

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. <u>10-82</u>
v.	:	DATE FILED: <u>September 14, 2010</u>
DAVID F. KANE	:	VIOLATIONS:
MARK G. MARINO	:	18 U.S.C. § 371 (conspiracy – 1 count)
JAMIE E. E. BAUGHER	:	26 U.S.C. § 7206(1) (filing a false income tax return - 8 counts)
	:	26 U.S.C. § 7201 (tax evasion - 3 counts)
	:	18 U.S.C. § 1014 (false statement to obtain a loan – 1 count)
	:	18 U.S.C. § 1344 (bank fraud - 1 count)
	:	18 U.S.C. § 2 (aiding and abetting)
	:	Notice of forfeiture

SECOND SUPERSEDING INDICTMENT

COUNT ONE

At all times relevant to this second superseding indictment:

1. Defendant DAVID F. KANE owned and operated a real estate development business in Montgomery County, Pennsylvania, called Kane Core, Inc. (“KCI”). Also, between approximately January 2006 and May 2008, defendant KANE was employed as the elected Chairman of the Limerick Township Board of Supervisors, which was the legislative body that governed Limerick Township, Pennsylvania. As a member of the Board of Supervisors, defendant KANE voted on various matters, including increases in township taxes and fees and approval for the development of real estate. Prior to establishing KCI, defendant KANE owned and operated Kane Construction. Except for a federal tax return filed for 2004, between at least 1999 and the date of this superseding indictment, defendant KANE did not file a timely personal federal income tax return or pay federal income taxes due.

2. Defendant MARK G. MARINO was defendant DAVID F. KANE's business partner in KCI and an elected member of the Skippack Township Board of Supervisors. Defendant MARINO also owned and operated other various businesses, including a landscaping business and Marino Holdings, Inc.

3. Defendant JAMIE E.E. BAUGHER was employed by defendants DAVID F. KANE and MARK G. MARINO at KCI. His duties at KCI included finding real estate for development and property owners needing assistance in obtaining approval for development. At the direction of defendant DAVID F. KANE, defendant BAUGHER established Jascu LLC for the purpose of receiving funds from KCI and evading federal taxes on payments to him from KCI.

4. John D. Kane, charged elsewhere, was defendant DAVID F. KANE's brother and assisted defendant KANE in concealing defendant KANE'S assets from the Internal Revenue Service ("IRS"). Among other things, Kane agreed to title KCI and defendant KANE's residences in his name to prevent the IRS from seizing them in payment of past-due federal taxes, interest, and penalties owed by defendant KANE.

5. Gregory M. Kane, charged elsewhere, was defendant DAVID F. KANE's father. He was employed by defendants KANE and MARK G. MARINO at KCI. His duties at KCI included locating real estate for development and property owners needing assistance in obtaining approval for development. At the direction of defendant KANE, Gregory M. Kane established Sunrise Enterprises LLC for the purpose of receiving funds from KCI and evading federal taxes on payments to him from KCI.

THE CONSPIRACY

6. From at least in or about 2002 and continuing through on or about the date of this second superseding indictment, in the Eastern District of Pennsylvania and elsewhere, defendants

**DAVID F. KANE,
MARK G. MARINO,
and
JAMIE E.E. BAUGHER**

conspired and agreed, with each other, and with John D. Kane and Gregory M. Kane, and others known and unknown to the grand jury, to defraud the United States by willfully impeding, impairing, obstructing, and defeating the lawful governmental functions of the IRS in the ascertainment, computation, assessment, and collection of revenue, that is, federal income taxes.

MANNER AND MEANS

It was part of the conspiracy that:

7. Defendant DAVID F. KANE did not timely file tax returns or pay federal taxes, interest, and penalties owed by him.

8. Although defendants DAVID F. KANE and MARK G. MARINO owned and operated KCI, they falsely stated that KCI was owned by John D. Kane and arranged that KCI be titled in John D. Kane's name.

9. Defendant DAVID F. KANE also titled his residence in John D. Kane's name.

10. Defendants DAVID F. KANE and MARK G. MARINO falsely stated that KCI employees were "independent contractors" and not subject to federal employment taxes.

11. At the direction of defendant DAVID F. KANE, defendant JAMIE E.E.

BAUGHER, Gregory M. Kane, and S.H., a person known to the grand jury, set up corporations to use to receive income from KCI so that they could conceal this income from the IRS. Defendant KANE also set up Celtic Development LLC, Minister Creek LLC, and other corporations for the same purpose.

12. Defendant DAVID F. KANE and John D. Kane made false statements to various title agencies and lenders to conceal defendant KANE's assets from the IRS.

13. Defendants DAVID F. KANE and MARK G. MARINO paid their personal expenses directly out of corporate funds and did not report these payments to the IRS. These included payments for housekeepers, a strip club, sports tickets, and vacations.

14. Defendants DAVID F. KANE and MARK G. MARINO diverted proceeds from KCI real estate transactions to personal bank accounts they controlled and then failed to report their earnings to the IRS.

OVERT ACTS

In furtherance of the conspiracy, defendants DAVID F. KANE, MARK G. MARINO, and JAMIE E.E. BAUGHER, and John D. Kane and Gregory M. Kane, and others known and unknown to the grand jury, committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. In or about 2002, defendant DAVID F. KANE purchased a residence on Bragg Road in Schwencksville, Pennsylvania, and falsely titled it in the name of John D. Kane. Defendant KANE and John D. Kane agreed that defendant KANE would pay the mortgage on the property by funneling payments to John D. Kane who would then write a check to the mortgage company. John D. Kane failed to report the payments from defendant KANE on his

tax returns, but took deductions for mortgage interest on those same returns.

2. In or about November 2002, defendant DAVID F. KANE and John D. Kane arranged for John D. Kane's long-time tax preparer to incorporate KCI in the name of John D. Kane because defendant KANE had not timely filed tax returns or paid federal taxes and feared the IRS would seize KCI or its assets.

3. On or about November 25, 2002, defendant DAVID F. KANE and John D. Kane caused KCI to be incorporated in Pennsylvania.

4. On or about August 18, 2004, at the direction of defendant DAVID F. KANE, Gregory M. Kane caused Sunrise Enterprises LLC to be incorporated in Pennsylvania.

5. On or about August 18, 2004, defendant DAVID F. KANE caused Celtic Development LLC to be incorporated in Pennsylvania.

6. On or about May 25, 2005, defendant JAMIE E.E. BAUGHER received a check in the amount of \$24,000 representing earnings from his work at KCI which he did not report on his 2005 federal tax return.

7. On or about May 26, 2005, Gregory M. Kane received a check in the amount of \$100,000 made out to Sunrise Enterprises LLC representing earnings from his work at KCI which he did not report to the IRS.

8. On or about November 23, 2005, Gregory M. Kane received a check in the amount of \$36,960 representing earnings from his work at KCI which he did not report to the IRS.

9. On or about May 2005, defendant DAVID F. KANE filed a false federal income tax return for the year 2004 which falsely stated that his adjusted gross income was

\$82,295 and failed to report more than \$231,000 in additional income.

10. On or about April 17, 2006, defendant JAMIE E.E. BAUGHER caused a \$42,189 check representing earnings from his work at KCI to be made out to Jascu LLC which he did not report on his 2006 tax return.

11. On or about April 17, 2006, and November 3, 2006, Gregory M. Kane received checks in the amount of \$152,264 and \$19,227 representing earnings from his work at KCI which were made out to Sunrise Enterprises LLC and which he did not report to the IRS.

12. On or about May 16, 2006, defendant DAVID F. KANE caused Hiatt Development, LLC to be incorporated in Pennsylvania.

13. In or about late-May 2006, defendant DAVID F. KANE substantially stopped using his long-time personal bank account at Harleysville National Bank. This was after the IRS had levied this account on or about May 17, 2006 and seized approximately \$8,000.

14. On or about July 6, 2006, defendant DAVID F. KANE opened a bank account in the name of Celtic Development LLC at Commerce Bank, the same day that the IRS filed at least one lien against him.

15. On numerous dates between on or about January 23, 2005, and on or about August 22, 2006, defendant DAVID F. KANE caused a total of approximately \$118,302 in proceeds of KCI real estate transactions to be transferred from the KCI bank account to his personal bank account at Harleysville National Bank, and failed to report the income from these proceeds to the IRS.

16. On or about November 30, 2006, defendant DAVID F. KANE caused approximately \$59,059 in proceeds from a KCI real estate transaction to be deposited to his

Celtic Development account at Commerce Bank and then failed to report the income from those proceeds to the IRS.

17. On March 28, 2007, defendant JAMIE E.E. BAUGHER caused a \$112,000 check representing earnings from his work at KCI to be made out to Jamie Baugher which he did not report to the IRS.

18. On March 28, 2007, Gregory M. Kane caused a \$150,000 check representing earnings from his work at KCI to be made out to Sunrise Enterprises LLC which he did not report to the IRS.

19. On or about March 28, 2007, defendants DAVID F. KANE and MARK G. MARINO caused a title agency responsible for distributing the proceeds of a KCI real estate transaction to make payments towards defendant KANE's personal expenses directly out of the settlement proceeds. These payments expenses included \$78,900 to pay off a line of credit defendant KANE used for personal expenses, \$50,000 which was deposited with another management company which defendant KANE later directed to be used to pay personal expenses, and an \$18,000 payment to defendant KANE's ex-wife as part of their divorce settlement. Defendants KANE and MARINO also caused proceeds of the KCI real estate transactions to be deposited to personal bank accounts they controlled and then failed to report their entire earnings to the IRS. These included deposits of \$258,151 and \$190,000 into defendant MARINO's Marino Holdings account and \$71,100 into defendant KANE's Celtic Development account.

20. On or about December 17, 2007, defendants DAVID F. KANE and MARK G. MARINO caused a title agency responsible for distributing the proceeds of a KCI real

estate transaction to make payments towards their personal expenses directly out of the settlement proceeds. These payments included a \$19,000 down payment for a boat owned by defendants KANE and MARINO, a \$25,000 payment to defendant KANE's ex-wife as part of their divorce settlement, \$38,881 which was later deposited with the management company and used to pay defendant KANE's personal expenses, and \$75,000 to pay off a line of credit defendant KANE used for personal expenses. Defendants KANE and MARINO also caused proceeds of the KCI real estate transactions to be deposited to personal bank accounts they controlled and then failed to report their entire earnings to the IRS. These included deposits of \$152,460 into defendant MARINO's Marino Holdings account, \$10,580 into defendant MARINO's Marino Landscape and Design account, and \$9,000 into defendant KANE's Celtic Development account.

21. On or about July 25, 2008, at the direction of defendant DAVID F. KANE, John D. Kane falsely told a title agent who was conducting the closing of defendant KANE's residence on Bragg Road that defendant KANE had no interest in the residence. As a result of this false statement by defendant KANE and John D. Kane, the title agent issued a check for approximately \$150,000 representing the proceeds of the sale of defendant KANE's residence to John D. Kane even though these funds should have been paid to the IRS.

22. In or about October 2009, John D. Kane falsely told D.A.M., a witness before the federal grand jury investigating the coconspirators' conduct, that he was the owner of defendant DAVID F. KANE's residence on Bragg Road.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

On or about June 9, 2005, in the Eastern District of Pennsylvania, defendant

DAVID F. KANE

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2004, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant KANE did not believe to be true and correct as to every material matter, in that the return reported adjusted gross income of \$82,295, when in fact, as KANE knew, he had received additional taxable income of approximately \$370,638.

In violation of Title 26, United States Code, Section 7206(1).

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

On or about September 17, 2004, in the Eastern District of Pennsylvania,
defendant

MARK G. MARINO

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2003, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant MARINO did not believe to be true and correct as to every material matter, in that the return reported adjusted gross income of -\$14,644, when in fact, as MARINO knew, he had received additional taxable income of approximately \$56,386.

In violation of Title 26, United States Code, Section 7206(1).

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

On or about August 16, 2005, in the Eastern District of Pennsylvania, defendant

MARK G. MARINO

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2004, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant MARINO did not believe to be true and correct as to every material matter, in that the return reported adjusted gross income of \$50,841, when in fact, as MARINO knew, he had received additional taxable income of approximately \$129,981.

In violation of Title 26, United States Code, Section 7206(1).

COUNT FIVE

THE GRAND JURY FURTHER CHARGES THAT:

On or about October 15, 2006, in the Eastern District of Pennsylvania, defendant

MARK G. MARINO

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2005, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant MARINO did not believe to be true and correct as to every material matter, in that the return reported adjusted gross income of \$256,826, when in fact, as MARINO knew, he had received additional taxable income of approximately \$83,531.

In violation of Title 26, United States Code, Section 7206(1).

COUNT SIX

THE GRAND JURY FURTHER CHARGES THAT:

On or about March 10, 2008, in the Eastern District of Pennsylvania, defendant

MARK G. MARINO

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2006, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant MARINO did not believe to be true and correct as to every material matter, in that the return reported adjusted gross income of \$191,025, when in fact, as MARINO knew, he had received additional taxable income of approximately \$6,024.

In violation of Title 26, United States Code, Section 7206(1).

COUNT SEVEN

THE GRAND JURY FURTHER CHARGES THAT:

On or about November 26, 2008, in the Eastern District of Pennsylvania,
defendant

MARK G. MARINO

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2007, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant MARINO did not believe to be true and correct as to every material matter, in that the return reported adjusted gross income of \$261,079, when in fact, as MARINO knew, he had received additional taxable income of approximately \$277,151.

In violation of Title 26, United States Code, Section 7206(1).

COUNT EIGHT

THE GRAND JURY FURTHER CHARGES THAT:

On or about June 28, 2006, in the Eastern District of Pennsylvania, defendant

JAMIE E.E. BAUGHER

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2005, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant BAUGHER did not believe to be true and correct as to every material matter, in that the return reported adjusted gross income of \$27,666, when in fact, as BAUGHER knew, he had received additional taxable income which included, but was not limited to, \$24,000 from his employer.

In violation of Title 26, United States Code, Section 7206(1)

COUNT NINE

THE GRAND JURY FURTHER CHARGES THAT:

On or about September 20, 2007, in the Eastern District of Pennsylvania,
defendant

JAMIE E.E. BAUGHER

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2006, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant BAUGHER did not believe to be true and correct as to every material matter, in that the return reported adjusted gross income of \$19,886, when in fact, as BAUGHER knew, he had received additional taxable income which included, but was not limited to, \$42,189 from his employer.

In violation of Title 26, United States Code, Section 7206(1)

COUNT TEN

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 5 of Count One are incorporated here.

2. Between in or about at least 1999 and the date of this second superseding indictment, in the Eastern District of Pennsylvania, and elsewhere, defendant

DAVID F. KANE

willfully engaged in a continuing attempt to evade and defeat a large part of the tax due and owing by him and his spouse to the United States of America for the calendar years 1999 through 2003, including taxes, penalties, and interest due under an IRS assessment in the amount of \$601, 310 made against defendant KANE on or about July 6, 2006, through various means.

3. As part of this attempt to evade federal income taxes, defendant DAVID F. KANE did the following:

(a) he failed to file timely federal income tax returns since at least 1999;

(b) he filed a false and untimely 2004 federal income tax return which failed to report more than \$230,000 in income;

(c) he fraudulently titled his residences and KCI in the name of his brother, John D. Kane;

(d) he established an escrow account at a title agency into which he deposited income from real estate closings and directed the title agency to pay his personal expenses;

(e) he established Celtic Development, LLC, opened a bank account in that name, and directed title companies to pay his earnings to Celtic Development LLC, after which he failed to report the earnings as income;

(f) he caused the wire transfer of his KCI earnings to his personal bank account and failed to report the earnings; and

(g) he failed to report as income thousands of dollars in personal expenses paid from corporate funds.

In violation of Title 26, United States Code, Section 7201.

COUNT ELEVEN

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 5 of Count One are incorporated here.
2. During 2007, in the Eastern District of Pennsylvania, and elsewhere,

defendant

JAMIE E.E. BAUGHER

willfully engaged in an attempt to evade and defeat a large part of the tax due and owing by him and his spouse to the United States of America for the calendar year 2007, through various means.

3. As part of this attempt to evade federal income taxes, defendant JAMIE E.E. BAUGHER did the following:

(a) he established Jascu LLC for the purpose of receiving commission checks he earned from the proceeds of KCI real estate sales;

(b) he deposited to his Jascu LLC account a \$112,000 commission check made payable to him from the proceeds of the sale of KCI real estate, and

(c) he failed to file a 2007 federal income tax return and thus failed to report to the IRS his receipt of the \$112,000 commission check from the sale of KCI real estate.

In violation of Title 26, United States Code, Section 7201.

COUNT TWELVE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 5 of Count One are incorporated here.
2. During 2007, in the Eastern District of Pennsylvania, and elsewhere,
defendant

MARK G. MARINO

willfully engaged in a continuing attempt to evade and defeat a large part of the tax due and owing by him to the United States of America for the calendar year 2007, through various means.

3. As part of this attempt to evade federal income taxes, defendant MARK G. MARINO did the following:

- (a) he caused approximately \$258,151 in proceeds from a KCI real estate sale to be falsely identified as “loan repayment” and paid to him;

- (b) he caused approximately \$19,000 in proceeds in proceeds from a KCI real estate sale to be diverted to purchase a boat that he owned with David F. Kane; and

- (c) he caused other proceeds from KCI real estate sales during 2007 to be deposited to his Marino Holdings and Marino Landscape and Design accounts, then failed to report his entire income during 2007 to the IRS.

In violation of Title 26, United States Code, Section 7201.

COUNT THIRTEEN

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this second superseding indictment:

1. Harleysville National Bank (“HNB”) was a financial institution located in Harleysville, Pennsylvania, the deposits of which were insured by the Federal Deposit Insurance Corporation.

2. On or about July 18, 2005, in the Eastern District of Pennsylvania, and elsewhere, defendants

DAVID F. KANE

knowingly made and caused to be made to HNB a false statement for the purpose of influencing the actions of HNB upon a loan, that is a \$750,000 business loan for his business, KCI, in that defendant KANE caused to be submitted to HNB a false loan application in which defendant KANE falsely claimed that he had no “unpaid income taxes” when, in fact, he was aware that he had not filed income tax returns or paid federal income taxes during 1999 through 2003 and that he owed significant unpaid taxes to the IRS.

In violation of Title 18, United States Code, Section 1014.

COUNT FOURTEEN

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this second superseding indictment:

1. Paragraphs 1 through 5 of Count One and paragraph 1 of Count Twelve are incorporated here.

2. Between in or about 2002 and April 2008, in the Eastern District of Pennsylvania, and elsewhere, defendant

DAVID F. KANE

knowingly executed, and attempted to execute, and aided and abetted the execution and attempted execution of a scheme to defraud HNB, and to obtain monies owned by and under the care, custody, and control of that bank by means of false and fraudulent pretenses, representations, and promises.

THE SCHEME

3. Between approximately 2002 and 2005, defendant DAVID F. KANE and Mark G. Marino applied for more than \$2.5 million in loans from HNB to use to operate KCI and to purchase real estate for development.

4. Because defendant DAVID F. KANE had poor credit and did not want to provide financial information to HNB for fear that the IRS or others may obtain it and use it to seek payment of amounts owed to the IRS and other creditors, defendant KANE enlisted John D. Kane to assist him in submitting false loan applications to HNB. Specifically, defendant KANE and John D. Kane falsely claimed to HNB that John D. Kane was the “majority owner” of and acted as a “consultant” to KCI when, in fact, John D. Kane did not own KCI, had no role in its

operation, and defendant KANE and Mark G. Marino were the true owners. By using John D. Kane as a straw owner of KCI, defendant KANE concealed his true financial condition from HNB, including the fact that he had hundreds of thousands of dollars in unpaid debts, including taxes, interest, and penalties due to the IRS.

5. Defendant DAVID F. KANE also submitted a false loan application and financial statement to HNB which did not disclose all of his debts, including his debt owed to the IRS.

6. As a result of the scheme to defraud, including the false statements described above, defendant DAVID F. KANE obtained more than \$2.5 million in fraudulent loans from HNB.

In violation of Title 18, United States Code, Sections 1344 and 2.

NOTICE OF FORFEITURE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Sections 1014 and 1344 set forth in this second superseding indictment, defendant

DAVID F. KANE

shall forfeit to the United States of America any property constituting, or derived from, proceeds obtained directly or indirectly from the commission of such offenses, including at least \$2.5 million.

2. If any of the property described above, as a result of any actor omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred to, sold to, or deposited with a third party;
- c. has been placed beyond the jurisdiction of this Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intention of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), 28 U.S.C.
§ 2461, and United States Code, Section 853.

A TRUE BILL:

FOREPERSON

ZANE DAVID MEMEGER
United States Attorney