

011 00554 DLJ EJD

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

FILED
2011 AUG 18 P 1:19

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
SAN JOSE

THE UNITED STATES OF AMERICA

vs.

DAVID RUSSELL FOLEY, and
ROBERT DEKETT

SEALED BY ORDER
OF THE COURT

INDICTMENT

SEE ATTACHMENT

A true bill.



Foreperson

Filed in open court this ^{17th} ~~the~~ ^{are} day of August

A.D. 2011


UNITED STATES MAGISTRATE JUDGE

Bail \$ NO BAIL / ^{ONE} ARREST WARRANT - DEKETT
NO PROCESS - ^Δ FOLEY

CSA'S INITIALS
c
DISTRICT COURT
CRIMINAL CASE PROCESSING

INDICTMENT COVER SHEET

United States v. David Russell Foley and Robert DeKett

**Count 1: 18 U.S.C. § 1349)—Conspiracy to Commit Bank Fraud
(Foley and DeKett)**

Count 2: 18 U.S.C. §§ 1344(2)—Bank Fraud (Foley and DeKett)

Count 3: 18 U.S.C. § 1344(2)—Bank Fraud (Foley and DeKett)

Counts 4 and 5: 18 U.S.C. §1001—False Statement to Federal Agency (DeKett Only)

1 MELINDA HAAG (CSBN 132612)
United States Attorney

FILED

2011 AUG 18 P 1:19

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. - SAN JOSE

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SEALED BY ORDER
OF THE COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DLJ
EJD

CR 11 No 00554

HRL

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID RUSSELL FOLEY, and
ROBERT DEKETT

Defendants.

VIOLATIONS: 18 U.S.C. § 1349 –
Conspiracy to Commit Bank Fraud; 18
U.S.C. § 1344 – Bank Fraud; 18 U.S.C. § 2
– Aiding And Abetting; 18 U.S.C. § 1001 -
False Statement to Federal Agency

SAN JOSE VENUE

INDICTMENT

The Grand Jury charges:

Introductory Allegations

At all times relevant to this Indictment:

1. Countrywide Home Loans (“Countrywide”) was a financial institution pursuant to Title 18, United States Code, Section 20(1) that engaged in the business of providing consumers with home mortgages throughout the United States. Countrywide was an insured depository institution as defined by the Federal Deposit Insurance Act, Section 3(c)(2).

DOCUMENT NO
CSA's INITIALS
DISTRICT COURT
CRIMINAL CASE PROCESSING

INDICTMENT

1 2. Global VR was a corporation located in San Jose, California, engaged in the
2 business of the development and sale of coin-operated arcade video games based on home
3 gaming technology.

4 3. Defendant DAVID RUSSELL FOLEY ("FOLEY") resided in Los Gatos,
5 California. Beginning approximately in 2003, FOLEY owned and operated an arcade video
6 game company called UltraCade Technologies ("UltraCade") in San Jose, California. Global VR
7 terminated FOLEY's employment on September 23, 2006.

8 4. Defendant ROBERT DEKETT ("DEKETT") worked as the Vice President of
9 Business Development for Global VR.

10 5. Financial institutions typically require mortgage loan applicants to fill out loan
11 applications known as Uniform Residential Loan Applications ("URLAs"). URLAs require
12 borrowers to accurately list their income, assets, employment, and the source of funds for the
13 down payment. Financial institutions rely on the accuracy of the information provided by
14 borrowers in URLAs and documents and other information provided in support of loan
15 applications in evaluating whether to fund mortgages.

16 SCHEME AND ARTIFICE TO DEFRAUD

17 6. FOLEY submitted false documents to Countrywide in order to induce
18 Countrywide to fund a \$2,624,475 mortgage of a residence in Los Gatos and a \$374,925 home
19 equity line of credit.

20 7. As part of the scheme and artifice to defraud Countrywide, FOLEY submitted a
21 URLA on October 3, 2006, signed under penalty of perjury, in which he falsely listed Global VR
22 as his current employer and falsely claimed that Global VR owed him a monthly salary.

23 8. It was further part of the scheme and artifice to defraud Countrywide, FOLEY
24 submitted an application for a home equity line of credit on October 3, 2006, in which he falsely
25 listed Global VR as his current employer and falsely claimed that Global VR owed him a
26 monthly salary.

27 9. It was further part of the scheme and artifice to defraud Countrywide that FOLEY
28 instructed DEKETT to contact Countrywide to confirm FOLEY's employment at Global VR.

1 10. It was further part of the scheme and artifice to defraud Countrywide, that
2 DEKETT agreed to verify the employment information on FOLEY's URLA and home equity
3 applications when he was contacted by Countrywide even though DEKETT knew that FOLEY
4 was no longer employed by Global VR or earning a salary at the time FOLEY sought the
5 Countrywide loans.

6 11. It was further part of the scheme and artifice to defraud that Countrywide funded
7 FOLEY's home mortgage and home equity line of credit in reliance on the false statements in the
8 URLA and the false employment verifications made by DEKETT.

9
10 COUNT ONE: (18 U.S.C. § 1349 – Conspiracy to Commit Bank Fraud)

11 7. The factual allegations in Paragraphs 1 through 11 are re-alleged and incorporated
12 herein as if set forth in full.

13 8. Beginning on a date unknown, but by no later than on or about September 23,
14 2006, and continuing to on or about October 3, 2006, in the Northern District of California and
15 elsewhere, the defendants

16 DAVID RUSSELL FOLEY, and
 ROBERT DEKETT

17 and others known and unknown to the Grand Jury, knowingly and intentionally combined,
18 conspired, and agreed to commit bank fraud in violation of Title 18, United States Code, Section
19 1344, that is conspired to devise and did devise a scheme and artifice (A) to defraud Countrywide
20 as to a material matter, and (B) to obtain any of the moneys, funds, credits, and assets owned by,
21 and under the custody and control of, Countrywide, by means of materially false and fraudulent
22 pretenses, representations, and promises, and material omissions, to wit: submission of URLA
23 papers to Countrywide on October 3, 2006, for a mortgage in the amount of \$2,624,475, and a
24 home equity line of credit in the amount of \$374,925, stating that Global VR was FOLEY's
25 current employer and that Global VR owed FOLEY a monthly salary, when in fact, as the
26 defendants well knew, FOLEY had been terminated from Global VR on September 23, 2006 and
27 was owed no salary by Global VR; in violation of Title 18, United States Code, Section 1344.

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

1 COUNT TWO: (18 U.S.C. §§ 1344(2) and 2 - Bank Fraud; Aiding and Abetting)

2 9. The factual allegations in Paragraphs 1 through 11 are re-alleged and incorporated
3 herein as if set forth in full.

4 10. On October 3, 2006, in the Northern District of California, the defendants

5
6 DAVID RUSSELL FOLEY, and
ROBERT DEKETT

7 knowingly executed a scheme or artifice to obtain any of the moneys, funds, credits, assets,
8 securities, or other property owned by, or under the custody or control of, a financial institution,
9 by means of material false and fraudulent pretenses, representations, and promises, to wit:
10 submission of URLA papers to Countrywide on October 3, 2006, for a mortgage in the amount of
11 \$2,624,475, stating that Global VR was FOLEY's current employer and that Global VR owed
12 FOLEY a monthly salary, when in fact, as the defendants well knew, FOLEY had been
13 terminated from Global VR on September 23, 2006 and was owed no salary by Global VR.

14 All in violation of 18 U.S.C. §§ 1344(2) and 2.

15
16 COUNT THREE: (18 U.S.C. §§ 1344(2) and 2 - Bank Fraud; Aiding and Abetting)

17 11. The factual allegations in Paragraphs 1 through 11 are re-alleged and incorporated
18 herein as if set forth in full.

19 12. On October 3, 2006, in the Northern District of California, the defendants

20
21 DAVID RUSSELL FOLEY, and
ROBERT DEKETT

22 knowingly executed a scheme or artifice to obtain any of the moneys, funds, credits, assets,
23 securities, or other property owned by, or under the custody or control of, a financial institution,
24 by means of material false and fraudulent pretenses, representations, and promises, to wit:
25 submission of URLA papers to Countrywide for a home equity line of credit in the amount of
26 \$374,925, stating that Global VR was FOLEY's current employer and that Global VR owed
27 FOLEY a monthly salary, when in fact, as the defendants well knew, FOLEY had been
28

1 terminated from Global VR on September 23, 2006 and was owed no salary by Global VR.

2 All in violation of 18 U.S.C. §§ 1344(2) and 2.

3
4 COUNT FOUR: (18 U.S.C. § 1001 - False Statement to Federal Agency)

5 13. On or about September 23, 2010, in the Northern District of California, defendant

6 ROBERT DEKETT

7 did willfully and knowingly make and cause to be made a material false, fictitious, and
8 fraudulent statement and representation in a matter within the jurisdiction of a department or
9 agency of the United States, to wit, the Federal Bureau of Investigation, by stating to Special
10 Agents Gregory Fine and Scott Medearis that he had no communication with FOLEY after
11 FOLEY was terminated from his employment at Global VR on September 23, 2006, when in
12 truth and in fact, as he then and there well knew, DEKETT communicated with FOLEY on
13 September 24, 2006;

14 All in violation of 18 U.S.C. § 1001.

15
16 COUNT FIVE: (18 U.S.C. § 1001 - False Statement to Federal Agency)

17 7. On or about September 23, 2010, in the Northern District of California, defendant

18 ROBERT DEKETT

19 did willfully and knowingly make and cause to be made a material false, fictitious, and
20 fraudulent statement and representation in a matter within the jurisdiction of a department or
21 agency of the United States, to wit:, the Federal Bureau of Investigation, by stating to Special
22 Agents Gregory Fine and Scott Medearis that he did not communicate with Countrywide
23 regarding FOLEY's employment status with Global VR, when in truth and in fact, as he then and
24 there well knew, DEKETT verbally communicated with Countrywide on September 29, 2006,

25 //

26 //

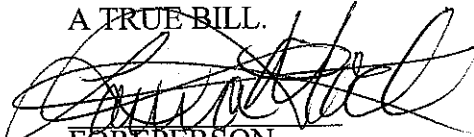
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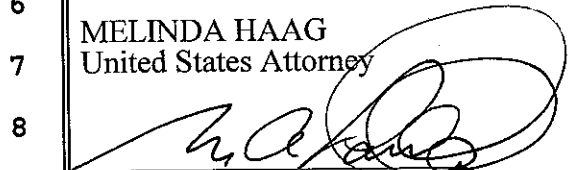
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1 and indicated that FOLEY was still employed by Global VR.


2 All in violation of 18 U.S.C. § 1001.

3 DATED:
4 8/17/2011

A TRUE BILL.

FOREPERSON

6 MELINDA HAAG
7 United States Attorney


8
9 MATTHEW A. PARRELLA
10 Chief, Computer Hacking and Intellectual Property Unit

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12 (Approved as to form: 
13 AUSA RICHARD CHENG

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AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

SEE ATTACHMENT

- Petty
- Minor
- Misdemeanor
- Felony

PENALTY:

SEE ATTACHMENT

SEALED BY ORDER OF THE COURT

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

S/A Gregory S. Fine -FBI

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

this is a re prosecution of charges previously dismissed which were dismissed on motion of:

U.S. Att'y Defense

this prosecution relates to a pending case involving this same defendant

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

Name and Office of Person Furnishing Information on THIS FORM

MELINDA HAAG

U.S. Att'y Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned)

RICHARD CHENG

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA

FILED

DEFENDANT - U.S.

2011 AUG 18 P 1:20

DAVID RUSSELL FOLEY

DISTRICT COURT NUMBER

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. - SAN JOSE

DLJ

CR 11 00554

DEFENDANT

HRL

IS NOT IN CUSTODY

- 1) Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
- 2) Is a Fugitive
- 3) Is on Bail or Release from (show District)

NORTHERN DISTRICT OF CALIFORNIA

IS IN CUSTODY

- 4) On this charge
- 5) On another conviction
- 6) Awaiting trial on other charges } Fed'l State

If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED TO U.S. CUSTODY

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT Bail Amount: _____

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address: _____

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____

Before Judge: _____

Comments: _____

PENALTY SHEET

United States v. David Russell Foley and Robert DeKett

Count 1: 18 U.S.C. § 1349)—**Conspiracy to Commit Bank Fraud** .
(Foley and DeKett)

Maximum Penalties: 30 years imprisonment, 3 years supervised release,
\$1,000,000 fine, and a \$100 mandatory special assessment.

Count 2: 18 U.S.C. §§ 1344(2) ^{and 2 (kid & Abett)}—**Bank Fraud** (Foley and DeKett)

Maximum Penalties: 30 years imprisonment, 3 years supervised release,
\$1,000,000 fine, and a \$100 mandatory special assessment.

Count 3: 18 U.S.C. § 1344(2) ^{and 2}—**Bank Fraud** (Foley and DeKett)

Maximum Penalties: 30 years imprisonment, 3 years supervised release,
\$1,000,000 fine, and a \$100 mandatory special assessment.

Counts 4 and 5: 18 U.S.C. §1001)—**False Statement to Federal Agency** (DeKett Only)

Maximum Penalties: 5 years imprisonment, 3 years supervised release,
\$250,000 fine, and a \$100 mandatory special
assessment.

△ /

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA

FILED

OFFENSE CHARGED

SEE ATTACHMENT

- Petty
- Minor
- Misdemeanor
- Felony

PENALTY:

SEE ATTACHMENT

DEFENDANT - U.S.

2011 AUG 18 P 1:20

Robert DeKett

DISTRICT COURT NUMBER

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. OF CALIFORNIA
DLJ

CR11 00554

HRL

SEALED BY ORDER
OF THE COURT

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

S/A Gregory S. Fine -FBI

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

this is a reprobation of charges previously dismissed which were dismissed on motion of:

U.S. Att'y Defense

this prosecution relates to a pending case involving this same defendant

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

Name and Office of Person Furnishing Information on THIS FORM

MELINDA HAAG

U.S. Att'y Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned)

RICHARD CHENG

DEFENDANT

IS NOT IN CUSTODY

- 1) Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
- 2) Is a Fugitive
- 3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
 - 5) On another conviction
 - 6) Awaiting trial on other charges
- } Fed'l State

If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No

} If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED TO U.S. CUSTODY

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT Bail Amount: NO BAIL

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address:

*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time:

Before Judge:

Comments:

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PENALTY SHEET

United States v. David Russell Foley and Robert DeKett

Count 1: 18 U.S.C. § 1349)—**Conspiracy to Commit Bank Fraud**
(Foley and DeKett)

Maximum Penalties: 30 years imprisonment, 3 years supervised release,
\$1,000,000 fine, and a \$100 mandatory special assessment.

Count 2: 18 U.S.C. §§ 1344(2)—**Bank Fraud** (Foley and DeKett)

Maximum Penalties: 30 years imprisonment, 3 years supervised release,
\$1,000,000 fine, and a \$100 mandatory special assessment.

Count 3: 18 U.S.C. § 1344(2)—**Bank Fraud** (Foley and DeKett)

Maximum Penalties: 30 years imprisonment, 3 years supervised release,
\$1,000,000 fine, and a \$100 mandatory special assessment.

Counts 4 and 5: 18 U.S.C. §1001)—**False Statement to Federal Agency** (DeKett Only)

Maximum Penalties: 5 years imprisonment, 3 years supervised release,
\$250,000 fine, and a \$100 mandatory special
assessment.

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