

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KEVIN V. RYAN (CSBN 118321)
United States Attorney

ORIGINAL
FILED

SEP 11 2003

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MMC

CR 03 0279

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT E. VENER,
DYNACORP FINANCIAL
STRATEGIES, INC., and
DFS CREDIT CORPORATION,

Defendants.

No.

VIOLATIONS: 18 U.S.C. § 1343 – Wire
Fraud; 18 U.S.C. § 1341 – Mail Fraud;
18 U.S.C. § 1956(a)(1)(A)(i) – Money
Laundering; 18 U.S.C. § 2 – Aiding and
Abetting

SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

COUNTS ONE THROUGH EIGHT: (18 U.S.C. §§ 1343 & 2– Wire Fraud and Aiding
and Abetting)

Introductory Allegations

1. At all times relevant to this Indictment:

The Defendants

a. Defendant DYNACORP FINANCIAL STRATEGIES, INC. (hereinafter

INDICTMENT

1 “DFS”) and defendant DFS CREDIT CORPORATION (hereinafter “DFSCC”) were
2 California corporations. DFS owned all of the stock of DFSCC. DFS and DSFCC’s
3 shared offices were located initially in San Francisco, later in San Rafael and finally in
4 Novato, California.

5 b. Defendant ROBERT E. VENER (hereinafter “VENER”) was the majority
6 shareholder in DFS, and Chief Executive Officer of DFS and DFSCC.

7 c. DFSCC was the grantor and administrator of the DFS Secured Healthcare
8 Receivables Trusts I, II, III, and IV (hereinafter “DFS Trusts”). DFS was the beneficiary
9 of the DFS Trusts.

10 Advanced Funding of Healthcare Receivables

11 d. Defendants VENER, DFS and DFSCC (hereinafter “defendants”) promoted an
12 investment program described as advanced funding of healthcare providers’ accounts
13 receivables (hereinafter “receivables”). Under the DFS Trusts’ indentures, healthcare
14 providers included hospitals, doctors, medical groups, health maintenance organizations,
15 and rehabilitation centers, but did not include the DFS Trusts. The DFS Trusts had the
16 authority to raise funds from investors to be used for the purchase of receivables at a
17 discount.

18 e. Defendants caused the DFS Trusts to give promissory notes to investors in
19 exchange for investor funds. Thus, investors became DFS Trusts’ Noteholders.
20 Defendants caused investor funds to be deposited in a lockbox bank account under the
21 control of independent trustees, a trust company for DFS Trusts I, II & IV, and a law firm
22 for DFS Trust III.

23 f. As described by defendants, advanced funding meant that a percentage of the
24 amount due on each receivable would be advanced immediately to the healthcare
25 provider. Healthcare providers would still be responsible for collecting the receivables
26 sold to the DFS Trusts. Receivables would be paid by healthcare recipients, or other
27 entities responsible for paying receivables such as insurance companies or government
28 agencies. The healthcare providers would forward, or direct other payers to forward,

1 receivables payments to either: (1) the bank account of the DFS Trust purchasing the
2 receivable, or (2) an intermediate bank lockbox account. In the latter case, a transfer
3 would be made from the bank lockbox account to the bank account of the DFS Trust
4 purchasing the receivable. The receivables payments would be both the source for
5 repayment of principal and interest to the DFS Trusts' Noteholders and the source for
6 purchases of additional receivables.

7 g. Defendants marketed the DFS Trusts' investment directly, and through
8 intermediaries known as wholesalers, to broker/dealers in various states. The
9 broker/dealers and their representatives presented the DFS Trusts' investment to
10 individual and institutional investors. The defendants created private placement
11 memoranda (hereinafter "PPMs") and other sales literature which described the DFS
12 Trusts' investment. The defendants provided the PPMs and subscription agreements to
13 broker/dealers who in turn provided them to prospective investors. Between February 1,
14 1998 and June 2000, over 600 investors located in over thirty states and several foreign
15 countries invested or reinvested approximately \$50,000,000 in the DFS Trusts. The
16 monies from investors were wired or mailed to DFS Trusts' accounts at the Bank of
17 America and Westamerica Bank.

18 Scheme to Defraud

19 2. Beginning on an unknown date, but no later than May 1, 1998, and continuing to
20 on or about June 30, 2000, the defendants devised and intended to devise a scheme and
21 artifice to defraud wholesalers, broker/dealers, DFS Trusts' Noteholders and prospective
22 investors, and to obtain money by false and fraudulent pretenses, representations and
23 promises.

24 3. In particular, the defendants made false representations to wholesalers,
25 broker/dealers, DFS Trusts' Noteholders and prospective investors in that they continued
26 to market the DFS Trusts' investment using PPMs and other sales literature after they
27 knew that such written material contained false and misleading statements.

28 4. The false statements contained in the PPMs and other sales literature included the

1 following:

- 2 a. The DFS Trusts would purchase receivables from healthcare providers;
- 3 b. The receivables purchased would have a net collectible value;
- 4 c. The receivables purchased would be aged less than either 90 or 180 days from
5 the billing date;

6 5. Contrary to the representations in the PPMs and other sales literature, the
7 defendants caused large-scale sales and purchases of receivables between the DFS Trusts
8 instead of purchasing receivables directly from healthcare providers. Defendants engaged
9 in inter-DFS Trusts' sales and purchases to generate cash for interest and/or principal
10 payments to DFS Trusts' Noteholders. Defendants also engaged in inter-DFS Trusts'
11 sales and purchases instead of purchasing receivables directly from providers to conceal
12 the DFS Trusts' precarious financial condition from DFS Trusts' Noteholders and new
13 investors.

14 6. Significant percentages of the receivables the defendants caused to be purchased
15 were aged longer than 90 days and 180 days and uncollectible. On at least one occasion,
16 receivables were purchased which were in litigation. Defendants on occasion used money
17 paid by DFS Trusts' Noteholders for the purchase of receivables to pay principal and
18 interest to other DFS Trusts' Noteholders.

19 7. Defendants also falsely represented the financial condition of DFS, DFSCC and
20 the DFS Trusts as sound. For example, defendants caused the creation of 1998 and 1999
21 consolidated balance sheets of DFS and subsidiaries which grossly overstated the net
22 realizable value of receivables by failing to record sufficient allowances for doubtful
23 accounts. By understating doubtful accounts, the 1998 and 1999 consolidated balance
24 sheets falsely represented that the collectible receivables exceeded the sum of current
25 liabilities and long term debt, thus leaving the false impression that there were sufficient
26 assets to satisfy, or substantially satisfy any claims by DFS Trusts' Noteholders.
27 Similarly, defendants falsely represented to investors in PPMs that the assets of the DFS
28 Trusts either exceeded in value or were close to exceeding in value the amount of the

1 notes outstanding to DFS Trusts' Noteholders.

2 8. Defendants falsely represented how well the Defendants and the DFS Trusts were
3 doing in receiving and collecting receivables proceeds. Defendants assured wholesalers
4 and broker/dealers that collections were being made and that there were no significant
5 problems in collecting receivables. In fact, collections of receivables from certain
6 important healthcare providers were not being made, or were being made in amounts
7 substantially under the estimated net collectible value of the receivables purchased.

8 Use of the Wires

9 9. On or about the dates set forth below, in the Northern District of California and
10 elsewhere, the defendants

11 ROBERT E. VENER,
12 DYNACORP FINANCIAL STRATEGIES, INC. and
13 DFS CREDIT CORPORATION,

14 for the purpose of executing the scheme and artifice to defraud wholesalers,
15 broker/dealers, DFS Trusts' Noteholders and prospective investors and to obtain money
16 by false and fraudulent pretenses, representations and promises, did knowingly transmit
17 and cause to be transmitted in interstate commerce by means of wire communication
18 certain writings, signs and signals as specified below:

| 18 | <u>Count</u> | <u>Wire Date</u> | <u>From</u> | <u>To</u> | <u>Description of Wire</u> |
|----|--------------|------------------|-------------|------------|--|
| 19 | 1 | 9/18/98 | Nebraska | California | \$250,000 wire transfer to Bank of America |
| 20 | 2 | 12/29/98 | New York | California | \$50,000 wire transfer to Bank of America |
| 21 | | | | | |
| 22 | 3 | 7/9/99 | Michigan | California | \$50,000 wire transfer to Bank of America |
| 23 | 4 | 7/13/99 | Michigan | California | \$50,000 wire transfer to Bank of America |
| 24 | | | | | |
| 25 | 5 | 7/16/98 | Nebraska | California | \$60,000 wire transfer to Bank of America |
| 26 | 6 | 8/30/99 | Nebraska | California | \$25,000 wire transfer to Bank of America |
| 27 | | | | | |
| 28 | 7 | 9/30/99 | Nebraska | California | \$100,000 wire transfer to Bank of America |

1 8 1/11/00 New York California \$49,980 wire transfer to
2 Bank of America

3 All in violation of Title 18, United States Code, Sections 1343 and 2.

4 COUNTS NINE THROUGH TWENTY-THREE: (18 U.S.C. §§ 1341 & 2- Mail Fraud
5 and Aiding and Abetting)

6 10. The allegations in paragraphs one through eight are hereby realleged and
7 incorporated by reference as if they were fully set forth herein.

8 Use of the Mails and Interstate Carriers

9 11. On or about the dates set forth below, in the Northern District of California and
10 elsewhere, the defendants

11 ROBERT E. VENER,
12 DYNACORP FINANCIAL STRATEGIES, INC. and
13 DFS CREDIT CORPORATION,

14 for the purpose of executing the scheme and artifice to defraud wholesalers,
15 broker/dealers, DFS Trusts' Noteholders and prospective investors and attempting so to
16 do, did knowingly cause such matters and things to be delivered by mail by the United
17 States Postal Service and commercial interstate carriers according to the directions
18 thereon, as set forth below:

| 18 | <u>Count</u> | <u>Date of Delivery</u> | <u>Carrier</u> | <u>Description of Item Delivered</u> |
|----|--------------|-------------------------|-------------------|--|
| 19 | 9 | 10/5/98 | US Postal Service | Subscription agreement and \$300,000 check mailed from McCook, Nebraska to San Rafael, California |
| 20 | | | | |
| 21 | 10 | 1/19/99 | US Postal Service | Subscription agreement and \$50,000 check mailed from Santa Rosa, California to San Rafael, California |
| 22 | | | | |
| 23 | | | | |
| 24 | 11 | 3/16/99 | Federal Express | Subscription agreement and \$25,000 check sent from Palm Springs, California to San Rafael, California |
| 25 | | | | |
| 26 | | | | |
| 27 | 12 | 4/14/99 | UPS | Subscription agreement and \$40,000 check sent from Pawnee City, Nebraska to San Rafael, California |
| 28 | | | | |

INDICTMENT

| | | | | |
|----|----|----------|-------------------|---|
| 1 | 13 | 5/21/99 | US Postal Service | Subscription agreement and \$150,000 check mailed from Santa Rosa, California to San Rafael, California |
| 2 | | | | |
| 3 | 14 | 6/1/99 | US Postal Service | Subscription agreement and \$500,000 check mailed from Redwood Shores, California to San Rafael, California |
| 4 | | | | |
| 5 | | | | |
| 6 | 15 | 6/28/99 | US Postal Service | Subscription agreement and \$20,000 check mailed from San Francisco, California to San Rafael, California |
| 7 | | | | |
| 8 | | | | |
| 9 | 16 | 8/30/99 | US Postal Service | Subscription agreement and \$50,000 check mailed from Redmond, Oregon to Novato, California |
| 10 | | | | |
| 11 | 17 | 10/25/99 | US Postal Service | Subscription agreement and \$20,000 check mailed from Petaluma, California to Novato, California |
| 12 | | | | |
| 13 | | | | |
| 14 | 18 | 1/21/00 | Airborne Express | Subscription agreement and \$73,286.91 check sent from Norfolk, Nebraska to San Rafael, California |
| 15 | | | | |
| 16 | 19 | 5/3/00 | US Postal Service | Supplemental subscription agreement and \$30,000 check mailed from Walnut Creek, California to Novato, California |
| 17 | | | | |
| 18 | | | | |
| 19 | 20 | 5/26/00 | US Postal Service | Subscription agreement and \$50,000 check mailed from Norfolk, Nebraska to Novato, California |
| 20 | | | | |
| 21 | 21 | 5/30/00 | US Postal Service | Subscription agreement and \$100,000 check mailed from San Francisco, California to Novato, California |
| 22 | | | | |
| 23 | | | | |
| 24 | 22 | 6/12/00 | UPS | Supplemental subscription agreement and \$75,000 check sent from Lincoln, Nebraska to Novato, California |
| 25 | | | | |

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

27 ///

28 ///

1 COUNTS TWENTY-THREE THROUGH THIRTY-TWO: (18 U.S.C. §§ 1956
2 (a)(1)(A)(i) & 2) – Money Laundering and Aiding and Abetting)

3 12. On or about the dates set forth below, in the Northern District of California and
4 elsewhere, the defendants

5 ROBERT E. VENER,
6 DYNACORP FINANCIAL STRATEGIES, INC. and
7 DFS CREDIT CORPORATION,

8 did knowingly and intentionally conduct and attempt to conduct the financial transactions
9 described below affecting interstate commerce and involving the use of Bank of America,
10 a financial institution which was engaged in interstate commerce, which financial
11 transactions involved the proceeds of specified unlawful activities, specifically wire and
12 mail frauds, and knowing that the property involved in such financial transactions
13 represented the proceeds of some form of unlawful activity, and with the intent to
14 promote the carrying on of those specific unlawful activities:

| 14 | <u>Count</u> | <u>Date</u> | <u>Financial Transaction</u> |
|----|--------------|-------------|--|
| 15 | 23 | 7/22/98 | Intra-bank transfer of \$607,441.08 from 16 DFS Trust IV account to DFS Trust II account |
| 17 | 24 | 7/22/98 | Intra-bank transfer of \$136,460.11 from 18 DFS Trust II account to DFSCC account |
| 19 | 25 | 9/24/98 | Intra-bank transfer of \$1,188,214.54 19 from DFS Trust IV account to DFS Trust II account |
| 20 | 26 | 9/24/98 | Intra-bank transfer of \$418,764.74 from 20 DFS Trust II account to DFSCC account |
| 21 | 27 | 10/15/98 | Intra-bank transfer of \$1,069,392.42 21 from DFS Trust IV account to DFS Trust II account |
| 22 | 28 | 10/16/98 | Intra-bank transfer of \$379,282.26 from 22 DFS Trust II account to DFSCC account |
| 23 | 29 | 4/19/99 | Intra-bank transfer of \$401,257.95 from 23 DFS Trust IV account to DFS Trust I account |
| 24 | 30 | 4/19/99 | Intra-bank transfer of \$375,000 from 24 DFS Trust I account to DFSCC account |

