UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY GRAND JURY 2021
APRIL 19, 2022 SESSION

FILED
APR 19 2022
RORY L. PERRY II, CLERK
U.S. District Court
Southern District of West Virginia

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:22-cr-00084
18 U.S.C. § 1343

MALIK BRECKENRIDGE

I N D I C T M E N T

The Grand Jury charges:

COUNTS ONE AND TWO

The Scheme to Defraud

1. From on or about April 4, 2021, through on or about August 10, 2021, at or near Charleston, Kanawha County, West Virginia, and within the Southern District of West Virginia, defendant MALIK BRECKENRIDGE, acting with the intent to defraud, did knowingly devise and intend to devise a scheme and artifice to defraud the Small Business Administration ("SBA") and a commercial lending institution (the "Lender"), and to obtain money and property from the SBA and the Lender by means of materially false and fraudulent pretenses, representations, and promises.

2. It was the purpose of the scheme to defraud for defendant MALIK BRECKENRIDGE to unjustly enrich himself and others by fraudulently obtaining loan proceeds through the Paycheck Protection Program ("PPP"), a federal program that provided emergency financial assistance to the millions of American who were suffering the economic effects caused by the COVID-19 pandemic.

Background

At all times material to this Indictment:

3. Defendant MALIK BRECKENRIDGE was a resident of Charleston, Kanawha County, West Virginia, within the Southern District of West Virginia. He claimed to own, as the sole proprietor, a business called Malik Breck.

4. The SBA was an executive branch agency of the United States government that provided support to entrepreneurs and small businesses. The mission of the SBA was to maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses and by assisting in the economic recovery of communities after disasters.

5. As part of this effort, the SBA enabled and provided for loans through banks, credit unions, and other lenders. These loans had government-backed guarantees.

6. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of American who were suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of up to $349 billion in forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP"). In or around April 2020, Congress authorized over $300 billion in additional PPP funding.

7. The PPP allowed qualifying small businesses and other organizations to receive PPP loans. Businesses were required to use PPP loan proceeds to cover payroll costs, interest on mortgages, rent and utilities. The PPP allowed interest and principal on the PPP loans to be entirely forgiven if the businesses spent the loan proceeds to cover these expenses within a designated time and used a certain specified percentage of the PPP loan proceeds on payroll expenses.

8. To obtain a PPP loan, a qualifying business was required to submit a PPP loan application. The PPP loan application required the small business (through its authorized representative) to acknowledge the program rules and make affirmative certifications that the small business was eligible to obtain the PPP loan. In addition, businesses applying for a PPP loan were required to provide documentation showing their prior gross income from either 2019 or 2020. Applicants also had to certify that the small business was in operation on February 15, 2020.

9. A PPP loan application was required to be processed by a participating lender. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies, which were 100% guaranteed by the SBA.

10. The Lender was a non-bank direct commercial lender that specialized in small business lending. The Lender was a non-bank PPP lender to small businesses. The Lender processed PPP loans nationwide and maintained an office in Florida. The Lender used a bank located in Florida to transfer the loan proceeds to small businesses via Automated Clearing House (ACH) deposits.

11. Defendant MALIK BRECKENRIDGE maintained at least one personal checking account at a bank located in Charleston, Kanawha County, West Virginia. The bank had numerous branch offices throughout West Virginia and was a financial institution as defined by 18 U.S.C. § 20.

Manner and Means for Carrying Out the Scheme

12. In the spring of 2021, defendant MALIK BRECKENRIDGE applied for PPP loans for Malik Breck even though Malik Breck was not a legitimate business nor eligible for the PPP loans.

13. Malik Breck was not a registered business entity in the State of West Virginia at any time before defendant MALIK BRECKENRIDGE applied for the PPP loans. Malik Breck had also not engaged in substantial, legitimate business activity on or before February 15, 2020 nor had it generated $180,489.00 in gross income during 2019.

14. In the beginning of April 2021, defendant MALIK BRECKENRIDGE submitted and caused the submission of an application to the SBA on behalf of Malik Breck for a PPP loan in the amount of $20,833.00. The loan application listed defendant MALIK BRECKENRIDGE as the owner of Malik Breck.

15. On the PPP loan application, defendant MALIK BRECKENRIDGE falsely represented that Malik Breck had received $180,489.00 in gross income in 2019. Defendant MALIK BRECKENRIDGE also falsely stated that Malik Breck was established in 2014 and in operation on February 15, 2020.

16. Defendant MALIK BRECKENRDIGE also submitted a false IRS Form 1040, Schedule C for the Profit or Loss from a Business ("Form 1040"), for the year 2019 as part of his PPP loan application.

17. The Form 1040 again falsely stated that Malik Breck had earned $180,489.00 in gross income 2019.

18. A few days later, Malik Breck's PPP loan application was approved. Defendant MALIK BRECKINRIDGE signed the note to the SBA as the owner of Malik Breck.

19. On or about April 26, 2021, the Lender sent $20,833.00 in PPP loan proceeds via an ACH transfer that originated in Florida and was deposited into defendant MALIK BRECKINRIDGE's personal checking account.

20. Approximately two weeks later, defendant MALIK BRECKINRIDGE on behalf of Malik Breck applied for a second PPP loan with the Lender.

21. On the second PPP loan application, defendant MALIK BRECKENRIDGE again used the false information that he provided the Lender on his first PPP loan, including the false representations that Malik Breck was established in 2014, had earned $180,489.00 in gross income in 2019, and was in operation on February 15, 2020.

22. Malik Breck's second PPP loan application was approved during the middle of May 2021. Defendant MALIK BRECKINRIDGE signed the note to the SBA as the owner of Malik Breck.

23. On or about May 18, 2021, the Lender sent $20,833.00 in PPP loan proceeds via an ACH transfer that originated in Florida into defendant MALIK BRECKINRIDGE's personal checking account.

24. A few months later, defendant MALIK BRECKENRDIGE on behalf of Malik Breck applied to have the two PPP loans forgiven even though the loan proceeds had not been used on permissible business expenses as required by the terms of the PPP loans.

25. Both of defendant MALIK BRECKENRIDGE's PPP loans obtained on behalf of Malik Breck were forgiven on or about August 8, 2021.

26. In this manner, from on or about April 4, 2021, through on or about August 8, 2021, defendant MALIK BRECKENRIDGE defrauded the Lender and SBA out of approximately $41,666.00.

Wire Transmissions to Execute the Scheme to Defraud

27. On or about the dates listed below for each Count, at or near Charleston, Kanawha County, West Virginia, in the Southern District of West Virginia, and elsewhere, defendant MALIK BRECKENRIDGE, having devised, and participating in the above-described scheme and artifice to defraud the SBA and the Lender and to obtain money and property by means of materially false and fraudulent pretenses, representation and promises, and for the purpose of executing such scheme and artifice, did knowingly transmit and cause to be transmitted by means of wire and radio communications in interstate commerce the writings, signs, signals, pictures, and sounds described below for each count, each transmission constituting a separate count:

COUNT	APPROXIMATE DATE	INTERSTATE TRANSMISSION	FROM	TO
1	4/26/21	ACH Deposit of $20,833	Florida	Charleston, Kanawha County, WV
2	5/18/21	ACH Deposit of $20,833	Florida	Charleston, Kanawha County, WV

All in violation of Title 18, United States Code, Section 1343.

NOTICE OF FORFEITURE

1. The allegations contained in this Indictment are hereby re-alleged and incorporated by reference for the purpose of giving notice of forfeiture pursuant to 18 U.S.C. §§ 981, 982 and 28 U.S.C. § 2461(c).

2. Notice is hereby given of 18 U.S.C. §§ 981, 982 and 28 U.S.C. § 2461(c). Under Section 2461(c), criminal forfeiture is applicable to any offenses for which forfeiture is authorized by any other statute, including, but not limited to 18 U.S.C. §§ 981, 982 and all specified unlawful activities listed or referenced in 18 U.S.C. § 1956(c)(7), which are incorporated as to proceeds by Section 981(a)(1)(C).

The following property is subject to forfeiture in accordance with Section 982 and/or 2461(c):

a. All property which constitutes or is derived from proceeds of the violations set forth in this Indictment;

b. All property involved in such violations or traceable to property involved in such violations; and

c. If, as set forth in 21 U.S.C. § 853(p), any property described in (a) or (b) cannot be located upon the exercise of due diligence, has been transferred or sold to, or deposited with, a third party, has been placed beyond the jurisdiction of the court, has been substantially diminished in value, or has been commingled with other property which cannot be divided without difficulty, all other property of the defendant's to the extent of the value of the property described in (a) and (b).

The following property is subject to forfeiture on one or more grounds stated above: a forfeiture money judgment in the amount of approximately $ 41,666.00, such amount constituting the proceeds of the violations set forth in this Indictment.

WILLIAM S. THOMPSON
United States Attorney

By: Kathleen Robeson
KATHLEEN ROBESON
Assistant United States Attorney