U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED Jul 01 2020

CAROL L. MICHEL
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FELONY

BILL OF INFORMATION FOR CONSPIRACY TO
COMMIT BANK FRAUD AND NOTICE OF FORFEITURE

UNITED STATES OF AMERICA	*	**CRIMINAL DOCKET NO. 20-60**
v.	*	**SECTION: H(1)**
GARY R. GIBBS	*	**VIOLATIONS: 18 U.S.C. § 1349**

* * *

The First Assistant United States Attorney, Michael M. Simpson, as the Attorney for the United States, acting on the authority conferred by Title 28, United States Code, Section 515, (hereinafter, "the Attorney for the United States") charges that:

COUNT 1
(Conspiracy to Commit Bank Fraud)

A. AT ALL TIMES MATERIAL HEREIN:

1. First NBC Bank ("the Bank") was a financial institution, as defined in Title 18, United States Code, Section 20, and a member of the Federal Deposit Insurance Corporation ("FDIC") with federally insured deposit accounts. The Bank was established in or about 2006, with its headquarters in New Orleans, Louisiana, within the Eastern District of Louisiana. At various times, the Bank maintained branch offices in Louisiana, Mississippi, and Florida.

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2. The Bank was the wholly-owned subsidiary of First NBC Bank Holding Company. Bank President A was a founder of the Bank and acted as its President and Chief Executive Officer from in or around May 2006, until in or around December 2016.

3. The Bank also had a Board of Directors ("the Board").

4. In or around May 2013, First NBC Bank Holding Company became a publicly-traded company listed on the NASDAQ.

5. On or about April 28, 2017, the Bank was closed by the Louisiana Office of Financial Institutions, and the FDIC took control over the Bank.

6. The defendant, **GARY R. GIBBS ("GIBBS")**, was a real estate developer, consultant, and borrower at the Bank. He owned and operated the following entities: Coastal Phoenix Investments, LLC; DeltaCB, LLC; Delta Greenscape, LLC; GRGCB, LLC; GRGCBHS, LLC; CBBB, LLC; and numerous others. **GIBBS** presented himself as having experience in tax credits. While a customer of the Bank, **GIBBS** worked on projects in Arkansas, Louisiana, and Tennessee.

7. **GIBBS** was a customer at the Bank, both individually and through his entities. Each loan that the Bank made to **GIBBS** was guaranteed by **GIBBS**, his entities, or both. Bank Officer C was **GIBBS's** loan officer, and Bank President A participated in **GIBBS's** relationship with the Bank.

8. In connection with his Bank loan applications, **GIBBS** had an obligation to provide accurate financial statements prior to any loans, advances, renewals, or increases in loans extended to him and any of his entities.

9. When **GIBBS** submitted personal financial statements or financial information about certain of his entities to the Bank, he and others, including Bank President A, Bank Officer B, and Bank Officer C, caused these supporting documents to be placed into the Bank's records.

10. By the time the Bank closed, **GIBBS** and his entities owed the Bank over $123 million, not including loans made to nominee borrowers on **GIBBS's** behalf.

B. <u>THE CONSPIRACY</u>:

Beginning at a time unknown to the Attorney for the United States, but at least in or around 2010, through in and around April 2017, in the Eastern District of Louisiana and elsewhere, the defendant, **GARY R. GIBBS**, and others known and unknown to the Attorney for the United States, did knowingly and willfully combine, conspire, confederate, and agree to knowingly and with the intent to defraud, execute and attempt to execute a scheme and artifice to defraud First NBC Bank, a financial institution, and to obtain any of the moneys, funds, credits, and assets, owned by and under the custody or control of First NBC Bank, by means of false and fraudulent pretenses, representations, and promises relating to a material fact, in violation of Title 18, United States Code, Section 1344.

C. <u>THE SCHEME AND ARTIFICE TO DEFRAUD</u>:

1. It was part of the scheme and artifice to defraud that the defendant, **GARY R. GIBBS**, along with Bank President A, Bank Officer B, and Bank Officer C, unjustly enriched themselves by disguising the true financial status of **GIBBS**, his entities, and other borrowers; concealing the true performance of loans; and misrepresenting the nature of payments to **GIBBS** and his entities.

2. It was further part of the scheme and artifice to defraud that **GIBBS**, Bank President A, Bank Officer B, and Bank Officer C made false statements and material omissions about

GIBBS, his entities, and nominee loans used to hide **GIBBS's** true levels of debt. These false statements and material omissions hid the truth about (a) the purpose of the loans, (b) the borrowers' and guarantors' assets and liabilities, (c) the borrowers' and guarantors' cash flow, (d) the collateral underlying the loans, and (e) the expected source of repayment.

3. It was further part of the scheme and artifice to defraud that **GIBBS**, Bank President A, Bank Officer B, and Bank Officer C used proceeds from loans issued to Borrower E to make loan payments for **GIBBS** and his entities. Borrower E was a borrower at the Bank, but Borrower E was not listed as a guarantor on **GIBBS's** loans.

4. It was further part of the scheme and artifice to defraud that **GIBBS**, Bank President A, Bank Officer B, and Bank Officer C used proceeds from loans issued to **GIBBS** and his entities to make loan payments for Borrower F. Borrower F was a borrower at the Bank, but **GIBBS** was not listed as a guarantor on Borrower F's loans.

Insufficient Cash Flow and Loan Masking

5. Bank President A, Bank Officer B, and Bank Officer C disguised **GIBBS's** and his entities' true financial condition by, among other things, issuing new loans to make payments on **GIBBS's** existing loans and to cover his overdrafts. The new loans then appeared to be current, while the past-due amounts and overdrafts appeared to have been paid or substantially reduced. This practice ensured that loans to **GIBBS** and his entities did not appear on month-end lists of past-due or overdrawn loans, or if they did appear, the amounts that were past due or overdrawn were substantially lower than they would have been without the new loans. In reality, the new loans were designed to hide **GIBBS's** inability to pay his existing loans without additional loan proceeds from the Bank. To cover up this deceit, Bank President A, Bank Officer B, and Bank Officer C falsely represented that **GIBBS** satisfactorily handled his loan payments and that **GIBBS**

could repay his loans with money he generated from his businesses, in dozens of loan documents over several years.

6. In or around May 2011, Bank President A, Bank Officer B, and Bank Officer C knew that **GIBBS** overdrew his accounts by hundreds of thousands of dollars and lacked sufficient revenue from his entities to pay his overdrafts and loan payments to the Bank. Nevertheless, Bank President A, Bank Officer B, and Bank Officer C signed loan documents authorizing a new loan of approximately $250,000 to **GIBBS**. Bank President A, Bank Officer B, and Bank Officer C falsely stated that **GIBBS** would pay the new loans with revenue from **GIBBS's** entities. Bank President A, Bank Officer B, and Bank Officer C omitted the material fact that the loans were made to pay **GIBBS's** existing loans and overdrafts and that **GIBBS** did not have enough revenue from his entities to make his loan payments. After the $250,000 loan was made to **GIBBS**, the loan proceeds were used to pay **GIBBS's** overdrafts and to make loan payments. Bank Officer B provided an asset quality report to the Board that falsely omitted **GIBBS** and most of his entities from the lists of overdrawn and past-due loans. Instead, only two of **GIBBS's** entities were listed for overdrafts of less than $5,000, rather than the hundreds of thousands of dollars that **GIBBS** and his entities would have been overdrawn without the new loan.

7. In or around 2012, a similar pattern continued. Bank President A and Bank Officer C knew that **GIBBS** was still not generating enough revenue from his entities to pay his overdrafts or make his loan payments to the Bank. Nevertheless, Bank President A and Bank Officer C signed loan documents that contained false statements about **GIBBS's** ability to pay his loans with business revenue and omitted the material fact that the loans were made to keep **GIBBS** and his entities off of month-end reports about borrowers who were overdrawn or past due. For example, in or around May 2012, when overdrafts for **GIBBS** and his entities exceeded $1 million,

Bank President A, Bank Officer B, and Bank Officer C arranged a $1 million loan to **GIBBS**. In loan documents, Bank President A, Bank Officer B, and Bank Officer C omitted the material fact that the loan was intended to keep **GIBBS** off of month-end overdraft reports. Similarly, in or around December 2012, Bank President A, Bank Officer B, and Bank Officer C, despite knowing that **GIBBS** continued to be unable to pay his loans to the Bank with revenue from his entities, signed documents approving a loan of approximately $150,000 to **GIBBS**. The loan documents falsely stated that the source of repayment would be cash flow from **GIBBS's** entities. Bank President A, Bank Officer B, and Bank Officer C omitted the material fact that the loan was intended to pay **GIBBS's** overdrafts and past-due loans. As a result of that loan, **GIBBS** and his entities escaped being listed on the overdraft reports or list of past-due loans that Bank Officer B provided to the Board for December 2012.

8. In or around June and July of 2013, a similar pattern continued. Knowing that **GIBBS** was still not generating enough revenue from his entities to pay his overdrafts or make his loan payments to the Bank, Bank President A and Bank Officer C required the Bank to lend **GIBBS** approximately $1 million per month to pay his existing loans and overdrafts. For this purpose, Bank President A, Bank Officer B, and Bank Officer C signed documents approving a $1 million loan in June 2013 and another $1 million in July 2013 for **GIBBS**. Documents for both loans contained false statements about **GIBBS's** ability to pay his loans with business revenue and omitted the material fact that the loans were made to keep **GIBBS** and his entities off of month-end reports about borrowers who were overdrawn or past due.

Threats of Bankruptcy

9. On more than one occasion, **GIBBS** informed Bank President A and Bank Officer C that **GIBBS** and his entities were unable to make payments on their loans from the Bank, and

that **GIBBS** was considering filing bankruptcy or not paying his loans. Bank President A told **GIBBS** that the Bank could not afford for **GIBBS** to default on the loans. Bank President A and Bank Officer C continued to issue loans to **GIBBS** and his entities. Bank President A and Bank Officer C continued to make false statements and material omissions to hide from the Board, auditors, and examiners that the purpose of the loans was to keep **GIBBS** and his entities from defaulting and that, in reality, neither **GIBBS** nor his entities were able to make their payments to the Bank without receiving proceeds from new loans. Neither Bank President A nor Bank Officer C ever disclosed to the Board, auditors, or examiners that **GIBBS** was considering defaulting on his loans or filing bankruptcy, or that Bank President A told **GIBBS** that the Bank could not afford for **GIBBS** to default.

10. In or around January 2016, Bank Officer C signed a form for the Bank's auditors regarding the loans to **GIBBS** and his entities. In that form, Bank Officer C falsely stated that, among other things, those loans had not been restructured or modified in response to possible collection problems; that there had not been and was not pending an event of default; that the borrower did not have a history of operating losses, marginal working capital, or inadequate cash flow; and that interest was not currently being added to principal rather than paid. Those statements to the Bank's auditors were false and omitted the material information that **GIBBS** was unable to make loan payments or pay overdrafts without new loans from the Bank. Bank Officer C also omitted the material information that because of **GIBBS's** long history of insufficient cash flow, he would have defaulted on his loans from the Bank if the new loans had not allowed him to convert his past-due interest payments into principal on new loans.

Falsified Financial Statements

11. **GIBBS**, Bank President A, Bank Officer B, and Bank Officer C provided the Bank with materially false and fraudulent documents and personal financial statements, which, among other things, overstated the value of **GIBBS's** and his entities' assets, understated their liabilities, and falsified or omitted other material information.

12. In or around 2015, **GIBBS** provided Bank President A documents purporting to show that **GIBBS** had a net worth in excess of $50 million as of December 31, 2014. **GIBBS** falsely inflated the value of several of his assets, including residences, commercial real estate, and other investments. Bank President A and Bank Officer C included those documents in credit memoranda supporting loans in 2015. However, **GIBBS** also submitted different financial statements to two other banks, signed and dated on the same date as the financial statements submitted to the Bank. For one of these other banks, **GIBBS** submitted a financial statement that included net worth amounts that were over $19 million less than the amount submitted to the Bank. For the other bank, **GIBBS** submitted a financial statement with a net worth that was over $35 million less.

13. In or around 2016, Bank President A directed **GIBBS** to revise financial statements for certain of his entities for 2015, reflecting tax credit income. Following Bank President A's instructions, **GIBBS** and his employees gave Bank President A revised financial statements for 2015 that falsely increased the income of several of **GIBBS's** entities, including by increasing the income associated with various tax projects, even though the entities in question had not actually earned that income. The net result of the revisions that Bank President A ordered was to change several of **GIBBS's** entities from having negative income to having positive income, in some cases by a difference of over $1 million, and Bank President A, Bank Officer B, and Bank Officer C

then presented those same false financial statements to the Board. Bank Officer C also provided the falsified financial statements to the Bank's external auditors.

False Statements about Loan Purposes

14. In several instances, beginning in or around 2009 and continuing through in or around 2016, President A, Bank Officer B, and Bank Officer C authorized loans to **GIBBS** for specific commercial purposes, but Bank President A, Bank Officer B, Bank Officer C, and **GIBBS** fraudulently diverted the proceeds of those loans to other unrelated purposes, including personal expenses.

Nominee Lending

15. Beginning in or around 2011, Bank President A, Bank Officer B, Bank Officer C, and **GIBBS** concealed the true purpose of certain nominee loans. Specifically, they falsely stated in loan documents that a given loan was for one borrower's business purposes, when the true purpose of the loan was to pay another borrower's loans and overdrafts. The nominees included Borrower E, Borrower F, and their related entities.

16. Bank President A, Bank Officer B, and Bank Officer C submitted loan documents falsely stating that Borrower E was repaying a debt to **GIBBS**. In fact, no such debt to **GIBBS** actually existed, and **GIBBS** was instead obtaining Bank funds by using Borrower E as a nominee. The loan proceeds were transferred directly to **GIBBS** or to his entities, and were, in part, used to pay **GIBBS's** and his entities' existing debts at the Bank or to enrich **GIBBS**.

17. Bank President A, Bank Officer B, and Bank Officer C, and **GIBBS** regularly made payments on the Borrower F's loans to keep Borrower F current. They used funds from new loans that the Bank made to **GIBBS** and his entities. However, many of Borrower F's loans that **GIBBS** paid were not included in **GIBBS's** financial documents as liabilities.

18. This practice had the effect of falsely understating **GIBBS's** debt obligations in loans to **GIBBS** and his entities, making them falsely appear to have additional income available to pay new loans. It also kept the loans to the nominees from being downgraded or impaired, even though the nominees were often unable to pay their loans without obtaining new loan proceeds through **GIBBS**.

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

NOTICE OF FORFEITURE

1. The allegations contained in Count 1 of this Bill of Information are hereby realleged and incorporated by reference for the purpose of alleging forfeiture to the United States.

2. Upon conviction of the offense alleged in Count 1, the defendant, **GARY R. GIBBS**, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, involved in said offense, and any property traceable to such property.

3. If any of the property described above, 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, the United States shall seek a money judgment and, pursuant to Title 21, United States Code, Section 853(p), forfeiture of any other property of the defendant up to the value of said property.

MICHAEL M. SIMPSON
Attorney for the United States
Acting under authority conferred
by 28 U.S.C. § 515

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New Orleans, Louisiana
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