

**FILED**  
UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

JAN 12 2011 *ld*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

**MATTHEW J. DYKMAN**  
CLERK

UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

**RICHARD B. WICKENS,** )

Defendant. )

CRIMINAL NO. 11-76

) Counts 1-4: 18 U.S.C. §1344 (1) and (2):  
) Bank Fraud;

) Counts 5-7: 18 U.S.C. § 1014: False  
) Statement in Connection with Credit or Loan  
) Application.

INDICTMENT

The Grand Jury charges:

General Allegations

1. Between on or about July 2006 through on or about December 2006, both dates being approximate and inclusive, in Bernalillo County, in the District of New Mexico, and elsewhere, the defendant, **RICHARD B. WICKENS**, knowingly and intentionally executed a scheme and artifice to defraud the Bank of Albuquerque (the "Bank") a financial institution within the meaning of Title 18, United States Code Section 20, with accounts insured by the Federal Deposit Insurance Corporation, and to obtain monies, funds, credits and property under the custody of the Bank by means of materially false and fraudulent pretenses, representations, promises and omissions.

2. At all times relevant to this indictment, the defendant, **RICHARD B. WICKENS**, was the co-owner and President of Real Turf and Putting Greens, Inc. ("RTPG"), a New Mexico corporation established in or about October 2000 and based in Albuquerque, New Mexico. RTPG was in the business of installing artificial turf,

which is used as a substitute for natural grass on residential lawns and athletic fields. As President of RTPG, the defendant awarded himself a salary of \$6000 per week. In or about March 2006, the defendant reduced this amount to \$4000 but added his wife to the RTPG payroll at a salary of \$2500 per week.

3. RTPG was primarily capitalized and funded through loans, loan guarantees and equity investments that the defendant's father, Richard L. ("Dick") Wickens provided. In October 2005, Dick Wickens acted as a guarantor on a loan of approximately \$1.7 million from Bank of the West to RTPG. In addition to guaranteeing this loan, Dick Wickens provided numerous additional loans to RTPG.

4. Despite this infusion of capital, the defendant was unable to operate RTPG profitably. In or about January 2006, financial statements for RTPG were prepared. These statements showed that RTPG operated at a loss in 2005. After reviewing these figures, the defendant approached the accountant who prepared the statements and explained that the defendant needed RTPG to show a profit for 2005 so that he could provide a favorable report to his father. The accountant refused to make any adjustments to the financial statements.

5. Between June and September of 2006, the defendant, acting in his capacity as President of RTPG, borrowed approximately \$550,000 through short-term, high interest loans from various individuals whose identities are known to the grand jury.

#### The Scheme and Artifice

6. In or about July 2006, the defendant met with representatives of the Bank to discuss the possibility of the Bank extending a line of credit to RTPG. At that meeting, the defendant falsely informed representatives of the Bank that RTPG had

\$11 million in contracts with Albuquerque Public Schools ("APS") to install artificial turf at various schools throughout the city. At the time the defendant made this statement he well knew that he did not have contracts with APS in this amount.

7. On or about August 2006, in support of RTPG's application for a line of credit, the defendant submitted a copy of RTPG's financial statements to the Bank. The defendant represented that these statements reflected RTPG's financial performance for the first half of 2006. Unbeknownst to the Bank, however, the defendant maintained several sets of financial statements for RTPG. The statements submitted to the Bank showed a profit, while RTPG had in fact operated at a significant loss for the period covered by the statement.

8. On or about September 16, 2006, the defendant caused certain accounts receivable to be added into RTPG's accounting program. At the time, the defendant knew that he needed to show a certain dollar amount on the accounts receivable because his line of credit from the Bank would be based on a percentage of RTPG's accounts receivable. As a consequence, hundreds of thousands of dollars worth of accounts receivable were entered into RTPG's accounting program, which the defendant knew did not exist and/or were not properly classified as accounts receivable.

9. On or about September 18, 2006, the defendant received a "Commitment Letter" issued by the Bank. The Commitment Letter offered to extend a line of credit to RTPG, the amount of which was to be calculated as a percentage of RTPG's accounts receivable and inventory on hand. The defendant, in his capacity as President of

RTPG, signed the Commitment Letter indicating his agreement to the terms set forth therein.

10. On or about September 22, 2006, the Defendant, acting in his capacity as President of RTPG, signed a document entitled "Commercial Loan Agreement." Through the Commercial Loan Agreement, the defendant represented to the Bank that "[e]ach of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender." At the time he signed this letter, defendant knew that, contrary to this representation, the financial statements contained material omissions and misstatements.

11. On or about September 27, 2006, the defendant signed and submitted to the Bank a document entitled "Borrowing Base Certificate, Financial and Reporting Covenants." This document purported to reflect RTPG's accounts receivable, which would be used to calculate the amount of credit extended by the Bank. As set forth in paragraph 8 above, however, this document contained hundreds of thousands of dollars worth of accounts receivable entries that the defendant knew to be false at the time he submitted it.

12. On or about September 27, 2006, the Bank extended to RTPG a line of credit in the amount of \$1.1 million. Within approximately five days of receiving access to this line of credit, the defendant issued checks totaling approximately \$280,000 in payment of the short-term, high-interest loans he had received from certain individuals as described in paragraph 4 above.

13. On or about October 23, 2006, RTPG hired a new controller and Chief Financial Officer. Shortly after starting work, the new controller discovered the false entries in the accounts receivable described above. The controller confronted the defendant about these entries and removed them from RTPG's accounts receivable. The defendant blamed the contract accountant for the false entries.

14. Pursuant to the Loan Agreement with the Bank, on or about November 20, 2006, RTPG was required to provide the Bank with an updated Borrowing Base Certificate reflecting RTPG's accounts receivable and inventory. Shortly before November 20, 2006, the defendant was informed that, as a result of the removal of the false entries, RTPG's accounts receivable were insufficient to sustain the \$1.1 million line of credit. RTPG would, therefore, be deemed overdrawn.

15. On or about November 20, 2006, the day the updated Borrowing Base was due to the Bank, the defendant instructed that \$1.7 million in invoices for monies supposedly due and owing to RTPG from APS be booked onto RTPG's accounts receivable and included on the Borrowing Base Certificate. Defendant so instructed despite his knowledge that such invoices were false and fraudulent. As a result of these entries, RTPG's line of credit was increased to \$1.3 million.

16. Copies of the invoices described above were subsequently faxed to the Bank. An employee of the Bank whose identity is known to the grand jury then asked the defendant for the name of a contact person at APS with whom he could verify the accuracy of the invoices. The defendant refused to provide such a contact, and explained that he had worked hard to obtain the contracts and did not want a bank calling APS, which would only aggravate APS.

17. On or about November 27, 2006, the defendant met with representatives of the Bank concerning the APS invoices. At that meeting, Bank representatives asked the defendant whether the invoices were real. The defendant responded to the effect that he would have to get back to them. The Bank later received an amended Borrowing Base Certificate, which did not include the amounts reflected in the APS invoices. This borrowing base listed total accounts receivable of \$430,761.51. This amount was well short of the amount required to sustain the outstanding line of credit. The Bank also received from RTPG faxed copies of the APS invoices with the word "VOID" written across the pages.

18. On or about December 4, 2006, after receiving the corrected Borrowing Base, the same Bank employee whose identity is known to the grand jury met with the defendant. In the course of their conversation, the defendant informed the Bank employee that he would pay off the line of credit in the next week, as he was going to collect \$17 million from the Hopi tribe. Regarding the APS invoices, the defendant informed the Bank employee to the effect that there was nothing there and blamed the invoices on a former employee.

19. The defendant thereafter failed to pay off the line of credit. The defendant also falsely informed the Bank employee that he was unable to get to the Hopi tribe as a winter storm made the roads impassable.

Execution of the Scheme and Artifice

Count 1

20. The grand jury hereby reincorporates and realleges the allegations set forth in paragraphs 1-10 above as if fully set forth herein.

21. On or about September 22, 2006, the defendant, **RICHARD B. WICKENS**, knowingly executed and attempted to execute a scheme and artifice to defraud, or to obtain money or property in the custody of, the Bank, a financial institution within the meaning of the law, through false or fraudulent pretenses, representations, promises and omissions, to wit, falsely representing to the Bank that the financial statements supplied to the Bank truly and completely disclosed RTPG's financial condition.

In violation of 18 U.S.C. § 1344(1) and (2).

Count 2

22. The grand jury hereby reincorporates and realleges the allegations set forth in paragraphs 1-11 above as if fully set forth herein.

23. On or about September 27, 2006, the defendant, **RICHARD B. WICKENS**, knowingly executed and attempted to execute a scheme and artifice to defraud, or to obtain money or property in the custody of, the Bank, a financial institution within the meaning of the law, through false or fraudulent pretenses, representations, promises and omissions, to wit, submission of a false and fraudulent Borrowing Base Certificate to the Bank.

In violation of 18 U.S.C. § 1344(1) and (2).

Count 3

24. The grand jury hereby reincorporates and realleges the allegations set forth in paragraphs 1-15 above as if fully set forth herein.

25. On or about November 20, 2006, the defendant, **RICHARD B. WICKENS**,

knowingly executed and attempted to execute a scheme and artifice to defraud, or to obtain money or property in the custody of, the Bank, a financial institution within the meaning of the law, through false or fraudulent pretenses, representations, promises and omissions, to wit, submission of a false and fraudulent Borrowing Base Certificate to the Bank.

In violation of 18 U.S.C. § 1344(1) and (2).

Count 4

26. The grand jury hereby reincorporates and realleges the allegations set forth in paragraphs 1-19 above as if fully set forth herein.

27. On or about December 4, 2006, the defendant, **RICHARD B. WICKENS**, knowingly executed and attempted to execute a scheme and artifice to defraud, or to obtain money or property in the custody of, the Bank, a financial institution within the meaning of the law, through false or fraudulent pretenses, representations, promises and omissions, to wit, falsely informing Bank representatives that he was going to collect \$17 million from the Hopi tribe and would pay off the line of credit within one week.

In violation of 18 U.S.C. § 1344(1) and (2).

Count 5

On or about September 22, 2006, in Bernalillo County, in the District of New Mexico, the defendant, **RICHARD B. WICKENS**, did knowingly make a false statement on a loan and credit application for the purpose of influencing a decision of an institution the accounts of which are insured by the Federal Deposit Insurance Corporation, to wit, that financial statements that the defendant submitted to the Bank



of Albuquerque truly and completely disclosed RTPG's financial condition when the defendant well knew that such financial statements contained false statements.

In violation of 18 U.S.C. § 1014.

Count 6

On or about September 27, 2006, in Bernalillo County, in the District of New Mexico, the defendant, **RICHARD B. WICKENS**, did knowingly make a false statement on a loan and credit application for the purpose of influencing a decision of an institution the accounts of which are insured by the Federal Deposit Insurance Corporation, to wit, that RTPG had accounts receivable of \$1,080,165, when he well knew this figure to be false.

In violation of 18 U.S.C. § 1014.


Count 7

On or about November 20, 2006, in Bernalillo County, in the District of New Mexico, the defendant, **RICHARD B. WICKENS**, did knowingly make a false statement on a loan and credit application for the purpose of influencing a decision of an institution the accounts of which are insured by the Federal Deposit Insurance Corporation, to wit, that RTPG had \$ 2,042,287 in accounts receivable when he well knew this figure to be false.

In violation of 18 U.S.C. § 1014.

A TRUE BILL:

/s/  
FOREPERSON OF THE GRAND JURY

  
Assistant United States Attorney  
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