other things, to fraudulently acquire title to selected properties at artificially suppressed prices; to make payoffs to and receive payoffs from co-conspirators; and to divert money away from financial institutions, homeowners, or others with a legal interest in selected properties.

9. Several financial institutions, as defined by Title 18, United States Code, Section 20, were affected by the conspiracy in that such financial institutions suffered actual monetary losses.

#### MEANS AND METHODS OF THE CONSPIRACY

10. For the purpose of forming and carrying out the charged combination and conspiracy, the Defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

a. purchasing selected properties through the North Carolina auction process at artificially suppressed prices;

b. negotiating payoffs with one or more co-conspirators in exchange for agreements not to compete during the public auction process;

c. in some cases, transferring title to selected properties into the names of co-conspirators who issued payoffs in exchange for agreements not to compete;

d. making and receiving payoffs to and from co-conspirators that otherwise would have gone to financial institutions, homeowners, and others with a legal interest in the selected properties, such as a payoff that the defendant received in furtherance of the conspiracy in or about April 2005;

e. making and causing to be made materially false and misleading pretenses or representations to trustees, the Clerk for Special Proceedings, financial institutions and others involved in the auction and sale of the selected properties; and

f. causing artificially suppressed purchase prices to be reported and paid to financial institutions and others with a legal interest in selected properties.

11. For the purpose of executing the scheme or artifice to defraud or attempting to do so, the Defendant and co-conspirators knowingly used and caused to be used the United

States Postal Service and private or commercial interstate carriers, in violation of Title 18, United States Code, Section 1349. For example, the defendant and co-conspirators did, among other things, cause checks, foreclosure deeds, and other documents material to the auction process to be sent or delivered by the United States Postal Service or private or commercial interstate carriers. Mailings such as these were knowingly caused by the Defendant and his co-conspirators and were foreseeable to the Defendant and his co-conspirators in the ordinary course of their activities.

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

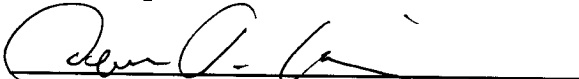
A TRUE BILL:

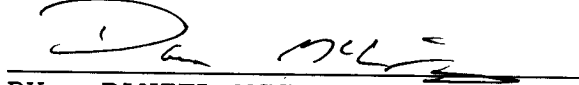
**REDACTED VERSION**  
Pursuant to the E-Government Act and the federal rules, the unredacted version of this document has been filed under seal.


\_\_\_\_\_  
FOREPERSON

\_\_\_\_\_  
DATE

WILLIAM J. BAER  
Assistant Attorney General  
Antitrust Division  
U.S. Department of Justice

  
BY: DEANA L. TIMBERLAKE-WILEY  
Trial Attorney  
Antitrust Division

  
BY: DANIEL MCCUAIG  
Trial Attorney  
Antitrust Division

  
BY: RICHARD POWERS  
Trial Attorney  
Antitrust Division