

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FILED

NOV 20 2019

AT 8:30 2:52 M
WILLIAM T. WALSH
CLERK

UNITED STATES OF AMERICA : Hon.
:
: Criminal Number:
v. :
: 18 U.S.C. § 1349
: 18 U.S.C. § 1343
HERBERT WHALEN, : 18 U.S.C. § 2
a/k/a "Bert Whalen" :

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark,
charges:

COUNT ONE

(Conspiracy to Commit Wire Fraud)

BACKGROUND

1. At all times relevant to this Indictment:

a. Defendant Herbert Whalen, a/k/a Bert Whalen ("WHALEN"),
was a resident of Indianapolis, Indiana. He was the owner of Oceanpointe
Property Management ("Oceanpointe") and the registered agent for Oceanpointe
Investments Limited ("Oceanpointe Investments"). He was also the manager of
Oceanpointe Holdings LLC ("Oceanpointe Holdings").

b. Coconspirator 1 was WHALEN's business partner and was the
Chief Executive Officer, owner, and incorporator of Oceanpointe Investments and
was the authorized agent for Oceanpointe Holdings.

c. Oceanpointe was a company located in Indianapolis, Indiana that managed properties it rented to tenants. WHALEN directed the sale, leasing, and rehabilitation of properties managed by Oceanpointe. Employee 1, an office assistant, and Employee 2, a client liaison, were employed by Oceanpointe and were directed by WHALEN in their employment activities.

d. Oceanpointe Investments and Oceanpointe Holdings were Indiana companies that received funds when investors purchased Oceanpointe properties.

e. Company 1 was a New Jersey company, whose owner, Individual 1, a resident of New Jersey, marketed properties to investors over the internet. When investors contacted Company 1, Individual 1 and other Company 1 employees directed investors to wire payments to a title agency, that, in turn, wired investor funds to entities that WHALEN controlled, including Oceanpointe Investments and Oceanpointe Holdings.

f. Victim 1 was a resident of South Orange, New Jersey.

g. Victim 2 was a resident of Plainview, New York.

THE CONSPIRACY

2. Beginning at least as early as in or around August 2016 through in or around July 2018, in Morris County, in the District of New Jersey and elsewhere, the defendant,

HERBERT WHALEN,
a/k/a "Bert Whalen,"

did knowingly and intentionally conspire and agree with others to devise a scheme and artifice to defraud, and to obtain money and property from Victim 1, Victim 2, and others by means of materially false and fraudulent pretenses representations, and promises, and, for the purpose of executing such scheme and artifice to defraud, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, namely, wire communications, contrary to Title 18, United States Code, Section 1343.

GOAL OF THE CONSPIRACY

3. The goal of the conspiracy was for WHALEN and others to enrich themselves by fraudulently obtaining money from victim real estate investors by, among other things, misrepresenting and concealing the poor condition of properties managed by Oceanpointe and creating fake leases for unoccupied Oceanpointe properties.

MANNER AND MEANS OF THE CONSPIRACY

4. It was part of the conspiracy that:

a. Individual 1 marketed properties over the internet, claiming that Company 1 would provide properties that were ready for a tenant's occupancy and that investors would receive a portion of the rent as their return on investment.

b. Instead of selling properties directly to investors, Company 1 diverted investors' funds to entities that WHALEN controlled, including

Oceanpointe and Oceanpointe Investments, which sold properties to victim investors.

c. Following the sale, employees from Oceanpointe and Company 1 sent investors a "Welcome Pack," which included a property management agreement permitting Oceanpointe to rent out properties on behalf of the victim investors. Additionally, employees from Company 1 and Oceanpointe promised investors that, after repairs and rehabilitations were completed, and the properties were rented to tenants, investors would receive copies of the leases and begin to receive rent payments as their return on investment.

d. In reality, many Oceanpointe properties were not repaired and rehabilitated, and were not ready to be rented to tenants.

e. To conceal this fact from victim investors, WHALEN and Coconspirator 1 directed Oceanpointe employees to draft fake leases, making it appear to investors that Oceanpointe properties were rented, when, in fact, the properties remained vacant. In particular, WHALEN instructed Oceanpointe employees to place fake tenant names on leases to send to Oceanpointe investors.

f. At times, when investors attempted to view the properties that they had purchased, employees from Oceanpointe, at WHALEN's direction, covered the windows to make the properties appear to investors as if work was being completed, when, in fact, it was not. In reality, Oceanpointe employees

did this to conceal the poor condition of the properties and the fact that the properties remained vacant.

g. WHALEN, Coconspirator 1, and others commingled tenant rent payments and selected which investors would be paid from the pool of funds in order to silence investors who voiced concerns and evade detection of the fraud.

h. In order to prevent investors from leaving Oceanpointe and exposing the fraudulent conduct, WHALEN directed Employee 1 to create a false identity and to falsely claim, on an online real estate message forum, on or about January 6, 2018, that Employee 1 was an investor with Oceanpointe and Company 1, and that Oceanpointe had addressed all of Employee 1's concerns about Employee 1's investment property.

i. WHALEN and his co-conspirators caused millions of dollars in losses to victim investors, which WHALEN used to, among other things, fund his lifestyle and the lifestyle of Coconspirator 1.

j. WHALEN, Coconspirator 1, and others engaged in fraudulent transactions involving a number of properties, some examples of which are provided below:

DREXEL AVENUE PROPERTY 1

k. On or about July 12, 2016, Individual 1 emailed Victim 1 an image and purchase details for an investment property located on N Drexel Avenue in Indianapolis, Indiana ("Drexel Avenue Property 1").

l. On or about August 8, 2016, Victim 1 sent a wire transfer in the amount of approximately \$40,480.50 from New Jersey to a title company in Michigan for the purchase of Drexel Avenue Property 1. On or about August 10, 2016, the title company sent a wire transfer in the amount of approximately \$13,940.19 to Oceanpointe Investments for the purchase of Drexel Avenue Property 1.

m. On or about April 20, 2017, Coconspirator 1 emailed to Victim 1 a fraudulent lease for Drexel Avenue Property 1, which falsely stated that a tenant was renting the property.

n. Despite the fact that Drexel Avenue Property 1 was vacant, on or about May 1, 2018, Oceanpointe Investments emailed Victim 1 a statement for rent payments, including \$630.00 for Drexel Avenue Property 1.

o. On or about June 29, 2018, in a telephone call, WHALEN misrepresented to Victim 1 that Drexel Avenue Property 1 was rented, when, in fact, it was vacant. WHALEN falsely stated, in sum and substance, that “every house you own has been occupied.”

DREXEL AVENUE PROPERTY 2

p. On or about November 2, 2017, Victim 2 purchased a duplex Oceanpointe investment property located on N Drexel Avenue in Indianapolis, Indiana (“Drexel Avenue Property 2”).

q. On or about November 2, 2017, Victim 2 sent a wire transfer in the amount of approximately \$56,013.75 to a title company in Michigan for

the purchase of Drexel Avenue Property 2. On or about November 3, 2017, the title company sent a wire transfer in the amount of approximately \$54,986.25 to Oceanpointe Holdings for the purchase of Drexel Avenue Property 2.

r. On or about January 19, 2018, Employee 2 emailed Victim 2 leases for the two duplex tenants in Drexel Avenue Property 2, which falsely stated that these tenants were renting the property.

In violation of Title 18, United States Code, Section 1349 and 2.

COUNTS TWO through FOUR
(Wire Fraud)

1. The allegations in Paragraphs 1, 3, and 4 of Count One of this Indictment are hereby incorporated and realleged as if set forth fully herein.

2. Beginning at least as early as in or around August 2016 through in or around July 2018, in Morris County, in the District of New Jersey and elsewhere, the defendant,

HERBERT WHALEN,
a/k/a "Bert Whalen,"

did knowingly and intentionally devise and attempt to devise a scheme and artifice to defraud, as described in Count One, and to obtain money and property from Victim 1, Victim 2, and others by means of materially false and fraudulent pretenses representations, and promises, and, for the purpose of executing such scheme and artifice to defraud, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, as set forth more fully below, each such transmission constituting a separate count of this Indictment:

Count	Approximate Date	Description
2	August 8, 2016	Wire transfer in the amount of approximately \$40,480.50 from Victim 1 in New Jersey to a title company in Michigan for the purchase of Drexel Avenue Property 1, which was processed through Federal Reserve facilities in New Jersey and Texas.
3	August 10, 2016	Wire transfer in the amount of approximately \$13,940.19 from a title company in Michigan to Oceanpointe Investments for the purchase of Drexel Avenue Property 1, which was processed through Federal Reserve facilities in New Jersey and Texas.
4	November 3, 2017	Wire transfer in the amount of approximately \$54,986.25 to Oceanpointe Holdings for the purchase of Drexel Avenue Property 2, which was processed through Federal Reserve facilities in New Jersey and Texas.

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

FORFEITURE ALLEGATION

1. As the result of committing the offense constituting specified unlawful activity as defined in 18 U.S.C. § 1956(c)(7), as alleged in Counts One through Four of this Indictment, defendant Herbert Whalen, a/k/a “Bert Whalen” (“WHALEN”), shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the wire fraud offenses, and all property traceable thereto.

Substitute Assets Provision

2. If any of the above-described 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 person;
- (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 subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

1 A
-TOLPERS-

Craig Carpenito
CRAIG CARPENITO
United States Attorney

CASE NUMBER: _____

**United States District Court
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UNITED STATES OF AMERICA

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**HERBERT WHALEN,
a/k/a "Bert Whalen"**

INDICTMENT FOR

**18 U.S.C. § 1349
18 U.S.C. § 1343
18 U.S.C. § 2**

CRAIG CARPENITO
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FOR THE DISTRICT OF NEW JERSEY

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