UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 22-80074-CR-ROSENBERG/REINHART
18 U.S.C. § 1349
18 U.S.C. § 982(a)(2)(A)

UNITED STATES OF AMERICA

v.

OMAR SMITH,

Defendant.
_______________________________/

FILED BY AT D.C.
May 9, 2022
ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - FTL

INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times material to this Information:

The Paycheck Protection Program

1. 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 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 forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP").

2. In order to obtain a PPP loan, a qualifying business submitted a PPP loan application, which was 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 PPP loan application ((Small Business Administration ("SBA") Form 2483)), the small business (through its authorized representative) was required to provide, 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. Businesses applying for a PPP loan were required to provide documentation confirming their payroll expenses. In general, an employer was obligated to report to the Internal Revenue Service ("IRS") after each calendar quarter, with an IRS Form 941, the number of salaried employees who received IRS W-2s and the amount, in total, the employees were paid for that calendar quarter.

3. A PPP loan application was processed by a participating lender or loan processor. If a PPP loan application was approved, the participating lender funded the PPP loan using its own monies. While it was the participating lender that issued the PPP loan, the loan was 100% guaranteed by the 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 in the course of processing the loan.

4. PPP loan proceeds were required to be used by the business to pay expenses necessary to continue the operations of the business, including the payroll costs of employees, interest on mortgages, rent, and utilities. The interest and principal on the PPP loan could be entirely forgiven if the business spent the loan proceeds on these expense items within a designated period of time and used a defined portion of the PPP loan proceeds on payroll expenses.

The Financial Institution

5. Bank 1 was a lending institution based in Salt Lake City, Utah, that was insured by the Federal Insurance Deposit Corporation. Bank 1 was an approved SBA lender of PPP loans.

6. Bank Processor 1 was a third-party processor, based in Redwood City, California, that processed PPP loan applications through a server located in Northern Virginia for Bank 1. Small businesses seeking PPP loans could apply electronically through Bank Processor 1 for PPP loans. Bank Processor 1 would review the loan application and, if approved, a partner bank disbursed the loan funds to the applicant via the interstate banking system.

The Defendant and the Defendant's Company

7. A Star For I, Inc., ("A Star For I") was a Florida corporation with its listed principal address in Royal Palm Beach, Florida.

8. Defendant OMAR SMITH was the president of A Star For I.

9. A Star For I had a checking account at a national bank ("Bank 2"), and defendant SMITH had check signing authority on that account.

COUNT 1
Conspiracy to Commit Bank Fraud and Wire Fraud
(18 U.S.C. § 1349)

1. The General Allegations section of this Information is re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around June 2020 through in or around October 2020, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendant,

OMAR SMITH,

did willfully, that is, with the intent to further the objective of the conspiracy, and knowingly combine, conspire, confederate, and agree with others known and unknown to the United States Attorney, to commit an offense against the United States, that is:

a. to knowingly, and with the intent to defraud, execute, and cause the execution of, a scheme and artifice to defraud a financial institution, which scheme and artifice would employ a material falsehood, and to knowingly, and with intent to defraud, execute, and cause the execution of, a scheme and artifice to obtain money and funds owned by, and under the custody and control of, a financial institution, by means of materially false and fraudulent pretenses, representations, and promises relating to a material fact, in violation of Title 18, United States Code, Sections 1344(1) and (2); and

b. to knowingly, and with the intent to defraud, devise, and intend to devise, a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and, for the purpose of executing the scheme and artifice, did knowingly transmit and cause to be transmitted, by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, in violation of Title 18, United States Code, Section 1343.

PURPOSE AND OBJECTIVE OF THE CONSPIRACY

3. It was the purpose and objective of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by, among other things; (a) submitting and causing the submission of a false and fraudulent application for a loan made available through the SBA to provide relief for the economic effects caused by the COVID-19 pandemic, including PPP loans;

and (b) diverting the proceeds for the defendant's and co-conspirators' personal use, the use and benefit of others, and to further the fraud.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which defendant SMITH and his co-conspirators sought to accomplish the purpose and objective of the conspiracy included, among others, the following:

4. In or about June 2020, in violation of the conditions for obtaining a PPP loan, defendant SMITH unlawfully agreed to pay 20% of the PPP loan proceeds to a co-conspirator who would help defendant SMITH obtain the loan.

5. On or about June 1, 2020, defendant SMITH caused a loan application to be prepared by a co-conspirator requesting a PPP loan of $212,500 to be submitted online, by interstate wire communication, to Bank Processor 1.

6. The loan application falsely stated that A Star For I had 30 employees and had an average monthly payroll of $85,000 a month.

7. In support of the loan application, an IRS Form 941 for the first quarter of 2019 was prepared by a co-conspirator and was submitted online, by interstate wire communication, to Bank Processor 1. The IRS Form 941 falsely stated that in the first quarter of 2019 A Star For I paid wages of $255,000 and had withheld from those wages federal income tax of $24,040, social security tax of $31,620, and Medicare tax of $7,395.

8. On or about June 2, 2020, based on the false information provided in the loan application and supporting document, Bank Processor 1 approved the loan to A Star For I and Bank 1 wire transferred $212,500, via interstate wire communication, to the A Star For I bank account at Bank 2.

9. On or about June 10, 2020, defendant SMITH transferred $42,500 to a co-conspirator as payment for obtaining the PPP loan for A Star For I.

10. From in or about July 2020 through in or about October 2020, defendant SMITH began issuing checks to persons in order to make it appear as if A Star For I had full-time employees and was complying with the conditions of the PPP loan.

11. The persons receiving the checks did little, if any, work for A Star For I.

All in violation of Title 18, United States Code, Section 1349.

FORFEITURE ALLEGATIONS

1. The allegations contained in this Information are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant, **OMAR SMITH**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1349, as alleged in this Information, the defendant shall forfeit to the United States any property constituting, or derived from, proceeds obtained, directly or indirectly, as the result of such offense, pursuant to Title 18, United States Code, Section 982(a)(2)(A).

3. The property subject to forfeiture as a result of the alleged offenses includes, but is not limited to, a sum of at least $212,500, which represents the total amount of funds derived from the alleged offense and may be sought as a forfeiture money judgment.

4. If any of the property subject to forfeiture, 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,

the United States shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p).

All pursuant to Title 18, United States Code, Section 982(a)(2)(A) and the procedures set forth in Title 21, United States Code, Section 853, as incorporated by Title 18, United States Code, Section 982(b)(l).

Thomas J. Mulvihill for

JUAN ANTONIO GONZALEZ
UNITED STATES ATTORNEY

JEFFREY KAPLAN
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

v.

OMAR SMITH

______________________________/
Defendant.

CASE NO.:

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

Court Division (select one)

☐ Miami ☐ Key West ☐ FTP
☐ FTL ☑ WPB

New Defendant(s) (Yes or No)
Number of New Defendants
Total number of New Counts

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. §3161.

3. Interpreter: (Yes or No) No
   List language and/or dialect:

4. This case will take 0 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)		(Check only one)
I	☑ 0 to 5 days	☐ Petty
II	☐ 6 to 10 days	☐ Minor
III	☐ 11 to 20 days	☐ Misdemeanor
IV	☐ 21 to 60 days	☑ Felony
V	☐ 61 days and over	

6. Has this case been previously filed in this District Court? (Yes or No) No
   If yes, Judge Case No.
7. Has a complaint been filed in this matter? (Yes or No) No
   If yes, Magistrate Case No.
8. Does this case relate to a previously filed matter in this District Court? (Yes or No) No
   If yes, Judge Case No.
9. Defendant(s) in federal custody as of
10. Defendant(s) in state custody as of
11. Rule 20 from the District of
12. Is this a potential death penalty case? (Yes or No) No
13. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard? (Yes or No) No
14. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss? (Yes or No) No

By: ______________________________
Jeffrey N. Kaplan
Assistant United States Attorney
Court ID No. 5500030

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name **OMAR SMITH**

Case No: ____________________

Count #: 1

Conspiracy to Commit Bank Fraud and Wire Fraud

Title 18, United States Code, Section 1349

*** Max. Penalty:** 30 years' imprisonment, a fine of the greater of twice the gross gain or twice the gross loss or $1,000,000, 5 years' supervised release

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms or forfeitures that may be applicable.**

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

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Defendant

Case No. 22-80074-CR-ROSENBERG/REINHART

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: ________________

____
Defendant's signature

____
Signature of defendant's attorney

____
Printed name of defendant's attorney

____
Judge's signature

____
Judge's printed name and title