

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

FILED

MAY 20 2009

ROBERT D. DENNIS, CLERK
U.S. DISTRICT COURT, WESTERN DIST. OF OKLA.
BY *Robert D. Dennis* DEPUTY

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

No. CR-08-272-C)

PAUL L. SMITH,)

Defendant.)

Violations: 18 USC § 664)

18 USC § 1341)

18 USC § 2)

18 USC § 1001(a)(2)

SUPERSEDING INDICTMENT

The Federal Grand Jury charges:

Introduction

At all times material to this Superseding Indictment:

1. Marie Detty Youth and Family Services Center, Inc., (hereinafter Marie Detty) is a non-profit corporation located in Lawton, Oklahoma that administers a Head Start Program with a grant received from the US Department of Health & Human Services, Administration for Children and Families (HHS-ACF).

2. The defendant, **PAUL L. SMITH**, became the Executive Director of Marie Detty on September 11, 1989. He terminated his position as Executive Director on December 31, 2004.

3. Marie Detty applied for a grant from HHS-ACF for fiscal years 2002 and 2003. In those grant applications, Marie Detty designated a certain amount of funds to be paid to

Principal Financial Group for the Marie Detty Youth and Family Service Center Inc., Profit Sharing Plan. Principal Financial Group was the Plan's third party administrator, record keeper, and Plan custodian. That money was budgeted and required to be paid over to Principal Financial as approved by HHS-ACF.

4. On April 30, 2002 and again on May 31, 2002, the defendant, **PAUL L. SMITH**, directed the fiscal director of Marie Detty to write checks to Principal Financial in the amounts of \$3,315.92 and \$49,167.74 respectively, for the Marie Detty employee profit sharing plan. After having written the checks, the fiscal director was told by the defendant, **PAUL L. SMITH**, to hold the checks and not remit them to Principal Financial for payment into the employee profit sharing plan.

5. On April 30, 2003 and again on May 26, 2003, the defendant **PAUL L. SMITH**, directed the fiscal director of Marie Detty to write two checks to Principal Financial, each in the amount \$52,483.66. Both checks were voided by the fiscal director at the direction of **PAUL L. SMITH** and never remitted to Principal Financial for payment into the employee profit sharing plan.

6. The Plan Administrator, Marie Detty Youth and Family Service Center Inc., acting through its Board of Directors, was the fiduciary for the Marie Detty employee profit sharing plan.

7. The defendant engaged in deceptive practices regarding the funding of the Marie Detty employee profit sharing plan. Specifically, the defendant falsely reported to the Board of Marie Detty that there were insufficient funds available to fund the profit sharing

plan for 2002 and 2003, when in fact the defendant knew that there were sufficient funds provided from the HHS-ACF grant, that provided a "line item" in the budget fully funding contributions to the employee profit sharing plan.

COUNT 1

8. From on or about April 30, 2002 and continuing through July 10, 2006, in the Western District of Oklahoma and elsewhere,

----- **PAUL L. SMITH,** -----

the defendant herein, did unlawfully, willfully and knowingly, embezzle, steal, abstract and converted to his own use moneys, funds, securities, premiums, credits, property and other assets of Marie Detty Youth and Family Service Center Inc., Profit Sharing Plan, an employee pension benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974 and of a fund connected with such plan. Specifically, the defendant defeated the plan's right to collect amounts contractually due from the employer or its agent by engaging in certain deceptive practices.

All in violation of Title 18, United States Code, Section 664.

COUNT 2

9. The Grand Jury realleges and incorporates paragraphs 1 through 3, 6 and 7 as though fully set forth herein.

10. On or June 30, 2003, the defendant, **PAUL L. SMITH**, directed the fiscal director of Marie Detty to write a check to Principal Financial, in the amount \$39,206.03.

The check was voided by the fiscal director at the direction of PAUL L. SMITH and never remitted to Principal Financial for payment into the employee profit sharing plan.

11. From on or about July 1, 2003 and continuing through July 10, 2006, in the Western District of Oklahoma and elsewhere,

----- PAUL L. SMITH, -----

the defendant herein, did unlawfully, willfully and knowingly embezzle, steal, abstract and converted to his own use moneys, funds, securities, premiums, credits, property and other assets of Marie Detty Youth and Family Service Center Inc., Profit Sharing Plan, an employee pension benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974 and of a fund connected with such plan. Specifically, the defendant defeated the plan's right to collect amounts contractually due from the employer or its agent by engaging in certain deceptive practices.

All in violation of Title 18, United States Code, Section 664.

COUNTS 3-8

12. The Grand Jury realleges and incorporates paragraphs 1 and 2 as though fully set forth herein.

The Scheme to Defraud

13. On February 1, 2001 Marie Detty signed a contract with Paradigm Associates for Paradigm to provide advice, consultation and direction on management matters to Marie Detty. The contract provided that Marie Detty would pay Paradigm the sum of \$2,000.00 per month for its services. While the defendant told the Board of Directors of Marie Detty that

he was associated with Paradigm, he falsely represented that he would not receive any financial benefit from Paradigm or the contract payments.

14. It was part of the scheme that on April 25, 2001, the defendant, **PAUL L. SMITH**, opened a post office box for Paradigm Associates in Oklahoma City, Oklahoma. The defendant was the only one with access to the post office box.

15. It was further part of the scheme that on October 10, 2001, the defendant, **PAUL L. SMITH**, opened an account in the name of Paradigm Associates at Southwest Oklahoma Federal Credit Union, formerly Lawton Teachers Federal Credit Union. The defendant was the only authorized signer on the Paradigm Associates account.

16. It was further part of the scheme that Paradigm Associates had no employees, no business location, and provided no advice, consulting services or direction to the management of Marie Detty during the term of the contract.

17. It was further part of the scheme that from October 23, 2001 through March 5, 2004, the defendant, **PAUL L. SMITH**, caused checks from Marie Detty to be written monthly to Paradigm Associates in the total amount of \$66,000, and mailed to Paradigm's post office box location in Oklahoma City, Oklahoma. **PAUL L. SMITH** would then drive to Oklahoma City to retrieve the checks from the post office box and deposit the proceeds into his personal account and/or the Paradigm Associates account at Southwest Oklahoma Federal Credit Union, formerly the Lawton Teachers Federal Credit Union.

18. It was further part of the scheme that from July 2003 through April 2004, the defendant, **PAUL L. SMITH**, prepared and submitted to the HHS-ACF auditors and the Board of Directors of Marie Detty a "Monthly Report" which was purportedly prepared by Robert Beesley, PhD, an employee of Paradigm.

19. On or about December 5, 2003 through March 5, 2004, in the Western District of Oklahoma and elsewhere,

----- **PAUL L. SMITH**, -----
 for the purpose of executing the scheme to defraud in a material manner, the defendant, acting with intent to defraud, knowingly caused to be delivered by the United States Mail from Lawton, Oklahoma, a check from Marie Detty made payable to Paradigm Associates in the amounts and on the dates identified below:

<u>Count</u>	<u>Date</u>	<u>Check #</u>	<u>Mailed From</u>	<u>Mailed To</u>	<u>Amount</u>
3	12/05/03	11266	Marie Detty 325 C. Avenue Lawton, OK	Paradigm Associates P.O. BOX 2352 Oklahoma City, OK	\$1,000
4	12/05/03	9964	Marie Detty 325 C. Avenue Lawton, OK	Paradigm Associates P.O. BOX 2352 Oklahoma City, OK	\$1,000
5	02/06/04	10254	Marie Detty 325 C. Avenue Lawton, OK	Paradigm Associates P.O. BOX 2352 Oklahoma City, OK	\$1,000
6	02/06/04	11776	Marie Detty 325 C. Avenue Lawton, OK	Paradigm Associates P.O. BOX 2352 Oklahoma City, OK	\$1,000
7	03/05/04	10409	Marie Detty 325 C. Avenue Lawton, OK	Paradigm Associates P.O. BOX 2352 Oklahoma City, OK	\$1,000

<u>Count</u>	<u>Date</u>	<u>Check #</u>	<u>Mailed From</u>	<u>Mailed To</u>	<u>Amount</u>
8	03/05/04	12046	Marie Detty 325 C. Avenue Lawton, OK	Paradigm Associates P.O. BOX 2352 Oklahoma City, OK	\$1,000

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

COUNT 9

20. On or about February 11, 2008, in the Western District of Oklahoma,

----- **PAUL L. SMITH,** -----

the defendant herein, knowingly and willfully made a materially false, fictitious and fraudulent statement and representation to a Special Agent of the United States Department of Labor Office of Inspector General (DOL-OIG) and an Investigator of the Employee Benefits Security Administration (DOL-EBSA) who were investigating allegations that Paradigm Associates was merely an alter ego of the defendant and had not provided advice, consulting services or direction on management matters to Marie Detty. As part of that investigation, agents with DOL-OIG and DOL-EBSA began tracing the checks Marie Detty wrote to Paradigm Associates to determine who ultimately received the money, since they were unable to locate a business address for Paradigm Associates. The defendant falsely told the agents that Paradigm Associates provided advice to him as the Executive Director and identified two consultants, Bob Beesley and Scott Selby who allegedly worked for Paradigm.

All in violation of Title 18, United States Code, Section 1001(a)(2).

COUNT 10

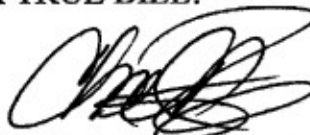
21. On or about February 11, 2008, in the Western District of Oklahoma,

-----**PAUL L. SMITH,**-----

the defendant herein, knowingly and willfully made a materially false, fictitious and fraudulent statement and representation to a Special Agent of the United States Department of Labor Office of Inspector General (DOL-OIG) and an Investigator of the Employee Benefits Security Administration (DOL-EBSA) who were investigating allegations that the defendant used Paradigm Associates to embezzle money from Marie Detty. During the interview with the agents, the defendant falsely represented that he received no financial benefit from Paradigm Associates when, in truth and fact, the defendant deposited the proceeds from the checks written from Marie Detty to Paradigm Associates into his personal account and the Paradigm Associates account at Southwest Oklahoma Federal Credit Union, formerly the Lawton Teachers Federal Credit Union.


All in violation of Title 18, United States Code, Section 1001(a)(2).

A TRUE BILL:



FOREPERSON OF THE GRAND JURY

JOHN C. RICHTER
United States Attorney



VICKI ZEMP BEHENNA
Assistant U.S. Attorney