

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JAN 26 2012 *db*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WAYNE B. CHURCH,
RODNEY CHAVEZ and
JOSHUA G. ELLIS,

Defendants.

)
)
) CRIMINAL NO. 12-152BB
)
) Count 1: 18 U.S.C. § 1349: Conspiracy;
)
) Counts 2-6: 18 U.S.C. § 1343: Wire Fraud and 18
) U.S.C. § 2: Aiding and Abetting;
)
) Count 7: 18 U.S.C. § 1956(h): Conspiracy;
)
) Counts 8-16: 18 U.S.C. § 1956(a)(1)(B)(i): Money
) Laundering;
)
) Counts 17-20: 18 U.S.C. § 1956(a)(1)(B)(i):
) Money Laundering and 18 U.S.C. § 2: Aiding and
) Abetting;
)
) Counts 21-22: 18 U.S.C. § 1957: Monetary
) Transaction in Criminally Derived Proceeds.

INDICTMENT

The Grand Jury charges:

Background

1. From approximately June 2004 through July 2008, at least 30 people (the "Investors") invested a total of approximately \$7,000,000.00 in an entity known as Puerto Peñasco Getaway LLC (hereinafter "PPG"). As marketed to the Investors by co-founder Michael Celenze, PPG was created in order to purchase and hold various real estate interests, including houses, apartments and condominiums, in Puerto Peñasco, Mexico. These investments were represented to return rental income to the Investors while simultaneously appreciating in value.

Lured by the promise of regular interest payments to be followed by the return of the principal investment amount, many of the Investors withdrew their retirement accounts and/or life savings to invest in these properties through PPG.

2. By early 2010, however, it was apparent that the PPG investment was in trouble. PPG had not paid investment interest to the Investors for some time. PPG founder Michael Celenze had disappeared and ceased all communication with the Investors. Finally, PPG could not afford to pay the Homeowners' Association dues owed on the properties. For these reasons, among others, the Investors elected to sell the properties and exit the investment.

3. For a variety of reasons, the Investors recognized that they would not be able to recoup the full amount of their original investment. Nonetheless, on or about March 1, 2010, G.L., the co-founder of PPG whose identity is known to the Grand Jury, sent an email to the Investors. In this email, G.L. informed the Investors that he was aware of an individual interested in purchasing some or all of the PPG properties. In the same email, G.L. asked the Investors whether a return of \$0.30 on the dollar of their original investment would be an acceptable exit strategy. Recognizing the poor future prospects for their investment, a number of the Investors agreed to this arrangement.

The Scheme and Artifice

4. On or about March 1, 2010, the precise date being unknown to the Grand Jury, G.L. was contacted by defendant **WAYNE B. CHURCH** (hereinafter "**CHURCH**"). **CHURCH** had previously been in contact with G.L. and had previously informed G.L. that he had purchased the PPG investment interest of R.H, one of the original PPG investors, whose identity is known to the Grand Jury. In the course of the March 1, 2010 conversation, **CHURCH** informed G.L.

that he had organized a consortium of investors in Albuquerque who were prepared to purchase the PPG properties for a price equivalent to 30% of the original investment, with payment to be made in a lump sum.

5. Although no written contract or agreement was executed, G.L. orally agreed to allow **CHURCH** to undertake this sale on behalf of the Investors for an agreed upon return of 30% of the original investment. To facilitate this sale, on or about April 19, 2010, G.L. executed a series of Powers of Attorney in favor of **CHURCH**, allowing him to sell the properties on behalf of the Investors.

6. Despite his stated intent to sell the properties and distribute the agreed upon amount to the Investors, **CHURCH** never intended to honor this agreement. Rather, **CHURCH**, acting in combination with co-defendants **RODNEY CHAVEZ** (hereinafter "**CHAVEZ**") and **JOSHUA G. ELLIS** (hereinafter "**ELLIS**"), devised and executed a scheme and artifice to defraud the Investors. The central element of this scheme and artifice was a plan by the defendants to sell the PPG properties, but retain the proceeds for themselves.

7. On or about August 4, 2010, in furtherance of the scheme and artifice to defraud, **CHURCH** caused G.L. to send an email to the Investors informing them that **CHURCH** required additional funds in order to complete the sale of the PPG properties. Specifically, at **CHURCH**'s request, G.L. asked each investor to send \$100 to **CHURCH** "so that he can get all the documents ready for him to get all of us a settlement."

8. On or about September 24-26, 2010, **CHURCH** and **ELLIS** contacted several of the Investors by telephone and email reiterating the need for additional funds to complete the sale of the PPG properties and requesting that the Investors provide such additional funds. **CHURCH**

and **ELLIS** falsely informed these Investors that several of the properties had been sold, but that they needed additional funds to facilitate a wire transfer of the funds from Mexico to the United States. For example, on or about September 26, 2010, **ELLIS** emailed A.M., an investor whose identity is known to the grand jury. In this email, **ELLIS** wrote "I sold the properties the money is here, my suggestion is that anyone of you investors is welcome to come and pick it up. Because I know for a corporation to take responsibility to send that amount of money from here or anywhere without raising any red flags is very hard . . ."

9. In response to these requests, numerous Investors provided **CHURCH** and **ELLIS** with the funds requested. For example, in response to an email from inquiry from L.F., an investor whose identity is known to the Grand Jury, in an email dated September 20, 2010, **ELLIS** advised L.F. that she should send the funds to him via Moneygram from a Walmart store. Similarly, on September 25, 2010, **ELLIS** emailed G.S. another investor whose identity is known to the Grand Jury, and informed her that he would open a Paypal account in order to receive the additional funds she agreed to send in response to the request.

10. Despite receipt of these funds, between September 2010 and July 2011, on numerous occasions via email and telephone, **CHURCH** and **ELLIS** knowingly and falsely informed G.L. and other Investors that they were making progress on the sale of the PPG properties and that the proceeds of the sales would soon be returned to the Investors. In particular, on numerous occasions **CHURCH** and **ELLIS** falsely informed Investors that (1) the properties had been sold but it was difficult to repatriate the proceeds to the United States and (2) that the proceeds of the sale of several properties were in a trust account awaiting distribution to the Investors.

11. Further, in the course of a February 1, 2011 conference call with a number of Investors, in furtherance of his scheme and artifice to defraud, **CHURCH** knowingly made the following false representations:

- a. that the proceeds from the sale of Villa 16 were in an account in the United States waiting to be disbursed to Investors;
- b. that he was waiting until all properties were sold to disburse the funds to the Investors;
- c. that the sale of additional properties in Puerto Peñasco was delayed while he was awaiting the approval of certain trusts and LLCs associated with the properties.

12. In the meantime, **CHURCH, CHAVEZ** and **ELLIS** were actively plotting to sell the properties for their own benefit. On September 15, 2010, in an email to **ELLIS, CHURCH** wrote “your [sic] right lets sell everything but casa 16 I want to find some nice properties for us. Do you think Brett is for real with that Puerto Vallarta deal I want that house bad Oh and don’t use my name on the computer ever thanks.” **ELLIS** expressed the same sentiment in an October 27, 2010 email to a potential buyer in which he wrote that he and **CHURCH** are “looking for buyers . . . because there are some other properties we are looking at further down south.” **ELLIS** also noted that “[w]e would also be interested in trade.”

13. During this same time period, while falsely assuring the Investors of their efforts to sell the properties on their behalf, **CHURCH, CHAVEZ** and **ELLIS** hired real estate agents for the purpose of selling the PPG properties. Between approximately October 2010 and April 2011, through the efforts of the real estate agents, **CHURCH, CHAVEZ** and **ELLIS** succeeded in selling approximately six pieces of real estate held by PPG. These sales generated approximately \$847,370.52 in proceeds.

14. In furtherance of the scheme and artifice, upon the closing of each sale, **CHURCH** directed that the proceeds be sent by wire transfer to a bank account held in the name of "Inspirational Equities" at People's Bank in Albuquerque, New Mexico. Inspirational Equities is a trust of which **CHAVEZ** is the managing director. **CHAVEZ** opened the account at People's Bank in the name of Inspirational Equities and maintained exclusive control over that bank account.

15. After receiving each transfer of funds into the Inspirational Equities account the defendants did not distribute the proceeds to the Investors. Rather, in an effort to distribute the proceeds of the fraudulent scheme among the co-conspirators as well as to conceal the source of the funds, **CHAVEZ** routinely caused those funds to be wired out to other accounts. In particular, **CHAVEZ** wired large portions of these funds to accounts held in the name of Chiesa LLC and Mountain Iron LLC, both of which are controlled exclusively by **CHURCH**, and Landmark Unlimited LLC and Shadow Systems LLC, both of which are controlled exclusively by **CHAVEZ**. Finally, **CHAVEZ** caused several wire transfers representing proceeds of the sale of PPG properties to be sent to a bank account controlled by **ELLIS**. Notably, none of the proceeds of the sales were returned to the Investors.

Count 1

16. The Grand Jury hereby reincorporates and realleges the allegations contained in paragraphs 1-15 above as though fully set forth herein.

17. Between March 2010 and November 2011, both dates being approximate and inclusive, in Bernalillo County, in the district of New Mexico and elsewhere, the defendants, **WAYNE B. CHURCH, RODNEY CHAVEZ, and JOSHUA G. ELLIS** knowingly,

unlawfully and wilfully combined, conspired, confederated and agreed with one another and with others known and unknown to the Grand Jury to commit the following offense against the United States, to wit, wire fraud, contrary to 18 U.S.C. § 1343.

Overt Acts

18. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the District of New Mexico, and elsewhere:

- a. On or about April 19, 2010, **CHURCH** caused G.L. to execute powers of attorney in favor of **CHURCH** thereby permitting him to sell the PPG properties;
- b. In approximately August 2010, **CHURCH** falsely informed G.L. that he needed additional funds from the Investors to complete the sale of the PPG properties;
- c. On or about September 25, 2010, **CHURCH** and **ELLIS** contacted several investors to request additional funds, falsely informing them that the properties had been sold and the additional funds were necessary to repatriate the money to the United States;
- d. On or about December 15, 2010, **CHURCH**, **ELLIS** and **CHAVEZ** caused the PPG property known as Villa 16 to be sold and the proceeds of that sale to be wired to the Inspirational Equities Account at People's Bank in Albuquerque, New Mexico;
- e. On or February 15, 2010, **CHURCH**, **ELLIS** and **CHAVEZ** caused the PPG property known as Las Palmas Bonitas 702 to be sold and the proceeds of that sale to be wired to the Inspirational Equities Account at People's Bank in Albuquerque, New Mexico;
- f. On or about April 22, 2011, **CHURCH**, **ELLIS** and **CHAVEZ** caused the PPG property known as Las Palmas Bonitas 701 and 703 to be sold and the proceeds of that sale to be wired to the Inspirational Equities Account at People's Bank in Albuquerque, New Mexico.

In violation of 18 U.S.C. § 1349.

Counts 2-6

19. The Grand Jury hereby reincorporates and realleges the allegations contained in paragraphs 1-15 above as though fully set forth herein.

20. On or about the dates and in the manner set forth below, in Bernalillo County, in the District of New Mexico and elsewhere, the defendants **RODNEY CHAVEZ** and **WAYNE B. CHURCH**, together with others known and unknown to the Grand Jury, having knowingly and intentionally devised and engaged in a scheme and artifice to defraud the Investors, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce writings, signs, signals and sounds for the purpose of executing said scheme and artifice to defraud:

<u>Count</u>	<u>Date</u>	<u>Description of Wiring</u>	<u>Amount</u>
2	October 26, 2010	Wire transfer of funds to Inspirational Equities account representing proceeds from sale of PPG Property known as Cholla Bay Lot	\$7,500
3	October 29, 2010	Wire transfer of funds to Inspirational Equities account representing proceeds from sale of PPG Property known as Cholla Bay Lot	\$7,470
4	December 15, 2010	Wire transfer of funds to Inspirational Equities account representing proceeds from sale of PPG Property known as Villa 16	\$353,289.21
5	February 15, 2011	Wire transfer of funds to Inspirational Equities account representing proceeds from sale of PPG Property known as Las Palmas Bonita 702	\$135,350.97
6	April 22, 2011	Wire transfer of funds to Inspirational Equities account representing proceeds from sale of PPG Property known as Las Palmas Bonita 701, 703	\$343,760.34

All in violation of 18 U.S.C. § 1343 and 18 U.S.C. § 2.

Count 7

21. The Grand Jury hereby reincorporates and realleges the allegations contained in paragraphs 1-15 above as though fully set forth herein.

22. Between December 2010 and May 2011, both dates being approximate and inclusive, in Bernalillo County, in the district of New Mexico and elsewhere, the defendants, **WAYNE B. CHURCH** and **RODNEY CHAVEZ** knowingly, unlawfully and wilfully combined, conspired, confederated and agreed with one another and with others known and unknown to the grand jury to commit the following offense against the United States, to wit, money laundering, contrary to 18 U.S.C. §§ 1956(a)(1)(B)(i).

Overt Acts

23. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the District of New Mexico, and elsewhere:

a. On or about October 25, 2010, December 15, 2010, February 3, 2011 and April 7, 2011, **CHURCH** instructed that the sale of the proceeds from certain PPG properties be sent by wire transfer to an account held by **CHAVEZ**, in the name Inspirational Equities, at People's Bank in Albuquerque, New Mexico;

b. On or about December 21, 2010, **CHURCH** caused an account to be opened in the name of Mountain Iron LLC at Century Bank in Albuquerque, New Mexico;

c. On or about December 21, 2010, **CHURCH** falsely informed an employee of Century Bank that Mountain Iron LLC was a welding business and that he was expecting a large wire transfer into the account representing proceeds of a loan with which he was to start his business;

c. On or about December 21, 2010 **CHAVEZ** caused approximately \$93,600 representing the proceeds of fraud to be sent by wire transfer to the

Mountain Iron account;

d. On or about February 23, 2011, **CHURCH** caused an account to be opened in the name of Chiesa LLC at Century Bank in Albuquerque, New Mexico;

e. On or about February 25, 2011, **CHAVEZ** caused approximately \$30,000 representing the proceeds of fraud to be sent by wire transfer to the Chiesa LLC account at Century Bank.

In violation of 18 U.S.C. § 1956(h).

Counts 8-16

24. The Grand Jury hereby reincorporates and realleges the allegations contained in paragraphs 1-15 above as though fully set forth herein.

25. On or about the dates and in the manner set forth below, in the District of New Mexico and elsewhere, defendant **RODNEY CHAVEZ** knowingly conducted or caused to be conducted a financial transaction affecting interstate and foreign commerce. Each of the transactions listed below involved the proceeds of a specified unlawful activity, to wit, wire fraud, in violation of 18 U.S.C. § 1343, and were conducted with knowledge that such transaction was designed in whole or in part to conceal or disguise the ownership and control of the proceeds of the specified unlawful activity and that the property involved the proceeds of some form of unlawful activity.

<u>Count</u>	<u>Date</u>	<u>Description of Transaction</u>
8	December 16, 2010	Transfer of \$80,000 from Inspirational Equities account to bank account held by Landmark Unlimited LLC.
9	December 16, 2010	Transfer of \$40,000 from Inspirational Equities account to bank account held by Shadow Systems LLC.
10	April 22, 2011	Transfer of \$14,000 from Inspirational Equities account to bank account held by Shadow Systems LLC.

11	April 26, 2011	Transfer of \$30,000 from Inspirational Equities account to bank account held by Landmark Unlimited LLC.
12	April 26, 2011	Transfer of \$7,000 from Inspirational Equities account to bank account held by Shadow Systems LLC.
13	May 21, 2011	Transfer of \$7,000 from Inspirational Equities account to bank account held by Shadow Systems LLC.
14	June 24, 2011	Transfer of \$9,000 from Inspirational Equities account to bank account held by Shadow Systems LLC.
15	July 1, 2011	Transfer of \$10,000 from Inspirational Equities account to bank account held by Shadow Systems LLC.
16	July 7, 2011	Transfer of \$16,000 from Inspirational Equities account to bank account held by Shadow Systems LLC.

All in violation of 18 U.S.C. § 1956(a)(1)(B)(i).

Counts 17-20

26. The Grand Jury hereby reincorporates and realleges the allegations contained in paragraphs 1-15 above as though fully set forth herein.

27. On or about the dates and in the manner set forth below, in the District of New Mexico and elsewhere, defendants **RODNEY CHAVEZ** and **WAYNE B. CHURCH** knowingly conducted or caused to be conducted a financial transaction affecting interstate and foreign commerce. Each of the transactions listed below involved the proceeds of a specified unlawful activity, to wit, wire fraud, in violation of 18 U.S.C. § 1343, and were conducted with knowledge that such transaction was designed in whole or in part to conceal or disguise the ownership and control of the proceeds of the specified unlawful activity and that the property involved the proceeds of some form of unlawful activity.

<u>Count</u>	<u>Date</u>	<u>Description of Transaction</u>
17	December 21, 2010	Transfer of \$93,600 from Inspirational Equities account to bank account held by Mountain Iron LLC.
18	February 25, 2011	Transfer of \$30,000 from Inspirational Equities account to bank account held by Chiesa LLC.
19	April 26, 2011	Transfer of \$30,000 from Inspirational Equities account to bank account held by Chiesa LLC.
20	April 26, 2011	Transfer of \$30,000 from Inspirational Equities account to bank account held by Mountain Iron LLC.

All in violation of 18 U.S.C. §1956(a)(1)(B)(i) and 18 U.S.C. § 2.

Count 21

28. The Grand Jury hereby reincorporates and realleges the allegations contained in paragraphs 1-15 above as though fully set forth herein.

29. On or about December 22, 2010, in Bernalillo County, in the District of New Mexico, the defendant, **WAYNE B. CHURCH** knowingly and unlawfully engaged in a monetary transaction, by through or to a financial institution affecting interstate and foreign commerce, to wit, purchase of a Jeep Grand Cherokee VIN number 1J4RS4GG6BC564422, in criminally derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, to wit, wire fraud.

In violation of 18 U.S.C. § 1957.

Count 22

30. The Grand Jury hereby reincorporates and realleges the allegations contained in paragraphs 1-15 above as though fully set forth herein.

31. On or about December 17, 2010, in Bernalillo County, in the District of New

Mexico, the defendant, **RODNEY CHAVEZ** knowingly and unlawfully engaged in a monetary transaction, by through or to a financial institution, affecting interstate and foreign commerce, to wit, a wire transfer of \$35,000 in criminally derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, to wit, wire fraud.

In violation of 18 U.S.C. § 1957.

Forfeiture Allegation

Paragraphs 1-31 of this Indictment are incorporated as part of this section of the indictment as if fully re-alleged herein for the purpose of alleging forfeiture to the United States.

Upon conviction of any offense in violation of 18 U.S.C. § 1349 or 18 U.S.C. § 1343, the defendants, **WAYNE B. CHURCH, RODNEY CHAVEZ,** and **JOSHUA G. ELLIS,** shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes and is derived from proceeds traceable to such offense.

Upon conviction of any offense in violation of 18 U.S.C. § 1956 or 18 U.S.C. § 1957, the defendants, **WAYNE B. CHURCH, RODNEY CHAVEZ,** and **JOSHUA G. ELLIS,** shall forfeit to the United States pursuant to 18 U.S.C. § 982(a)(1) any property, real or personal, involved in such offense, or any property traceable to such property.

Property to be forfeited to the United States includes but is not limited to the following:

FUNDS:

Funds from the following accounts at Peoples Bank in Albuquerque, New Mexico:

- a. funds of \$220,271.00 from account number ending in **3478;
- b. funds of \$12,302.40 from account number ending in **3451; and

c. funds of \$975.00 from account number ending in **6035.

VEHICLE:

A Gold 2011 Jeep Grand Cherokee, VIN: 1J4RS4GG6BC564422

SUBSTITUTE ASSETS:


If any of the above described forfeitable property, as a result of any act or omission of the defendants:

1. cannot be located upon exercise of due diligence;
2. has been transferred or sold to, or deposited with, a third person;
3. has been placed beyond the jurisdiction of the Court;
4. has been substantially diminished in value; or
5. 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 18 U.S.C. § 982(b)(1) and 28 U.S.C. § 2461(c), to seek forfeiture of any other property of defendants up to the value of the forfeitable property described above.

A TRUE BILL:

/s/
FOREPERSON OF THE GRAND JURY


Assistant United States Attorney

01/23/12 3:41pm