

A Lawyer/Real Estate Broker/Contractor  
Found Guilty of Defrauding Homeowners

by

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The Eighth Circuit Court of Appeals (located in St. Louis) recently upheld the guilty verdict against Alvin Clay, a licensed attorney, real estate broker and contractor, for his participation in a conspiracy to defraud five homeowners in Little Rock, Arkansas. The conspiracy also involved a mortgage broker and the owner of a property management and construction corporation.

The case is *United States v. Clay*, 2010 WL 3363091 (C.A. 8 (Ark.)), decided August 27.

Along with Clay, the federal government charged Raymond Nealy and Donny McCuien in the conspiracy. Nealy was a mortgage broker and owned a mortgage company. McCuien managed a Burger King and owned a property management and construction corporation.

The scheme for each of the five home purchases was similar. McCuien and/or Nealy located someone to purchase an inexpensive home. McCuien promised the buyer a no-risk transaction wherein the buyer would receive some cash at closing.

Nealy obtained financing for the purchase by securing a loan that far exceeded the sale price of the home. He did this by using fraudulent information and forging signatures to obtain appraisals on the homes and to prepare contracts for sale. The contracts placed the sale price far greater than the actual asking price.

The difference went to Clay Construction Company for renovation of the property as part of the sale. Then at closing the co-conspirators would fax a Clay Construction invoice to the closing agent in an amount equal to the difference between the asking price and the sale price.

In other words, the invoice reflected the difference between the amount loaned to the borrower and the amount paid to the seller. The problem was that the work had not been performed.

The closing agent then sent a check for the invoice amount to Clay Construction. This resulted in five invoices to five title companies which then issued five checks to Clay Construction totaling \$133,142.23. Clay, Nealy and McCuien divided the money.

The break in discovering this practice came from Kenny Wright, a tax preparer, who became concerned that he had participated in this scheme by preparing false documents. Wright and his lawyer went to see the federal authorities. He admitted he had prepared false tax documents and false invoices from Clay Construction for work never performed. He provided the government with the names of the conspirators and other vital information such as Clay's social security number.

The FBI, armed with a warrant, searched Clay's law office and Nealy's mortgage company. The FBI seized twenty boxes of documents.

A federal grand jury indicted the three men. The indictment alleged that Nealy and McCuien solicited individuals to purchase the five homes and then used fraudulent documentation to apply for financing with Nealy's mortgage company. They supplied false invoices for work not performed to the title companies. The indictment further alleged that they then defrauded the purchasers of the five homes.

Clay was tried separately. The trial lasted seven days and more than thirty witnesses testified. The jury found him guilty of conspiracy to commit wire fraud.

Clay argued on appeal that the evidence did not show that he "knowingly participated in the conspiracy." He says he did not know about the fraudulent documents that Nealy and McCuien sent to the lenders and the title companies.

As for the Clay Construction invoices, Clay contended that they were not material to the lenders' decisions to loan money to the purchasers. Thus, he asserted, no loan proceeds were transmitted by wire communications through any involvement of him.

The Eighth Circuit disagreed in part because Clay had received \$27,500 from his "partnership" with Nealy and McCuien, yet Clay did not complete any work on any of the homes. Clay also admitted at trial that he listed himself on one of the invoices as the "supervisor" on one of the construction projects even though he had never been to the job site and he had not supervised any subcontractors or workers.

The evidence further showed, according to the Eighth Circuit opinion, that the title companies relied on the Clay Construction invoices to send a check to Clay for the difference between the amount loaned to the seller and the amount paid to the seller. The Eighth Circuit found all of this to be sufficient evidence to support the conviction.

Clay also argued on appeal that the trial court erred by submitting a "willful blindness" instruction to the jury. This instruction is premised on the concept that if reasonable inferences support a finding that failure to investigate is equivalent to "burying one's head in the sand," then the jury may consider willful blindness as a basis for knowledge. The Eighth Circuit agreed that this instruction was proper.

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