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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	SA CR 03-25(B) AHS
)	
Plaintiff,)	ORDER DENYING IN PART AND
)	GRANTING IN PART
v.)	DEFENDANT'S MOTION FOR
)	JUDGMENT OF ACQUITTAL
JAMES DAVIS BENNETT,)	
)	
Defendant.)	
)	
)	
)	

I.

INTRODUCTION

On February 6, 2006, defendant filed a Motion for Judgment of Acquittal pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure ("Rule 29 Motion"). The government filed opposition on February 17, 2006. On March 24, 2006, the Court held a hearing on the Rule 29 Motion. Before the Court ruled on the motion, however, defendant asked the Court to hear his request to relieve counsel. The Court granted the motion to relieve defense counsel and allowed defendant to proceed in pro se. The hearing was continued to May 19, 2006, so that the Court could consider

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1 "continuing financial crimes enterprise" ("CFCE") means four or
2 more people acting in concert to commit a series of violations¹
3 under either the bank fraud statute, the wire fraud statute, or the
4 mail fraud statute, among other possible violations. 18 U.S.C. §
5 225(b); see Harris, 79 F.3d at 229. The latter two types of
6 violations must affect a financial institution for purposes of the
7 CFCE statute.² 18 U.S.C. § 225(b); Harris, 79 F.3d at 229. Among
8 other things, a "financial institution" is a bank or savings
9 association the deposits of which are insured by the FDIC. 18
10 U.S.C. § 20(1); 12 U.S.C. § 1813(c)(2).

11 **1. The Evidence Demonstrates That Receipts from the**
12 **CFCE Do Not Total \$5 Million**

13 In this case, the Court grants the Rule 29 Motion as to
14 Count 12 because the government fails to show that the entire \$5
15 million in gross receipts attach to violations affecting financial
16 institutions. As shown in the charts below, when one subtracts the
17 receipts from transactions with nonfinancial institutions, the
18 total gross receipts total well under \$5 million. The first chart
19 uses the information from defendant's summary Exhibit 524, while
20 the second chart uses the information from the government's summary
21 Exhibit 258. The exhibits differed for purposes of this

23 ¹ A "series" of violations is three or more violations. See
24 Harris, 79 F.3d at 229.

25 ² The bank fraud statute, 18 U.S.C. § 1344, builds in the
26 requirement that bank fraud affect a financial institution. Bank
27 fraud is defined as "a scheme or artifice -- (1) to defraud a
28 *financial institution*; or (2) to obtain any of the moneys, funds,
credits, assets, securities, or other property owned by, or under
the custody or control of, a *financial institution*." 18 U.S.C. §
1344 (emphases added).

1 calculation only as to the receipts attributable to two properties,
 2 760 East 43rd Street and 520 Chestnut. Using either party's
 3 information, the receipts total under \$5 million.

4 **CALCULATION UNDER DEFENDANT'S EXHIBIT 524**

5 Property	6 Lender	7 Exhibit verifying lender	8 Receipt
9 9501 S. Western	Mortgage Portfolio Services	Deft.'s Ex. 516	\$250,698.37
10 1177 W. 38th St.	Chadwick Mortgage, Inc.	Govt.'s Ex. 135	\$255,529.32
11 760 E. 43rd St.	Mortgage Portfolio Services	Deft.'s Ex. 515	\$116,073.57
12 456 E. 40th St	Home Loan Mortgage Co.	Deft.'s Ex. 512	\$211,914.43
13 615 W. Imperial	Greenpoint Mortgage Funding, Inc.	Deft.'s Ex. 513	\$223,439.99
14 1485 Molino	Mortgage Capital Acceptance	Govt.'s Ex. 158	\$186,365.68
15 1017 Raymond Ave.	Home Mortgage America/ Greenpoint Mortgage	Govt.'s Ex. 174	\$237,640.56
16 930 E. 11th St.	Home Mortgage America/ Greenpoint Mortgage	Deft.'s Ex. 519	\$244,807.78
17 428 W. 5th St.	New Freedom Mortgage Co.	Deft.'s Ex. 517	\$251,593.11
18 520 Chestnut	First National Home Finance	Deft.'s Ex. 518	\$183,729.82
19 549 E. 17th St.	First Union Mortgage Co.	Govt.'s Ex. 225	\$252,838.38
20 2121 Atlantic	BNC Mortgage Inc.	Govt.'s Ex. 234	\$251,407.38
21 860 Cerritos	Laguna Capital Mortgage	Deft.'s Ex. 514	\$241,443.84

1	TOTAL from Nonfinancial institutions		\$2,907,482.23
2			
3	TOTAL Gross Receipts in Deft.'s Ex. 524		\$5,532,021.21
4			
5	TOTAL Gross Receipts - Sum from Nonfinancial institutions		\$2,624,538.98
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CALCULATION UNDER GOVERNMENT'S EXHIBIT 258

Property	Lender	Exhibit verifying lender	Receipt
9501 S. Western	Mortgage Portfolio Services	Deft.'s Ex. 516	\$250,698.37
1177 W. 38th St.	Chadwick Mortgage, Inc.	Govt.'s Ex. 135	\$255,529.32
760 E. 43rd St.	Mortgage Portfolio Services	Deft.'s Ex. 515	\$232,688.84
456 E. 40th St	Home Loan Mortgage Co.	Deft.'s Ex. 512	\$211,914.43
615 W. Imperial	Greenpoint Mortgage Funding, Inc.	Deft.'s Ex. 513	\$223,439.99
1485 Molino	Mortgage Capital Acceptance	Govt.'s Ex. 158	\$186,365.68
1017 Raymond Ave.	Home Mortgage America/ Greenpoint Mortgage	Govt.'s Ex. 174	\$237,640.56
930 E. 11th St.	Home Mortgage America/ Greenpoint Mortgage	Deft.'s Ex. 519	\$244,807.78
428 W. 5th St.	New Freedom Mortgage Co.	Deft.'s Ex. 517	\$251,593.11

1	520 Chestnut	First National Home Finance	Deft.'s Ex. 518	\$252,390.01
2				
3	549 E. 17th St.	First Union Mortgage Co.	Govt.'s Ex. 225	\$252,838.38
4	2121 Atlantic	BNC Mortgage Inc.	Govt.'s Ex. 234	\$251,407.38
5	860 Cerritos	Laguna Capital Mortgage	Deft.'s Ex. 514	\$241,443.84
6				
7	TOTAL from Nonfinancial institutions			\$3,092,757.69
8				
9	TOTAL Gross Receipts in Govt.'s Ex. 258			\$5,869,334.13
10				
11	TOTAL Gross Receipts - Sum from Nonfinancial institutions			\$2,776,576.44
12				
13				

14 **2. The Government's Argument That the Receipts Need Not**
15 **Come from Violations Affecting Financial**
16 **Institutions is Unpersuasive**

17 The government argues that the \$5 million in gross
18 receipts need not all "come from" financial institutions, relying
19 on United States v. Lefkowitz, 125 F.3d 608 (8th Cir. 1997), and
20 United State v. Gallant, No. CRIM.03-CR-00232-RPM, 2006 WL 278554
21 (D. Colo. Feb. 3, 2006). In Lefkowitz, the defendant induced
22 financial institutions to invest \$1,120,000 in his fraudulent
23 scheme, which investments allowed the defendant's company to make
24 offerings grossing over \$5 million within a 24-month period. The
25 court concluded that these facts, together with facts demonstrating
26 the other elements of § 225 had been met, were sufficient to
27 support a jury's finding that the defendant violated § 225. In
28 Gallant, the district court instructed the jury that the

1 government must prove the defendants "received more than \$5,000,000
2 in gross receipts, from such enterprise during a 24-month period."
3 Gallant, 2006 WL 278554 at *2. In addition, the "continuing
4 financial crimes enterprise [must have] affected a financial
5 institution." Id. The Gallant court held that the defendants'
6 argument that "gross receipts must be shown to have been received
7 from the offenses constituting the 'continuing financial crimes
8 enterprise' specifically charged" took too narrow a view of § 225.
9 Id. at *3. The purpose of § 225 was to increase the penalty for
10 violations that "were a part of repeated and continuing criminal
11 conduct affecting the health of a financial institution." Id.
12 Thus, the CFCE count required only evidence "that the defendants
13 were responsible for a recurring pattern of fraud to obtain funds
14 from [a financial institution] unlawfully." Id.

15 The Court finds the Second Circuit's opinion in Harris
16 more persuasive on this issue. In that case, the court explained
17 that the \$5 million element of the offense was "tied to the series
18 of violations," i.e., the \$5 million or more in receipts should
19 come "from the series of violations during any 24-month period."
20 Harris, 79 F.3d at 230. According to the express language of
21 § 225(b) and 18 U.S.C. 1344 (bank fraud statute), the mail fraud,
22 wire fraud, and bank fraud violations in the series must affect a
23 financial institution. With only those violations that affect
24 financial institutions comprising the series, and thus, the
25 enterprise, as detailed in the chart above, the total gross
26 receipts from the enterprise would be less than \$5 million.

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III.

CONCLUSION

For the foregoing reasons, the Court denies in part and grants in part defendant's Rule 29 Motion. The Court grants the motion as to Count 12 only.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order on counsel and defendant at his last known place of incarceration.

DATED: May 24, 2006.



ALICEMARIE H. STOTLER
CHIEF U.S. DISTRICT JUDGE