

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
)	Case No. 1:11CR119
v.)	
)	18 U.S.C. § 371 (Conspiracy)
TERESA KELLY,)	
)	
Defendant.)	

CRIMINAL INFORMATION

THE UNITED STATES CHARGES THAT:

Count 1

(Conspiracy to Commit Bank Fraud, Wire Fraud, and Securities Fraud)

1. From in or about 2002 through in or about August 2009, in the Eastern District of Virginia and elsewhere, the defendant

TERESA KELLY

did knowingly and intentionally combine, conspire, confederate, and agree with others known and unknown to commit certain offenses against the United States, namely:

- a. bank fraud, that is, to knowingly and intentionally execute a scheme and artifice to defraud a financial institution, and to obtain any of the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, a financial institution, by means of materially false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, § 1344;
- b. wire fraud, that is, having knowingly and intentionally devised and intending to devise a scheme and artifice to defraud a financial institution, and for

obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, to transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, § 1343; and,

c. securities fraud, that is, to knowingly and intentionally execute a scheme and artifice to defraud any person in connection with any security of an issuer with a class of securities registered under § 12 of the Securities Exchange Act of 1934 (Title 15, United States Code, § 781), in violation of Title 18, United States Code, § 1348.

2. Among the manner and means by which defendant KELLY and others would and did carry out the conspiracy included, but were not limited to, the following:

a. KELLY and co-conspirators caused the transfer of funds between Taylor, Bean & Whitaker Mortgage Corp. (TBW) bank accounts at Colonial Bank in an effort to hide TBW overdrafts.

b. KELLY and co-conspirators caused TBW to sell to Colonial Bank mortgage loan assets, via the COLB facility, that included loans that did not exist or that had been committed or sold to third parties.

c. KELLY and co-conspirators caused TBW to sell to Colonial Bank, via the AOT facility, fictitious Trades that had no mortgage loans collateralizing them and that had fabricated agreements reflecting commitments by investors to purchase them in the near future.

d. KELLY and co-conspirators caused TBW to sell to Colonial Bank, via the AOT facility, Trades backed by impaired-value loans and real estate owned that had

fabricated agreements reflecting commitments by investors to purchase them in the near future.

e. KELLY and co-conspirators periodically “recycled” fraudulent loans, identified as “Plan B” loans, on the COLB facility and the fictitious and impaired Trades on the AOT facility to give the false appearance that old loans and Trades had been sold and replaced by new loans and Trades.

f. KELLY and co-conspirators covered up their misappropriations of funds from the COLB and AOT facilities by causing false documents and information to be provided to Colonial Bank.

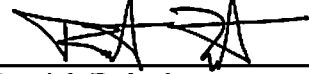
g. KELLY and co-conspirators caused Colonial BancGroup to file with the Securities and Exchange Commission (SEC) materially false annual reports contained in Forms 10-K and quarterly reports contained in Forms 10-Q that misstated the value and nature of assets held by Colonial BancGroup.

3. In furtherance of the conspiracy and to effect the objects thereof, KELLY and other co-conspirators committed or caused others to commit the following overt acts, among others, in the Eastern District of Virginia and elsewhere:

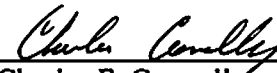
a. On or about January 6, 2009, KELLY and other co-conspirators caused Colonial Bank to wire approximately \$66,400,000.00 to LaSalle Bank in connection with the purported purchase of three Trades from TBW, which were to be held on Colonial Bank’s books as securities purchased under agreements to resell.

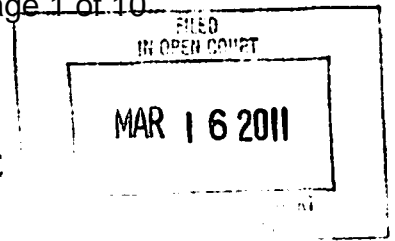
(All in violation of Title 18, United States Code, § 371.)

DENIS J. MCINERNEY
Chief, Fraud Section
Criminal Division
United States Department of Justice

By:  3/16/2011
Patrick F. Stokes
Deputy Chief
Robert A. Zink
Trial Attorney

NEIL H. MACBRIDE
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By: 
Charles F. Connolly
Paul J. Nathanson
Assistant United States Attorneys



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STATEMENT OF FACTS

The United States and the defendant, TERESA KELLY, agree that had this matter proceeded to trial the United States would have proven the facts set forth in this Statement of Facts beyond a reasonable doubt. Unless otherwise stated, the time periods for the facts set forth herein are at all times relevant to the charges in the Information.

I. Overview

1. The defendant was an operations supervisor in Colonial Bank’s Mortgage Warehouse Lending Division (MWLD). MWLD was located in Orlando, Florida.

2. From in or about 2002 through in or about August 2009, co-conspirators, including the defendant, engaged in a scheme to defraud various entities and individuals, including Colonial Bank, a federally insured bank; Colonial BancGroup, Inc.; shareholders of Colonial BancGroup; and the investing public. One of the goals of the scheme to defraud was to cause Colonial Bank to provide funding to Taylor, Bean & Whitaker (TBW) to assist TBW in covering expenses related to operations and servicing payments owed to third-party purchasers of loans and/or mortgage-backed securities. Although the defendant did not personally receive

funds paid out by Colonial Bank to TBW as a result of the scheme to defraud, she knowingly and intentionally placed Colonial Bank and Colonial BancGroup at significant risk of incurring losses as a result of the scheme and, in fact, caused Colonial Bank to purchase assets from TBW of substantially more than \$400 million that in fact had no value and were held on Colonial Bank's and Colonial BancGroup's books as if they had actual value.

II. Colonial Bank's Purchase of Worthless Assets

3. In or about early 2002, TBW began running overdrafts in its master bank account at Colonial Bank due to TBW's inability to meet its operating expenses, such as mortgage loan servicing payments owed to investors in Freddie Mac and Ginnie Mae securities, payroll, and other obligations. The defendant and co-conspirators covered up the overdrafts by transferring, or "sweeping," overnight money from another TBW account with excess funds into the master account to avoid the master account falling into an overdrawn status. This sweeping of funds gave the false appearance to other Colonial Bank employees that TBW's master account was not overdrawn. The day after sweeping funds, the conspirators would cause the money to be returned to the other account, only to have to sweep funds back into the master account later that day to hide the deficit again. By in or about December 2003, the size of the deficit due to overdrafts had grown to tens of millions of dollars.

4. In or about December 2003, Lee Farkas, the chairman of TBW, and co-conspirators, including the defendant, caused the deficit in TBW's master account at Colonial Bank to be transferred to "COLB," a mortgage loan purchase facility at MWLD. Through the COLB facility, Colonial Bank purchased interests in individual residential mortgage loans from TBW pending resale of the loans to third-party investors. The purpose of the COLB facility was

to provide mortgage companies, like TBW, with liquidity to generate new mortgage loans pending the resale of the existing mortgage loans to investors. The COLB facility was designed such that Colonial Bank would recoup its outlay only after TBW resold a mortgage loan to a third-party investor, which generally was supposed to take place within 90 days after being placed on the COLB facility.

5. In this part of the scheme, which the conspirators called "Plan B," Farkas and other co-conspirators, including the defendant, sought to disguise the misappropriations of tens of millions of dollars of Colonial Bank funds to cover up TBW shortfalls or overdrafts of TBW's accounts at Colonial Bank as payments related to Colonial Bank's purchase through the COLB facility of legitimate TBW mortgage loans. Farkas and other co-conspirators, including the defendant, accomplished this by causing TBW to provide false mortgage loan data to Colonial Bank under the pretense that it was selling Colonial Bank interests in mortgage loans. As the defendant, Farkas, and other co-conspirators knew, however, the Plan B data included data for loans that did not exist or that TBW had already committed or sold to other third-party investors. As a result, these loans were not, in fact, available for sale to Colonial Bank. Whether a Plan B loan was fictitious or owned by a third party, the defendant knew and understood that she and her co-conspirators had caused Colonial Bank to pay TBW for an asset that was worthless to Colonial Bank.

6. Farkas and other co-conspirators at TBW caused the Plan B loan data to be delivered to the defendant and/or other co-conspirators at Colonial Bank. The defendant and other co-conspirators caused the Plan B loan data to be recorded in Colonial Bank's books and

records to give the false appearance that Colonial Bank had purchased legitimate interests in mortgage loans from TBW through COLB.

7. To avoid scrutiny from regulators, auditors, and Colonial Bank management of Plan B loans sold to Colonial Bank, Farkas and other co-conspirators devised and, with the defendant's assistance, implemented a plan that gave the appearance that TBW was periodically selling the Plan B loans off of the COLB facility. In fact, Plan B loans were unable to be sold off of the COLB facility, and the conspirators instead created a document trail that disguised the existence of the Plan B loans.

8. In or about mid-2005, conspirators caused the deficit created by Plan B to be moved from the COLB facility to MWLD's Assignment of Trade (AOT) facility. The AOT facility was designed for the purchase of interests in pools of loans, which were referred to as "Trades," that were in the process of being securitized and/or sold to third-party investors. The conspirators moved the deficit to the AOT facility in part because, unlike the COLB facility, Colonial Bank generally did not track in its accounting records loan-level data for the Trades held on the AOT facility, thus making detection of the scheme by regulators, auditors, Colonial Bank management, and others less likely.

9. In an effort to transfer the deficit caused by the Plan B loans on the COLB facility to the AOT facility, Farkas and other co-conspirators, including the defendant, caused TBW to engage in sales to Colonial Bank of fictitious Trades purportedly backed by pools of Plan B loans. In fact, the Trades had no collateral backing them. As the defendant and other co-conspirators knew, Colonial Bank held these fictitious Trades in its accounting records at the amount Colonial Bank paid for them.

10. After moving the Plan B deficit from the COLB facility to the AOT facility, TBW continued to experience significant operating losses. From in or about mid-2005 through in or about 2009, Farkas and other co-conspirators, including the defendant, continued to cause TBW to sell additional fictitious Trades to Colonial Bank through the AOT facility. These Trades had no pools of loans collateralizing them. Moreover, conspirators caused the creation of false documents to reflect agreements, as required under the AOT facility, for third-party investors to purchase the Trades within a short period of time. This fraudulent AOT funding was typically provided in an ad hoc fashion based on requests from Farkas or other co-conspirators at TBW for, among other reasons, servicing obligations, operational expenses, and covering overdrafts.

11. To obtain the fraudulent AOT funding, Farkas or other TBW co-conspirators would contact the defendant and/or another co-conspirator at Colonial Bank to request an advance from the AOT facility. Once an advance had been agreed to, TBW co-conspirators caused a wire request to be generated for the funds and provided the defendant and other Colonial Bank co-conspirators with false documentation purporting to represent the sale of pools to Colonial Bank to support the release of the funds. The defendant and her co-conspirators caused the false information to be entered on Colonial Bank's books and records, giving the appearance that Colonial Bank owned a 99% interest in legitimate securities on the AOT facility in exchange for the advances, when in fact those securities had no value and could not be sold.

12. In addition to causing Colonial Bank to hold in its accounting records fictitious AOT Trades with no collateral backing them, Farkas and other co-conspirators, including the defendant, caused Colonial Bank to hold in its accounting records AOT Trades backed by assets that TBW was unable to sell, including but not limited to impaired-value loans, charged-off

loans, previously sold loans, loans in foreclosure, and real-estate owned (REO) property.

Conspirators also caused the creation of false documents to reflect agreements, as required under the AOT facility, for third-party investors to purchase these impaired Trades within a short period of time.

13. As with the Plan B loans, the defendant, Farkas, and other co-conspirators took steps to cover up the fictitious and impaired Trades on AOT by giving the false appearance that, periodically, the fictitious and impaired Trades were sold to third parties. The conspirators did this by, among other things, engaging in sham sales to hide the fact that the vast majority of assets backing the AOT Trades could not be resold because the assets were either wholly fictitious or consisted of, among other things, impaired-value loans and REO and, in either case, had no corresponding, legitimate commitment to be purchased by third parties. Farkas and other co-conspirators, including the defendant, engaged in these sham sales to deceive others, including regulators, auditors, and certain Colonial Bank management.

14. The size of the deficit created by providing fraudulent advances to TBW through Plan B loans and the fictitious AOT Trades fluctuated during the conspiracy, and it reached into the hundreds of millions of dollars. During the course of the conspiracy, the defendant and other co-conspirators negotiated the transfer of funds to Colonial Bank from TBW bank accounts or lending facilities and obtained other collateral from TBW and Farkas in order to reduce the deficit caused by the Plan B loans and the fictitious AOT Trades. Despite these efforts, the government would prove at a trial that the deficit in AOT caused by the defendant's and her co-conspirators' scheme was significantly more than \$400 million on or about August 14, 2009, the day the Alabama State Banking Department seized Colonial Bank and appointed the Federal

Deposit Insurance Corporation (FDIC) as receiver. Moreover, the government would prove that some wire transfers of funds by Colonial Bank to TBW for fictitious Plan B loans and AOT securities involved transfers to LaSalle Bank, which had been purchased by Bank of America. Some of these wires were processed from Chicago, Illinois, through a Bank of America server located in Richmond, Virginia.

III. False Financial Statements

15. During the conspiracy, the defendant was aware that the financial results of MWLD were incorporated into Colonial BancGroup's publicly filed financial statements, including annual reports on Form 10-K and quarterly reports on Form 10-Q filed with the United States Securities and Exchange Commission (SEC). As the government would prove, Colonial BancGroup's Forms 10-K and Forms 10-Q were filed electronically with the SEC's EDGAR Management Office of Information and Technology, in Alexandria, Virginia, during the period set forth in the Information. The defendant and her co-conspirators took steps to hide the fraud scheme described in this statement of facts from Colonial Bank's and Colonial BancGroup's senior management, auditors, and regulators, and Colonial BancGroup's shareholders, including by providing materially false information that significantly overstated assets held in the COLB and AOT facilities. The defendant knew that these actions caused materially false financial data to be reported to Colonial BancGroup and incorporated in its publicly filed statements.

16. For example, in its Form 10-K for the year ending December 31, 2008, which was filed on or about March 2, 2009, Colonial BancGroup reported that MWLD had total assets under management of approximately \$4.3 billion, of which approximately \$1.55 billion, or 36%, were held as AOT Trades reported as Securities Purchased under Agreements to Resell. In its

last Form 10-Q filed with the SEC, for the period ended March 31, 2009, which was filed on or about May 8, 2009, Colonial BancGroup reported that MWLD managed assets valued at approximately \$4.9 billion, with approximately \$1.6 billion, or approximately 33%, held as AOT Trades reported as Securities Purchased under Agreements to Resell. As the defendant knew, the vast majority of the securities held on AOT at that time were fictitious or impaired and were not under legitimate agreements to be resold to third-party investors.

IV. January 6, 2009, AOT Transaction

17. On or about January 6, 2009, the defendant received an email request from a co-conspirator at TBW requesting that Colonial Bank wire approximately \$66,400,000 to LaSalle Bank, on behalf of Ocala Funding, for the purported purchase of three Trades from TBW. The co-conspirator also sent the defendant three “trade assignment agreements” purporting to represent that TBW had arranged with a third-party to purchase the Trades in approximately one month. As the defendant knew, the transaction was part of an effort by the co-conspirators to periodically “recycle” the Trades held on the AOT facility by making it appear that Trades had been sold and replaced by newly purchased Trades. As the defendant knew, the three Trades “purchased” by Colonial Bank had no loans assigned to them, and thus no actual value, and the trade assignment agreements were false as there was no third-party purchaser for the Trades. As the defendant knew, the three new Trades were held in Colonial Bank’s books as securities purchased under agreements to resell.

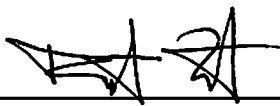
V. Conclusion

18. The defendant admits that this statement of facts does not represent and is not intended to represent an exhaustive factual recitation of all the facts about which she has knowledge relating to the scheme to defraud as described herein.


19. The defendant admits that her actions, as recounted herein, were in all respects intentional and deliberate, reflecting an intention to do something the law forbids, and were not in any way the product of any accident or mistake of law or fact.

Respectfully submitted,

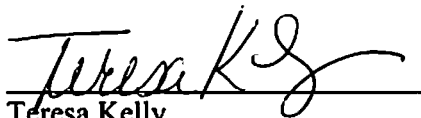
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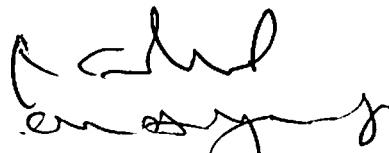
By: 
Charles F. Connolly
Paul J. Nathanson
Assistant United States Attorneys

After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, TERESA KELLY, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate to the best of my knowledge, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.



Teresa Kelly
Defendant

I am TERESA KELLY's attorney. I have carefully reviewed the above Statement of Facts with her. To my knowledge, her decision to stipulate to these facts is an informed and voluntary one.



Robert Alan Leventhal, Esq.
Alan Yamamoto, Esq.
Attorneys for Defendant