

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

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL NO. <u>13-</u></b>
v.	:	<b>DATE FILED: <u>May 9, 2013</u></b>
<b>THOMAS C. PHELAN</b>	:	<b><u>VIOLATIONS:</u></b>
	:	<b>18 U.S.C. § 371 (conspiracy - 1 count)</b>
	:	<b>18 U.S.C. § 1014 (loan fraud - 3 counts)</b>
	:	<b>18 U.S.C. § 1343 (wire fraud - 1 count)</b>
	:	<b>18 U.S.C. § 2 (aiding and abetting)</b>
	:	<b>Notice of forfeiture</b>

**INDICTMENT**

**COUNT ONE**

**(Conspiracy)**

**THE GRAND JURY CHARGES THAT:**

At all times material to this indictment:

1. Defendant THOMAS C. PHELAN was a mortgage broker with a home address in Darby and Feasterville, PA. PHELAN was the president and secretary of a company called Phelan Mortgage Associates, Inc. (PMAI) which operated in Feasterville, PA. PHELAN also created and controlled a company called Phelan Financial Holdings LLC.
2. G.W. an individual known to the grand jury, worked as a mortgage broker and a part owner of PMAI from approximately fall, 2004 to spring, 2008. PHELAN and G.W's duties as a mortgage broker included preparing loan applications and submitting them, along with support documentation, to potential lenders to secure loans and mortgages.
3. O.J., an individual known to the grand jury, owned a title company and was employed as a title examiner which provided closing and settlement services from May,

2006 to August 2010.

4. Countrywide Bank FSB was a financial institution, the deposits of which were insured by the Federal Deposit Insurance Corporation, Certificate No. 33143.

5. Homecomings Financial LLC was a subsidiary of a financial institution, now known as Ally Bank, the deposits of which were insured by the Federal Deposit Insurance Corporation, Certificate No. 57803.

6. IndyMac Bank FSB was a financial institution, the deposits of which were insured by the Federal Deposit Insurance Corporation, Certificate No. 58912.

7. American Home Mortgage Acceptance Inc. was a company which provided mortgage loans and did business in interstate commerce.

8. Scott Consumer Discount Company was a company which provided mortgage loans and did business in interstate commerce.

9. From in or about August, 2006 to in or about February, 2009, at Philadelphia, in the Eastern District of Pennsylvania and elsewhere, defendant

THOMAS C. PHELAN

conspired and agreed, together with G.W. and O.J., and with others known and unknown to the grand jury, to commit offenses against the United States, that is:

(a) knowingly making and causing to be made to federally insured financial institutions a false statement for the purpose of influence the actions of that institution on a loan, in violation of Title 18, United States Code, Section 1014; and

(b) having devised a scheme to defraud mortgage lenders and to obtain money and property from them by means of false and fraudulent pretenses, representations, and promises,

knowing using interstate wire communications to further the scheme to defraud, in violation of Title 18, United States Code, Section 1343.

#### **MANNER AND MEANS**

It was part of the conspiracy that:

10. Defendant THOMAS C. PHELAN enriched himself by arranging real estate deals in which the residences were purchased for inflated prices so that the buyers could get tens of thousands of dollars back at closing, which was not disclosed to the lenders, and the borrowers qualified for mortgages using false information, such as inflated income and asset information, under-reported debt information, and false representation of primary residence, resulting in losses to the mortgage lenders. In addition to proceeds from mortgage loans, defendant PHELAN collected thousands of dollars in mortgage broker fees.

11. Defendant THOMAS C. PHELAN knew that the transactions were structured so that the buyers did not need to put any money down to make the purchases, and that the buyers would get a substantial amount of money back at or after closing. Defendant PHELAN structured the transactions to mislead the mortgage lenders about whether and how much cash a buyer was investing in a property.

12. Defendant THOMAS C. PHELAN directed the completion of the buyers' loan applications, and assisted in completing their applications, using false information about the buyers, including the amount of their income, assets, and debts.

13. Defendant THOMAS C. PHELAN directed that false HUD-1 settlement statements for the transactions be prepared by O.J., which reflected inflated purchase prices, reflected (non-existent) down payments from the buyers, and did not reflect the money back that

the buyers received.

14. Some of the buyers made few or no payments on their mortgages, causing the lenders to have to foreclose on the properties and attempt to resell them to recoup some of their losses. However, due to numerous factors, including the fact that the purchase prices were inflated, the lenders were only able to resell the properties for a fraction of the unpaid principal balance on the loans.

15. In total, defendant THOMAS C. PHELAN facilitated at least a dozen real estate deals for a total of over \$2.9 million in mortgage loans that involved inflated sale prices, fraudulent mortgage loan applications, or false HUD-1 settlement statements.

#### **OVERT ACTS**

In furtherance of the conspiracy and to accomplish its objects, defendant THOMAS C. PHELAN and co-conspirators G.W. and O.J. committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

##### 3945 Countrywood Lane, Hatboro Pennsylvania

1. On or about October 30, 2006, defendant THOMAS C. PHELAN submitted and caused to be submitted to Countrywide Bank FSB, a financial institution, two mortgage loan applications and supporting documents containing false statements for the purpose of influencing Countrywide Bank FSB on mortgage loans for 3945 Countrywood Lane, including overstating defendant PHELAN's income, falsely stating that the property would be PHELAN's primary residence, and falsely stating that PHELAN had made an "earnest money deposit" of \$7,128 when PHELAN had not made any deposit.

2. On or about October 30, 2006, defendant THOMAS PHELAN drafted a

“show check” in the amount of \$36,858.92 from PMAI to O.J.’s title company. The purpose of the “show check” was to deceive Countrywide Bank FSB and others into thinking that defendant PHELAN brought approximately \$36,858.92 in funds to closing at settlement of 3945 Countrywood Lane. At the direction of defendant PHELAN, O.J. photocopied the “show check” for the settlement file but did not negotiate the check.

3. On or about October 30, 2006, a false settlement statement was prepared by O.J., with the knowledge of defendant THOMAS C. PHELAN, for defendant PHELAN’s purchase of 3945 Countrywood Lane. Specifically, the settlement statement falsely stated that the borrower, defendant PHELAN, brought funds of approximately \$36,858.92 to closing, when PHELAN brought only a “show check” and no funds to closing. The settlement statement falsely stated that the sellers received approximately \$71,175.48 at closing when, in fact, they received no funds. The lender's closing instructions stated that the borrower must not receive any cash proceeds without approval of the lender. The settlement statement fraudulently omitted the amount of money the buyer, defendant PHELAN, received back from the purchase of 3945 Countrywood Lane.

4. On or about October 30, 2006, at the direction of defendant THOMAS C. PHELAN, O.J. drafted a check in the amount of \$33,062.12 to Phelan Financial Holdings for the amount of money defendant THOMAS C. PHELAN fraudulently received for his purchase of 3945 Countrywood Lane. Shortly thereafter, defendant PHELAN caused the check to be deposited into a bank account he controlled.

5. On or about October 30, 2006, O.J. drafted a check in the amount of \$6,900 to PMAI for defendant PHELAN’s brokerage fees in connection with his purchase of

3945 Countrywood Lane. Shortly thereafter, defendant PHELAN caused the check to be deposited into a bank account he controlled.

1631 Woodford Avenue, Fort Myers, Florida

6. On or about January 23, 2007, at the direction of defendant THOMAS C. PHELAN, G.W. submitted and caused to be submitted to Homecomings Financial LLC, a subsidiary of a financial institution, two mortgage loan applications and supporting documents containing false statements for the purpose of influencing Homecomings Financial LLC on mortgage loans for defendant PHELAN and G.W.'s purchase of 1631 Woodford Avenue, including falsely stating that the property would be G.W.'s primary residence and overstating G.W.'s income and assets, and failing to disclose all liabilities.

239 Haines Street, Philadelphia, Pennsylvania

7. On or about April 17, 2007, defendant THOMAS C. PHELAN caused to be submitted to American Home Mortgage Acceptance Inc., a mortgage loan application and occupancy agreement for G.W.'s purchase of 239 Haines Street containing false statements, falsely stating that the property would be G.W.'s primary residence, overstated his income, and failing to disclose all liabilities.

8. On or about April 17, 2007, a false settlement statement was prepared by O.J., with the knowledge of defendant THOMAS C. PHELAN, for G.W.'s purchase of 239 Haines Street. Specifically, the settlement statement falsely stated that the borrower, G.W., brought funds of approximately \$23,152.41 to closing, when G.W. brought no funds to closing. The settlement statement falsely stated that the seller received approximately \$47,517.35 at closing. The settlement statement fraudulent omitted the amount of money the buyer, defendant

G.W., received back from the purchase of 239 Haines Street.

9. On or about April 17, 2007, at the direction of defendant THOMAS C. PHELAN and G.W., O.J. drafted a check in the amount of \$24,364.94 to the seller of 239 Haines Street. That same day, the seller, G.W. and defendant THOMAS C. PHELAN fraudulently split these proceeds received from G.W.'s purchase of 239 Haines Street.

10. On or about April 17, 2007, O.J. drafted a check in the amount of \$6,775 to PMAI for defendant PHELAN's brokerage fees in connection with G.W.'s purchase of 239 Haines Street.

1731 Webster Street, Philadelphia Pennsylvania

11. On or about March 7, 2007, defendant THOMAS C. PHELAN submitted and caused to be submitted to IndyMac FSB, a financial institution, a mortgage loan application containing false statements for the purpose of influencing IndyMac Bank FSB on defendant PHELAN's purchase of 1731 Webster Street including overstating defendant PHELAN's income, falsely stating that the property would be PHELAN's primary residence, and falsely stating that PHELAN had made a "cash deposit on sales contract" of \$42,000 when PHELAN had not made any deposit.

12. On or about March 12, 2007, defendant THOMAS PHELAN obtained an official check, made payable to O.J.'s title company, in the amount of \$42,000 from a bank account PHELAN controlled for use as a "show check." The purpose of the "show check" was to deceive IndyMac Bank FSB and others into thinking that defendant PHELAN had made an approximately \$42,000 down payment for the purchase of 1731 Webster Street. The same day, PHELAN caused the check to be re-deposited back into his bank account.

13. On or about March 29, 2007, a false settlement statement was prepared by O.J., with the knowledge of defendant THOMAS C. PHELAN for the purchase of 1731 Webster Street. Specifically, the settlement statement falsely stated that the borrower, defendant PHELAN, brought funds of approximately \$63,970.08 to closing, when PHELAN brought no funds to closing. The settlement statement falsely stated that the seller of record received approximately \$393,670.57 at closing when, in fact, proceeds were distributed to multiple recipients based on side agreements not disclosed to the lender. The settlement statement fraudulently omitted the amount of money the buyer, defendant PHELAN, received back from the purchase of 1731 Webster Street.

14. On or about March 29, 2007, at the direction of defendant THOMAS C. PHELAN, O.J. drafted a check in the amount of \$14,500.49 to Phelan Financial Holdings for the amount of money defendant THOMAS C. PHELAN fraudulently received for his purchase of 1731 Webster Street. Shortly thereafter, defendant PHELAN caused the check to be deposited into a bank account he controlled.

15. On or about March 29, 2007, O.J. drafted a check in the amount of \$16,260 to Phelan Mortgage for defendant PHELAN's brokerage fees in connection with his purchase of 1731 Webster Street. Shortly thereafter, defendant PHELAN caused the check to be deposited into a bank account he controlled.

4431 Remo Crescent Road, Bensalem, Pennsylvania

16. On or about May 5, 2008, defendant THOMAS C. PHELAN purchased 4431 Remo Crescent Road for \$340,000. At the direction of defendant PHELAN, O.J. prepared a HUD-1 reflecting a buyer known to the grand jury as A.D., a sales price of \$340,000, a "seller



assist” of \$105,000, and the \$243,409.63 in funds which PHELAN brought to settlement.

17. Shortly after May 5, 2008, the precise date unknown, at the direction of defendant THOMAS C. PHELAN, O.J. prepared a duplicate HUD-1 purporting to reflect defendant PHELAN’s purchase of 4431 Remo Crescent Road. The purpose of the duplicate HUD-1 was for defendant PHELAN to mortgage 4431 Remo Crescent Road with inflated sales price and equity. The duplicate HUD-1 showed the buyer as defendant PHELAN and kept the sale price of \$340,000. However, the duplicate HUD-1 removed the “seller assist” of \$105,000, falsely stating that defendant PHELAN brought \$348,409.63 in funds to settlement.

18. On or about June 23, 2008, defendant THOMAS C. PHELAN submitted and caused to be submitted to Scott Consumer Discount Company, the false HUD-1 settlement statement containing false statements for his mortgage of 4431 Remo Crescent Road.

19. On or about July 3, 2008, funds in the amount of \$102,000 were transmitted from National City Bank in Cleveland Ohio, through Diversified Settlement Services in Reading, Pennsylvania, for a net amount to 97,709.54 to defendant THOMAS C. PHELAN.

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

**COUNT TWO**  
**(Loan Fraud)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1, 3, and 4 and Overt Acts 1 through 5 of Count One are incorporated here.
2. On or about October 30, 2006, in the Eastern District of Pennsylvania and elsewhere, defendant

**THOMAS C. PHELAN**

knowingly made and caused to be made to Countrywide Bank FSB, a false statement for the purpose of influencing the actions of Countrywide Bank FSB upon loans, that is a \$320,000 mortgage loan and \$40,000 second mortgage loan on the property at 3945 Countrywood Lane, Hatboro, Pennsylvania, in that defendant THOMAS C. PHELAN knew the statements listed below were false:

<b>False Statements</b>	
a	Falsely represented that the property would be his primary residence/owner occupied.
b	Falsely represented that his base monthly employment income was \$13,450 plus a \$4,000 bonus.
c	Falsely represented he had made a down payment of \$7,128 and would come to and present at settlement additional cash of \$73,872.

In violation of Title 18, United States Code, Sections 1014 and 2.

**COUNT THREE**  
**(Loan Fraud)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1, 2, and 5 and Overt Act 6 of Count One are incorporated here.
2. On or about January 23, 2007, in the Eastern District of Pennsylvania and elsewhere, defendant

**THOMAS C. PHELAN**

knowingly made and caused to be made to Homecomings Financial LLC, a false statement for the purpose of influencing the actions of Homecomings Financial LLC upon loans, that is a \$329,000 mortgage loan and \$82,250 second mortgage loan on the property at 1631 Woodford Avenue, Fort Myers, Florida, in that defendant THOMAS C. PHELAN knew the statements listed below were false:

<b>False Statements</b>	
a	Falsely represented that the property would be G.W.'s primary residence/owner occupied.
b	Falsely represented that G.W.'s base monthly employment income was \$12,500.
c	Falsely represented that G.W. owned a property worth \$200,000 when it was worth only \$135,000.
d	Failed to disclose that on or about January 1, 2007, G.W. took a loan in the amount of \$40,000.

In violation of Title 18, United States Code, Sections 1014 and 2.

**COUNT FOUR**  
**(Loan Fraud)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1, 3, and 6 and Overt Acts 11 through 15 of Count One are incorporated here.
2. On or about March 7, 2007, in the Eastern District of Pennsylvania and elsewhere, defendant

**THOMAS C. PHELAN**

knowingly made and caused to be made to IndyMac Bank FSB, a false statement for the purpose of influencing the actions of IndyMac Bank FSB upon a loan, that is a \$378,000 mortgage loan on the property at 1731 Webster Street, Philadelphia, Pennsylvania, in that defendant THOMAS C. PHELAN knew the statements listed below were false:

	<b>False Statements</b>
a	Falsely represented that the property would be his primary residence/owner occupied.
b	Falsely represented that his base monthly employment income was \$15,000 plus a \$5,000 bonus.
c	Falsely represented that he made a cash deposit on the sales contract of \$42,000.

In violation of Title 18, United States Code, Sections 1014 and 2.

**COUNT FIVE**  
**(wire fraud)**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1, 3, and 8 and Overt Acts 16 through 19 of Count One are incorporated here.

2. Between on or about April 18, 2008 and on or about July 3, 2008, in the Eastern District of Pennsylvania, and elsewhere, defendant

**THOMAS C. PHELAN**

devised and intended to devise a scheme to defraud Scott Consumer Discount Company, and to obtain money and property from it by means of false and fraudulent pretenses, representations and promises.

**MANNER AND MEANS**

It was part of the scheme that:

3. Defendant THOMAS C. PHELAN entered into an agreement to purchase the real property located at 4431 Remo Crescent Road, Bensalem, Pennsylvania.

4. Defendant THOMAS C. PHELAN used approximately \$243,409 in funds to purchase the property. Defendant PHELAN caused the preparation of a HUD-1 settlement statement with an inflated sales price of \$340,000 including a \$107,000 seller's assist.

5. To make it appear that defendant THOMAS C. PHELAN had additional equity in the property, defendant PHELAN submitted a false HUD-1 settlement statement reflecting the inflated sales price of \$340,000, without the \$107,000 seller's assist, that is, falsely stating that defendant PHELAN came to settlement with \$348,409 in funds and had 100% equity

in the property.

6. Based on these false representations, defendant THOMAS C. PHELAN obtained a mortgage loan of approximately \$107,000 from Scott Consumer Discount Company.

7. On or about July 3, 2008, in the Eastern District of Pennsylvania, and elsewhere, defendant

**THOMAS C. PHELAN,**

for the purpose of executing the scheme described above, and aiding and abetting its execution, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below:

<b>DESCRIPTION</b>
\$102,000 wired from Scott Finance Company account No. xxxxx0124 at National City Bank, Cleveland Ohio, to Diversified Settlement Services Inc, account no. xxxxx2691 at Sovereign Bank, Wyomissing, Pennsylvania.

In violation of Title 18, United States Code, Sections 1343 and 2.

**NOTICE OF FORFEITURE**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. As a result of the violations of Title 18, United States Code, Sections 1343 and 1014 as set forth in this indictment, defendant

**THOMAS C. PHELAN,**

shall forfeit to the United States of America any property, real or personal, that constitutes or is derived from proceeds traceable to the commission of such offense, up to and including the amount of \$2,900,000, as charged in this indictment.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the 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 intent of the United States, pursuant to Title 28, United States Code, Section 2461(c), incorporating 21 U.S.C. § 853(p), and Title 18, United States Code, Section 982(b), 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, Sections 982 and 981, and Title 28,  
United States Code, Section 2461.

**A TRUE BILL:**

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**GRAND JURY FOREPERSON**

  
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**ZANE DAVID MEMEGER**  
**United States Attorney**