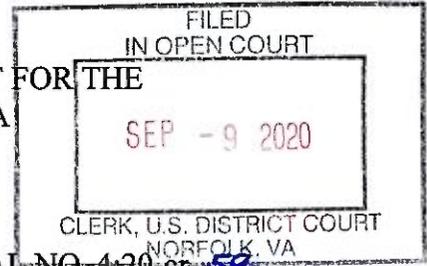


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Newport News Division



UNITED STATES OF AMERICA)

v.)

MICHAEL J. TIERNAN,)

Defendant.)

CRIMINAL NO. 4:20-cr-59)

18 U.S.C. § 1344)

Bank Fraud)

(Counts 1-7))

26 U.S.C. § 7206(1))

Filing False Tax Returns)

(Counts 8-9))

26 U.S.C. § 7203)

Failure to File Income tax)

(Count 10))

18 U.S.C. § 982(a)(2))

Asset Forfeiture)

INDICTMENT

September 2020 Term – at Norfolk, Virginia

THE GRAND JURY CHARGES THAT:

GENERAL ALLEGATIONS

At all relevant times:

1. The Internal Revenue Service (“IRS”) is an agency within the Department of Treasury responsible for administering and enforcing the tax laws of the United States and collecting taxes owed to the Treasury of the United States by its citizens and other entities.

2. Ford’s Colony Realty, LLC, (“Ford’s Colony”) was a real estate brokerage company located in Williamsburg, Virginia, in the Eastern District of Virginia.

3. Southeast Settlement and Title, LLC, (“Southeast”) was a business that handled real-estate settlements and title insurance in Williamsburg, Virginia, in the Eastern District of Virginia.

4. MICHAEL J. TIERNAN, the defendant herein, was a co-owner of Ford's Colony and Southeast. TIERNAN also worked as the Chief Financial Officer and Controller of both companies.

5. Beginning in or about early 2015, TIERNAN represented to the other owners of Ford's Colony and Southeast that the businesses were struggling. To keep the companies afloat, TIERNAN and the other owners agreed to forgo their salaries and other unnecessary capital outlays.

6. TIERNAN also pushed for the owners to sell Ford's Colony and Southeast, which they did in or about May 2017 to D.W. – who later reformed the businesses as IDWT, LLC.

7. Prior to the sale, Southeast maintained a business bank account at TowneBank ending in #1564, and Ford's Colony maintained a business bank account at Chesapeake Bank ending in #0674.

8. TIERNAN maintained a joint personal bank account with his wife, A.T., at Bank of America ending in #3324.

9. In his professional capacity as the Chief Financial Officer and Controller for Ford's Colony and Southeast, TIERNAN had access to both companies' bank accounts. TIERNAN was authorized to make salary deposits to employees and draft checks drawn on the accounts of each business to pay expenses.

10. Beginning in or about January 2015 and continuing until at least the sale of Ford's Colony and Southeast in or about May 2017, TIERNAN committed a scheme to embezzle, steal, obtain by fraud and otherwise without authority, convert to TIERNAN's personal use moneys and funds owned by Ford's Colony and Southeast.

11. Despite having agreed to forgo his salary and other capital outlays to keep the businesses afloat, TIERNAN repeatedly stole and misappropriated funds from Ford's Colony

and Southeast by diverting funds to himself in excess of any salary, return of capital, or other outstanding debt.

12. In or about 2015, TIERNAN deposited in his personal Bank of America account checks from Ford's Colony totaling approximately \$69,518.74; checks from Southeast totaling approximately \$15,884.90; direct deposits from Ford's Colony totaling approximately \$8,430.49; and U.S. currency totaling approximately \$88,430.00.

13. Despite these significant sums, TIERNAN reported only \$40,863.00 in wages from Ford's Colony on his joint 2015 tax return with his wife, A.T.

14. In or about 2016, for the 2015 tax year, Bank of America also issued TIERNAN's wife, A.T., an IRS Form 1099-C, cancellation of debt, in the amount of \$160,500.00. This cancelled debt was from the couple's home equity line of credit (HELOC).

15. TIERNAN and his wife did not claim the cancellation of debt as taxable income on their joint 2015 return because they falsely claimed they were insolvent. In fact, however, TIERNAN and his wife spent over \$260,000.00 that year – much of which was for luxurious travel, dining, resort, and retail purchases.

16. In or about 2016, TIERNAN, without authorization, drafted 84 checks to himself drawn on the business bank account of Southeast totaling \$285,000.00. He subsequently (i) cashed these checks or (ii) deposited them into his personal Bank of America account.

17. Despite this significant sum, TIERNAN reported only \$76,477.00 in Schedule E income from Southeast on his 2016 tax return.

18. In or about 2017, TIERNAN, without authorization, drafted 23 checks to himself drawn on the business bank account of Southeast totaling \$111,352.83. He subsequently (i) cashed these checks or (ii) deposited them into his personal Bank of America account.

19. TIERNAN continued to use the embezzled funds transferred from these business accounts for his own enrichment, including lavish personal expenditures like travel, high-stakes gambling, expensive restaurants, and the purchase of a luxury automobile.

20. TIERNAN failed to report U.S. currency and additional earnings from Southeast and Ford's Colony. He also failed to correctly classify the Form 1099-C, cancellation of debt as income. This unreported income between 2015 and 2017 is approximately as follows:

YEAR	Unreported Income
2015	\$289,401.13
2016	204,523.00
2017	111,352.83
TOTAL	\$605,276.96

21. As a result of TIERNAN's unreported income, his total tax due and owing for 2015 through 2017 is approximately as follows:

YEAR	Tax Due and Owing
2015	\$70,291.18
2016	\$34,119.14
2017	\$6,669.00
TOTAL	\$111,079.32

22. In or about 2019, the other owners of Ford's Colony and Southeast filed civil claims against TIERNAN for fraudulently diverting funds from the businesses contrary to their agreement to forgo salaries and keep the businesses afloat.

23. To justify the substantial numbers of payments made payable to himself from Southeast's bank account, TIERNAN drafted and ostensibly backdated invoices for old accounting work he purportedly did for Ford's Colony, Southeast, and other businesses.

SCHEME AND ARTIFICE

1. From at least January 2015 through in or about 2019, TIERNAN created a scheme and artifice to defraud and obtain money and property by making materially false representations, promises, and omissions to enrich himself by fraudulently diverting and

misappropriating for his own use and benefit money from the accounts of Ford's Colony and Southeast to his personal Bank of America account.

2. It was a part of the scheme and artifice to defraud that TIERNAN, as a result of his work as the Chief Financial Officer and Controller for Ford's Colony and Southeast, knew when the business accounts at Towne Bank and Chesapeake Bank had sufficient money to fund unauthorized diversions of capital to himself.

3. It was further part of the scheme and artifice to defraud that TIERNAN, from in or about January 2015 through in or about May 2017, drafted and signed unauthorized checks and other withdrawals drawn on the business accounts of Ford's Colony and Southeast in order to divert funds to himself, without the knowledge or consent of the other owners/principals of Ford's Colony and Southeast

4. It was further part of the scheme and artifice that TIERNAN – by means of materially false and fraudulent pretenses, representations, and promises – presented these unauthorized checks and other deposits to Bank of America. In so doing, TIERNAN made false representations and material omissions to Bank of America in holding himself out as authorized by the businesses to undertake these transactions.

5. It was further part of the scheme and artifice to defraud that the books and records of Ford's Colony and Southeast were maintained and kept by employees under the direction and control of TIERNAN as the Chief Financial Officer and Controller and were destroyed in or about 2017.

6. It was further part of the scheme and artifice that TIERNAN executed a new signature card for Southeast's business bank account in or about December 2016, changing the address of record from the business mailing address to his personal residence.

7. It was further part of the scheme and artifice that TIERNAN in or about 2019 drafted and backdated invoices for accounting work to justify the checks and other withdrawals making up the large diversions of capital to himself.

COUNTS ONE THROUGH SEVEN
(Bank Fraud)

THE GRAND JURY FURTHER CHARGES THAT:

1. The factual allegations contained in the General Allegations section are incorporated herein by reference as if set out in full.

2. From at least January 2015 and continuing through in or about 2019, in the Eastern District of Virginia, MICHAEL J. TIERNAN, the defendant herein, knowingly devised and intended to devise a scheme and artifice and for obtaining money, funds, and property owned by and under the custody and control of Chesapeake Bank and TowneBank, by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice, and the execution thereof, operated in substance as follows:

3. As set forth below, the defendant obtained funds under the control of Bank of America by providing to it unauthorized deposits and checks representing funds from Ford's Colony and Southeast's business accounts at Chesapeake Bank and TowneBank, thereby triggering disbursement of funds from Chesapeake Bank and TowneBank to TIERNAN's personal account at Bank of America.

4. On or about the dates set forth below in the Eastern District of Virginia, TIERNAN did knowingly and willfully execute a scheme and artifice to obtain monies owned by and under the custody of Chesapeake Bank and TowneBank, financial institutions, as defined under Title 18, United States Code, Section 20, by means of materially false and fraudulent pretenses, representations, and promises, executed as set forth in the table below.

COUNT	DATE (on or about)	TRANSACTION	AMOUNT
1	2/23/2016	TIERNAN cashed unauthorized check #6469 drawn on Southeast's TowneBank account #1564 made payable to himself.	\$1,500.00

2	2/26/2016	TIERNAN cashed unauthorized check #6470 drawn on Southeast's TowneBank account #1564 made payable to himself.	\$2,500.00
3	3/3/2016	TIERNAN cashed unauthorized check #6471 drawn on Southeast's TowneBank account #1564 made payable to himself.	\$4,000.00
4	3/10/2016	TIERNAN cashed unauthorized check #6472 drawn on Southeast's TowneBank account #1564 made payable to himself.	\$2,500.00
5	3/14/2016	TIERNAN deposited unauthorized check #6473 drawn on Southeast's TowneBank account #1564 made payable to himself into his personal Bank of America account #3324.	\$2,000.00
6	3/17/2016	TIERNAN deposited unauthorized check #6474 drawn on Southeast's TowneBank account #1564 made payable to himself into his personal Bank of America account #3324.	\$500.00
7	3/22/2016	TIERNAN deposited unauthorized check #6477 drawn on Southeast's TowneBank account #1564 made payable to himself into his personal Bank of America account #3324.	\$500.00

(In violation of Title 18, United States Code, Section 1344(2).)

COUNT EIGHT
(Filing False Tax Returns)

THE GRAND JURY FURTHER CHARGES THAT:

1. The factual allegations from the General Allegations section are incorporated herein as if set out in full.
2. On or about October 14, 2016, in the Eastern District of Virginia and elsewhere, MICHAEL J. TIERNAN, the defendant herein, willfully made and subscribed a 2015 United States Income Tax Return 1040 ("2015 return"), which was verified by a written declaration of the defendant as true and correct as to every material matter. The 2015 return contains a declaration that it was made under the penalties of perjury and electronically filed with the Internal Revenue Service, which said 2015 return the defendant, did not believe to be true and correct as to every material matter in that the 2015 return reported Total Income of \$47,454.00 on Line 22, whereas, as he then and there well knew and believed, he had received additional unreported income of approximately \$93,834.13 from Ford's Colony and Southeast, U.S. currency deposits of approximately \$88,430.00, as well as a cancellation of debt in the amount of \$160,500.00 by Bank of America.

(In violation of Title 26, United States Code, Section 7206(1).)

COUNT NINE
(Filing False Tax Returns)

THE GRAND JURY FURTHER CHARGES THAT:

1. The factual allegations from the General Allegations section are incorporated herein as if set out in full.

2. On or about October 15, 2017, in the Eastern District of Virginia and elsewhere, MICHAEL J. TIERNAN, the defendant herein, willfully made and subscribed a 2016 United States Income Tax Return 1040 ("2016 return"), which was verified by a written declaration of the defendant under penalty of perjury as true and correct as to every material matter. The 2016 return contains a declaration that it was made under the penalties of perjury and electronically filed with the Internal Revenue Service, which said 2016 return the defendant, did not believe to be true and correct as to every material matter in that the 2016 return reported Total Income of \$73,269.00 on Line 22 of the return, whereas, as he then and there well knew and believed, he had received additional unreported income of approximately \$285,000.00.

(In violation of Title 26, United States Code, Section 7206(1).)

COUNT TEN
(Failure to File Tax Return)

THE GRAND JURY CHARGES THAT:

1. The factual allegations from the General Allegations section are incorporated herein as if set out in full.
2. During the calendar year 2017, MICHAEL J. TIERNAN, the defendant herein, who was a resident of Williamsburg, Virginia, had and received gross income of approximately \$111,352.00. By reason of such gross income, he was required by law, following the close of the calendar year 2017 and on or before October 15, 2018, to make an income tax return to the Internal Revenue Service Center, at Louisville, Kentucky, to a person assigned to receive returns at the local office of the Internal Revenue Service at Norfolk, Virginia, or to another Internal Revenue Service office permitted by the Commission of Internal Revenue, stating specifically the items of his gross income and any deductions and credits to which he was entitled. Well knowing and believing all of the foregoing, he did willfully fail, on or about October 15, 2018, in the Eastern District of Virginia and elsewhere, to make an income tax return.

(In violation of Title 26, United States Code, Section 7203.)

FORFEITURE

THE GRAND JURY FURTHER FINDS PROBABLE CAUSE THAT:

1. The defendant, if convicted of any of the violations alleged in Count One through Count Seven of this Indictment, shall forfeit to the United States, as part of sentencing pursuant to Federal Rule of Criminal Procedure 32.2, any property constituting, or derived from, proceeds obtained directly or indirectly, as the result of the violation.

2. If any property that is subject to forfeiture above is not available, it is the intention of the United States to seek an order forfeiting substitute assets pursuant to Title 21, United States Code, Section 853(p) and Federal Rule of Criminal Procedure 32.2(e).

3. The property subject to forfeiture includes, but is not limited to, the following:

- a. A monetary judgment in an amount representing the proceeds the defendant obtained from the scheme alleged in this indictment.

(In accordance with Title 18, United States Code, Section 982(a)(2)(A).)

UNITED STATES v. MICHAEL J. TIERNAN
4:20-cr- 59

Pursuant to the E-Government Act,
the original of this document has been filed
under seal in the Clerk's Office.

A TRUE BILL:

REDACTED COPY

FOREPERSON

G. ZACHARY TERWILLIGER
UNITED STATES ATTORNEY

By:


Brian J. Samuels
Assistant United States Attorney
Eastern District of Virginia
Fountain Plaza Three, Suite 300
721 Lakefront Commons
Newport News, Virginia 23606
Phone: (757) 591-4000
Fax: (757) 591-0866
Email: brian.samuels@usdoj.gov

By:


D. Mack Coleman
Assistant United States Attorney
Eastern District of Virginia
Fountain Plaza Three, Suite 300
721 Lakefront Commons
Newport News, Virginia 23606
Phone: (757) 591-4000
Fax: (757) 591-0866
Email: mack.coleman@usdoj.gov

REDACTED

Criminal Case Cover Sheet

U.S. District Court

Place of Offense:		Under Seal: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Judge Assigned:
City: <u>EDVA</u>	Superseding Indictment:		Criminal Number <u>4:20CR 59</u>
County/Parish:	Same Defendant:		New Defendant:
		Magistrate Judge Case Number:	TRANSFER TO NN
		Search Warrant Case Number:	
		R 20/R 40 from District of _____	

Defendant Information:

Juvenile: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	FBI#:
Defendant Name: <u>Michael J. Tiernan</u>	
Address: <u>Williamsburg, VA, 23188</u>	
Employment:	
Birth Date: <u>1958</u>	SS#: <u>7484</u>
Sex: <u>M</u>	Race:
Nationality:	Place of Birth:
Height:	Weight:
Hair:	Eyes:
Scars/Tattoos:	
Interpreter: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	List Language and/or dialect:

Location Status:

Arrest Date:	
<input type="checkbox"/> Already in Federal Custody as of _____ in: _____	
<input type="checkbox"/> Already in State Custody	<input type="checkbox"/> On Pretrial Release
<input type="checkbox"/> Arrest Warrant Requested	<input type="checkbox"/> Fugitive
<input type="checkbox"/> Arrest Warrant Pending	<input type="checkbox"/> Detention Sought
	<input checked="" type="checkbox"/> Summons Requested
	<input type="checkbox"/> Bond

Defense Counsel Information:

Name:	<input type="checkbox"/> Court Appointed
Address:	<input type="checkbox"/> Retained
Telephone:	<input type="checkbox"/> Public Defender
	<input type="checkbox"/> Office of Federal Public Defender should not be appointed due to conflict of interest
	<input type="checkbox"/> CJA attorney: _____ should not be appointed due to conflict of interest

U.S. Attorney Information:

AUSA <u>Brian J. Samuels & AUSA David M. Coleman</u>	Telephone No. <u>757-591-4032</u>	Bar #: <u>65898 (Samuels)</u>
---	--	--------------------------------------

Complainant Agency, Address & Phone Number or Person & Title:

<u>IRS-CI, SA Brian Pelfrey</u>

U.S.C. Citations:

	Code/Section	Description of Offense Charged	Count(s)	Capital/Felony/Misd/Petty
Set 1	<u>18 U.S.C. § 1344</u>	<u>Bank Fraud</u>	<u>1 - 7</u>	<u>Felony</u>
Set 2	<u>26 U.S.C. § 7206(1)</u>	<u>Filing False Tax Returns</u>	<u>8 - 9</u>	<u>Felony</u>
Set 3	<u>26 U.S.C. § 7203</u>	<u>Failure to File Income tax</u>	<u>10</u>	<u>Felony</u>
Set 4	<u>18 U.S.C. § 982</u>	<u>Asset Forfeiture</u>		