

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	DOCKET NO. 10-128
v.	*	SECTION: I
MICHAEL B. SMUCK	*	
	*	
	*	

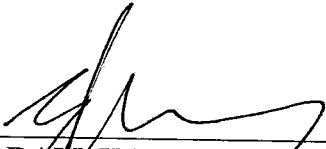
FACTUAL BASIS

Should this matter have gone to trial, the Government would have proved beyond a reasonable doubt, through the introduction of competent testimony and admissible tangible exhibits, including the testimony of special agents from the United States Postal Inspection Service (“USPIS”) the Federal Bureau of Investigation (“FBI”), and various private investor/victims the following to support the allegations charged by the Government in the one count Bill of Information now pending against the defendant, **MICHAEL B. SMUCK** (“**SMUCK**”).

SMUCK was engaged in the business of property investments through his companies MBS Realty Investors, LTD and MBS Management Services, Inc. (collectively “MBS”). MBS was located at One Galleria Blvd., Suite 1950, Metairie, Louisiana. **SMUCK** worked with various investors and co-general partners to acquire capital for funding his projects.

In or about May of 2004, **SMUCK** was involved in making an offer to investors to participate in a real estate investment known as MBS-Briar Meadows, LTD, which would acquire an apartment community in Houston, TX called "Briar Meadows." On May 30, 2007, **SMUCK**, acting in his capacity as Managing Member for the General Partner of MBS-Briar Meadows, LTD, sold the property. After settling the debts of the partnership and the property, \$3,447,980.00 was available for distribution to the investors. Without the investors' knowledge, **SMUCK** misappropriated this money to pay company debts unrelated to Briar Meadows.

In furtherance of his scheme to misappropriate the sale proceeds, **SMUCK** mailed a letter to his investors regarding the regular quarterly cash distribution due to the Briar Meadows investors. In this correspondence, **SMUCK** did not reveal that Briar Meadows had been sold to give the impression that the property was still operating. An example of such a mailing that would be introduced as evidence is an August 27, 2007 letter with attached Briar Meadows disbursement checks sent from **SMUCK**'s offices in Metairie, Louisiana to an investor in New York, New York.



G. DAIL KAMMER
Assistant U.S. Attorney
Louisiana Bar Roll No. 26948

5/12/10

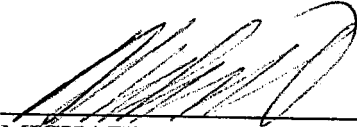
Date



RALPH CAPITELLI
Counsel for Defendant

5-5-10

Date



MICHAEL B. SMUCK
Defendant

5/5/10

Date