

2021R00643/MCO

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

OCT 11 2023

AT 8:30 _____ M
CLERK, U.S. DISTRICT COURT - DNJ

UNITED STATES OF AMERICA : Hon. Georgette Castner, USDJ
:
v. : Crim. No. 23- 794
:
ARLEN ENCARNACION : 18 U.S.C. § 1349
: 18 U.S.C. § 1957
: 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:

COUNT ONE

(Conspiracy to Commit Wire Fraud)

Background

Individuals and Entities

1. At all times relevant to this Information:

a. Defendant ARLEN ENCARNACION (“ENCARNACION”) resided in New Jersey and was the owner or “member/manager” of approximately 12 purported entities (the “Fraud Entities”) that submitted approximately 19 fraudulent loan applications for federal COVID-19 emergency relief funds.

b. CC-1 and CC-2 were co-conspirators not charged in this Information who agreed with ENCARNACION to submit fraudulent loan applications for federal COVID-19 emergency relief funds.

c. Bank 1 was headquartered in Boston, Massachusetts, Bank 2 was headquartered in San Francisco, California, Bank 3 was headquartered in Cherry Hill, New Jersey, and Bank 4 was headquartered in New York, New York

(collectively, the “Victim Banks”). The Victim Banks were financial institutions insured by the Federal Deposit Insurance Corporation (“FDIC”).

Paycheck Protection Program

d. The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was a federal law enacted in or about March 2020 and designed to provide emergency financial assistance to the millions of Americans 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 about April 2020, Congress authorized over \$300 billion in additional PPP funding. The PPP ended on May 31, 2021.

e. To obtain a PPP loan, a qualifying business was required to submit a PPP loan application, signed by an authorized representative of the business. The PPP loan application required the business—through its authorized representative—to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the loan application, the small business was required to state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. In addition, businesses applying for a PPP loan had to provide documentation showing their payroll expenses.

f. A PPP loan application had to be processed by a participating lender. If the PPP loan application was approved, the participating lender funded the PPP loan using its own money, which was 100% guaranteed by the U.S. Small Business Administration (“SBA”). Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the SBA while processing the loan.

g. PPP loan proceeds could only be used by the business on certain permissible expenses—payroll costs, interest on mortgages, rent, and utilities. The PPP allowed the interest and principal on the PPP loan to be forgiven if the business spent the loan proceeds on these eligible expense items within a designated period of time after receiving the proceeds and used a certain amount of the PPP loan proceeds on payroll expenses.

h. PPP loan applications had to be electronically submitted or caused to be submitted by the borrower, and after on or about January 11, 2021, all PPP applications were received and processed through SBA servers located in Oregon.

Economic Injury Disaster Loan Program

i. The Economic Injury Disaster Loan (“EIDL”) program was an SBA program that provided low-interest financing to small businesses, renters, and homeowners in regions affected by declared disasters.

j. The CARES Act authorized the SBA to provide EIDLs of up to \$2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic.

k. In order to obtain an EIDL, a qualifying business had to submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues, and cost of goods sold in the 12-month period preceding the disaster. The amount of the EIDL was determined based, in part, on the information the applicant provided regarding the revenue, employees, and cost of goods of the company. SBA directly issued any funds disbursed under an EIDL to the applicant company. A company could use EIDL funds for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent, and mortgage payments. If an applicant also obtained a loan under the PPP, the applicant company was prohibited from using EIDL funds for the same purpose as the PPP funds.

The Wire Fraud Conspiracy

2. From in or around May 2020 through in or around April 2021, in the District of New Jersey and elsewhere, defendant,

ARLEN ENCARNACION,

did knowingly and intentionally conspire to devise a scheme and artifice to defraud lenders of federal COVID-19 emergency relief funds, specifically the SBA and the Victim Banks, and to obtain money and property from them by means of one or more materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce writings, signs, signals, pictures, and sounds, contrary to Title 18, United States Code, Section 1343.

Goal of the Conspiracy

3. The goal of the conspiracy was for ENCARNACION, CC-1, and CC-2 to profit by submitting fraudulent loan applications to obtain PPP and EIDL funds from the SBA and the Victim Banks, which they diverted for their personal use and other business ventures.

Manner and Means of the Conspiracy

4. It was part of the conspiracy that:
- a. ENCARNACION conspired with CC-1 and CC-2 to obtain PPP and EIDL loans by submitting false and fraudulent applications on behalf of the Fraud Entities.
 - b. In those applications, ENCARNACION and his coconspirators claimed that each of the Fraud Entities was a real company even though none of them conducted any actual business.
 - c. Each application included fictitious payroll and tax documents and misrepresented, among other things, the number of employees and payroll expenses for each purported company.
 - d. To collect money from the scheme, CC-1 and CC-2 opened bank accounts in the names of some of the Fraud Entities.
 - e. In total, ENCARNACION, using the Fraud Entities and aided by CC-1 and CC-2, caused the SBA or one of the Victim Banks to disburse approximately \$2,175,717.83 in PPP and/or EIDL funds, as set forth in the following chart:

Approx. Date of Application	Type of Loan	Bank/ SBA	Approx. Amount Disbursed	Approx. Date Disbursed
May 20, 2020	PPP	Bank 1	\$26,415	July 1, 2020
July 30, 2020	PPP	Bank 1	\$105,009	August 7, 2020
August 8, 2020	EIDL	SBA	\$63,600	August 31, 2020
August 21, 2020	EIDL	SBA	\$149,900	September 1, 2020
August 22, 2020	EIDL	SBA	\$149,900	September 2, 2020
January 15, 2021	PPP	Bank 1	\$143,450	March 1, 2021
January 15, 2021	PPP	Bank 1	\$121,312	February 2, 2021
January 16, 2021	PPP	Bank 1	\$130,330	February 3, 2021
January 16, 2021	PPP	Bank 1	\$105,010	January 25, 2021
January 18, 2021	PPP	Bank 1	\$101,235	February 9, 2021
January 18, 2021	PPP	Bank 1	\$148,350	January 26, 2021
January 20, 2021	PPP	Bank 3	\$116,670	February 25, 2021
April 8, 2021	PPP	Bank 2	\$153,030	April 22, 2021
April 13, 2021	PPP	Bank 2	\$169,372	May 10, 2021
July 25, 2020	PPP	Bank 4	\$46,500	July 28, 2020
January 20, 2021	PPP	Bank 4	\$119,912	February 5, 2021
March 16, 2021	PPP	Bank 1	\$169,280	March 29, 2021
March 18, 2021	PPP	Bank 1	\$156,442	March 29, 2021

f. All of the PPP loan applications listed above were transmitted via interstate wire from New Jersey to servers located in Oregon.

g. On or about September 28, 2020, ENCARNACION transferred approximately \$50,000 in fraudulently obtained PPP funds to CC-2's personal bank account at Bank 4, and CC-2 improperly used those funds to purchase real estate.

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

COUNT TWO
(Transacting in Criminal Proceeds)

1. The allegations set forth in paragraphs 1, 3, and 4 of Count One of this Information are realleged here.

2. On or about September 28, 2020, in the District of New Jersey and elsewhere, defendant,

ARLEN ENCARNACION,

knowingly engaged in a monetary transaction by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a greater value than \$10,000, that is the transfer of approximately \$50,000 to CC-2's personal bank account at Bank 4, such property having been derived from a specified unlawful activity, that is wire fraud.

In violation of Title 18, United States Code, Section 1957 and Section 2.

FORFEITURE ALLEGATION AS TO COUNT ONE

1. As a result of committing the offense charged in Count One of this Information, defendant, **ARLEN ENCARNACION**, 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(c), any property, real or personal, constituting or derived from proceeds traceable to the offense alleged in Count One of this Information, the value of which totaled \$1,683,883.83.

FORFEITURE ALLEGATION AS TO COUNT TWO

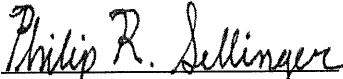
2. As a result of committing the money laundering offense charged in Count Two of this Information, defendant, **ARLEN ENCARNACION**, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), all property, real or personal, involved in such money laundering offense, and all property traceable to such property.

SUBSTITUTE ASSETS PROVISION
(Applicable to All Forfeiture Allegations)

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,

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(a)(1) and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of such defendant up to the value of the forfeitable property described above.


PHILIP R. SELLINGER
United States Attorney