

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

2021 JUL -8 PM 1:30

CLERK

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UNITED STATES OF AMERICA,

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Crim. No.

2:21-cr-58-1

v.

)

)

(18 U.S.C. §§ 1014, 1343,
1957)

DENNIS DUFFY II

)

Defendant.

)

INDICTMENT

The grand jury charges:

A. The Paycheck Protection Program Fraud

1. At all times material to this indictment, the defendant DENNIS DUFFY II owned and operated Night Owl Cleaning, also known as Night Owl Cleaning, Inc., a commercial cleaning business with an address in Winooski, Vermont. DUFFY and Night Owl Cleaning had accounts at North Country Federal Credit Union, a federal credit union with offices in Vermont.

2. In March 2020, Congress enacted the Coronavirus Aid, Relief and Economic Security Act as part of the Government's response to the COVID-19 epidemic. Among other things, the CARES Act established the Paycheck Protection Program, an economic stimulus program administered by the United States Small Business Administration. The purpose of the PPP was to provide low-cost unsecured loans to small businesses to assist them in remaining

open and viable during the pandemic. PPP loans were funded by private financial institutions but those loans were guaranteed by the Small Business Administration. An applicant for a PPP loan had to certify that he or she would use the loan proceeds for specified business purposes, including the retention of workers and maintaining payroll expenses, and the making of mortgage interest, lease and utility payments.

3. On or about June 30, 2020, DUFFY, on behalf of Night Owl Cleaning, submitted a written PPP loan application to NCFCU. The application sought a loan in the amount of \$416,093.23.

4. As part of its loan approval process, NCFCU required DUFFY to submit information about Night Owl Cleaning to verify that the company was eligible for and qualified to receive a PPP loan. DUFFY provided NCFCU with copies of Night Owl Cleaning financial information, some of which was false and fraudulent, intending that such documentation would induce NCFCU to approve the PPP loan application. The false and fraudulent documentation included:

a. Internal Revenue Service Form 1120 (U.S. Corporation Tax Return) for 2019. The form purported to show that Night Owl Cleaning had gross receipts in 2019 of more than \$7.3 million and taxable income of nearly \$382,000. In truth and in fact, DUFFY did not file a Form 1120 with IRS in 2019, and reported to IRS that in 2019

Night Owl Cleaning had gross receipts of only \$79,669 and net profits of only \$15,785.

b. IRS Forms 941 (Employer's Quarterly Federal Tax Return) for all four quarters of 2019 and the first two quarters of 2020. In each of those returns, DUFFY claimed Night Owl Cleaning had 21 salaried employees to whom it paid wages totaling about \$499,000 each quarter. In truth and in fact, DUFFY did not submit any Form 941s to the IRS.

c. Invoices from a business named VT Commercial, which purported to show that Night Owl Cleaning paid monthly rent of \$11,416.67 in May and June 2020. In truth and in fact, both invoices were forgeries and Night Owl Cleaning never paid any rent to VT Commercial.

d. Invoices from Vermont Gas, a Vermont utility company, which purported to show that Night Owl Cleaning was a customer of Vermont Gas in May and June 2020 and received service at its office in Winooski. In truth and in fact, Night Owl Cleaning has never had an account with Vermont Gas.

5. NCFCU approved the Night Owl Cleaning PPP loan application. On or about July 1, 2020, NCFCU disbursed the loan proceeds by depositing \$416,093.22 into Night Owl Cleaning's NCFCU account.

6. On or about July 9, 2020, DUFFY signed a contract to purchase 557 East Road, a residential property in Milton, Vermont, for \$385,000.

7. On or about July 13, 2020, DUFFY used proceeds of Night Owl Cleaning's PPP loan to make a \$7700 down payment on 557 East Road. On or about August 17, 2020, DUFFY used proceeds of the PPP loan to purchase a NCFCU official check in the amount of \$383,616.91. The check was made payable to a Vermont attorney who was representing DUFFY in the purchase of 557 East Road. The proceeds of the check were used to close the purchase of 557 East Road on August 18, 2020.

B. The Fraud Against American Express

8. On or about April 27, 2017, DUFFY opened a corporate credit card account with American Express, Inc. in the name Dennis Duffy/Night Owl Cleaning.

9. On or about May 12, 2017, DUFFY used the AMEX credit card to make a \$50,000 charge with an entity named Vermont Aerial. This transaction was processed by Stripe, an Internet-based credit card processing company with United States offices in New York City, Chicago, Seattle and San Francisco. This \$50,000 charge was fraudulent because DUFFY did not intend the proceeds to be paid to Vermont Aerial; rather, the monies were secretly intended to benefit DUFFY and Night Owl Cleaning. On or about May 23, 2017, American Express, through Stripe, transferred

\$48,549.72 (\$50,000 less processing fees) to an account at NCFCU in the name of The Pet Stop, a business controlled by DUFFY. DUFFY immediately retransferred those funds from the Pet Stop account to Night Owl Cleaning's NCFCU account, then used that money for his personal benefit.

10. On or about June 5, 2017, DUFFY used the AMEX credit card to make a \$25,000 charge with Vermont Aerial. This transaction was processed by Stripe. This \$25,000 charge was fraudulent because DUFFY did not intend the proceeds to be paid to Vermont Aerial; rather, the monies were secretly intended to benefit DUFFY and Night Owl Cleaning. On or about June 7, 2017, American Express, through Stripe, transferred \$24,274.70 (\$25,000 less processing fees) to the NCFCU Pet Stop account. DUFFY immediately retransferred those funds from the Pet Stop account to Night Owl Cleaning's NCFCU account, then used that money for his personal benefit. Among other things, DUFFY used \$12,700 to purchase a 1996 Nissan 300ZX automobile, VIN JN1CZ24D0TX580442.

11. On or about August 1, 2017, DUFFY used the AMEX credit card to make a \$50,000 charge with Vermont Aerial. This transaction was processed by Stripe. This \$50,000 charge was fraudulent because DUFFY did not intend the proceeds to be paid to Vermont Aerial; rather, the monies were secretly intended to benefit DUFFY and Night Owl Cleaning. On or about August 2, 2017, American Express, through Stripe, transferred \$48,549.70

(\$50,000 less processing fees) to the NCFCU Pet Stop account. DUFFY immediately retransferred those funds from the Pet Stop account to Night Owl Cleaning's NCFCU account, then used that money for his personal benefit. Among other things, DUFFY used \$28,201 to purchase a 2014 Ford truck, VIN 1FTFW1EF6EFB28601.

12. DUFFY has not repaid American Express any of the \$125,000 he charged on the Duffy/Night Owl Cleaning credit card.

13. In the course of opening the Duffy/Night Owl Cleaning American Express account and in making the three charges to Vermont Aerial, DUFFY caused electronic communications between Vermont and places outside Vermont. In the course of causing Stripe to process the Vermont Aerial charges, DUFFY caused electronic transfers of funds in the amount of \$125,000 from accounts outside Vermont to NCFCU accounts in Vermont controlled by DUFFY.

COUNT 1

14. The grand jury repeats and realleges paragraphs 1-7 of this indictment.

15. On or about June 30, 2020, in the District of Vermont, the defendant DENNIS DUFFY II knowingly made false statements and reports to North Country Federal Credit Union, a federal credit union, for the purpose of influencing in any way the action of NCFCU upon Night Owl Cleaning's \$416,093.22 Paycheck Protection Program loan application, by submitting to NCFCU false and fraudulent Internal Revenue Service Forms 1120 and 941, and false and fraudulent invoices from VT Commercial and Vermont Gas.

(18 U.S.C. § 1014)

COUNT 2

16. The grand jury repeats and realleges paragraphs 1-7 of this indictment.

17. On or about August 17, 2020, in the District of Vermont, the defendant DENNIS DUFFY II knowingly and willfully engaged in a monetary transaction affecting interstate commerce, which involved criminally derived property of a value greater than \$10,000 and which property was derived from specified unlawful activity, by purchasing a \$383,616.91 official check with proceeds of the \$416,093.22 PPP loan he fraudulently obtained from NCFCU.

(18 U.S.C. §§ 1957 & 2)

COUNT 3

18. The grand jury repeats and realleges paragraphs 8-13 of this indictment.

19. On or about the dates listed below, in the District of Vermont and elsewhere, the defendant DENNIS DUFFY II, having devised the above described scheme and artifice to defraud American Express, Inc., and for obtaining money from American Express, Inc. by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme, caused the following electronic transfers of funds from bank accounts outside Vermont to bank accounts controlled by DUFFY inside Vermont:

| DATE | APPROXIMATE AMOUNT |
|----------------|---------------------------|
| May 23, 2017 | \$50,000 |
| June 7, 2017 | \$25,000 |
| August 2, 2017 | \$50,000 |

(18 U.S.C. §§ 1343 & 2)

FORFEITURE NOTICE

20. The allegations of this indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

21. Upon conviction of the offenses charged in Counts 1 and 3, the defendant DENNIS DUFFY II shall forfeit to the United States any property which represents or is traceable to the gross receipts obtained, directly or indirectly, as a result of such violations. The property to be forfeited includes, but is not limited to, the following:

- (a) 1996 Nissan 300ZX automobile, VIN JN1CZ24D0TX580442
- (b) 2014 Ford truck, VIN 1FTFW1EF6EFB28601
- (c) United States funds in the amount of \$541,093.22 obtained as a result of the violations.

22. If any of the property described above, as a result of any act or omission of the defendant:

- 1) cannot be located upon the exercise of due diligence;
- 2) has been transferred or sold to, or deposited with, a third party;
- 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 divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property 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).

(18 U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461(c))

A TRUE BILL
REDACTED

FOREPERSON _____

Jonathan A. Ophardt

JONATHAN A. OPHARDT (GLW)
Acting United States Attorney
Burlington, Vermont
July 8, 2021