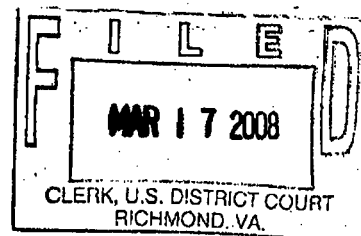


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



UNITED STATES OF AMERICA

v.

EDWARD HUGH OKUN,

Defendant.

) Criminal No. 3:08cr 102

) Count 1 - 18 U.S.C. § 1341

) Mail Fraud

) Count 2 - 31 U.S.C. § 5332

) Bulk Cash Smuggling

) Count 3 - 18 U.S.C. § 1623(a)

) False Declaration

March 2008 Term - At Richmond

SEALED

INDICTMENT

THE GRAND JURY CHARGES THAT at all times relevant to this Indictment:

GENERAL ALLEGATIONS

The Defendant

1. EDWARD HUGH OKUN ("OKUN") was the sole owner of Investment Properties of America ("IPofA") and The 1031 Tax Group ("1031TG").

Relevant Entities

2. IPofA was a Delaware limited liability company with its principal place of business in Richmond, Virginia. IPofA was in the commercial real estate investment and management business.

3. 1031TG was a Delaware limited liability company with its principal place of business in Richmond, Virginia. Between August of 2005, and December of 2006, OKUN acquired six Qualified Intermediary companies. These acquisitions ultimately resulted in each of

the acquired entities and their affiliated subsidiaries becoming wholly-owned direct or indirect subsidiaries of 1031TG, which was, in turn, wholly owned by OKUN. These acquisitions included:

- a. Atlantic Exchange Company, Inc. ("AEC") in Boston, Massachusetts in or about August of 2005;
- b. Security 1031 Services, LLC ("SOS") in Trumbull, Connecticut in or about November of 2005;
- c. Real Estate Exchange Services, Inc. ("REES") in Safety Harbor, Florida in or about June of 2006;
- d. National Exchange Services QI, Ltd. ("NES") in San Antonio, Texas in or about June of 2006;
- e. Investment Exchange Group, LLC ("IXG") in Denver, Colorado in or about August of 2006, and;
- f. 1031 Advance, Inc. ("1031 Advance") in San Jose, California in or about December, 2006.

The Qualified Intermediary Industry

4. Section 1031 of the Internal Revenue Code permits owners of investment property to defer the capital gains tax that would otherwise be due and owing upon the sale of the investment property conditioned upon timely application of the sale proceeds to the purchase of an identified replacement investment property. These transactions are commonly known as a "like-kind exchanges," "tax-free exchanges," or "1031 exchanges."

5. In a typical 1031 exchange, an exchanger ("Exchanger" or "Client") sells his or her business or investment real estate. The Exchanger then has 45 days from the date of the sale to identify a like-kind replacement property and 180 days from the date of the sale to close on the purchase of the replacement property. In order to preserve the tax deferral, the Exchanger cannot take title to the sale proceeds (commonly referred to as "Exchange Funds," "Client Exchange Funds," or "Exchange Proceeds") but must instead deposit the proceeds with a Qualified Intermediary until the Exchanger is ready to timely close on the replacement property.

6. A Qualified Intermediary's responsibilities and obligations to the Exchanger regarding the safekeeping and use of Exchange Funds are typically set forth in a contract commonly referred to as an "Exchange Agreement," which is entered into between the Exchanger and the Qualified Intermediary.

1031 Tax Group's Exchange Agreements

7. While 1031TG did not use a uniform Exchange Agreement across its six subsidiary Qualified Intermediary ("QI") companies, the Exchange Agreements entered into by 1031TG's QI companies made it clear that Client Exchange Funds deposited with the QI were to be used to effectuate 1031 exchanges. The Exchange Agreements also included various promises regarding the safekeeping and use of Exchange Funds. For example:

- a. AEC's Exchange Agreement required that exchange proceeds be deposited in an interest bearing Escrow Account and that exchange proceeds "shall be used solely in accordance with the provisions of Article 3 to enable the Intermediary to perform its obligations as set forth hereunder and to effectuate the exchange. The Exchange Funds shall at no time be

considered part of the Intermediary's general assets nor subject to claims by the Intermediary's creditors."

- b. 1031 Advance's Exchange Agreement stated: "Exchanger and QI expressly agree that any cash proceeds received from the disposition of the Relinquished Property (Exchange Proceeds) shall be held in the account of QI with a nationally insured bank or savings institution."

OKUN's Misappropriation of Client Exchange Funds

8. Despite the limitations contained in the Exchange Agreements regarding the use of Client Exchange Funds by the QI's and the promises contained in the Exchange Agreements regarding the safekeeping of those funds, OKUN began misappropriating client funds soon after the acquisition of his first QI company, AEC, in or about August of 2005.

9. Typically upon acquiring a QI company and in order to effectuate and conceal his misappropriations, OKUN transferred, or caused the transfer of, the Client Exchange Funds held by the newly acquired QI company to bank accounts controlled by himself and a select group of IPofA and/or 1031TG executives. OKUN would then transfer, or cause the transfer, of Client Exchange Funds to: (a) his own personal bank accounts; (b) the bank accounts of other companies OKUN owned, which were unrelated to the QI companies, and; (c) the bank accounts of third-party lenders.

10. OKUN then used misappropriated Client Exchange Funds to: (a) fund his lavish lifestyle; (b) pay operating expenses for his various companies; (c) invest in commercial real estate, and; (d) purchase additional QI companies.

11. At various times, OKUN's misappropriations resulted in the depletion of Client Exchange Funds at 1031TG companies to the extent they were in danger of being unable to fund the 1031 exchanges of their clients. In order to continue the scheme and conceal the misappropriation of Client Exchange Funds, OKUN would use the remaining Client Exchange Funds under his control to finance the purchase of additional QI's. In doing so, OKUN was able to access the Client Exchange Funds of the newly acquired QI, use these funds to conceal the amounts he had previously misappropriated, and continue to use Client Exchange Funds for his personal benefit.

12. OKUN's misappropriations of Client Exchange Funds were euphemistically referred to by OKUN and a select group of IPofA and/or 1031TG executives as "loans" from the QI companies to IPofA. The vast majority of these "loans" were undocumented when consummated and there existed inadequate internal accounting controls to even track the amounts of the "loans."

Attorneys Warn OKUN About Potential Criminal Liability

13. In or about September of 2006, IPofA's in-house counsel became aware that OKUN and IPofA were removing Client Exchange Funds from the QI's. Thereafter, IPofA's in-house counsel began an internal investigation into the unauthorized transfers of QI Client Exchange Funds.

14. On or about November 7, 2006, IPofA's in-house counsel issued a memorandum to OKUN entitled "Affiliate Loans from Qualified Intermediary Companies." In that memorandum, the attorneys documented the following findings from their internal investigation: (a) the fund transfers from the QI's to OKUN, IPofA, and other parties began in August of 2005; (b) the

outstanding balance of the loans could be as low as \$80 million and as high as \$135 million; (c) few, if any, of the transactions were documented when consummated and some remained undocumented; (d) there was no current source of funds to repay these transactions; (e) the transactions and course of dealing were specifically concealed from IPofA in-house counsel (as well as outside counsel) and material misstatements had been made to in-house counsel during recent months concerning these transactions. The memorandum further contained interim conclusions stating that the prior conduct surrounding the loans: (a) violated existing exchange agreements with QI entity customers; (b) violated any fiduciary standard that might apply; (c) "could potentially subject one or more involved parties to criminal prosecution in multiple states and/or at the federal level (under theories ranging from theft, embezzlement, and or conversion to racketeering and laundering statutes);" (d) could potentially violate the terms of one or more existing loans to which IPofA, OKUN, and/or affiliates are parties; and (e) the Loans could render outstanding financial statements provided to lenders of IPofA or OKUN materially inaccurate. In the recommendations section of the memorandum, IPofA's in-house counsel stated that "[a]ll outstanding Loans should be repaid immediately."

15. On or about November 13, 2006, IPofA's in-house counsel became aware that OKUN was in negotiations to purchase another QI company – 1031 Advance. The attorneys became concerned that this was a continued effort to acquire new QI entities as a temporary fix to 1031TG's current financial problems and that it suggested an intent to continue the previously outlined improper course of conduct.

16. On or about November 21, 2006, IPofA's Chief Legal Officer ("CLO") wrote another memorandum, which was sent via electronic mail to OKUN, as a follow-up to the

November 7, 2006 Memorandum, entitled "Affiliate Transfers from QI Entities." In the November 21st Memorandum, the CLO wrote: (a) "[t]he prior course of conduct described in the November 7 memorandum likely constitutes violation of both federal and state criminal law;" (b) IPofA and 1031TG's outside counsel had confirmed the conclusion regarding the violation of both federal and state criminal law; (c) "[t]his prior course of conduct also constitutes a breach of the underlying exchange agreements (with respect to the QI entities) and likely a violation of state statutory and common law under a variety of theories;" (d) "[u]nder the Virginia Rules of Professional Conduct, [the CLO was] obligated to advise the company that continuing this course of conduct will likely result in both civil and criminal liability (in multiple jurisdictions) to the entities and individuals involved with such conduct;" and; (e) "[t]his course of conduct should cease and desist immediately and all outstanding funds owed to the QI entities should be repaid immediately." IPofA's CLO resigned on or about November 21, 2006.

17. On or about November 21, 2006, IPofA and 1031TG's outside counsel resigned from further representation of IPofA and 1031TG. In its resignation letter, the outside law firm stated: (a) the letter confirmed discussions between the law firm and OKUN that the law firm ceased to render legal services to IPofA and 1031TG; (b) the resignation decision was based on concerns about both entities' continuing course of conduct and potential conflicts of interest between IPofA and 1031TG; (c) under the Virginia Rules of Professional Conduct, the outside law firm was obligated to advise IPofA and 1031TG that continuing the prior course of conduct with respect to the transfer or investment of funds received by the 1031TG could result in civil and criminal liability to the entities and individuals involved with that conduct; (d) the outside law firm had counseled OKUN that the conduct must cease and all outstanding funds owed to the

QI entities should be repaid immediately; and (e) while OKUN had assured the outside law firm that all the entities involved were taking steps to cease and cure the improper course of conduct, the outside law firm could not continue to represent IPofA and 1031TG due to possibly divergent interests.

The Misappropriation of 1031TG's Client Funds Continues

18. On December 19, 2006, OKUN purchased 1031 Advance. Consistent with OKUN's prior course of conduct, 1031 Advance's client exchange funds – totaling approximately \$23 million – were transferred almost immediately upon its acquisition to bank accounts controlled by OKUN and executives at IPofA.

19. Despite the advice provided to OKUN by IPofA's in-house counsel and outside counsel – in their capacity as attorneys for OKUN's companies – regarding the potential criminal liability of transfers of Client Exchange Funds, OKUN continued to transfer, and/or cause the transfer of, millions of dollars of Client Exchange Funds from 1031TG to IPofA or one of OKUN's other companies. These transfers included: (a) \$5 million on December 20, 2006; (b) \$2 million on January 17, 2007; (c) \$1 million on January 24, 2007; (d) \$3 million on January 31, 2007; (e) \$2 million on February 15, 2007; (f) \$8 million on February 22, 2007; (g) \$1.4 million on March 1, 2007; (h) \$2 million on March 2, 2007; (i) \$1 million on March 8, 2007; (j) \$4.7 million on March 15, 2007; and (k) \$1 million on March 23, 2007. Consistent with OKUN's prior course of conduct, many of these "loans" were not documented when the transfers were consummated.

1031 Tax Group Declares Bankruptcy

20. On or about May 13, 2007, 1031TG filed for protection under Chapter 11 of the United States Bankruptcy Code. As of the date of the bankruptcy filing, 1031TG estimated that it was owed approximately \$132 million from IPofA as a result of OKUN's transfers of Client Exchange Funds.

COUNT ONE

(Mail Fraud)

21. The General Allegations contained in paragraphs 1 through 20 of this Indictment are realleged and incorporated as though set forth in full herein as constituting the scheme and artifice to defraud.

22. From in or about August of 2005 and continuing through in or about April of 2007, within the Eastern District of Virginia and elsewhere, the defendant,

EDWARD HUGH OKUN,

did knowingly execute and attempt to execute a scheme and artifice to defraud, and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises.

Purpose of the Scheme and Artifice

23. The purpose of the scheme and artifice was to mislead 1031TG clients ("Exchangers") regarding the safekeeping and use of Client Exchange Funds in order to obtain access to those funds so that OKUN could: (a) fund his lavish lifestyle; (b) pay operating expenses for his various companies; (c) invest in commercial real estate, and; (d) purchase additional QI companies.

The Mailings and Act of Execution

24. For the purpose of executing the scheme and artifice to defraud, and attempting to do so, OKUN did knowingly: (a) place and cause to be placed in any post office and authorized depository for mail matter, any matter and thing whatever to be sent and delivered by the Postal Service; (b) deposit and cause to be deposited any matter and thing whatever to be sent and

delivered by any private and interstate commercial carrier; and (c) cause to be delivered by mail and private and interstate commercial carrier any matter and thing whatever according to the direction thereon. That is a package containing \$15,000 in cash deposited with Federal Express, on or about January 22, 2007, for delivery from IPofA's headquarters in Richmond, Virginia, to OKUN on his yacht, "The Simone," located at The Atlantic Marina, slip #4041 on Paradise Island in the Bahamas.

(In violation of Title 18, United States Code, Sections 1341 and 2.)

COUNT TWO

(Bulk Cash Smuggling)

25. The General Allegations contained in paragraphs 1 through 20 of this Indictment are realleged and incorporated as though set forth in full herein.

26. On or about January 22, 2007, in the Eastern District of Virginia, and elsewhere, the defendant,

EDWARD HUGH OKUN,

with the intent to evade a currency reporting requirement under Title 31, United States Code, Section 5316, knowingly caused the concealment of more than \$10,000 in currency and other monetary instruments in a conveyance or other container, and caused the transport and transfer or the attempted transport and transfer of such currency and monetary instruments from a place within the United States to a place outside of the United States.

27. On or about January 22, 2007, OKUN sent the following instructions, via electronic mail, to an IPofA employee: "[C]ould you fed ex \$15,000 cash (large bills and pad the package with paper on both sides so it looks like a thick document, you may want to put it in several envelopes so they can't tell what it is) to me here in Nassau people don't like credit cards here. I would suggest cashing two checks one for 5,200 and one for 9,800 so you stay under the 10,000 cash reporting with the IRS or better yet take someone else with you, you cash one and they cash the other. I need it sent priority next day to: Atlantis Marina, Paradise Island, Nassau Bahamas, c/o motor Yacht Simone slip #4041, Telephone number 954-328-1481. Thanks, Ed."

28. On or about January 22, 2007, an IPofA employee withdrew \$15,000 in cash from one of IPofA's bank accounts in Richmond, Virginia. On that same day, Federal Express picked

up a package at IPofA's headquarters in Richmond, Virginia and delivered the package the following day to OKUN on his yacht, "The Simone," located at The Atlantic Marina, slip #4041 on Paradise Island in the Bahamas.

(In violation of Title 31, United States Code, Sections 5332 and 2, and Title 31 of the Code of Federal Regulations §§ 103.25 and 104.49.)

COUNT THREE

(False Declaration)

29. The General Allegations contained in paragraphs 1 through 20 of this Indictment are realleged and incorporated as though set forth in full herein.

30. Prior to November 7, 2007, a federal grand jury sitting in the Eastern District of Virginia issued a grand jury subpoena to the above mentioned Chief Legal Officer for IPofA for information related to the grand jury's investigation of the misappropriation of client exchange funds held at 1031TG. OKUN, by counsel, filed a Motion to Quash the grand jury subpoena based on his claim that he had a personal attorney-client relationship with the CLO.

31. On or about November 7, 2007, the United States District Court in the Eastern District of Virginia, considering OKUN's Motion to Quash, held an evidentiary hearing to hear testimony from OKUN and the CLO to determine whether a personal attorney-client relationship existed between OKUN and the CLO.

32. On or about November 7, 2007, in the Eastern District of Virginia, the defendant
EDWARD HUGH OKUN,
having taken an oath to testify truthfully in a proceeding before a United States District Court sitting in the Eastern District of Virginia, unlawfully, willfully, knowingly, and contrary to such oath, did make false material declarations, that is, he gave the following false testimony:

Question: Did you have a discussion with him about whether or not he was your lawyer or the companies' lawyer?

Answer: Yes.

Question: Did you ever discuss with him [the CLO] your view as to whether or not he was your lawyer?

Answer: Yes.

Question: Without telling us the details of the conversation, what was the nature of your assertion to [the CLO]?

Answer: That he personally was my lawyer.

Question: As it relates to what?

Answer: To the memorandums and this matter regarding borrowings from the QI.

33. When in truth and in fact, as OKUN well knew, OKUN never had a discussion with the CLO in which OKUN told the CLO that OKUN believed the CLO to be his personal attorney.

(In violation of Title 18, United States Code, Section 1623(a)).

Forfeiture Allegation

Pursuant to Federal Rule of Criminal Procedure 32.2, the defendant is advised that upon conviction of the offense charged in Count One of this indictment, he shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to the violation charged in Count One, and upon conviction of the offense charged in Count Two of this indictment, he shall forfeit to the United States, any property, real or personal, involved in the offense, and any property traceable to such property.

Property subject to forfeiture consists of, but it not limited to, the following:

The sum of not less than \$132 million which represents the proceeds of client funds fraudulently transferred by the defendant to IpofA as charged in Count One.

The sum of \$15,000 which represents property involved in the offense charged in
Count Two.

If property subject to forfeiture meets the requirements of 21 U.S.C. §853(p), the
government will seek an order forfeiting substitute assets.

(In accordance with 18 U.S.C. §981(a)(1)(C) and 28 U.S.C. §2461(c) and 31 U.S.C.
§5332(b)(2)).

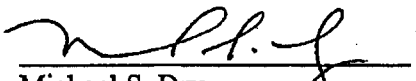
A TRUE BILL

FOREPERSON

CHUCK ROSENBERG
UNITED STATES ATTORNEY

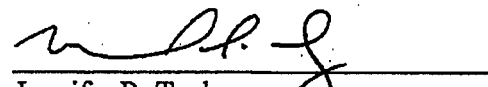
STEVEN R. TYRRELL
CHIEF, FRAUD SECTION

By:



Michael S. Dry
Assistant United States Attorney
Eastern District of Virginia

By:



for Jennifer R. Taylor
Trial Attorney, Fraud Section
U.S. Department of Justice