

NEWS

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New Charges Brought in Superseding Indictment Against Former Operator of Cartec Motors, LLC

(More)

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TRENTON – A grand jury returned a 17-count Superseding Indictment today that charges Denis Kelliher, the former operator of a Bordentown car dealership, with bank fraud, wire fraud, and money laundering, and seeks criminal forfeiture in the amount of \$14.9 million, U.S. Attorney Paul J. Fishman, announced.

Denis Kelliher, 39, who resides in both Toms River and Monroe Township, has been free on bond since his arrest in Aug. 10, 2009. Kelliher's arraignment on the Superseding Indictment before U.S. District Court Chief Judge Garrett E. Brown, Jr., will be scheduled in the near future.

The Superseding Indictment charges Kelliher with three counts of bank fraud, three counts of wire fraud, and eleven counts of money laundering. The Superseding Indictment also contains a forfeiture allegation seeking forfeiture of illegal proceeds in the total amount of \$14.9 million.

Kelliher was the principal operator of Cartec Motors, LLC, ("Cartec") located on Route 206 in Bordentown, which was in the business of buying and selling both new and used motor vehicles, including recreational vehicles. The Superseding Indictment expands on the original allegations against Kelliher which included a \$7.1 million dollar check kiting scheme, and fraud in connection with a \$410,000 loan from a prior Cartec customer.

Among the new allegations contained in the Superseding Indictment:

- That Kelliher defrauded KeyBank out of approximately \$6.4 million in connection with his car dealership's floor plan line of credit.
- That Kelliher defrauded an individual out of \$500,000 in connection with a July 2008 loan.
- That Kelliher laundered money derived from his fraudulent schemes.
- A forfeiture allegation seeking forfeiture of the illegal proceeds in the amount of \$14.9 million.

According to the Superseding Indictment, beginning in August 2007, in connection with KeyBank's approval of Cartec's floor plan line of credit, Kelliher provided KeyBank with a false Personal Financial Statement, purporting to show ownership in Future Real Estate Group, LLC, a company in which Kelliher no longer held an ownership interest, and purporting to show ownership of a 2004 Lamborghini Murcielago, a vehicle valued at \$225,000 that a Cartec customer provided to Kelliher to sell on his behalf.

Floor plan financing is a type of asset-based financing commonly used in the automotive sales industry whereby a lender extends a revolving line of credit to an auto dealer to purchase vehicles for inventory. The lender takes a security interest in the purchased vehicles and when the auto dealer sells a vehicle, the dealer is required to immediately repay the lender the amount lent for the purchase of that particular vehicle.

Count One of the Superseding Indictment alleges that Kelliher fraudulently obtained advances from KeyBank, pursuant to the Floor Plan Agreement, and sold vehicles that Cartec financed through the Floor Plan Agreement out of trust, using the proceeds of these sales for personal and business expenses. Kelliher made false statements to KeyBank regarding the ownership and location of these vehicles, and provided false documents, including bogus sales agreements and forged checks, to KeyBank representatives. Kelliher's fraudulent conduct in financing vehicles that Cartec never owned, and selling vehicles out of trust, resulted in a loss to KeyBank of more than \$6.4 million in connection with loans for which KeyBank now holds no collateral.

In addition, the wire fraud counts charge Kelliher in connection with two separate schemes in which he approached individuals for loans to be used to purchase vehicles for sale. The Superseding Indictment alleges that Kelliher pledged certain collateral for the \$500,000 loan from an individual identified only as "Victim-1" in the Superseding Indictment, including the Lamborghini Murcielago that Kelliher didn't own, which he gave to Victim-1 to use. Instead of using the loan proceeds to purchase vehicles for sale, Kelliher used the loan proceeds for other things, including transferring money to a KeyBank account to pay down part of the \$7.4 million overdraft caused by Kelliher's check kiting scheme.

A prior Cartec customer, identified only as "Victim-2" in the Superseding Indictment, was approached for a \$410,000 loan purportedly to be used to purchase recreational vehicles for re-sale. Kelliher provided Victim-2 with a personal financial statement which claimed that as of Dec. 31, 2008, Kelliher's net worth exceeded \$6.2 million. The Superseding Indictment alleges this financial statement was false and that it failed to disclose that, in September 2008, KeyBank obtained a judgment for approximately \$27 million against Cartec and Kelliher individually.

As a result of committing the bank fraud and wire fraud offenses, the Superseding Indictment contains a forfeiture allegation, seeking forfeiture of \$14,967,820 to the United States.

Counts One, Two, and Three of the Superseding Indictment, charging Kelliher with bank fraud, each carry a maximum penalty of 30 years in prison and a fine of \$1 million. Counts Four, Five and Nine, which charge wire fraud, each carry a maximum penalty of

20 years in prison and a fine of \$250,000 or twice the aggregate loss to the victims or gain to the defendant. Counts Six, Seven, Eight and Ten through Seventeen, charging money laundering, each carry a maximum penalty of 10 years in prison and a fine of \$250,000 or twice the aggregate loss to the victims or gain to the defendants.

In determining an actual sentence, Judge Brown would, upon a conviction, consult the advisory U.S. Sentencing Guidelines, which provide appropriate sentencing ranges that take into account the severity and characteristics of the offense, the defendant's criminal history, if any, and other factors. The judge, however, is not bound by those guidelines in determining a sentence. Parole has been abolished in the federal system. Defendants who are given custodial terms must serve nearly all that time.

Despite indictment, the defendant is presumed innocent unless proven guilty beyond a reasonable doubt.

Fishman credited Special Agents of the FBI's Trenton Resident Agency, under the direction of Acting Special Agent in Charge Kevin B. Cruise in Newark, the IRS Criminal Investigation Division, under the direction of Special Agent in Charge William P. Offord, with the investigation leading to the Superseding Indictment.

The government is represented by Assistant U.S. Attorneys Eric M. Schweiker and Jennifer Davenport of the Criminal Division in Trenton.

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Defense Counsel: Lisa Van Hoeck, Esq. and Andrea Bergman, Esq.