

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL DOCKET NO. 20-53
v. * SECTION: "G"
ARVIND "MIKE" VIRA *
*
* * *

FACTUAL BASIS

The defendant, ARVIND "MIKE" VIRA ("VIRA"), has indicated that he intends to plead guilty as charged to Count One, that is, conspiracy to commit bank fraud, in violation of 18 U.S.C. §§ 371 and 1344, of the Bill of Information pending against him.

The United States and VIRA do hereby stipulate and agree that the allegations in the Bill of Information and the following facts are true and correct and that, should this matter have proceeded to trial, the government would have proven them beyond a reasonable doubt, through the introduction of competent testimony and admissible tangible and documentary exhibits. This Factual Basis does not set forth all of the facts known to the United States or VIRA at this time. The limited purpose of this Factual Basis is to demonstrate that there exists a sufficient legal basis for VIRA's guilty plea. By their signatures below, the parties expressly agree that there is a factual basis supporting the defendant's guilty plea. The parties also agree that this Factual Basis may, but need not, be used by the United States Probation Office and the Court in determining the applicable advisory guideline range under the United States Sentencing Guidelines or the appropriate sentence under 18 U.S.C. § 3553(a).

AUSA no
Defendant a
Defense Counsel IA

INTRODUCTION

A. FIRST NBC BANK

1. At all times material to the Bill of Information, First NBC 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.

2. First NBC Bank was established in or about 2006, with its headquarters in New Orleans, Louisiana, which was within the Eastern District of Louisiana, and had branch offices in Louisiana, Mississippi, and Florida.

3. First NBC Bank was the wholly-owned subsidiary of First NBC Bank Holding Company. Ashton J. Ryan, Jr. (referred to in the Bill of Information as “Bank President A,” but “Ryan” herein) was a founder of First NBC Bank and acted as its President and Chief Executive Officer from on or about May 2006, until on or about December 2016.

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

5. On or about April 28, 2017, First NBC Bank was closed by the Louisiana Office of Financial Institutions. The FDIC was named Receiver.

B. THE PARTIES AND THE LOANS WITH FIRST NBC BANK

1. From a time unknown, but beginning in or around June of 2008, **VIRA** had a banking relationship with First NBC Bank.

2. During this time, **VIRA** was assigned a loan officer at First NBC Bank; however, Ryan acted as **VIRA**’s de facto loan officer.

AUSA MP
Defendant A
Defense Counsel KA

C. COUNT 1: CONSPIRACY TO COMMIT BANK FRAUD

1. From in or around April 2010, through in and around April 2017, in the Eastern District of Louisiana and elsewhere, **VIRA** and others known and unknown, did knowingly and willfully combine, conspire, confederate, and agree to commit offenses against the United States of America, that is: to knowingly, and with 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 material facts.

2. The purpose of the conspiracy was for **VIRA** and Ryan to conceal their personal loan relationship from First NBC Bank. As a result, Ryan was able to borrow money from First NBC Bank using **VIRA** as a nominee. Ryan instructed **VIRA** to hide their lending relationship because, if revealed, Ryan would have been prevented from participating in the loan approval process for **VIRA** at First NBC Bank. Ryan sought loans from **VIRA** because Ryan could not obtain loans from other financial institutions in the New Orleans area.

3. During an FDIC regulatory exam in December 2012, FDIC examiners discovered that Ryan had borrowed money from First NBC Bank using **VIRA**'s loan proceeds. When examiners questioned him, Ryan admitted to their relationship, but claimed that he had not been aware that the source of the funds were First NBC Bank loan proceeds. Bank examiners warned Ryan that it was a conflict of interest, a violation of banking regulations, and a violation of company policy for him to borrow funds from a First NBC Bank borrower without disclosing his lending relationship with **VIRA** to the Board. Despite this warning from bank examiners, Ryan instructed **VIRA** to continue concealing their loan relationship from others at First NBC Bank.

Ryan also instructed **VIRA** to inflate his assets on financial documents submitted to First NBC Bank so that **VIRA** could obtain loans at beneficial interest rates. In accordance with Ryan's instructions, **VIRA** agreed to do just that. Ryan also ensured that **VIRA** received beneficial interest rates on his checking and savings accounts so that **VIRA** would continue to provide loans to Ryan.

4. During the period that **VIRA** loaned money to Ryan, **VIRA** received an average interest rate of approximately 3% on his First NBC savings and checking accounts. **VIRA** also paid an average interest rate of approximately 4% on loans he received from First NBC Bank. According to First NBC Bank employees, these rates were some of the most advantageous interest rates that any bank customer received.

5. Furthermore, **VIRA** loaned money to Ryan at an average interest rate of approximately 8%. **VIRA** omitted or misrepresented the source of this income on forms that he provided to First NBC Bank. Likewise, he omitted this income on his personal income tax returns for tax years 2011 through 2015.

SUMMARY OF THE OFFENSE CONDUCT

1. Since approximately 2006, Ryan and **VIRA** had a business relationship. Ryan often attended meetings of business associations of which **VIRA** was a member. When Ryan became the head of First NBC Bank, he lobbied **VIRA** to move his business accounts to First NBC Bank. **VIRA** agreed and moved his accounts to First NBC Bank.

2. On or about September 21, 2009, Ryan approved a \$5,000,000.00 increase on **VIRA**'s revolving line of credit from First NBC Bank. The purpose of the loan was identified as working capital for investment properties. Ryan approved an interest rate of 4.25% on the line of credit.

3. On or around April 26, 2010, Ryan requested **VIRA** loan him \$400,000.00. Ryan told **VIRA** not to tell anyone at First NBC Bank about his request. **VIRA** provided these funds from his First NBC Bank revolving line of credit. Ryan authorized the \$400,000.00 advance from **VIRA**'s revolving line of credit to be issued to Lake Forest Plaza LLC, a business that Ryan owned. Ryan used the funds to pay property taxes on Lake Forest Plaza LLC. Ryan agreed to pay **VIRA** an annual interest rate of 6% on the loan. At the instruction of Ryan, **VIRA** did not disclose this loan relationship to Bank employees. Ryan did not disclose this business relationship to the Board, auditors, or regulators.

4. On or about January 4, 2011, Ryan approved a 3% interest rate for **VIRA**'s premier checking account.

5. On or about May 2, 2011, Ryan signed off on a loan package for **VIRA** as an additional approving officer for First NBC Bank. The package renewed **VIRA**'s prior loan and increased it by \$1,000,000.00.

6. On or about May 10, 2011, Ryan approved a 3% interest rate on four new checking accounts opened by **VIRA**.

7. On or about July 7, 2011, First NBC Bank's Board Loan Committee, with Ryan participating, approved an unsecured \$9,000,000.00 revolving line of credit to **VIRA**, with the stated purpose of providing working capital for investment purposes.

8. On or around November 17, 2011, **VIRA** loaned Ryan an additional \$2,000,000 from his First NBC revolving line of credit. To execute the transaction, **VIRA** had this \$2,000,000 loan withdrawn from his First NBC Bank revolving line of credit and deposited into one of his First NBC checking accounts. Thereafter, **VIRA** wrote a check for \$2,000,000.00 to Ryan. Ryan deposited that check into his personal account with BNY Mellon Pershing. As collateral for this

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loan, Ryan pledged to **VIRA** five certificates representing 275,000 shares of First NBC Bank stock. Ryan agreed to pay **VIRA** an annual interest rate of 8% on his entire outstanding loan amount of \$2,400,000.00.

9. On or about July 16, 2012, Ryan approved a change to the interest rate on **VIRA**'s business checking account. The change increased the interest rate on the account to 3%.

10. On or about October 1, 2012, Ryan approved a 3% interest rate on **VIRA**'s new personal premier checking account at First NBC Bank.

11. During the December 2012 FDIC examination, FDIC examiners discovered the November 2011 transaction where Ryan borrowed \$2,000,000.00 from **VIRA**'s First NBC Bank line of credit. Examiners cited Ryan for violations of federal banking regulations. Ryan lied to the examiners by falsely stating that he was unaware that **VIRA** had used his line of credit at First NBC Bank to fund the personal loan. Ryan told examiners that when **VIRA**'s loan was approved, he had no idea that he would be borrowing from **VIRA** in the future. During the interview, Ryan never disclosed to the FDIC examiners that he had previously borrowed \$400,000.00 from **VIRA**'s First NBC Bank line of credit.

12. After Ryan's meeting with FDIC examiners during the December 2012 examination, Ryan met with **VIRA**. During that meeting, Ryan informed **VIRA** that the FDIC examiners had discovered the loans that **VIRA** had given to Ryan from First NBC Bank loan proceeds. Ryan told **VIRA** that they would have to devise another way for **VIRA** to continue loaning money to Ryan, which would escape detection. Ryan advised **VIRA** that he should not disclose their lending relationship on any Bank loan applications in the future. Ryan also instructed **VIRA** to inflate his assets in future loan applications with First NBC Bank.

13. From approximately January 2013 through July 2013, Ryan sought an additional loan from **VIRA** for approximately \$1,000,000.00, but **VIRA** declined to loan the additional funds.

14. On or about February 11, 2013, Ryan approved a 3% interest rate on **VIRA**'s business checking account that previously had been earning a lower rate.

15. On or about June 4, 2013, **VIRA** provided a personal financial statement to his loan officer at First NBC Bank to support increases on two preexisting loans, representing a total increase of approximately \$8.9 million dollars. The loans, as well as the personal financial statement, were presented later that month to the Board. On the statement, **VIRA** omitted the fact that he had loaned money to Ryan. **VIRA** also provided inflated account balances at four other banks, falsely stating that he had a total of \$15 million in cash. He also misrepresented the amount of real estate that he owned.

16. On or about September 13, 2013, Ryan approved a 3% interest rate on a new money market account opened by **VIRA**.

17. On or about October 18, 2013, Ryan drafted a memo, purportedly from **VIRA**'s loan officer, to change the terms of **VIRA**'s loans. The change benefitted **VIRA** by allowing him to make interest-only payments on his outstanding First NBC loans instead of having to make payments on the loan principal as well.

18. On or about May 7, 2014, Ryan approved a 3% interest rate on an account to be held by one of **VIRA**'s family members.

19. On or about June 14, 2014, Ryan approved raising the interest rate on all of **VIRA**'s savings and checking accounts from 2.75% to 3% when, for some reason, the rate dropped from the 3% interest rate that **VIRA** previously received.

20. On or about September 2, 2014, Ryan authorized **VIRA** to receive an annual interest rate of 3% on two money market accounts at First NBC Bank.

21. On or about November 5, 2014, **VIRA** signed a personal financial statement to support his loan with First NBC Bank. In that statement, **VIRA** failed to disclose his loans of money to Ryan. **VIRA** provided inflated account balances at four other banks, falsely stating that he had a total of \$15 million in cash. He also misrepresented the amount of real estate that he owned.

22. On or about December 9, 2014, Ryan approved a 3% interest rate on an account held by **VIRA** that was converted from a money market account to a checking account.

23. On or about June 18, 2015, Ryan approved a waiver of required documents related to a loan for **VIRA**.

24. On or about June 10, 2016, **VIRA** loaned Ryan \$2,000,000.00 derived from **VIRA**'s account at First NBC Bank. Ryan agreed to pay **VIRA** an annual interest rate of 8% on the loan. As collateral, Ryan pledged 40% of his ownership share in Wadsworth Estates, LLC, a company that Ryan owned with another individual.

25. On or about October 4, 2016, **VIRA** signed a personal financial statement to support his loan with First NBC Bank in which he made several false statements. Among these false statements, **VIRA** misrepresented the \$2,000,000.00 loan that he had made to Ryan as a \$2,500,000.00 note receivable for a "home." **VIRA** did not disclose that the loan was actually made to Ryan. In the same personal financial statement, **VIRA** provided false or inflated account balances at four other banks, stating falsely that he had a total of \$15 million in cash at these banks. Additionally, **VIRA** falsely inflated his real estate holdings by including properties that he did not own.

26. On or about October 11, 2016, **VIRA** loaned Ryan \$750,000.00 derived from **VIRA**'s First NBC account. Ryan agreed to pay **VIRA** an annual interest rate of 8% on the loan.

27. During the course of this scheme to defraud First NBC Bank, **VIRA** intentionally omitted the fact that he had loaned money to Ryan. He also concealed the interest income that he received from the loans that he made to Ryan by omitting this income on filings with First NBC Bank and on some of his personal income tax returns. **VIRA** admits that Ryan personally approved these beneficial interest rates as part of the payoff from Ryan to him in connection with their ongoing agreement that defrauded First NBC Bank.

CONCLUSION

28. From April 2010 through April 2017, **VIRA** and his family members received approximately \$2,300,000.00 in interest on savings and checking accounts from First NBC Bank. During this time period, no First NBC Bank customer received more than 2% interest. Accordingly, **VIRA** benefitted in receiving approximately \$800,000.00 in excess interest that was authorized by Ryan.

29. Furthermore, from 2011 to April 2017, Ryan personally paid **VIRA** approximately 8% interest on the loans that he received from **VIRA**, for a total of approximately \$840,541.07 in interest. Meanwhile, **VIRA** paid approximately 4% interest on the loans that he received from First NBC Bank, resulting in **VIRA** paying approximately \$420,270.00 in interest on the First NBC Bank loan proceeds that he loaned to Ryan. Accordingly, **VIRA** received approximately \$420,271.07 in profit from the interest that he charged Ryan.

30. In total, **VIRA** received approximately \$1,220,271.07 in profits and therefore caused this amount in loss through the scheme to defraud First NBC Bank.

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31. During and in furtherance of this scheme to defraud, **VIRA** made false statements at the direction of Ryan to First NBC Bank, including the Board, Senior Loan Committee, and others in order to receive fraudulent loans from First NBC Bank. Ryan directed and facilitated **VIRA's** fraud in order to obtain loans from **VIRA** without disclosing such relationship to the Board of First NBC Bank, FDIC examiners, auditors, and others inside and outside of First NBC Bank. Ryan also made his own false statements related to **VIRA**. **VIRA's** and Ryan's conduct constitute a criminal agreement to defraud First NBC Bank.

APPROVED AND AGREED TO:



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9/9/2020
Date

 9/9/20

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ARVIND "MIKE" VIRA
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