

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

Alexandria Division

UNITED STATES OF AMERICA)	Criminal No. 98-305-A
)	
v.)	Count 1:
)	15 U.S.C. §1
KENNETH R. ARNOLD)	(Bid Rigging)
(Counts 1, 2))	
)	Count 2:
and)	18 U.S.C. §1341
)	(Mail Fraud)
ALAN SHAMS,)	
(Count 1))	Filed: August 13, 1998
)	
Defendants.)	

INDICTMENT

August 1998 Term - At Alexandria, Virginia

COUNT ONE
(Bid Rigging)

THE GRAND JURY CHARGES THAT:

A. DEFENDANTS AND CO-CONSPIRATORS

1. At all times material to this Indictment, the defendants, KENNETH R. ARNOLD and ALAN SHAMS, were real estate speculators doing business in the Eastern District of Virginia.

2. Various firms and individuals, not made defendants in this count, participated as co-conspirators in the offense charged and performed acts and made statements in furtherance of it.

B. DESCRIPTION OF THE OFFENSE

3. Beginning at least as early as August 1991 and continuing through at least April 1995, the exact dates being unknown to the grand jury, the defendants and others entered into and engaged in a combination and conspiracy to limit the bidding at certain public real estate foreclosure auctions in the Eastern District of Virginia. Defendant Shams joined this ongoing conspiracy at least as early as April 27, 1994. The combination and conspiracy unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

4. In certain instances when real estate located in the Commonwealth of Virginia is sold, the sale is conducted by public auction. When a deed of trust, commonly called a mortgage, is foreclosed upon in the Commonwealth of Virginia, the property is sold at a public auction in order to protect the interests of the mortgage holder and the property owner.

5. When a mortgage is foreclosed, the mortgage holder appoints a Trustee, pursuant to provisions in the original mortgage documents, to conduct the sale of the property by public auction. After required notice of an auction is given, the Trustee holds the auction on the date and time specified.

6. The bidding at the public auction typically opens at the amount owed by the property owner to the mortgage holder. The Trustee who conducts the foreclosure auction seeks to obtain the highest price possible at the public auction by soliciting open and competitive bidding from potential purchasers. The Trustee stops the bidding when the highest price reached by competitive bidding is offered. The high bidder pays a deposit to the Trustee in the form of a cashier's or certified check. The Trustee then executes a Memorandum of Sale indicating the property address, the date of the auction, the high bidder, the high bid amount, and the amount of the deposit paid. The Memorandum of Sale is needed by the high bidder in order to complete the settlement of the property transaction, which usually occurs within 15 days of the auction. Once the settlement of the property transaction is completed, the high bidder takes title to the property.

7. When a property is sold at a foreclosure auction, any amount paid for the property above the amount owed to the mortgage holder(s) represents the property owner's equity in the property and is paid to the property owner.

8. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators to rig bids, the substantial terms of which were:

- a) to suppress competition by refraining from full competitive bidding at certain public real estate

foreclosure auctions;

- b) to conduct second, secret auctions, open only to members of the conspiracy, to rebid the properties won at the public real estate foreclosure auctions; and
- c) to make payoffs to one another in return for limiting the bidding at those public real estate foreclosure auctions.

C. MEANS AND METHODS OF THE CONSPIRACY

9. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and co-conspirators did those things that they combined and conspired to do, including, among other things:

- a) agreeing to limit competition with one another at certain public real estate foreclosure auctions;
- b) permitting co-conspirators to make bids to seek to win the public real estate foreclosure auction without full competition from the other co-conspirators;
- c) purchasing auctioned property at prices lower than would have resulted from a fully competitive auction, thereby depriving property owners and certain mortgage holders of the full value of the auctioned property;
- d) holding second, secret and private auctions, open

only to the co-conspirators and generally conducted by written bid, in which the co-conspirators made bids to acquire each property at prices higher than the price paid by the winner of the public real estate foreclosure auction;

- e) awarding the property to the highest of the secret auction bids, and agreeing to divide the group's secret profit (the difference between the foreclosure auction price and the secret auction price) by making payoffs among the conspirators;
- f) arranging for the secret auction winner to take title or ownership of the property; and
- g) making the payoffs that they agreed to make.

10. In the manner described in paragraph 9, and for the purpose of carrying out the charged combination and conspiracy, the defendants and co-conspirators unreasonably restricted full competitive bidding at public foreclosure auctions of the following properties, among others, on or about the listed dates:

<u>Property Address</u>	<u>Auction Date</u>
5861 Banning Place, Burke	August 30, 1991
6728 Wills Street, Alexandria	October 29, 1991
9100 Arlington Boulevard, Fairfax	May 27, 1993
7496 Laurel Oak Court, Springfield	June 28, 1993
9363 Peter Roy Court, Burke	September 14, 1993
3404 Beechcraft Drive, Alexandria	October 7, 1993
9650 Grant Avenue, Manassas	October 12, 1993
5114 Cliffhaven Drive, Annandale	November 9, 1993
6825 Lamp Post Lane, Alexandria	November 12, 1993
7345 McWhorter Place, #111, Annandale	April 27, 1994

9213 Hood Road, Manassas	May 10, 1994
5323 Stonington Drive, Fairfax	June 9, 1994
8588 Richmond Avenue, Manassas	August 12, 1994
5903 Flanders Avenue, Springfield	August 16, 1994
2246 Roanoke Drive, Alexandria	August 23, 1994
803 Mosby Hollow Drive, Herndon	September 8, 1994

D. TRADE AND COMMERCE

11. The business activities of the defendants and co-conspirators that are the subject of this count were within the flow of, and substantially affected, interstate trade and commerce.

12. Foreclosure auctions held in the Eastern District of Virginia regularly were advertised in newspapers that were distributed in the District of Columbia and in Maryland.

13. Potential purchasers at public real estate foreclosure auctions in the Eastern District of Virginia made telephone inquiries from outside Virginia regarding properties to be auctioned, and traveled across state lines to attend such auctions.

14. In a substantial number of instances when the defendants or co-conspirators purchased a property at a public real estate foreclosure auction, interstate contacts by mail and wire initiated the foreclosure proceeding, and interstate transfers of money and documents were necessary to transfer ownership of the property to the defendants or their co-conspirators.

E. JURISDICTION AND VENUE

15. The combination and conspiracy charged in this count was formed in and carried out, in part, within the Eastern District of Virginia, within the five years preceding the return of this Indictment.

(In violation of Title 15, United States Code, Section 1.)

COUNT TWO
(Mail Fraud)

THE GRAND JURY FURTHER CHARGES THAT:

1. KENNETH R. ARNOLD is hereby indicted and made a defendant in this count.
2. During at least October 1993, the exact dates being unknown to the grand jury, the defendant, KENNETH R. ARNOLD, and others, within the Eastern District of Virginia, as part of an ongoing arrangement, did knowingly devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises from the mortgage holders and owners of a property that was being sold at a public real estate foreclosure auction in the Eastern District of Virginia. That scheme and artifice to defraud consisted of suppressing competition at the public auction of a property at 9650 Grant Avenue, Manassas, VA, by agreeing not to bid against one another at the public auction, by acquiring the property at a lower price than would have resulted from a fully competitive auction, and by holding a second, secret auction and dividing the profits of the scheme (the difference between the public and secret auction prices) among themselves.
3. On or about October 13, 1993, in the Eastern District of Virginia, the defendant, KENNETH R. ARNOLD, in connection with the auction of a property at 9650 Grant Avenue, Manassas, VA, for the purpose of executing the scheme and artifice described above and attempting to do so, knowingly caused to be delivered by mail according to the direction thereon, by the United States Postal

Service, an envelope addressed to Leo Gulley, 10907 Blue Roan Road, Oakton, VA 22124, containing a payoff check.

(In violation of Title 18, United States Code, Section 1341.)

A TRUE BILL

FOREPERSON

HELEN F. FAHEY
United States Attorney

JOEL I. KLEIN
Assistant Attorney General

By:

JUSTIN W. WILLIAMS
Assistant United States Attorney
Chief, Criminal Division

_____/s/_____
GARY R. SPRATLING
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_____/s/_____
ANTHONY V. NANNI

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