

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

FILED
RICHARD W. NAGEL
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U.S. DISTRICT COURT
SOUTHERN DIST. OF OHIO
WESTERN DIV. DAYTON

UNITED STATES OF AMERICA, : No. 3:18CR186TMR
: :
Plaintiff, : T H I R D
: S U P E R S E D I N G
v. : I N D I C T M E N T
: :
BRIAN HIGGINS, : 18 U.S.C. § 1341
: 18 U.S.C. § 1512(d)(1)
Defendant. : 18 U.S.C. § 1513(e)
: 18 U.S.C. § 2

The Grand Jury charges:

COUNTS ONE THROUGH THREE

[18 U.S.C. §§ 1341 and 2]

I. INTRODUCTION

At all times relevant to this Indictment:

1. Defendant **BRIAN HIGGINS** was a businessman in the greater Dayton, Ohio metropolitan area. Throughout that time, defendant **BRIAN HIGGINS** lived at 7240 Meeker Creek Drive, Dayton, Ohio (hereinafter "Meeker Residence"), a private home with over 8,000 square feet of living space. Defendant **BRIAN HIGGINS** held an interest in the the Meeker Residence with an individual identified herein by the initials C.H; C.H., however, did not reside at the Meeker Residence.

2. Nationstar Mortgage, LLC, now doing business as Mr. Cooper, (hereinafter "Nationstar") was a company headquartered in Texas that, among other things, originated and serviced mortgages for customers throughout the United States.

Nationstar, a financial institution within the meaning of Title 18, United States Code, Section 20, held a legal interest in the Meeker Residence. Notably, the Meeker Residence served as collateral for a mortgage that Nationstar held on that property.

3. Assurant, through its related entity Standard Guaranty Insurance Company, (collectively, "Assurant") was a specialized insurance business that operated in various states, including Ohio. Assurant provided homeowners insurance coverage on the Meeker Residence for Nationstar and C.H.

II. THE SCHEME TO DEFRAUD AND ITS EXECUTION

4. Between a beginning date unknown, but at least by in or around August 2014, and continuing through in or around May 2015, in the Southern District of Ohio, defendant **BRIAN HIGGINS** knowingly and with the intent to defraud, devised, executed, and participated in a scheme to defraud Nationstar and to obtain money and property owned by and under the custody and control of Nationstar, by means of materially false and fraudulent pretenses, representations, and promises, and the non-disclosure

and concealment of material facts through a fraudulent scheme. This mail fraud affected a financial institution.

5. Defendant **BRIAN HIGGINS** devised this fraudulent scheme to operate, and the fraudulent scheme did operate, as follows:

a. By summer 2014, the Meeker Residence was in financial distress. In the preceding years, neither defendant **BRIAN HIGGINS** nor C.H. had made a mortgage payment on the Meeker Residence to Nationstar or any other financial institution. The property previously had been in foreclosure, and the non-payment of the mortgage again placed it at significant risk of lapsing into similar proceedings once more. Additionally, various entities had placed on the Meeker Residence thousands of dollars in liens representing judgments against defendant **BRIAN HIGGINS**. Around this same time, defendant **BRIAN HIGGINS** was embroiled in litigation that sought his removal from restaurant space that he operated on Third Street in Dayton, Ohio; the litigation ultimately resulted in him vacating the Third Street premises thereby triggering his search for new restaurant space in around late summer 2014.

b. With the financial distress of the Meeker Residence, Nationstar obtained for its benefit and that of C.H. homeowner's insurance on the property. This insurance was

designed to provide funds to repair and restore the Meeker Residence in the event that it was damaged, thereby protecting the value of the property for Nationstar as well as this mortgage company's financial interest in this residence. Maintaining the value of this property proved particularly important for Nationstar given that the Meeker Residence was in arrearage and confronted the prospect of foreclosure.

c. In or around July 2014, while defendant **BRIAN HIGGINS** resided at the Meeker Residence, the property sustained significant water damage from an apparent leak in a large fish tank. Soon thereafter, defendant **BRIAN HIGGINS** submitted a claim in the name of C.H. to Assurant concerning the water damage. Through interactions with Nationstar and Assurant, defendant **BRIAN HIGGINS** understood that Nationstar intended for him to use any and all money disbursed on the claim to fund and complete bona fide repairs and restoration of the Meeker Residence. Neither Assurant nor Nationstar authorized or expected defendant **BRIAN HIGGINS** to divert these Assurant claim funds for personal, non-repair related expenditures, such as funding new restaurant space, paying telephone bills, spending money at a casino, or on other personal expenses - particularly, given defendant **BRIAN HIGGINS's** non-payment of the mortgage as

well as Nationstar's interest in the Meeker Residence.

d. Nationstar (as well as Assurant) took affirmative steps to ensure that claimants such as defendant **BRIAN HIGGINS** did not improperly divert repair funds for improper and fraudulent purposes, including, but not limited to:

(1) Assurant disbursed the insurance claim funds to Nationstar to allow the mortgage company to protect its interest in the Meeker Residence. Upon receiving these proceeds, Nationstar did not release the insurance funds in a lump sum to a claimant such as defendant **BRIAN HIGGINS**. Rather, Nationstar released the funds through a series of draws. By staggering the funds in this manner, an assessment could be performed on the status of repairs before additional draws were issued. As an added protection against the misuse of funds by the claimant, Nationstar issued each draw check in the name of, among others, the claimant and the contractor; requiring countersignatures of all parties listed on the check was designed to prevent the claimant from improperly diverting the funds for purposes other than repairs.

(2) Nationstar also required the claimant to provide honest, truthful information concerning the identity of the contractor providing an estimate of, and management over,

the repair work. As part of this process, Nationstar sought true information - such as contracts, summaries of repairs being completed, or similar documents - detailing the actual arrangements between the claimant and the contractor purporting to perform work on the house. In doing so, Nationstar wanted to ensure that the contractor and claimant had an arms-length relationship; such a relationship enabled the contractor to serve as a neutral party that would directly receive and handle disbursements from the insurance proceeds and then use those funds to complete the contemplated repair work as represented to the mortgage company.

(3) Nationstar issued additional paperwork to the claimant that detailed, among other things, how the mortgage company expected the insurance funds to be used and who was authorized to make repairs on a residence. For instance, Nationstar sought written assurances from the claimant that he intended to use all claims funds to repair the residence. The mortgage company also expressly prohibited a claimant from making private repairs on the residence and required the use of a licensed contractor to complete the work.

(4) For its part, during the claims process (including requests for supplemental funds), Assurant required

that the claimant submit true and accurate information to it, concerning, among other things: the cost of expected repairs as well as bona fide invoices documenting repair work performed, or expected to be performed, on the residence; as well as the true identity of the contractor performing the work.

(5) Defendant **BRIAN HIGGINS** was aware of and understood these safeguards. He also knew that, because Nationstar held an interest in the Meeker Residence, any insurance money that he received needed to be used to restore the value of this mortgage company's collateral, *i.e.*, to actually repair the residence.

e. In submitting a claim to Assurant in C.H.'s name and seeking draws from Nationstar on the insurance funds, defendant **BRIAN HIGGINS** did not plan to use the money as expected -- namely, only for bona fide repair work to, and restoration of, the Meeker Residence. Rather, defendant **BRIAN HIGGINS** intended to divert, and actually diverted, significant portions of this money for his own personal benefit and to make a personal profit on the claim submitted in C.H.'s name. As part of his plan to fraudulently divert significant portions of the repair funds, defendant **BRIAN HIGGINS** took affirmative steps to conceal his improper activity from Nationstar (as well as

Assurant), including through not only the knowing use of false statements, false promises, false assertions, and half-truths but also the knowing concealment of material facts. For instance:

(1) To conceal his plan, defendant **BRIAN HIGGINS** sought assistance from a business identified herein as Company A. Designating Company A as the initial contractor on the project, defendant **BRIAN HIGGINS** caused this entity to submit repair estimates or work plans to Nationstar and Assurant. In doing so, defendant **BRIAN HIGGINS** did not plan for Company A to perform the bulk of the work or use all funds requested through the estimate to perform bona fide repairs on the Meeker Residence; rather, defendant **BRIAN HIGGINS** instructed Company A to divert substantial portions of the insurance funds directly to him for his own personal use, including to pay living expenses, to fund the build out of his new restaurant location, and to travel within the United States. For instance, in or around December 2014, defendant **BRIAN HIGGINS** deposited into his personal bank account an approximately \$41,000 check issued to C.H. and Company A that represented insurance proceeds earmarked for repairs at the Meeker Residence. Rather than using the funds for repair work as promised, represented, and required,

defendant **BRIAN HIGGINS** used the money for personal expenses and diverted portions of the money to another bank account where he spent the funds on, among other things, hotels, travel, and dining out. Defendant **BRIAN HIGGINS** never disclosed this flow or use of insurance funds to either Nationstar or Assurant.

(2) To create an appearance of work at the Meeker Residence, defendant **BRIAN HIGGINS** had Company A use a small portion of one of the draws received from Nationstar to complete certain cosmetic repairs at the property. Defendant **BRIAN HIGGINS** intended for these smaller repairs to convince any inspectors or adjusters from Nationstar or Assurant to authorize additional draws or disbursements on the claim. Having created the appearance of repair work, defendant **BRIAN HIGGINS** intended to divert (and actually diverted) subsequent draws primarily for his own personal benefit as described above.

(3) Rather than submitting bona fide, accurate information, statements and other documentation concerning repairs performed or intended to be performed on the Meeker Residence, defendant **BRIAN HIGGINS** submitted and caused to be submitted paperwork that materially misrepresented these matters. For instance, signing in the name of C.H., defendant **BRIAN HIGGINS** falsely submitted paperwork asserting to

Nationstar that he intended to use all Assurant claim funds to repair the Meeker Residence. He made this false statement to conceal the improper manner in which he intended to use and (actually used) a significant portion of the funds.

Additionally, when Company A withdrew as the contractor on the project in or around December 2014, defendant **BRIAN HIGGINS** purported to hire a business known as ProTech to serve as the new contractor to complete the repairs at the Meeker Residence. Defendant **BRIAN HIGGINS** failed to disclose and actively concealed that he owed or otherwise controlled ProTech and that Protech was not a licensed contractor. In taking these actions, defendant **BRIAN HIGGINS** intended to stop inquiries from Assurant or Nationstar concerning his misuse of the funds as well as induce the mortgage or insurance company to issue additional money that he then planned to divert for his own personal benefit rather than repairing the Meeker Residence as represented.

f. Based on defendant **BRIAN HIGGINS'** false and fraudulent pretenses, representations, and promises, and the non-disclosure and concealment of material facts, Nationstar released insurance funds, and sustained losses from the non-repair of the Meeker Residence, totaling thousands of dollars.

Defendant **BRIAN HIGGINS** misappropriated a substantial portion of the insurance proceeds for his own personal benefit as described above, and in doing so, intentionally failed to repair the Meeker Residence and restore its value as promised to Nationstar,

III. THE MAILINGS

6. On or about the dates listed below, in the Southern District of Ohio, defendant **BRIAN HIGGINS**, for the purpose of carrying out the above-described scheme to defraud, caused the items described below to be deposited and to be sent and delivered by the United States Postal Service as well as private and commercial interstate carriers:

<u>COUNT</u>	<u>DATE</u>	<u>MAILING</u>
ONE	9/12/2014	Letter from Nationstar addressed to C.H. at the Meeker Residence
TWO	10/6/2014	Paperwork in the name of C.H., including intent to repair, from defendant BRIAN HIGGINS to Nationstar
THREE	12/10/2014	Letter from Nationstar addressed to C.H. at the Meeker Residence

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT FOUR

[18 U.S.C. §§ 1341 and 2]

I. INTRODUCTION

7. The allegations of paragraphs 1 through 3 of this Third Superseding Indictment are realleged and incorporated by reference as though set forth in full.

II. THE SCHEME TO DEFRAUD AND ITS EXECUTION

8. Between a beginning date unknown, but at least by in or around August 2014, and continuing through in or around February 2015, in the Southern District of Ohio, defendant **BRIAN HIGGINS** knowingly and with the intent to defraud, devised, executed, and participated in a scheme to defraud Assurant and to obtain money and property owned by and under the custody and control of Assurant, by means of materially false and fraudulent pretenses, representations, and promises, and the non-disclosure and concealment of material facts through a fraudulent scheme.

9. The scheme was designed to operate and did operate as described above in paragraphs 5(a) through 5(f) of this Third Superseding Indictment.

III. THE MAILING

10. On or about the dates listed below, in the Southern District of Ohio, and elsewhere, defendant **BRIAN HIGGINS**, for the purpose of carrying out the above-described scheme to defraud, caused the items described below to be deposited and to be sent and delivered by the United States Postal Service as well as private and commercial interstate carriers:

<u>COUNT</u>	<u>DATE</u>	<u>MAILING</u>
FOUR	2/4/2015	Letter from Assurant addressed to defendant BRIAN HIGGINS at the Meeker Residence

In violation of Title 18, United States Code, Section 1341 and 2.

COUNT FIVE

[18 U.S.C. § 1512(d)(1)]

Between in or around March 2020 and in or around December 2020, in the Southern District of Ohio, defendant **BRIAN HIGGINS** intentionally harassed another person -- namely, an individual identified herein by the initials M.M. -- and thereby attempted to hinder and dissuade M.M. from attending and testifying in an official proceeding -- namely, *United States v. Brian Higgins*,

Case No. 3:18CR186, a matter pending before a court of the United States.

In violation of Title 18, United States Code, Section 1512(d)(1).

COUNT SIX

[18 U.S.C. § 1512(d)(1)]

Between in or around March 2020 and in or around December 2020, in the Southern District of Ohio, defendant **BRIAN HIGGINS** intentionally harassed another person -- namely, an individual identified herein by the initials S.W. -- and thereby attempted to hinder and dissuade S.W. from attending and testifying in an official proceeding -- namely, *United States v. Brian Higgins*, Case No. 3:18CR186, a matter pending before a court of the United States.

In violation of Title 18, United States Code, Section 1512(d)(1).

COUNT SEVEN

[18 U.S.C. § 1513(e)]

Between in or around March 2020 and in or around December 2020, in the Southern District of Ohio, defendant **BRIAN HIGGINS** knowingly, with the intent to retaliate, took any action harmful to an individual identified herein by the initials M.M., including interference with the lawful employment and livelihood of M.M., for providing to a law enforcement officer truthful information relating to the commission and possible commission of any Federal offense.

In violation of Title 18, United States Code, Section 1513(e).

COUNT EIGHT

[18 U.S.C. § 1513(e)]

Between in or around March 2020 and in or around December 2020, in the Southern District of Ohio, defendant **BRIAN HIGGINS** knowingly, with the intent to retaliate, took any action harmful to an individual identified herein by the initials S.W., including interference with the lawful employment and livelihood of S.W., for providing to a law enforcement officer truthful

information relating to the commission and possible commission of any Federal offense.

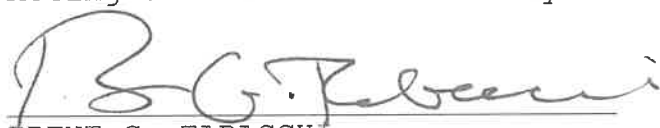
In violation of Title 18, United States Code, Section 1513(e).

A TRUE BILL



Foreperson

VIPAL J. PATEL
Acting United States Attorney



BRENT G. TABACCHI
Assistant United States Attorney