

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 19-cr-00408-REB

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. RICHARD K. SEARS,

Defendant.

INDICTMENT

The Grand Jury charges:

COUNTS 1 – 8
(Mail Fraud and Aiding and Abetting)

The Scheme

1. Beginning on or about June 5, 2008, and continuing through and including on or about May 6, 2015, in the State and District of Colorado, defendant RICHARD K. SEARS (“SEARS”) and another person identified as “Person A”, knowingly devised and intended to devise a scheme to defraud investors, and for obtaining money and property by means of materially false and fraudulent pretenses, representations and promises from those investors, and aided and abetted the same.

2. As part of the scheme, SEARS represented to investors that he was the president and/or owner of various corporations engaged in the business of raising and selling cattle.

During the period of his scheme, Sears also operated an outfitting business referred to as Trophy Outfitters, Inc. which provided guiding services to big game hunters.

3. As part of the scheme, SEARS operated a cattle investment program (“program”) for cows and heifers using the following Colorado corporations which he controlled:

- (A) Apache Park Livestock, Inc.,
- (B) Private Land Bucks and Bulls, Inc.,
- (C) Rocky Mountain Romangus, Inc., and
- (D) Trophy Outfitters, Inc.

4. As part of the scheme, SEARS maintained multiple leases on several agricultural and ranching properties in Southern Colorado. Depending on the terms of a given lease agreement, SEARS and his corporations had the right to graze cattle, conduct outfitting business, and/or farm on such properties. During the course of the scheme, neither SEARS nor any of his corporations ever actually owned any agricultural or ranching properties.

5. As part of the scheme, SEARS sent, or caused to be sent, annual mass mailings (also referred to as “advertisements”) to potential investors inviting them to participate in his cattle investment program selling Angus and “Romangus” beef cows and heifers (collectively referred to as “cows”). SEARS’ advertisements represented that his program was offered “exclusively to sportsmen” and provided investors with the chance to own a “tangible asset” that produced a “great return”. SEARS typically directed his advertisements for his program to individuals holding hunting licenses throughout the United States.

6. As part of the scheme, SEARS offered potential investors the right to receive an annual hunt discount from SEARS and his outfitting business should the investor elect to invest

in the program.

7. As part of the scheme, SEARS' advertisements described the basic terms of his investment program and contained various inducements, which included:

- (A) For a set "entry fee," SEARS promised to purchase a specific number of cows for the benefit of the investor who would become the "owner" of the cows. In later advertisements, SEARS represented that for a fee, he was offering the investor the unique opportunity to purchase from SEARS a special breed of cows currently owned by him.
- (B) SEARS stated that the investor would then agree to "leaseback" the cattle to SEARS for a set period of time (usually a three or five year lease term), during which time SEARS would be solely responsible for all costs related to the feed, care and management of the investor's cows, including breeding the investor's cows.
- (C) On an annual basis, SEARS agreed to pay the investor a "cash return" or "leaseback payment" of approximately 10%. In later advertisements, the investor was also given the option to take additional cows instead of receiving a cash leaseback payment.
- (D) At the end of the parties' contract, SEARS guaranteed that he would buy back the cattle from the investor for not less than the original price on the contract should the investor so request at his or her discretion. The investor also had the option to extend the duration of the leaseback agreement beyond the expiration of the original contract.

(E) As part of the agreement with the investor, SEARS, for his own benefit, was entitled to keep, raise, breed and/or sell all calves born from the investor's cows, also referred to as the "calf crop."

8. As part of the scheme, SEARS required that investors sign and execute a written contract along with SEARS which set forth the parties' respective commitments and obligations under the cattle investment program. SEARS typically entitled each contract as either a "Mother Cow Leaseback Agreement" or "Cattle Leaseback Agreement," and on limited occasion, SEARS referred to his contract as a "Joint Venture Agreement". (collectively referred to as "investor contracts").

9. As part of the scheme, SEARS falsely promised investors -- in both the investor contracts and advertisements -- that SEARS or one of his corporations would purchase a set number of cows on behalf of the investor after the investor paid an agreed upon amount of money. In later cases, SEARS falsely promised to sell the investor a set number of cows from SEARS' special breed of cows which he owned. SEARS further promised to brand each investor's cows with a unique brand specifically owned by and assigned to each investor. Instead, SEARS failed to purchase, otherwise acquire, and/or brand the number of cattle which he promised to his investors after receiving their payments. Typically, SEARS only purchased or branded a fraction of the number of the cows which he promised to purchase in an investor contract. In some instances, SEARS failed to purchase or brand any cows on behalf of an investor.

10. As part of the scheme, SEARS and his corporations stopped purchasing cows on behalf of investors by approximately September of 2011, yet SEARS continued to collect funds

from new investors after such date while continuing to promise such new investors he would purchase and brand cows on their behalf as part of the cattle investment program.

11. As part of the scheme, SEARS frequently converted the money paid by investors for the purchase of cattle to his own use and benefit.

12. As part of the scheme, SEARS falsely promised investors -- in both the investor contracts and advertisements -- that SEARS or one of his corporations would pay an annual “cash return” or annual “leaseback payment” to the investor of approximately 10%. At times, SEARS paid annual leaseback payments to investors which lulled investors into believing that their investment was successful and that SEARS’ cattle program was operating consistent with the terms of the parties’ agreement. In some instances, SEARS used new investor funds for cows to pay leaseback payments owed to earlier investors. Over time, SEARS began to make fewer cash returns or leaseback payments to investors and completely stopped making such annual payments to some investors despite his promises.

13. As part of the scheme, SEARS misrepresented to investors -- in both the investor contracts and advertisements -- that their investments were secure since he promised to purchase the investors’ cows back at the end of the contract at a price not less than the original purchase price. Investors regularly relied upon SEARS’ guarantee to buy back their cows at the original price when deciding to initially join the investment program. Instead, SEARS generally failed to buy back any investors’ cows at full price despite his original promises.

14. As part of the scheme, SEARS made other misrepresentations to investors to induce them to invest in his program including: falsely promising to replace any of the investors’ cows that died under SEARS’ care with a productive female cow at SEARS’ sole expense; and falsely

promising to brand all of the investors' purchased cows with the investors' unique brand.

During the course of the scheme, SEARS routinely failed to abide by these promises.

15. As part of the scheme, SEARS regularly persuaded earlier investors in his program to extend the duration of the length of their investor contracts usually by one or two years as they neared expiration of their agreements. SEARS obtained such contract extensions for purposes of avoiding his contractual obligation to make leaseback payments, repay investors the full amount of their initial purchase price for cows, and to conceal the fact that his investment program was failing.

16. As part of his scheme, SEARS used other Colorado entities at times to conceal and/or conduct his financial activities related to the handling of investors' funds to include Apache Park Land and Cattle Company, Inc. and Rio Valle Farms, LLC. At times, SEARS also utilized Person A, and family members to assist him in opening bank accounts and conducting financial transactions in furtherance of the scheme. SEARS also made misleading statements or directed Person A to make misleading statements to existing investors regarding the status of their cattle investment.

17. As part of the scheme, SEARS was aware by at least September 11, 2013, that he was unable to meet his contractual obligations owed to investors under his program. Specifically, SEARS was unable to make annual scheduled leaseback payments to investors as well as fulfill his guarantee to investors that he would buy back investors' cow herds as promised. When attempting to obtain an extension on an investor contract in September of 2013, SEARS stated in a letter to Investor-1 that his cattle investment program was suffering from a series of operational setbacks and financial problems (also referred to as "material facts")

to include:

- (A) “[W]e have lost pasture grass as a result of the extreme and prolonged record setting drought.”
- (B) “Our irrigation water allocations have been cut by 100% on one of our farms (zero water allocations) and cut 65% on another farm.”
- (C) “The only way we can afford to purchase this quantity of hay to sustain winter feeding is to defer leaseback payments for one year.”
- (D) “Our entire cow herd has been quarantined with ‘Tricohomoniasis’... a venereal disease in cattle....”
- (E) “The quarantine restricts the selling of any production cow or bull except for slaughter and also the purchase of production cattle added to the infected herd.”
- (F) “...It will take at least a year to get [the Tricohomoniasis] cleaned up.”
- (G) As a result of this disease, “We have lost between 45 and 50% of our calf crop due to aborted calves. This is a catastrophic loss for us and has caused a severe hardship and impacts our ability to meet our contractual obligations.”
- (H) “At this time an early buy out of the herd by me is not possible given the current quarantine order and my financial status.”

18. As part of the scheme, SEARS continued to actively solicit and collect funds from approximately 12 additional investors (referred to as “later investors”) in his program after September of 2013. SEARS received in excess of \$800,000 from these later investors.

However, when entering into contracts and collecting funds from these later investors, SEARS purposely failed to disclose the material facts related to operational setbacks and financial problems as set forth above in paragraph no. 17 of this indictment.

19. As part of his scheme, SEARS also failed to disclose to later investors the material fact that as of December 9, 2013, he owed and agreed to pay the Internal Revenue Service (“I.R.S.”) \$278,274 in restitution in connection with his criminal case involving his willful failure to file an income tax return, *U.S. v. Richard Sears*, Case No. 13-cr-00180-MSK (District of Colorado).

20. As part of his scheme, SEARS entered into a contract with Investor-2 on April 16, 2014, in which SEARS promised to sell the investor 25 cows which he would brand for the investor in exchange for \$55,000. Instead, on approximately June 4, 2014, SEARS converted a portion of Investor-2’s funds to his own use when he used \$27,000 for purposes of making a restitution payment to the I.R.S. in connection with Case No. 13-cr-00180-MSK. SEARS failed to ever acquire and brand any cows on behalf of Investor-2.

21. As part of his scheme, SEARS regularly misrepresented to investors the true number of cows in his possession to conceal the fact that he was not purchasing, acquiring and/or branding the number of cows which he had promised investors. On March 7, 2014, Investor-3, using an agent, attempted to exercise his right under his investment contract to “personally inspect” his cattle and obtain an inventory of his cows. During the inspection, Investor-3’s agent learned that SEARS did not have an accurate inventory of Investor-3’s cows and that SEARS did not have the required number of Investor-3’s cows as required by the parties’ contracts. Investor-3 then filed a civil lawsuit. On May 2, 2014, Investor-3 obtained a court

order in the District Court in Pueblo, State of Colorado which directed that SEARS' cattle be marshalled, identified and inventoried. Brand inspectors with the State of Colorado Department of Agriculture inventoried cattle in SEARS' possession as a result of the court order related to Investor-3. The inventory ultimately established that as of July of 2014, SEARS possessed substantially fewer cows than contractually promised to Investor-3. The inventory also showed that SEARS possessed substantially fewer cows than he was contractually obligated to possess for all of his other investors.

22. As part of the scheme, SEARS filed a petition for bankruptcy on April 2, 2015, in the District of Colorado, Case 15-13389-HRT, in which he unsuccessfully attempted to discharge his financial commitments to his investors and conceal the fact that he purposely failed to actually purchase, acquire and/or brand the requisite number of cattle promised to investors. On May 6, 2015, SEARS continued to provide misleading information to investors regarding his purchase, acquisition and disposition of investors' cows during and in connection with a 341 Creditor's Meeting held on such date.

23. As part of the scheme, SEARS promised investors that he would purchase or acquire in excess of 5,000 cows in total for such investors. SEARS further promised that all such cows would be branded on behalf of the investors with their own brand. Over the course of the scheme, however, SEARS only purchased or acquired, and branded approximately 2,000 cows for investors despite his promises.

24. As part of the scheme, SEARS caused approximately 111 investors or investor groups to purchase small herds of cows in his cattle investment program. During the scheme, SEARS and his corporations received in excess of \$7,000,000 in investor funds but ultimately

caused approximately \$4,900,000 in investor losses through his scheme.

The Mailings

25. On or about the following dates, in the State and District of Colorado, and elsewhere, defendant RICHARD K. SEARS and “Person A” for the purpose of executing the scheme described above in paragraphs 1 – 24 of the Indictment, knowingly caused to be delivered by United States mail, or by private or commercial interstate carrier, according to the directions thereon, the following matters:

COUNT	Date	Description of Item Delivered	Method of Delivery
1	10-20-14	“Leaseback payment” check for \$5,666.66 from SEARS to Investor-4 in Washington	U.S. Mail
2	10-21-14	Investment check for \$55,000 from Investor-5 to SEARS in Colorado	FedEx
3	12-16-14	Check for \$12,923.61 from Winter Livestock to SEARS in Colorado	U.S. Mail
4	12-20-14	Investment check for \$55,000 from Investor-6 to SEARS in Colorado	U.S. Mail
5	1-20-15	Check for \$7,781.39 from Winter Livestock to SEARS in Colorado	U.S. Mail
6	1-30-15	“Leaseback payment” check for \$6,000 from SEARS to Investor-7 in Texas	U.S. Mail
7	2-3-15	Check for \$4,089.53 from Winter Livestock to SEARS in Colorado	U.S. Mail
8	4-1-15	Check for \$3,432.31 from Winter Livestock to Investor-8 in Texas	U.S. Mail

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

COUNT 9

(Engaging in Monetary Transaction in Property Derived from Specified Unlawful Activity)

26. The allegations contained in counts 1 through 8 of this Indictment are hereby re-alleged as if set out in full and incorporated herein by reference.

27. On or about December 30, 2014, in the State and District of Colorado, the defendant RICHARD K. SEARS did knowingly engage or attempt to engage in a monetary transaction in criminally derived property of a value greater than \$10,000, which property was derived from specified unlawful activity, that is, mail fraud in violation of Title 18, United States Code, Sections 1341 and 2, namely, SEARS caused a withdrawal and transfer of \$16,850 from his personal bank account at Wells Fargo Bank (account ending #4138) for purposes of making a restitution payment to the I.R.S. in connection with his case, *U.S. v. Richard Sears*, Case No. 13-cr-00180-MSK (District of Colorado).

All in violation of Title 18, United States Code, Section 1957.

COUNT 10

(Engaging in Monetary Transaction in Property Derived from Specified Unlawful Activity)

28. The allegations contained in counts 1 through 8 of this Indictment are hereby re-alleged as if set out in full and incorporated herein by reference.

29. On or about January 9, 2015, in the State and District of Colorado, the defendant RICHARD K. SEARS did knowingly engage or attempt to engage in a monetary transaction in criminally derived property of a value greater than \$10,000, which property was derived from specified unlawful activity, that is, mail fraud in violation of Title 18, United States Code, Sections 1341 and 2, namely, SEARS made a withdrawal of \$110,000 from his personal bank

account at Wells Fargo Bank (account ending #4138).

All in violation of Title 18, United States Code, Section 1957.

COUNT 11
(Money Laundering)

30. The allegations contained in counts 1 through 8 of this Indictment are hereby re-alleged as if set out in full and incorporated herein by reference.

31. On or about April 1, 2015, in the State and District of Colorado, and elsewhere, the defendant RICHARD K. SEARS knowing that property involved in a financial transaction represented the proceeds of some form of unlawful activity, conducted or attempted to conduct such a financial transaction, which in fact involved the proceeds of specified unlawful activity, that is, mail fraud in violation of Title 18, United States Code, Sections 1341 and 2, knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of the specified unlawful activity, namely, SEARS made a transfer and withdrawal of \$116,813 from a corporate bank account he controlled at Wells Fargo Bank (account ending #1548) for purposes of purchasing a cashier's check for the same amount paid to the order of "Rio Valle Farms, LLC."

All in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

Forfeiture Allegation

32. The allegations contained in Counts 1 through 11 of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and 18 U.S.C. § 982(a)(1).

33. Upon conviction of the violations alleged in Count 1 through 8 of this Indictment involving the commission of violations of Title 18, United States Code, Sections 1341 and 2,

defendant RICHARD K. SEARS shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c) any and all of the defendant's right, title and interest in all property constituting and derived from any proceeds the defendant obtained directly and indirectly as a result of such offense, including, but not limited to: a money judgment in the amount of proceeds obtained by the by the defendant.

34. Upon conviction of the violations alleged in Counts 9 through 11 of this Indictment involving violations of Title 18, United States Code, Section 1957 and Title 18, United States Code, Section 1956(a)(1)(B)(i), defendant RICHARD K. SEARS shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1) any and all of the defendant's right, title and interest in all property, real or personal, involved in such offense, or all property traceable to such property, including, but not limited to: a money judgment in the amount of proceeds obtained by the by the defendant.

35. If any of the property described above, as a result of any act or omission of the defendant:

- a) cannot be located upon the exercise of due diligence;
- b) has been transferred or sold to, or deposited with, a third party;
- c) has been placed beyond the jurisdiction of the Court;
- d) has been substantially diminished in value; or
- e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other

property of said defendant up to the value of the forfeitable property.

A True Bill:

Ink Signature on file in Clerk's Office
Foreperson

JASON R. DUNN
United States Attorney

By: s/Tim R. Neff

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