

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA	*	CRIMINAL NO. 12-124
v.	*	SECTION: "G"
EARL MYERS	*	
	* * *	

FACTUAL BASIS

Should this matter have gone to trial, the Government would have proved beyond a reasonable doubt, through the introduction of competent testimony and admissible tangible exhibits including the testimony of special agents of the Federal Bureau of Investigation (FBI), Department of Housing and Urban Development, Office Of Inspector General (HUD-OIG) and others, the following facts to support the allegations charged by the United States Attorney in the Bill of Information now pending against the defendant, **EARL MYERS**:

**CONSPIRACY TO COMMIT THEFT IN CONNECTION
WITH A PROGRAM RECEIVING FEDERAL FUNDS**

New Orleans Affordable Homeownership Corporation

Prior to August 2005, the City of New Orleans contracted with New Orleans Affordable Homeownership Corporation ("NOAH"), a city agency and non-profit corporation, to help repair and remediate residential properties owned by low to moderate income individuals. The NOAH home remediation program was designed to address the problem of blight in the New Orleans metropolitan

area. Primarily, NOAH provided paint supplies, painting service and roofing materials to eligible program participants.

On or about August 29, 2005, Hurricane Katrina made landfall in the New Orleans, Louisiana area, and, as a result, damaged and destroyed homes in the New Orleans. Hurricane Katrina further exacerbated the blight problem in the City of New Orleans and created even more of an urgency to repair and remediate blighted homes.

To that end, in January of 2006, the City of New Orleans entered into a one-year contract with NOAH expanding the scope of its previous agreements to include gutting services. The program, called the Mayor's Home Remediation Program, still provided painting and roofing services to qualified individuals; however, post-Hurricane Katrina, NOAH began providing gutting services to homeowners whose homes were damaged by the storm. Gutting services included the complete gutting of a home, pressure washing the exterior, securing the home by boarding windows and doors, and grass cutting. In January of 2007, the City of New Orleans renewed its one-year agreement for home remediation services, including gutting, roofing, grass-cutting, boarding, and painting.

Prior to and after Hurricane Katrina, City Official A was the Executive Director of NOAH. As the Executive Director of NOAH, City Official A was an agent of the organization, and had the following responsibilities, among others: (1) supervised the rehabilitation of properties; (2) managed professional service agreements; (3) supervised services provided by contractors; and (4) supervised all staff persons at New Orleans Affordable Homeownership. City Official A was also responsible for the day-to-day management of the contractors and had the ability to decide how much work each contractor would get.

Housing and Urban Development Community Development Block Grants

Prior to and after August 2005 the United States Department of Housing and Urban Development, an agency and department of the United States, awarded federally funded grants annually to the City of New Orleans in the form of Community Development Block Grants (the “CDBG program”). The primary objectives of the CDBG program are to develop viable communities by the provision of decent housing and a suitable living environment principally for low to moderate income households. A program may qualify for CDBG funds if it meets at least one of the following objectives: (1) to benefit low and moderate income persons, (2) prevent slums or blight, and (3) meet urgent needs that pose an immediate threat to a community. At least 70% of the funds must go toward the first objective, the benefit of low and moderate income persons.

In 2005, 2006, and 2007, CDBG program money funded NOAH’s activities through yearly contracts between the City of New Orleans and NOAH. Under these agreements, NOAH was entitled to receive \$880,000 per year in federal money to support home remediation work. In exchange for the CDBG money, NOAH agreed to provide the remediation services and satisfy certain CDBG program requirements.

From 2005 through 2008, NOAH received federal funds from the Department of Housing and Urban Development in the form of CDBG money in excess of \$10,000 per year.

Among other things, NOAH agreed to keep detailed records supporting the work performed, including all source documents evidencing eligible and authorized expenditures, and demographic information, including race, age and income level of participants in the remediation programs.

NOAH Contractors

Under its agreements with the City of New Orleans to receive CDBG money for the years 2005, 2006, and 2007, NOAH was required to hire contractors through a competitive bidding process.

Myers and Sons

Prior to Hurricane Katrina and through on or around September 2008, Myers and Sons was owned and operated by the defendant, **EARL MYERS**.

Excel Development

Prior to Hurricane Katrina and continuing through September of 2008, Excel Development was owned and operated by the defendant, **EARL MYERS**.

Federal Funds Paid to EARL MYERS

From May of 2006 to July 2008, NOAH paid the defendant, **EARL MYERS**, and his corporations Myers and Sons and Excel Development more than \$500,000.

The Conspiracy

From on or about April of 2005 through September 2008, in the Eastern District of Louisiana, the defendant, **EARL MYERS**, did knowingly and willfully combine, conspire, and confederate and agree with persons known and unknown, including City Official A, to among other things, to embezzle, steal and obtain by fraud and otherwise without authority, convert to the use of **EARL MYERS**, and others known and unknown, property valued at \$5,000 or more and owned by or under the care, custody and control of the City of New Orleans in that **EARL MYERS**, through Myers and Son and Excel Development, received thousands of dollars in funds that neither he nor his co-conspirators were entitled to because he did not perform remediation work on numerous residences

located in the city of New Orleans, in violation of Title 18, United States Code, Section 666(a)(1)(A).

In furtherance of the conspiracy and to effect the objects of the conspiracy, the following overt acts, among others, were committed in the Eastern District of Louisiana and elsewhere:

1. In or around April of 2005, City Official A asked the defendant, **EARL MYERS**, to put property located on Bayou Road in New Orleans, Louisiana in the name of the defendant's company, Excel Development. City Official A and **EARL MYERS** agreed that the property would be kept in the name of Excel Development, but that City Official A would pay for the property and the property taxes. It was part of the agreement between City Official A and **EARL MYERS** that the Bayou Road Property would really belong to City Official A so that she could develop the property, but that it could not be in City Official A's name because of her status as the Executive Director of NOAH. The defendant, **EARL MYERS**, agreed to put the Bayou Road properties in his name because he wanted to continue to receive work as a NOAH contractor.
2. On two occasions in January of 2005, City Official A gave the defendant, **EARL MYERS**, a check from NOAH and asked him to cash it and give her the money. City Official A wanted the defendant to cash the check through his account so that the NOAH funds could not be traced back to her. The defendant, **EARL MYERS**, agreed to cash the checks because he wanted to continue to receive work as a NOAH contractor.
3. From on or about December of 2006 to on or about July of 2007, City Official A contracted with the defendant to renovate properties that she owned which were located on 6th Street and Danneel Street in New Orleans, Louisiana. City Official A paid the defendant more than \$90,000 to complete the renovation project. A portion of this amount was paid for with federal money belonging to NOAH.
4. On numerous occasions from May 2006 through July 2008, the defendant **EARL MYERS**, corruptly agreed with City Official A, that he would be paid an "overpayment" in numerous NOAH checks that exceeded the amount of money he or his company Myers and Sons or Excel Development was owed for work that he or his subcontractors actually performed on home remediation. Specifically, various NOAH checks included an overpayment which was "extra" money which the defendant, **EARL MYERS**, and City Official A knew could not be substantiated by invoices or work actually performed. It was part of the agreement between **EARL MYERS** and City Official A, that the defendant would give this extra money to City

Official A as a “kickback,” thus ensuring that the defendant, **EARL MYERS**, would continue to get work from NOAH.

- On or around June 6, 2006, City Official A gave **EARL MYERS** a NOAH check in the amount of \$16,420.80. City Official A told Myers to give her half the amount and was told that he could keep the remaining half.
 - On or around November 1, 2007, City Official A gave **EARL MYERS** two NOAH checks totaling \$80,742 when he had only invoiced work totaling \$51,085.00. The NOAH check amounted to an overpayment of \$29,657. City Official A then instructed **EARL MYERS** to pay \$10,200 to Z.F., \$500.00 to Holy Name of Jesus, and give half of the remaining funds (approximately \$9,479.00) to City Official A and to keep the other half for himself.
 - In or around May of 2008, City Official A instructed **EARL MYERS** to keep \$5,000 and give her \$5,000 from a NOAH check. She told him to put an additional \$5,000 toward “construction costs.” The note “construction costs” refers to construction costs to renovate City Official A’s personally owned property located at 1925-31 6th Street.
5. On or about May 1, 2008, City Official A gave the defendant, **EARL MYERS**, a NOAH check in excess of \$30,000 made out to Myers and Sons and instructed the defendant to give portions of this check to different entities and individuals that she knew or was affiliated with. City Official A instructed the defendant to pay her a portion of this check by having him pay a landscaper \$4,100 to work on her mother’s home located at 7623 Plum St., New Orleans, Louisiana. In exchange for doing so, City Official A instructed the defendant that he could keep \$7,500 of the NOAH money, above and beyond the amount he earned in connection with work he did to remediate NOAH properties.
6. On or about June 6, 2008, City Official A gave the defendant, **EARL MYERS**, a NOAH check in excess of \$19,000 made out to Excel Development and instructed the defendant to give portions of this check to different entities and individuals that she knew or was affiliated with. City Official A instructed the defendant to pay her a portion of this check by having him pay a landscaper a second installment in the amount of \$3,000 for work performed on her mother’s home located at 7623 Plum St., New Orleans, Louisiana. The defendant understood that “kicking back” a portion of the NOAH check for the benefit of City Official A would ensure that he would continue getting NOAH remediation work assignments from City Official A.

7. On or around August 12, 2008, the defendant, **EARL MYERS**, was served with a subpoena from a federal grand jury ordering him to produce documents supporting work he performed to remediate homes for the New Orleans Affordable Homeownership program. On or around that day, the defendant spoke with City Official A in person to express his concern that he did not have documentation to support the work he did for NOAH. City Official A assured him not to worry and indicated that she would take care of it.
8. On or about August 13, 2008, in the Eastern District of Louisiana, the defendant, **EARL MYERS**, received false invoices in his mailbox originating from City Official A for the purpose of submitting them in response to the federal grand jury subpoena. The defendant and City Official A knew that the invoices were fake, and agreed that they would be submitted to the grand jury in response to the subpoena so that the grand jury would have the false impression that the defendant, **EARL MYERS**, properly invoiced NOAH for work he performed and that NOAH paid him for that work.
9. On or about August 14, 2008, in the Eastern District of Louisiana, City Official A sent Z.F. to meet with the defendant, **EARL MYERS**, at a Walgreens located on St. Charles Avenue in New Orleans, Louisiana. Z.F. provided **EARL MYERS** with false task orders created by City Official A for the purpose of submitting them in response to the subpoena he received from a federal grand jury. The defendant understood from his conversations with City Official A, that City Official A provided him with the false task orders so he could submit them to the federal grand jury and lead the grand jury to believe that he had performed remediation work on the homes listed in the task orders.
10. On or about August 15, 2008, the defendant, **EARL MYERS**, received a false invoice from City Official A in his mailbox in connection with work he allegedly performed to remediate homes for the NOAH program. The defendant and City Official A knew that this invoice was not prepared by the defendant and did not represent work done by the defendant.

11. On or about August 21, 2008, in the Eastern District of Louisiana, the defendant, **EARL MYERS**, presented the false documents to the grand jury, as part of his agreement with City Official A.

READ AND APPROVED:

RICHARD E. MOORE (Date)
Counsel for Earl Myers

FRED P. HARPER, JR. (Date)
Assistant United. States Attorney

EARL MYERS (Date)
Defendant