

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

UNITED STATES OF AMERICA)
)
)
) CRIMINAL NO. 95-416-A
 v.)
)
)
) FILED: [SEPTEMBER 28, 1995]
 LEO E. GULLEY,)
)
)
 Defendant.)

STATEMENT OF FACTS

1. From at least as early as November 1991 through approximately April 1995, defendant LEO E. GULLEY (GULLEY) participated with a group of real estate speculators in Northern Virginia in a conspiracy to rig bids at public real estate foreclosure auctions by not bidding against each other at auctions and then holding second, secret auctions at which the conspirators rebid the property and split among them the difference between the public and secret auction prices. The conspiracy is explained further below.

2. 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 homeowner.

3. 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. Notices of public auctions held in the Commonwealth of Virginia are published in

newspapers of general circulation in a wide geographic area. Such notices are regularly published and advertised in newspapers that are distributed in the District of Columbia and Maryland, as well as in Virginia.

4. After required notice of an auction is given, the Trustee holds the auction on the date and time specified.

5. The bidding at the public auction typically opens at the amount owed by the homeowner to the lender. The Trustee stops the bidding when the highest price reached by competitive bidding is offered. The high bidder pays a deposit to the Trustee (typically 10% of the opening bid price) 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.

6. Information about properties listed for foreclosure sale, such as the assessed value of the property, outstanding loan amounts, and outstanding liens or judgements against the property, can be obtained from public and commercially available sources. By using the information found in these sources, and other information about real estate values in a given area, a potential bidder can usually estimate at what price the bidding on a given property will start and how much equity a homeowner has in a property. With this information, a potential bidder can determine the attractiveness of a particular property to be sold at auction, and how high he or she will be willing to bid to acquire that property.

7. When a property is sold by public auction, any amount paid for the property above the amount owed to the lender(s) represents the homeowner's equity in the property and goes to the homeowner. Hence, from an equity standpoint, it is in the homeowner's interest for the public auction price to exceed the outstanding mortgage balance.

8. From approximately the late 1980s through approximately April 1995, GULLEY was a real estate speculator in Northern Virginia in that he attended foreclosure auctions for the purpose of purchasing properties for investment.

9. From at least as early as November 1991 through approximately April 1995, GULLEY participated with other real estate speculators in a conspiracy to rig bids at certain public real estate foreclosure auctions in Northern Virginia.

10. The conspiracy consisted of a continuing agreement, understanding, and concert of action among GULLEY and his co-conspirators, the substantial terms of which were to agree to refrain from bidding at public foreclosure auctions, and then to conduct second, secret auctions open only to members of the conspiracy for the purpose of rebidding the properties won at the public auctions and dividing the proceeds of the second auctions among themselves.

11. Based on their own research of properties, members of the conspiracy determined which auctions they were interested in attending. Often, members of the conspiracy only attended auctions of properties in which they were interested.

12. If the members of the conspiracy present at an auction were able to meet before the auction began, a bidder was designated for the group of conspirators, and only the designated bidder bid at the public auction.

13. If the members of conspiracy were unable to meet before the auction began, any one of several courses of action were followed. A member of the group of conspirators would circulate among the bidders and tell members of the group of conspirators to let another member "bid it [the property] in" or "take it." Other times, public bidding by one group member served as a signal to other group members not to bid. Occasionally, one of the group simply told another member, out loud during the bidding, to "take" the property.

14. By agreeing not to bid against each other, and then obtaining the properties at the public auction, the members of the group of conspirators were able to buy those properties at prices lower than what they would have had to pay at a fully competitive auction.

15. If the designated bidder won the property at the public auction, the group of conspirators then went elsewhere to hold a second, secret auction among themselves. These second auctions were held on the grounds and in the cafeterias of the courthouses where the public auctions were held, in a conspirator's home, and in a conspirator's office.

16. Bidding at the second auction was open only to members of the conspiracy and usually was conducted by written bid. Each conspirator wrote down on a piece of paper the amount, or "premium," above the public auction price he or she was willing to pay for the property. The conspirator with the highest amount written down won the property. The premium amount bid by the highest bidder at the second auction was the group's illicit profit, and it was divided among them by the winner of the second auction based on a predetermined formula. Any deposit paid by the public auction winner was reimbursed by the second auction winner by either cash or cashier's check at the close of the second auction.

17. The public auction winner assigned the bid rights to the property to the second auction winner, usually by either executing a document assigning the public auction bid to the second auction winner, or by so indicating on the Memorandum of Sale. The second auction winner could then take the property to settlement as if he or she won it at the public auction. In some instances, the designated public auction winner also won the second auction and no assignment was necessary.

18. The second auction winner made the payoffs to the other conspirators shortly after the property was taken to settlement. The payoffs were determined according to the following formula:

$$\text{Payoff} = [\text{High Premium Bid} \div (\text{Sum of the Losing Premium Bids})] \times \text{Individual Premium Bid}$$

19. The following example of how the conspiracy worked is drawn from the auction of the property at 6842 Indian Run Court in Annandale, Virginia, held on or about November 21, 1991.

a. The Public Auction. Six members of the conspiracy, including GULLEY, were present at this particular auction. Pursuant to an agreement to refrain from bidding during this auction, one of the co-conspirators, who was the designated bidder, won the property with a bid of \$59,000.

b. The Secret Auction. Each of the six co-conspirators present at the public auction attended the second auction and submitted the following written premium bids:

Conspirator A	\$40,000	Conspirator D	\$15,000
Conspirator B	\$ 3,000	Conspirator E	\$21,000
Conspirator C	\$15,000	Conspirator F	\$26,000

The high bidder at the second auction, Conspirator A, won the property. GULLEY was Conspirator B. The conspirator who won the public auction assigned the Memorandum of Sale to Conspirator A who then took the property to settlement.

c. The Payoffs. Using the formula established by the conspirators for distributing the secret auction proceeds, Conspirator A made the following payoffs to the other conspirators:

	Payoff	=	[High Premium Bid	÷	(Sum of Losing Premium Bids)]	×	Individual Premium Bid
Conspirator B	\$1,500	=	(\$40,000	÷	\$80,000)	×	\$3,000
Conspirator C	\$7,500	=	(\$40,000	÷	\$80,000)	×	\$15,000
Conspirator D	\$7,500	=	(\$40,000	÷	\$80,000)	×	\$15,000
Conspirator E	\$10,500	=	(\$40,000	÷	\$80,000)	×	\$21,000
Conspirator F	\$13,000	=	(\$40,000	÷	\$80,000)	×	\$26,000

20. The conspirators made payoffs to each other with both cash and checks. Payoff checks, drawn on federally insured banks, were mailed by the conspirators to each other via the U.S. Postal Service, and deposited in federally insured banks. Cash payoffs were likewise withdrawn from, and deposited into, federally insured banks.

21. The victims of auction bid rigging are the persons or entities who would have received more money for the property sold if there had been a fully competitive auction.

22. The business activities of GULLEY and co-conspirators were within the flow of, and substantially affected, interstate trade and commerce. For example, mortgage holders

located in states other than Virginia held mortgages on foreclosed properties, appointed Substitute Trustees to conduct the foreclosure sales, and received proceeds from the foreclosure sales.

HELEN F. FAHEY
UNITED STATES ATTORNEY

ANNE K. BINGAMAN
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

By: _____/S/
Justin W. Williams
Chief, Criminal Division

By: _____/S/
James T. Clancy

_____/S/
Joseph A. Capone

Trial Attorneys
Antitrust Division
United States Department of Justice

Seen and agreed:

_____/S/
LEO E. GULLEY

_____/S/
Mitchell S. Ettinger
Counsel for Defendant GULLEY

_____/S/
Saul M. Pilchen
Counsel for Defendant GULLEY