

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

Richmond Division

UNITED STATES OF AMERICA

v.

RICHARD B. SIMRING,

Defendant.

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Criminal No. 3:08cr 321

Count 1 - 18 U.S.C. § 371
Conspiracy to Commit Mail Fraud
& Money Laundering

CRIMINAL INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT:

GENERAL ALLEGATIONS

At all times relevant to this Criminal Information:

The Conspirators

1. Edward Hugh Okun ("Okun") was the sole owner of Investment Properties of America ("IPofA"), The 1031 Tax Group ("1031TG"), and Okun Holdings, Inc.
2. RICHARD B. SIMRING ("SIMRING") was an attorney who, beginning in January of 2007, served as the Chief Legal Officer ("CLO") for Okun Holdings, Inc. ("Okun Holdings"), which was incorporated to serve as the parent entity for all Okun owned businesses, though no actual transfers of ownership to Okun Holdings ever occurred.
3. Other conspirators, not named herein, included senior executives at IPofA, 1031TG, and Okun Holdings.

Relevant Entities

4. 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.

5. 1031TG was a Delaware limited liability company with its principal place of business in Richmond, Virginia. Between August 2005 and December 2006, Okun acquired six Qualified Intermediary ("QI") 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 2005;
- b. Security 1031 Services, LLC ("SOS") in Trumbull, Connecticut in or about November 2005;
- c. Real Estate Exchange Services, Inc. ("REES") in Safety Harbor, Florida in or about June 2006;
- d. National Exchange Services QI, Ltd. ("NES") in San Antonio, Texas in or about June 2006;
- e. Investment Exchange Group, LLC ("IXG") in Denver, Colorado in or about August 2006; and
- f. 1031 Advance, Inc. ("1031 Advance") in San Jose, California in or about December 2006.

The Qualified Intermediary Industry

6. 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 “like-kind exchanges,” “tax-free exchanges,” or “1031 exchanges.”

7. 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 must deposit the sale proceeds (commonly referred to as “Exchange Funds,” “Client Exchange Funds,” or “Exchange Proceeds”) with a QI until the Exchanger is ready to timely close on the replacement property.

8. A QI’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 QI.

1031 Tax Group’s Exchange Agreements

9. While 1031TG did not use a uniform Exchange Agreement across its six subsidiary 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 held and used to effectuate 1031 exchanges. The Exchange Agreements included various promises regarding the safekeeping and

use of Exchange Funds, which limited the permissible uses of Client Exchange Funds to effectuating client exchanges.

COUNT ONE
(Conspiracy to Commit Mail Fraud and Money Laundering)

THE CONSPIRACY

10. The allegations set forth in paragraphs 1 through 9 of this Criminal Information are realleged and incorporated as though set forth in full herein.

11. From in or about March 2007 through in or about May 2007, within the Eastern District of Virginia and elsewhere, defendant

RICHARD B. SIMRING

did unlawfully and knowingly combine, conspire, confederate, and agree with others, both known and unknown, to commit offenses against the United States, namely:

- a. Having devised and intending to devise a scheme and artifice to defraud and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises, 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, in violation of Title 18, United States Code, Section 1341; and
- b. Did knowingly conduct and attempt to conduct financial transactions affecting interstate commerce and foreign commerce, which transactions involved the

proceeds of specified unlawful activity, that is mail fraud, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

PURPOSE

12. A purpose of the conspiracy was to mislead 1031TG Clients regarding the safekeeping and use of Client Exchange Funds, as well as the ever worsening financial condition of 1031TG, in order to obtain access to client funds so that the conspirators could: (a) pay for Okun's lavish lifestyle; (b) pay large salaries and bonuses for the conspirators; (c) purchase additional QI companies; (d) pay operating expenses for Okun's various companies; and (e) invest in commercial real estate.

MANNER AND MEANS

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

14. 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 personal and business bank accounts controlled by Okun

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.

15. Okun used misappropriated Client Exchange Funds to: (a) fund his lavish lifestyle; (b) pay large salaries and bonuses for the conspirators; (c) pay operating expenses for his various companies; and (d) invest in commercial real estate.

16. 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.

17. In or about September of 2006, IPofA's in-house counsel became aware that Okun and IPofA were taking 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.

Attorneys Warn About Potential Criminal Liability

18. On or about November 7, 2006, IPofA's in-house counsel issued a memorandum to Okun and other IPofA executives 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; and (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 result in material inaccuracies on outstanding financial statements provided to lenders of IPofA or Okun. In the memorandum, IPofA’s in-house counsel recommended that “[a]ll outstanding Loans should be repaid immediately.”

19. On or about November 13, 2006, IPofA’s in-house counsel became aware that Okun was in negotiations to purchase another QI company named 1031 Advance, Inc. (“1031 Advance”). The attorneys became concerned that this purchase represented part of a continuing 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.

20. On or about November 21, 2006, IPofA's Chief Legal Officer ("CLO") wrote another memorandum, which was sent via electronic mail to Okun and other IPofA executives, as a follow-up to the November 7th 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.

21. On or about November 21, 2006, IPofA and 1031TG's outside counsel also 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.

Okun Hires SIMRING

22. In or about November 2006, Okun consulted with SIMRING, who at the time was a partner at a Miami law firm, about the issues raised by IPofA's CLO and IPofA and 1031TG's outside counsel regarding the transfers of Client Exchange Funds. SIMRING subsequently reviewed specific 1031TG Exchange Agreements, conducted independent legal research, and spoke to the in-house and outside counsel that had raised the concerns. SIMRING concluded that Okun's prior course of conduct of obtaining money under false pretenses risked criminal liability.

23. SIMRING informed Okun of his conclusions and advised Okun that the transfers of Client Exchange Funds must cease until: (1) the exchange agreements were changed to allow for the transfer of Client Exchange Funds; and (2) there was adequate liquidity at 1031TG to ensure that there were sufficient funds to cover client exchanges as they became due. SIMRING further informed Okun that following this prospective advice would not rectify what Okun had done in the past, but by ensuring that no clients lost money, Okun would minimize the likelihood that law enforcement authorities would learn about what Okun had done, which would minimize the prospect of Okun being criminally prosecuted. In response, Okun told SIMRING that the

exchange agreements would be changed and that Okun would pay back the majority of the Client Exchange Funds that he and IPofA had taken from 1031TG. SIMRING told Okun that failing to follow his advice would likely result in Okun going to jail.

24. In or about January 2007, Okun hired SIMRING to be the Chief Legal Officer for Okun Holdings at an annual salary of \$850,000, with a signing bonus of \$100,000.

25. In or about March 2007, SIMRING became aware that: (1) Okun was continuing to illicitly transfer millions of dollars of Client Exchange Funds from 1031TG to IPofA and Okun's personal bank account; (2) 1031TG's exchange agreements had not been changed; and, (3) 1031TG was on the verge of insolvency. When SIMRING confronted Okun about the continued illicit transfer of Client Exchange Funds, Okun stated that it was only in the short term and that Okun was in the process of paying 1031TG back to ensure that it had adequate liquidity. Despite these assurances, the financial condition of 1031TG continued to deteriorate.

26. In or about April 2007, the financial condition of 1031TG had worsened to the point that 1031TG was unable to fund certain client exchanges when due. In response to inquiries from 1031TG clients regarding delays in funding their exchanges and in order to conceal the prior misappropriations, SIMRING and other conspirators lied to 1031TG clients by informing them that their funds were secure and that the delay was a short-term liquidity issue resulting from mistimed investments. But in truth and fact, 1031TG was insolvent as a result of the prior misappropriations by Okun and the other conspirators.

27. In order to conceal the misappropriations and the ever worsening financial condition of 1031TG – and wholly consistent with a typical “Ponzi” scheme – it was part of the conspiracy that Okun, SIMRING, and other conspirators continue to misappropriate Client

Exchange Funds to make “lulling” payments to earlier unwitting 1031TG clients from deposits belonging to later unwitting 1031TG clients. Each and every one of these lulling payments represented a separate misappropriation of Client Exchange Funds.

28. In or about late April 2007, 1031TG’s CEO resigned due to concerns regarding the illicit transfers of Client Exchange Funds. The CEO was one of the authorized signatories for approximately \$8 million of 1031TG Client Exchange Funds held in bank accounts in California. Upon 1031TG’s CEO’s resignation, Okun appointed SIMRING as interim CEO of 1031TG. So the conspirators could continue to make “lulling” payments, and thereby avoid detection by law enforcement authorities, Okun directed SIMRING to transfer the approximately \$8 million of Client Exchange Funds to bank accounts controlled by Okun and other conspirators. In response, SIMRING willingly complied with Okun’s directive. SIMRING resigned three days after assuming the role of interim CEO of 1031TG.

1031 Tax Group Declares Bankruptcy

29. 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 the illicit transfers of Client Exchange Funds.

OVERT ACTS

30. In furtherance of the conspiracy and to affect the objects thereof, within the Eastern District of Virginia and elsewhere, defendant SIMRING, conspirator Okun, and other conspirators did commit and cause to be committed the following overt acts, among others:

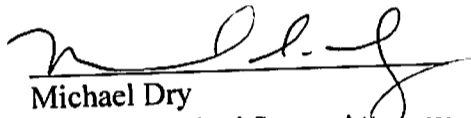
- a. On or about April 26, 2007, cause a package containing two checks of Client Exchange Funds to be delivered, via Federal Express, from Boston, Massachusetts to Richmond, Virginia.
- b. On or about April 20, 2007, cause the wire transfer of \$6,177,249 from IPofA's Wachovia Bank Account # XXXX2719 to 1031TG's Wachovia Bank Account # XXXX3272.

(All in violation of Title 18, United States Code, Section 371.)


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