

FILED

## UNITED STATES DISTRICT COURT

13 MAR -8 PM 1:45

for the

Southern District of Ohio

United States of America )

v. )

Diane Elizabeth Niehaus )

Case No.

3 : 13 mj 75

MICHAEL J. NEWMAN  
UNITED STATES  
MAGISTRATE JUDGE

MICHAEL J. NEWMAN

Defendant(s)

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of See Attachment A in the county of Montgomery in the  
Southern District of Ohio, the defendant(s) violated:

Code Section

Offense Description

See Attachment A

See Attachment A

This criminal complaint is based on these facts:

See Attached Affidavit of Michael R. Bush

☒ Continued on the attached sheet.

Complainant's signature

Michael R. Bush, SA of the FBI

Printed name and title

Sworn to before me and signed in my presence.

Date:

3/8/13

City and state:

Dayton, Ohio



Judge's signature

Michael Newman, US Magistrate Judge

Printed name and title

ATTACHMENT A

COUNT ONE

[18 U.S.C. § 656]

Beginning on an exact date unknown, but at least by June 2008, and continuing through in or around 2010, in the Southern District of Ohio, defendant DIANE ELIZABETH NIEHAUS, an agent and employee of Union Savings Bank, a financial institution the deposits of which were insured by the Federal Deposit Insurance Corporation, embezzled, abstracted, purloined, and willfully misapplied in excess of \$1,000 in moneys, funds, assets and securities intrusted to the custody and care of Union Savings Bank.

In violation of Title 18, United States Code, Section 656.

COUNTS TWO AND THREE

[18 U.S.C. § 1028A]

From in or around June 2008 and continuing through in or around 2010, in the Southern District of Ohio, defendant DIANE ELIZABETH NIEHAUS knowingly possessed and used, without lawful authority, means of identification of other persons - namely, the name, social security number and other identifying information for the following Union Savings Bank customers, each individual consisting of a separate count herein:

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COUNT	INDIVIDUAL WHOSE MEANS OF IDENTIFICATION WAS UNLAWFULLY USED OR POSSESSED
2	R.F.
3	J.C.

during and in relation to a felony violation enumerated in 18 U.S.C. § 1028A - namely, embezzlement in violation of 18 U.S.C. § 656.

All in violation of Title 18, United States Code, Section 1028A.

**AFFIDAVIT**

I, Michael R. Bush, being duly sworn, depose and state as follows:

1. I am a Special Agent of the Federal Bureau of Investigation, and have been so employed for over twenty-two years. I am currently assigned to the Dayton Resident Agency of the Cincinnati Field Division. In conjunction with my official duties, I investigate violations of Federal criminal laws, to include white collar crime matters, which includes offenses involving embezzlement of moneys intrusted to the custody or care of a Federally insured financial institution; specifically including violations of Title 18, United States Code, Section 656 (embezzlement) and Title 18, United States Code, Section 1028A (aggravated identity theft).
2. The information contained within this Affidavit is based upon investigation personally conducted and information provided to me by other law enforcement personnel. I have personally interviewed witnesses, and reviewed reports of interviews conducted by other law enforcement personnel. I have personally reviewed financial records, and reviewed summaries of reviews conducted by other law enforcement personnel. For purposes of this Affidavit, I have not distinguished between information of which I have direct knowledge and that which I have hearsay knowledge.
3. This Affidavit does not contain every fact known to the investigation, but only those deemed necessary to demonstrate sufficient probable cause that DIANE ELIZABETH NIEHAUS committed the offenses alleged in the complaint.

**FACTS SUPPORTING PROBABLE CAUSE**

4. Union Savings Bank is headquartered in Cincinnati, Ohio, with offices located in Cincinnati, Dayton, Columbus, Kentucky and Indiana. Union Savings Bank is insured via the Federal Deposit Insurance Corporation (FDIC), an agency of the United States Government.
5. DIANE ELIZABETH NIEHAUS started her employment with Union Savings Bank on or about October 26, 2006. On or about September 20, 2011, NIEHAUS resigned from her position as branch manager of the Centerville branch of Union Savings Bank located at 5651 Far Hills Avenue, Dayton, Ohio 45429.

**J.F. and R.F**

6. From on or about October 6, 2007 to October 6, 2008, DIANE ELIZABETH NIEHAUS withdrew funds from Union Savings Bank certificate of deposit accounts in the names of J.F. and R.F. and caused some of the funds to be negotiated into official checks.



7. On June 18, 2008, DIANE ELIZABETH NIEHAUS withdrew \$2,583.89 (with no signature) from R.F.'s account #\*\*\*\*\*0993 in the form of official check #458725 made payable to R.F. DIANE ELIZABETH NIEHAUS cashed this check one hour later with no endorsement on June 18, 2008.
8. On October 6, 2008, DIANE ELIZABETH NIEHAUS withdrew \$2,079.14 from R.F.'s account #\*\*\*\*\*4814 with no signature, but the withdrawal slip reflects "In Florida phone request." The withdrawal was made in the form of official check #522275 payable to R.F. DIANE ELIZABETH NIEHAUS cashed this check with no endorsement.
9. DIANE ELIZABETH NIEHAUS did not have R.F. or J.F.'s permission to make these withdrawals. The withdrawal slips contained no signatures and all of the withdrawals were eventually converted into cash totaling \$7,592.34. When the couple discovered that funds were missing from their accounts, DIANE ELIZABETH NIEHAUS reimbursed their accounts with two official checks funded from the bank accounts of D.C. and J.C., other Union Savings Bank customers.
10. In October of 2008 DIANE ELIZABETH NIEHAUS told R.F. that the discrepancy with her bank accounts was caused by the theft of an employee named S.B.; further, DIANE ELIZABETH NIEHAUS told R.F., S.B. did not make enough to cover all of her bills so she took money from certificates of deposit because the certificates are long term and the customers wouldn't immediately notice the loss. DIANE ELIZABETH NIEHAUS told R.F. that S.B. tracked when the certificates of deposit came due and would replace the funds from another customer account to cover what she took. DIANE ELIZABETH NIEHAUS told R.F. that they were not the only victim. DIANE ELIZABETH NIEHAUS stated they confronted S.B. and she admitted to it. DIANE ELIZABETH NIEHAUS stated the bank was filing charges against S.B. and she would have to pay restitution and she would never work at a bank again because of FDIC rules. DIANE ELIZABETH NIEHAUS stated several of the accounts in question had been closed and the bank had to notify the customer and make the accounts whole. DIANE ELIZABETH NIEHAUS sent a letter to R.F. explaining the fraud by purported teller S.B.
11. DIANE ELIZABETH NIEHAUS was actually the teller that conducted the illegal transactions; and DIANE ELIZABETH NIEHAUS replaced the missing funds with funds from the bank account belonging to J.C. and D.C. DIANE ELIZABETH NIEHAUS had actually explained her own embezzlement scheme to R.F.
12. Based on my training and experience, I know that an account number as well as an individual's name constitute means of identification within the meaning of Title 18, United States Code, Section 1028A.

**J.C. and D.C.**

13. J.C. and his wife, D.C., maintained accounts at Union Savings Bank. They resided in Beavercreek, Ohio; however, they traveled to the Centerville branch of Union Savings Bank to conduct most of their banking transactions. They typically dealt with DIANE ELIZABETH NIEHAUS, who assisted them with their banking transactions.

14. According to J.L. and S.I., the daughters of D.C. and J.C., during late 2007, DIANE ELIZABETH NIEHAUS befriended D.C. and J.C. DIANE ELIZABETH NIEHAUS started assisting D.C. and J.C. with all of their banking activities. J.L. and S.I. indicated that by 2008 their parents were not in good health; J.C. was medicated for several conditions including congestive heart failure and diabetes; D.C. had dementia and could no longer balance her checkbook or cook meals. D.C. and J.C. had been thrifty their entire lives and were on a strict budget of \$600 a month from which they purchased food and gas.
15. On August 25, 2010, DIANE ELIZABETH NIEHAUS caused durable powers of attorney to be prepared for, and signed by J.C. and D.C. individually making DIANE ELIZABETH NIEHAUS the power of attorney for both J.C. and D.C. They were notarized by Venus Jackson of Union Savings Bank. Venus Jackson was interviewed and stated that J.C. and/or D.C. were not both present during each of the times that she notarized documents for J.C. and D.C. at the Union Savings Bank office on Far Hills Avenue in Centerville, Ohio. Jackson stated that she did not read any of the documents that she notarized. A witness previously stated J.C. was in the hospital on August 25, 2010 and could not have gone to Union Savings Bank to sign a power of attorney. Miami Valley Hospital records were obtained and reflect that J.C. was in the intensive care unit on August 25, 2010, the date. J.C.'s signature appears neatly on this POA.
16. Charles Thornton, the General Counsel for Union Savings Bank, stated that in late 2010 the bank discovered that DIANE ELIZABETH NIEHAUS was conducting transactions within the accounts of J.C. and D.C. The bank determined DIANE ELIZABETH NIEHAUS had transferred funds from J.C. and D.C.'s accounts to DIANE ELIZABETH NIEHAUS' accounts. Thornton advised your Affiant he interviewed DIANE ELIZABETH NIEHAUS and she indicated she had Power of Attorney from J.C. and D.C. and they approved of her activities. Thornton advised your Affiant that he had interviewed D.C. at her residence where DIANE ELIZABETH NIEHAUS sat next to D.C. and assisted in explaining Thornton's questions, and helped with D.C.'s answers. J.C. was hospitalized at the time Thornton met with D.C. D.C. indicated that ELIZABETH (DIANE ELIZABETH NIEHAUS) and PAUL (PAUL ROBERT NIEHAUS) were wonderful people who treated her and J.C. better than family. D.C. indicated that she had given DIANE ELIZABETH NIEHAUS money for a car and she planned to give DIANE ELIZABETH NIEHAUS money to buy a house. Thornton told your Affiant that he advised D.C. to seek legal assistance, but D.C. declined. Thornton told your Affiant that he advised DIANE ELIZABETH NIEHAUS that it was a conflict of interest for her to conduct financial transactions for J.C. and D.C. under the Power of Attorney, while DIANE ELIZABETH NIEHAUS was employed at the bank, and J.C. and D.C. had their accounts at the Union Savings Bank.
17. On January 7, 2011, Union Savings bank retroactively prepared a document containing the signatures of D.C. and J.C. authorizing DIANE ELIZABETH NIEHAUS to withdraw funds from their bank accounts. The transactions listed begin on November 8, 2010. There is no mention of the other transactions dating back to January 2, 2008.
18. On January 25, 2011, a monetary gift letter was prepared and notarized by Venus Jackson. This letter reflects that J.C. and D.C. will give PAUL ROBERT NIEHAUS and DIANE ELIZABETH NIEHAUS a gift of \$220,000 toward the purchase of a home located at 2165 Van



Oss Drive, Beavercreek, OH 45431. The gift funds were to be transferred from an account at Union Savings Bank. According to Greene County property records, this residence is on the same street as the residence of J.C. and D.C. Neither DIANE ELIZABETH NIEHAUS nor PAUL ROBERT NIEHAUS purchased this home.

19. A second monetary gift letter was prepared and notarized by Venus Jackson on February 11, 2011. This letter reflects that J.C. and D.C. will give PAUL ROBERT NIEHAUS and DIANE ELIZABETH NIEHAUS a gift of \$500,000 toward the purchase of a home and/or land in Beavercreek, Ohio. According to the letter, the gift funds were to be transferred from an account at Benchmark Bank.
20. On or about January 31, 2011, DIANE ELIZABETH NIEHAUS withdrew funds from Union Savings Bank certificates of deposit, numbers \*\*\*\*\*3402, \*\*\*\*\*9459 and \*\*\*\*\*9434 in the names D. C. and/or J.C. The withdrawals were made in the form of Union Savings Bank Official checks, numbers 767325, 767326, and 767324.
21. On or about February 10, 2011, J.C. and D.C. each executed a new Last Will and Testament (Wills), which were prepared by Attorney Joseph Stadnicar. The wills bequeathed all the estate to the surviving spouse, either J.C. or D.C. If one spouse had died, the wills bequeathed 50% of their estate to J.L. (one of J.C. and D.C. two daughters); 10% each to their two granddaughters; and 30% to DIANE E. NIEHAUS and her husband, PAUL R. NIEHAUS. In addition, the Wills appointed DIANE ELIZABETH NIEHAUS, to serve as Executrix.
22. On February 28, 2011, the Union Savings Bank three official checks, numbers 767324, 767325, and 767326, were deposited into Benchmark Bank, account numbers \*\*\*\*3282, and \*\*\*\*3290, in the names of J.C., D.C. and DIANE ELIZABETH NIEHAUS. Benchmark Bank is located in Gahanna, Ohio. DIANE ELIZABETH NIEHAUS contacted Benchmark Bank to set-up the accounts; further, DIANE ELIZABETH NIEHAUS directed the statements for the accounts be mailed to her residence located in Beavercreek, Ohio.
23. On or about March 30, 2011, Jesse Cline passed away at the Miami Valley Hospital.
24. On or about May 9, 2011, DIANE ELIZABETH NIEHAUS directed Benchmark Bank to close accounts \*\*\*\*3282, and \*\*\*\*3290; and transfer the funds, totaling \$492,802.27, to a new account at Benchmark Bank, account number \*\*\*\*3940 in the names D.C., DIANE ELIZABETH NIEHAUS, and PAUL NIEHAUS.
25. On or about May 18, 2011, DIANE ELIZABETH NIEHAUS caused \$406,748.19 to be wired from Benchmark Bank Account Number \*\*\*\*3940, to Landmark Title Company for the purchase of a residence located at 3492 Riva Court, Beavercreek, Ohio. The home was purchased on June 8, 2011 for \$410,000. Landmark Title Company is located in Centerville, Ohio.

26. The Settlement Statement for the purchase of the residence listed PAUL ROBERT NIEHAUS and DIANE ELIZABETH NIEHAUS as the purchasers of 3492 Riva Court, Beavercreek, Ohio.
27. On November 22, 2011, DIANE ELIZABETH NIEHAUS was appointed Executrix of the Estate of J.C. In addition, the Last Will and Testament of J.C. was filed on this date.
28. On July 19, 2011, a lawsuit was filed by D.C. in the Common Pleas Court of Montgomery County, case number 2011 CV 05176. This lawsuit alleges breach of fiduciary duty and fraud by DIANE ELIZABETH NIEHAUS. A second lawsuit was filed on March 29, 2012 amending the lawsuit to include Union Savings Bank as a defendant. The lawsuit alleges:

On February 28, 2011, ELIZABETH NIEHAUS used the power of attorney to withdraw approximately \$490,653.95 of [D.C.'s] money from her Union Savings Bank account and deposited it into an account at the Gahanna, Ohio branch of Benchmark Bank, which is nearly ninety (90) miles distant from [D.C.'s] residence, in the names of [J.C.], [D.C.], and DIANE ELIZABETH NIEHAUS, POA, joint with survivorship. ELIZABETH NIEHAUS caused the new Benchmark Bank account statements to be mailed to her then residence at 1463 Red Barn Way, Beavercreek, Ohio, such that [J.C. and D.C.] would not receive information regarding their money. On or about May 18, 2011, ELIZABETH NIEHAUS caused the sum of \$406,748.19 to be wire transferred from [D.C.'s] account at Benchmark Bank to Landmark Title Agency... On or about June 15, 2011, ELIZABETH NIEHAUS used the funds to purchase a \$410,000 house in her and her husband's names located at 3492 Riva Court, Beavercreek, Ohio.
29. One of the documents filed in civil case 2011 CV 05176, on April 25, 2012, by DIANE ELIZABETH NIEHAUS through her attorneys, was an answer to first set of interrogatories and production of documents. In this document, DIANE ELIZABETH NIEHAUS admits that she resides at 3492 Riva Court, Beavercreek, OH. In answer to the question "Identify all property, whether tangible or intangible, that you removed from [J.C. and D.C.'s] home during the time period, whether you removed the property as a result of a gift, or for safekeeping purposes" the defendant responded "...Several items of personality were entrusted to my husband and I for safe keeping by [J.C. and D.C.] to wit: savings bonds, wills, car title, marriage license, and deed. After [J.C.'s] death, possession of [J.C.'s] wallets were entrusted to me as I was his named fiduciary..."
30. On May 18, 2012, the lawsuit was settled, wherein DIANE ELIZABETH NIEHAUS and PAUL ROBERT NIEHAUS agreed to transfer the contents of a cash box, \$365,934, to the attorney for the victim D.C. along with transferring the house on Riva Court, Beavercreek to Union Savings Bank. Union Savings Bank agreed to pay the attorney for the victims \$834,066, which includes the \$407,000 value for the real estate and \$427,000 in cash.




CONCLUSION

31. Based on forgoing, your Affiant respectfully submits there is probable cause to believe DIANE ELIZABETH NIEHAUS did embezzle funds intrusted to the custody, care and/or control of Union Savings Bank. Specifically, DIANE ELIZABETH NIEHAUS misappropriated moneys belonging to J.F. and R.F. in violation of Title 18, United States Code, Section 656, and, in using the names and account numbers of R.F. and J.F. in perpetrating this fraud, committed aggravated identity theft in violation of Title 18, United States Code, Section 1028A.
32. Additionally, based on the forgoing, your Affiant respectfully submits there is probable cause to believe DIANE ELIZABETH NIEHAUS did embezzle funds intrusted to the custody, care and/or control of Union Savings Bank. Specifically, DIANE ELIZABETH NIEHAUS misappropriated moneys belonging to D.C., J.C. and the estate of J.C.; and utilized these funds personally, to include the purchase a residence located at 3492 Riva Court, Beavercreek, Ohio; in violation of Title 18, United States Code, Section 656.
33. Your Affiant therefore respectfully request that a Warrant for Arrest be granted based upon this Criminal Complaint and supporting Affidavit.



Michael R. Bush  
Special Agent, FBI  
Dayton, Ohio

Subscribed and sworn to before me this 8<sup>th</sup> day of March, 2013.



Michael J. Newman  
U.S. Magistrate Judge

