

FILED IN OPEN COURT  
U.S.D.C. Atlanta

FEB 19 2013

James N. Hatten, Clerk  
By: *[Signature]*  
Deputy Clerk

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

|                          |   |                      |
|--------------------------|---|----------------------|
| UNITED STATES OF AMERICA | : |                      |
|                          | : | CRIMINAL INDICTMENT  |
| v.                       | : |                      |
|                          | : | NO. <b>1:13CR048</b> |
| KENNETH J. ENRICO        | : |                      |

THE GRAND JURY CHARGES THAT:

COUNT ONE  
**Conspiracy**

1. Beginning on or about June 1, 2011, and continuing to on or about September 30, 2012, in the Northern District of Georgia and elsewhere, the defendant, KENNETH J. ENRICO, did knowingly and willfully and unlawfully combine, conspire, confederate, agree and have a tacit understanding with others known and unknown to the grand jury to commit certain offenses against the United States, to wit:

**Objects of the Conspiracy**

2. To devise and intend to devise a scheme and artifice to defraud consumers and for obtaining their money and property by means of materially false and fraudulent pretenses and omissions of material facts by enticing them to apply for loans and pay up front fees for loans that never materialized, and knowingly cause the Postal Service and private and commercial interstate carriers to be used in furtherance of said scheme and artifice to defraud, in violation of Title 18, United States Code, Section 1341;

3. To devise and intend to devise a scheme and artifice to

defraud consumers and for obtaining their money and property by means of materially false and fraudulent pretenses and omissions of material facts by enticing them to apply for loans and pay up front fees for loans that never materialized, and knowingly cause interstate wire communications to be made in furtherance of said scheme and artifice to defraud, in violation of Title 18, United States Code, Section 1343.

#### **Background**

At all times relevant to this indictment:

4. KENNETH J. ENRICO (hereafter referred to as Enrico) was the owner of Enrico Corporation (EC), located in Bohemia, New York.

5. G.S.W. was a loan broker doing business as Total Choice Corporation (TCC), in Conyers, Georgia.

6. A.J.G. and S.R.O. were loan brokers doing business as SCS Private Funding (SCS), in Marietta, Georgia.

7. K.W. was a loan broker doing business as Rebuilding America (RA) in Virginia.

#### **Scheme to Defraud**

8. It was part of the scheme to defraud that Enrico directly and indirectly, through various loan brokers (TCC, SCS, RA and others), via interstate telephone calls and the internet, offered to the public a private lending service where borrowers could obtain a 105% loan at a 4.99% interest rate, regardless of the borrower's credit score, as long as the borrower had a job that

generated enough income to qualify for the loan amount and make the monthly mortgage payments. Further, Enrico directly and indirectly - through the brokers - informed prospective borrowers that this loan service required that the borrowers pay an up front fee of several thousand dollars (the amount varied on the size of the loan), which covered processing fees, the appraisal and the title search, and that once the borrowers' loans were approved, the borrowers would be able to close on the loans within six to eight weeks. The prospective borrowers were also informed the loans would be sold to outside investors.

9. It was also part of the scheme to defraud that Enrico, directly and indirectly (through the brokers TCC, SCS, RA and others), instructed prospective borrowers to send to him via U.S. mail or commercial interstate carriers directly or indirectly (through the brokers TCC, SCS, RA and others), the multi-thousand dollar processing fee, and copies of the borrowers' tax returns, pay stubs, and driver's licenses. Once Enrico received the processing fees and the borrowers' financial documents, he approved the borrowers for loans and advised them either directly or through the brokers that the closing for the loan would be scheduled within six to eight weeks. Relying on Enrico's representations or those of the brokers, the borrowers routinely entered into sales contracts and paid earnest money to property owners. When the loans did not close, the borrowers would lose their earnest money

as well as the opportunity to purchase the properties. Enrico repeatedly lulled the borrowers with false excuses promising that the loans would close soon, which the brokers communicated to the borrowers via e-mail and telephone. The borrowers relied on the lulling promises to their detriment, often entering into new sales contracts for other properties, putting up additional earnest money, delaying the demand for the return of their and foregoing reporting ENRICO to law enforcement authorities.

10. It was part of the scheme to defraud, that since June 2011 over 350 borrowers sent in excess of \$1,280,000 in up front fees and their financial information to Enrico, SCS, TCC, and RA.

11. As of the date of the filing of the Indictment, neither EC nor Enrico have closed or funded on any of the borrowers' loans that Enrico received through TCC, SCS or RA. Nor has EC or Enrico refunded the borrowers' fees that he received.

12. It was part of the scheme to defraud, that Enrico spent the fees that he received to support himself, his girl friend and his mother.

All in violation of Title 18, United States Code, Section 1349.

COUNTS TWO THROUGH FOUR  
**Mail Fraud**

13. The Grand Jury incorporates and re-alleges the factual allegations contained in paragraphs 1-12 of Count One above.

14. On or about the dates listed in Column B below, in the

Northern District of Georgia and elsewhere, the defendant, KENNETH J. ENRICO, aided, abetted and assisted by others known and unknown to the grand jury, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, as well as by omissions of material facts, knowing and having reason to know that said pretenses, representations, and promises were and would be false, and that said omissions were and would be material, did cause to be sent, via United Parcel Service, a commercial interstate carrier, the matters listed in Column C below from the location listed in Column D below to the location listed in Column E below. Such matters were addressed to the defendant, and the defendant did receive the matters:

| Column A | Column B   | Column C            | Column D        | Column E      |
|----------|------------|---------------------|-----------------|---------------|
| Count    | Date       | Mail Matter         | From            | To            |
| Two      | 06/07/2012 | Loan Files and fees | TCC Conyers GA  | EC Bohemia NY |
| Three    | 06/28/2012 | Loan Files and fees | SCS Marietta GA | EC Bohemia NY |
| Four     | 08/02/2012 | Loan Files and fees | SCS Marietta GA | EC Bohemia NY |

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS FIVE THROUGH SEVENTEEN**Wire Fraud**

15. The Grand Jury incorporates and re-alleges the factual allegations contained in paragraphs 1-12 of Count One above.

16. On or about the dates listed below in Column B, in the Northern District of Georgia and elsewhere, the defendant, KENNETH J. ENRICO, aided, abetted and assisted by others known and unknown to the grand jury, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, as well as by omissions of material facts, knowing and having reason to know that said pretenses, representations, and promises were and would be false, and that said omissions were and would be material, did cause to be transmitted by means of wire communications in interstate commerce, the following e-mail communications listed in Column C below, which were sent from the location listed in Column D below to the location listed in Column E below:

| Column A | Column B   | Column C  | Column D  | Column E  |
|----------|------------|---|---|---|
| Count    | Date       | Communication   | From  | To  |
| Five     | 02/16/2012 | E-mail: Subj: "Kimberly Petkosh Commitment" with attachment from KENNETH ENRICO | TCC, G.S.W., <a href="mailto:gaylinware@totalchoice.biz">gaylinware@totalchoice.biz</a> Conyers, GA | SCS, S.R.O., <a href="mailto:scottoneil22@gmail.com">scottoneil22@gmail.com</a> , North Myrtle Beach, SC; |

| Column A | Column B   | Column C   | Column D  | Column E  |
|----------|------------|--|---|---|
| Count    | Date       | Communication  | From  | To  |
| Six      | 03/13/2012 | E-mail, Subj: "Status of Loans" with attached letter to borrowers                    | KENNETH ENRICO<br><u>enricocorporation@gmail.com</u> ,<br>Bohemia, NY | SCS,<br>S.R.O.,<br><u>scottoneil22@gmail.com</u> ,<br>North Myrtle Beach, SC;<br>TCC, G.S.W.,<br><u>gaylinware@totalchoice.biz</u><br>Conyers, GA |
| Seven    | 03/15/2012 | E-mail, Subj: "Mangrove & DLR Capital Letters," with attachments from KENNETH ENRICO | TCC, G.S.W.,<br><u>gaylinware@totalchoice.biz</u><br>Conyers, GA      | SCS,<br>S.R.O.,<br><u>scottoneil22@gmail.com</u> ,<br>North Myrtle Beach, SC;<br>A.G.<br><u>Agei@comcast.net</u> ,<br>Marietta, GA                |
| Eight    | 03/16/2012 | E-mail, Subj: "Updated Letters," with attachments from KENNETH ENRICO                | TCC, G.S.W.,<br><u>gaylinware@totalchoice.biz</u> ,<br>Conyers, GA    | SCS,<br>S.R.O.,<br><u>scottoneil22@gmail.com</u> ,<br>North Myrtle Beach, SC;   |

| Column A | Column B   | Column C  | Column D   | Column E  |
|----------|------------|---|--|---|
| Count    | Date       | Communication   | From   | To  |
| Nine     | 04/29/2012 | E-mail, Subj: "Kimberly Petkosh" with attachments                                   | Keller Williams B.S. <a href="mailto:barryslaton@kw.com">barryslaton@kw.com</a> , Douglasville, GA                               | SCS, S.R.O., <a href="mailto:scottoneil22@gmail.com">scottoneil22@gmail.com</a> , North Myrtle Beach, SC; A.G. <a href="mailto:Agei@comcast.net">Agei@comcast.net</a> , Marietta, GA; TCC, G.S.W., <a href="mailto:gaylinware@talchoice.biz">gaylinware@talchoice.biz</a> Conyers, GA; SCS, S.R.O., <a href="mailto:Underwriting@SCSPrivateFunding.com">Underwriting@SCSPrivateFunding.com</a> , North Myrtle Beach, SC |
| Ten      | 05/04/2012 | E-mail, Subj: FW with attachments from KENNETH ENRICO                               | TCC, G.S.W., <a href="mailto:gaylinware@talchoice.biz">gaylinware@talchoice.biz</a> , Conyers, GA                                | SCS, S.R.O., <a href="mailto:scottoneil22@gmail.com">scottoneil22@gmail.com</a> , North Myrtle Beach, SC;   |
| Eleven   | 05/16/2012 | E-mail, Subj: "Whaley, Kenneth Approval Letter" with attachment from KENNETH ENRICO | SCS, S.R.O., <a href="mailto:Underwriting@SCSPrivateFunding.com">Underwriting@SCSPrivateFunding.com</a> , North Myrtle Beach, SC | <a href="mailto:kallenwhaley@gmail.com">kallenwhaley@gmail.com</a> , Bowie, MD; American Eagle Consultants, <a href="mailto:will@aeci.us">will@aeci.us</a> , <a href="mailto:kelli@aeci.us">kelli@aeci.us</a> Smyrna, GA  |

| Column A | Column B   | Column C  | Column D   | Column E   |
|----------|------------|---|--|--|
| Count    | Date       | Communication   | From   | To   |
| Twelve   | 06/15/2012 | E-mail, Subj: "Temporary Delay on 15 <sup>th</sup> Loan Packages" | SCS, S.R.O., <a href="mailto:scottoneil22@gmail.com">scottoneil22@gmail.com</a> , North Myrtle Beach, SC           | Ellis Funding Group, <a href="mailto:tracey.ellis@gotown.net">tracey.ellis@gotown.net</a> , Indianapolis, IN; <a href="mailto:info@SCSPrivateteFunding.com">info@SCSPrivateteFunding.com</a> Marietta, GA  |
| Thirteen | 06/19/2012 | E-mail, Subj: "Austins Point Loan Closing Update"                 | Keller Williams, B.S., <a href="mailto:barry@silvercitygroup.net">barry@silvercitygroup.net</a> , Douglasville, GA | REMAX <a href="mailto:smorra@serviceteamga.com">smorra@serviceteamga.com</a> , <a href="mailto:lbenson@serviceteamga.com">lbenson@serviceteamga.com</a> , Buford, GA   |
| Fourteen | 06/26/2012 | E-mail, Subj: "Loan Closing Update"                               | Keller Williams, B.S., <a href="mailto:barry@silvercitygroup.net">barry@silvercitygroup.net</a> , Douglasville, GA | S.G. <a href="mailto:calrazin@yahoo.com">calrazin@yahoo.com</a> ; Hoschton, GA<br>W.L. <a href="mailto:lightwayne@gmail.com">lightwayne@gmail.com</a><br>SCS, S.R.O., <a href="mailto:scottoneil22@gmail.com">scottoneil22@gmail.com</a> , Myrtle Beach, SC; |
| Fifteen  | 06/28/2012 | E-mail, Subj: "Update on Loans"                                   | SCS, S.R.O., <a href="mailto:scottoneil22@gmail.com">scottoneil22@gmail.com</a> , North Myrtle Beach, SC;          | Keller Williams B.S., <a href="mailto:barry@silvercitygroup.net">barry@silvercitygroup.net</a> , Douglasville, GA;<br>S.F. <a href="mailto:scott@vision2marketing.com">scott@vision2marketing.com</a> Marietta, GA   |

| Column A  | Column B   | Column C   | Column D  | Column E  |
|-----------|------------|--|---|---|
| Count     | Date       | Communication  | From  | To  |
| Sixteen   | 07/18/2012 | E-mail, Subj: "Update July 18 2012"                            | SCS, S.R.O., <a href="mailto:scottoneil22@gmail.com">scottoneil22@gmail.com</a> , Myrtle Beach, SC; | American Eagle Consultants, <a href="mailto:will@aeci.us">will@aeci.us</a> , Smyrna, GA |
| Seventeen | 07/27/2012 | E-mail, Subj: "LENDER CLOSING STATUS UPDATE," with attachments | SCS, L.K., <a href="mailto:lckirkland1@gmail.com">lckirkland1@gmail.com</a> ; Marietta, GA          | C.G., <a href="mailto:kgriffor2@gmail.com">kgriffor2@gmail.com</a> , Warren, MI         |

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

FORFEITURE PROVISION

17. Upon conviction for any of the offenses charged in Counts One through Seventeen of this indictment, the defendant KENNETH J. ENRICO, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, any property, real or personal, constituting, or derived from, proceeds obtained, directly or indirectly, as a result of said violations, including but not limited to, a sum of money representing the amount of proceeds obtained as a result of the offenses alleged in Counts One through Seventeen of the Indictment.

17. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (1) cannot be located upon the exercise of due diligence;

- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

A TRUE BILL

Steven A. Cousins  
FOREPERSON

SALLY QUILLIAN YATES  
UNITED STATES ATTORNEY



DAVID M. LETA  
ASSISTANT UNITED STATES ATTORNEY  
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Georgia Bar No. 447931