JMR/2019R00876

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No. 20-
	:	
v.	:	
	:	
JOSHUA FERRELL	:	18 U.S.C. §§ 664 and 981(a)(1)(C)
	:	18 U.S.C. § 2

INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

Background

1. At all times relevant to this Information, unless otherwise noted:

a. Indian Mills Contracting Services, Inc. ("Indian Mills") was a family owned construction company incorporated in 2011 with its principal place of business in Chatsworth, New Jersey.

b. Defendant JOSHUA FERRELL was the president and owned a majority of Indian Mills. Defendant FERRELL maintained and had authority over Indian Mills's bank accounts.

Background on Benefit Plan

2. Under the Employee Retirement Income Security Act of 1974 ("ERISA") regulations, employers are permitted to establish and maintain employer sponsored retirement plans ("plans") for the benefit of their employees. Once these plans are established, both employers and employees have the option of making regular contributions of funds to their

plans. The accumulated plan assets are generally invested for the benefit of the plan and the plan participants, and any capital gains or income earned through such investment is added to the accumulated plan assets. Upon retirement, or when otherwise eligible, a plan participant may request and receive disbursements from the retirement plan assets. These disbursements correspond to contributions made to the plan by the participant, plus any associated gains made during the term of employment.

3. On or about January 1, 2015, Indian Mills established Indian Mills Contracting, Inc. 401K Plan ("the Plan") which was a single employer profit sharing and 401K plan. This 401K retirement plan was an "employee pension benefit plan" as defined by the ERISA.

4. The Plan allowed for contributions in the form of employee salary deferrals, discretionary employer matching contributions, employer prevailing wage contributions, and rollover contributions. Under the Plan's prevailing wage feature, Indian Mills was obligated to make contributions to the Plan's trust representing fringe benefit contributions to each participant who was employed by Indian Mills to work on certain contracts.

5. Indian Mills's employees' salary deferrals were deducted from the employee's biweekly paychecks by Proservtax Services for Indian Mills and earmarked for contributions to the Plan's trust.

6. The Plan was intended to comply with ERISA § 404(c) as a tax qualified retirement benefit plan.

7. Defendant JOSHUA FERRELL was the Plan administrator on the Retirement Plan's 2015 Annual Report Form 5500, last executed by defendant FERRELL on July 6, 2016. The Retirement Plan had 17 participants and assets totaling $60,085.

The Charge

8. From in or about June 2015 through in or about February 2017, in Burlington County, in the District of New Jersey and elsewhere, defendant

JOSHUA FERRELL

did embezzle, steal, and unlawfully and willfully convert without authority to the use of himself and others who were not the rightful owners, the moneys, funds, credits, and other assets in the approximate amount of $159,592, of the Indian Mills 401(k) Plan, an employee pension benefit plan, subject to Title I of the Employee Retirement Income Security Act of 1974.

In violation of Title 18, United States Code, Section 664, and Title 18, United States Code, Section 2.

FORFEITURE ALLEGATION

1. As a result of committing the pension fund embezzlement offense charged in this Information, defendant

JOSHUA FERRELL

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, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the violation of Title 18, United States Code, Section 664, and all property traceable thereto.

2. If any of the forfeitable property, 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 be entitled, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c) and 18 U.S.C. § 982(b), to forfeiture of any other property of the defendant up to the value of the above described forfeitable property.

Craig Carpenito by AE

CRAIG CARPENITO
United States Attorney

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v.

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INFORMATION FOR

18 U.S.C. § 664
18 U.S.C. § 981
18 U.S.C. § 2

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