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U.S. DISTRICT COURT
WESTERN DISTRICT OF NC

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA)	DOCKET NO. 3:09cr113-W
)	
)	18 U.S.C. § 371
)	(15 U.S.C. §78j(b))
v.)	(15 U.S.C. §78m(a))
)	(15 U.S.C. §78m(b))
)	(17 C.F.R. § 240.10b-5)
)	(18 U.S.C. § 1010)
BEAZER HOMES USA, INC.)	(18 U.S.C. § 1341)
_____)	(18 U.S.C. § 1343)

BILL OF INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

At the specified times and at all relevant times:

Entities

1. Defendant Beazer Homes USA, Inc. (hereafter, "BEAZER") was a home building company incorporated under the laws of Delaware and headquartered in Atlanta, Georgia, with operations in at least twenty-one states, including North Carolina. BEAZER's common stock was registered with the Securities and Exchange Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 and listed on the New York Stock Exchange under the symbol "BZH."

2. Beazer Mortgage Corporation (hereafter, "Beazer Mortgage") was a wholly owned subsidiary of BEAZER whose primary business was to originate home mortgage loans for homebuyers purchasing homes from BEAZER. On February 1, 2008, Beazer Mortgage ceased business activities and exited the mortgage origination business.

The Mortgage Fraud Scheme

3. From at least as early as in or about 2000, through in or about 2007, BEAZER, Beazer Mortgage, and certain co-conspirators engaged in a fraudulent scheme designed to increase Beazer Mortgage's profit margin and to sell BEAZER homes. Several aspects of this scheme are set forth below.

A. Discount Point Fraud

4. In general, a homebuyer may pay “discount points” to a lender or broker to receive a better interest rate in connection with a home mortgage loan. North Carolina law requires that discount points result in a bona fide reduction of the interest rate or time-price differential.

5. From at least as early as in or about 2000, through as late as in or about 2006, BEAZER MORTGAGE, through certain Beazer Mortgage employees, and certain co-conspirators entered into a scheme to charge discount points in connection with home mortgage loans without providing the borrower with a bona fide reduction of the interest rate or time-price differential in certain instances.

6. In certain instances, Beazer Mortgage told the homebuyer that he or she would receive a discounted interest rate. However, rather than passing such discount points on to the lender in return for a better interest rate, Beazer Mortgage fraudulently retained some or all of the amount paid for discount points in order to increase Beazer Mortgage’s profit margin.

7. When BEAZER paid the discount points retained by Beazer Mortgage, BEAZER in certain instances fraudulently increased the purchase price of the home to offset the amount paid for the illusory discount points.

8. In certain instances, Beazer Mortgage retained discount points while at the same time receiving a “yield spread” or “service release” premium from the lender in exchange for placing the homebuyer into a higher interest rate loan.

9. In some instances in which discount points were charged and retained, Beazer Mortgage awarded its employees an “overage” incentive bonus of a few hundred dollars for exceeding Beazer Mortgage’s target profit margin with that particular loan.

B. Down-Payment Assistance Fraud

10. In North Carolina and certain other markets, BEAZER built homes primarily for first-time and low-income homebuyers who were expected to purchase BEAZER homes with the assistance of home mortgage loans insured by the Federal Housing Administration (“FHA”). FHA loans required a minimum loan to value ratio (“LTV”) of ninety-seven percent (97%) and a borrower down-payment of at least three percent (3%).

11. Many potential homebuyers in BEAZER’s target market, however, did not have enough money to make the required down-payment. BEAZER was not permitted to give the homebuyer the required down-payment funds directly because, under clearly established FHA policy, any “gift” directly provided by the seller was treated as an inducement to purchase and the sales price would be reduced by a commensurate amount in calculating the maximum insurable mortgage.

12. BEAZER, nevertheless, sold homes to many of these low-income buyers by providing them with the down-payment needed through utilizing a “down-payment assistance” program that was common in the industry. Under the down-payment assistance program, BEAZER would pay a charity the required down-payment funds, plus an “administrative” or “donation” fee of generally around \$300. In turn, the charity would provide the homebuyer with a “gift” of the down-payment funds it had received from BEAZER, retaining the fee.

13. BEAZER and others represented to homebuyers that the down-payment assistance gift funds were a true “gift.” A typical down-payment assistance gift letter from a charity to a homebuyer, for example, read that the borrower understood that he or she was “under no obligation whatsoever to repay any amount of down payment assistance received”

14. BEAZER and Beazer Mortgage understood that down-payment assistance funds were to be treated as a true “gift,” and that the price of the home could not be increased to offset the cost for down-payment assistance. Indeed, Beazer Mortgage assured at least one charity in writing that it would not increase the price of a home when a sale was associated with down-payment assistance.

15. Nevertheless, BEAZER and Beazer Mortgage on certain occasions fraudulently increased the prices of homes sold to down-payment assistance beneficiaries in order to offset the cost of the down-payment assistance, thereby fraudulently increasing the loan amount to be repaid by the homebuyer.

C. HUD-Licensing Fraud

16. The Department of Housing and Urban Development (“HUD”) operated the “Neighborhood Watch” and “Credit Watch” programs to monitor default and foreclosure rates for loans originated by branch lenders licensed by HUD, such as the branch offices of Beazer Mortgage. Credit Watch compared the performance of FHA loans originated by each lender branch with the average performance of FHA loans originated by that branch’s peers. If Credit Watch indicated that a branch’s default rate was 200% of its peers, that branch would be flagged for attention and could lose its ability to originate FHA loans.

17. During the period of the fraud, Beazer Mortgage recognized that several of its branches were at risk under the Credit Watch program. To avoid being subject to scrutiny from HUD, Beazer Mortgage took steps in certain instances to avoid detection under the Credit Watch Program.

18. When a Beazer Mortgage branch approached a default rate of 200% of its peers, Beazer Mortgage generally took one of two actions to avoid detection:

- a. Beazer Mortgage would instruct loan originators in the at-risk branch to use the HUD license number from another branch that was not at risk, to make it appear as though the loan had originated from that branch.

b. Beazer Mortgage would terminate the branch identification number for the at-risk branch and simply apply for a new HUD license number for the loan originators in the at-risk branch.

19. In furtherance of the scheme, certain Beazer Mortgage employees made other false statements to HUD to conceal the scheme. For example, when a large, at-risk branch was fraudulently originating loans as though they were from a smaller branch not at risk, a former employee of Beazer Mortgage falsely represented to HUD that the manager of the at-risk branch was located in the smaller branch, knowing that doing so would raise fewer questions.

D. Stated Income Fraud

20. One of the loan programs offered by Beazer Mortgage was the “stated income” program. This program was purportedly designed for homebuyers who were self-employed or otherwise had difficulty documenting their income.

21. In or about December 2004, Beazer Mortgage adopted a strategy of willful blindness toward homebuyers in some locations with regard to stated income loans. Beazer Mortgage conveyed to certain Beazer Mortgage staff “the danger of knowing too much about a buyer when originating . . . a stated . . . loan.”

22. In some divisions, mortgage loan counselors were specifically instructed to avoid “knowing too much.” In one division, for example, mortgage loan counselors were provided a script in which it was suggested that instead of asking, *e.g.*, “how much do you make,” loan counselors should ask, “It is going to take \$X,XXX a month in household income to qualify for this home. Can you state that you have that much household income?”

The Accounting Fraud Scheme

23. From in or about 2000 through in or about 2007, BEAZER and others engaged in a scheme to commit securities fraud by practicing a form of what is commonly known as “cookie jar accounting.”

24. Specifically, when BEAZER’s financial performance was stronger than needed to achieve maximum bonuses and meet market expectations, certain of its executives and others often decreased the company’s net income by improperly increasing certain operating expenses.

25. BEAZER decreased its net income through the manipulation of a variety of “reserve” accounts, including the company’s legal and warranty reserves, land inventory accounts, and house cost-to-complete accounts. During quarters in or about 2000 through in or about 2006, certain executives improperly increased such “reserves” when BEAZER’s financial performance exceeded target earnings for such quarters.

26. BEAZER did so despite knowing that investors relied on BEAZER to report its true net income and earnings without manipulation.

27. This manipulation left BEAZER with excess reserves and excess balances in such accounts. This excess was available to “smooth earnings” as needed. In fiscal year 2006, when BEAZER’s financial performance began to decline, BEAZER released such reserves that had been improperly created, and even began not recognizing certain period expenses in order to improperly increase net income.

28. The “cookie jar accounting” materially misstated BEAZER’s true financial results, net income, and earnings per share in filings with the Securities and Exchange Commission and other investor disclosures disseminated in the Western District of North Carolina and elsewhere.

COUNT ONE
18 U.S.C. § 371
(Mortgage Fraud Conspiracy)

29. The United States Attorney realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 22 of the Bill of Information, and further alleges that:

30. From in or about 2000 through in or about 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, the defendant,

BEAZER HOMES USA, INC.

did knowingly combine, conspire, confederate, and agree with Beazer Mortgage Corporation and others known and unknown to the Government, to commit offenses against the United States, including violations of Title 18, United States Code, Sections 1010 (HUD fraud), 1341 (mail fraud), and 1343 (wire fraud).

Manner and Means

31. The defendant and others carried out the conspiracy in the manner and means described in paragraphs 3 through 22 of this Bill of Information, among others.

Overt Acts

32. In furtherance of the conspiracy, and to accomplish the objects thereof, BEAZER and its co-conspirators committed one or more of the following overt acts, as well as other overt acts, in the Western District of North Carolina and elsewhere.

A. On February 23, 2001, Branch Manager X, a branch manager of a certain Beazer Mortgage branch, received an e-mail expressing concern regarding her profit margin. Branch Manager X responded by e-mail, inquiring whether a report could be run “to show how much of the margin is in the fee’s [sic] collected from the builder - i.e. discount points,” and later stating “I’m trying to make a profit for our branch which in

turn makes me a profit - if this is going to be the case - we really need to talk about my salary again!”

B. On May 31, 2001, Branch Manager X, when asked by e-mail, “[w]hat would you put down for income if you went stated,” e-mailed the person back, stating, “[i]s this a stated program? I would put her income at whatever I could to put her ratios in line with what your company say’s [sic] they need to be.”

C. On July 24, 2001, Branch Manager X e-mailed another person, stating with regard to a certain down-payment assistance loan that “the addendum can not say increasing price [sic] -- just put the base loan amount increased -- we can not indicate on any gift, that we are increasing for the gift.”

D. On or about October 1, 2002, an executive for Beazer Mortgage signed an application for HUD approval regarding the Columbia, SC Branch in which he falsely stated that Branch Manager X was the Branch Manager for the Columbia, SC office.

E. On November 30, 2005, Branch Manager X e-mailed another person, stating, “I had a closing today that we were charging disc pts because we were not making any margin”

F. On March 20, 2006, Branch Manager X received instruction by e-mail to “let all your employees know that going forward they need to use the Raleigh office HUD ID Number”

G. On March 6, 2007, Branch Manager X e-mailed another person, stating, “RULE OF THUMB . . . never say YOU stated income . . . you can go to prison for this . . . the buyer must always be the one to state their income.”

All in violation of 18 U.S.C. § 371.

COUNT TWO
18 U.S.C. § 371
(Accounting Fraud Conspiracy)

33. The United States Attorney realleges and incorporates by reference herein all of the allegations contained in paragraphs 1 through 2 and 23 through 28 of the Bill of Information, and further alleges that:

34. From in or about 2000 through in or about 2007, in Mecklenburg County, within the Western District of North Carolina, and elsewhere, the defendant,

BEAZER HOMES USA, INC.

did knowingly combine, conspire, confederate, and agree with others known and unknown to the Government, to commit offenses against the United States, including violations of Title 15, United States Code, 78j(b) (securities fraud), 78m(a) (false statements to SEC), 78m(b) (false books and records), and 78m(a), (b) (false statements to auditors).

Manner and Means

35. The defendant and others carried out the conspiracy in the manner and means described in paragraphs 23 through 28 of this Bill of Information, among others.

Overt Acts

36. In furtherance of the conspiracy, and to accomplish the objects thereof, BEAZER and its co-conspirators committed one or more of the following overt acts in the Western District of North Carolina and elsewhere.

A. On July 7, 2000, Executive X e-mailed Executive Y with regard to a certain reserve, stating, "didn't D&T just finish their audit. Might be a good time to take back some reserves."

B. On October 18, 2000, Executive X e-mailed Executive Y that another executive "would really like to bring the number down further," and instructed Executive Y to "think about things we can reduce income by. Especially for any divisions well above their max bonus."

C. On October 19, 2000, in response to an executive's e-mail stating that "[i]t is not fair that we change the system in order to manage earnings and it costs these guys money," Executive X replied, "I agree and I have some sympathy for them, especially where the adjustment is essentially unjustified . . . and affects their income."

D. On December 27, 2000, Executive Y e-mailed Executive X and others that "[i]f releasing reserves on jobs 9+ months old will put Virginia over the December

quarter EBIT target, wait until next quarter to release such reserves”

E. On June 7, 2001, when Executive Y asked by e-mail how he should account for a certain project, Executive X replied, “I would say be objective, but with a view towards not reporting too much gain. Definitely make sure to leave some cushion for future margins.”

F. On January 7, 2002, Executive Y e-mailed Executive X, stating, “please send me what you want the quarter #s to be.”

G. On January 8, 2002, Executive X provided Executive Y with a target EBIT. Executive Y e-mailed certain divisional executives that he had been given “a target for the quarter which is considerably less than what I think our Divisions will initially report” and provided such executives with a “quarterly EBIT target and not to exceed target for the quarter.”

H. On January 8, 2002, in response to Executive Y’s e-mail with a target EBIT, one divisional executive replied, “OK . . . finally a chance to establish some reserves . . . thanks.”

I. On January 10, 2002, Executive Y e-mailed certain divisional executives with the following subject line “SEt [sic] aside all the reserves you reasonably can . . . the quarter is too high.”

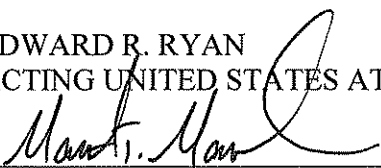
J. On June 28, 2002, Executive X e-mailed Executive Y that it, “sounds like we know where to go in September if for some reason there are negative surprises elsewhere,” upon receiving a divisional executive’s e-mail that he had been “putting the brakes on for the 4th quarter unless you need more than the \$35mm ebit for the year.”

K. On October 8, 2002, a divisional executive forwarded Executive Y an e-mail from another divisional executive, directing that “if you have anything saved in the cookie jar, pull it out for this years [sic] numbers,” and remarked that “[a] squirrel that stores up nothing for the winter starves.”

L. On December 16, 2005, Executive Y directed a divisional executive to “scrub” certain accruals because “a million may be the difference betwween [sic] missing and making consensus.”

All in violation of 18 U.S.C. § 371.

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