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IN THE
COURT OF APPEALS OF INDIANA

JASON KEIGLEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-1012-CR-743
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Judge
Cause No. 49G02-0902-FC-26965

July 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Jason Keigley appeals his conviction of Identity Deception,[1] a class C felony, and five counts of Fraud In Loan Brokering,[2] all as class D felonies, as well as the aggregate sentence imposed thereon. Keigley presents the following restated issues for review:

1. Was the evidence insufficient to support convictions for fraud in loan brokering?

2. Did the trial court err in entering judgment of conviction on multiple counts of fraud in loan brokering?

3. Did the trial court err in ordering the sentence in the instant case to be served consecutively to the sentence in another case, in violation of Ind. Code Ann. § 35-50-1-2(c) (West, Westlaw through 2011 Pub. Laws approved & effective through 6/28/2011)?

We affirm.

The facts favorable to the convictions are that on May 1, 2003, Keigley filed articles of incorporation with the Corporations Division of the Office of the Indiana Secretary of State, seeking to establish 1st Place Mortgage, Inc. (1st Place) as a domestic corporation with its headquarters on Cabin Creek Drive in Indianapolis. Keigley was the sole incorporator. He prepared the form and listed himself as the registered agent. 1st Place was authorized to issue only one share of stock. On May 5, 2003, the Secretary of State authorized Keigley to do business as a for-profit domestic corporation.

On April 16, 2004, 1st Place submitted its application for a license as a loan broker with the Securities Division of the Secretary of State. Keigley was listed as the sole contact.

[1] Ind. Code Ann. § 35-43-5-3.5 (West, Westlaw through 2011 Pub. Laws approved & effective through 6/28/2011).
[2] Ind. Code Ann. § 23-2-5-20 (West, Westlaw through 2011 Pub. Laws approved & effective through 6/28/2011).

Keigley was listed as the principal on the $50,000 bond issued by Hartford Fire Insurance Company (Hartford). The bond was valid from January 30, 2004 through December 31, 2005. On March 26, 2004, Keigley listed himself as "President" of 1st Place when he filed Form 1096 (annual summary and transmittal of U.S. information returns) with the Internal Revenue Service. On April 19, 2004, the Securities Commissioner licensed 1st Place as a loan broker, effective April 19, 2004 through December 31, 2005.

On January 12, 2005, Keigley, identifying himself as "Owner/President", notified the Secretary of State that 1st Place had relocated its principal office to Hanna Avenue in Indianapolis. *The Exhibits* at 343. Keigley operated his loan broker business out of that location and worked with customers via telephone, electronic mail, and in person. Jeri Ann Jones met with Keigley seeking to refinance her home. Responding to her request for refinancing, Keigley indicated that he worked for 1st Place. Jones submitted her driver's license information to 1st Place during the refinancing process. After the refinancing was completed, Keigley began to offer financial advice to Jones. At some point, Jones asked Keigley to help an elderly couple she knew, the Stinsons, with an investment deal so they might avoid losing their home. Jones secured a home equity loan on her home and loaned that money to Keigley with instructions to use it to help the Stinsons. As part of a real-estate transaction to assist the Stinsons, Jones signed a limited power of attorney in favor of Keigley for purposes of completing that transaction.

On July 15, 2005, Hartford notified the Indiana Securities Commissioner that, effective August 25, 2005, it would terminate its liability with respect to 1st Place pursuant to the terms of the $50,000 loan broker's bond, effective August 25, 2005. On July 21, 2005,

the Securities Division notified Keigley that failure to maintain a bond would result in administrative action to revoke the loan broker's license. The Securities Division informed Keigley that he was required to obtain another bond or terminate 1st Place's license by August 25, 2005. Keigley failed to do either and on September 1, 2005, the Securities Division petitioned the Commissioner to order a summary revocation of 1st Place's broker's license. The petition to revoke was granted immediately.

On October 7, 2005, Ralph Bays contacted 1st Place to refinance his home in Indianapolis. Keigley secured the financing after Bays completed the loan application. Keigley was named on the application completed by Bays, but 1st Place was not. Instead, the entity was listed as "America's Wholesale Lender" with an address on 96th Street in Indianapolis. Bays completed the application process, however, at the 1st Place office on Hanna Avenue. Bays paid a broker's fee, but Keigley never informed him that he and 1st Place were unlicensed.

On October 10, 2005, Brina Vidal submitted a loan application using 1st Place. She closed on her home in December 2005, and Keigley was paid through the closing process. Keigley never informed Vidal that he and 1st Place were unlicensed.

In March 2006, Keigley assisted Wanda Preston with repairing her credit. The two communicated by telephone and Preston believed she was working with 1st Place. Keigley informed Preston that her credit was good enough to apply for a mortgage. Keigley filled out an application for Preston. The name 1st Place Mortgage appeared on the face of that application. He also filled out a second loan application for Preston's approval, including a statement of assets and liabilities. The second loan application lists Sunny Mortgage

throughout, although Preston believed she was doing business with 1st Place. Keigley did not divulge to Preston that he and 1st Place were not licensed.

George Payne was acquainted with Keigley through church. Payne engaged the services of Keigley in applying for a home loan and, on March 17, 2006, completed a loan application. When he closed on his house, Payne paid Keigley $645 from the settlement.

Gary Hippensteel was a real estate investor who wanted to purchase distressed property to renovate and re-sell. In April 2006, Hippensteel worked with Keigley to obtain mortgages. Keigley continued to market his brokerage services through 1st Place. On July 18, 2006, Gary applied for a mortgage through 1st Place. Keigley told Hippensteel he would be paid his fee at closing.

In October 2006, Jones began receiving calls from a debt collector for Capital One Bank regarding a business loan. Jones, who had not applied for any business loans, contacted an attorney. Several months before that, in June 2006, Charles Williams, an investigator with the Prosecution Assistance Unit of the Indiana Secretary of State, had begun an investigation of 1st Place. Williams sought to determine whether there were any violations of loan broker laws or "licensing things that might have taken place" in conjunction with several mortgage documents filed by 1st Place. *Transcript* at 182. After receiving Jones's inquiry, Williams subpoenaed Capital One's bank records to determine who submitted the loan application and where the funds were disbursed. Williams determined that the loan borrower was 1st Place and the lender was Capital One. The loan was in the amount of $50,000, disbursed to the 1st Place bank account at Fifth Third Bank. Although Jones had never applied for a loan with Capital One and did not work for 1st Place

in any capacity, she was listed throughout the Capital One documents. Keigley was the only signatory on the Fifth Third account to which the loan had been disbursed. 1st Place made several payments on the loan, but eventually defaulted, after which the loan was sent to collections.

On February 23, 2009, the State filed a fifteen-count information against Keigley, including one count of identity deception, one count of fraud on a financial institution and six counts of unlicensed broker transaction, all as class C felonies. The other allegations were for class D felonies, including one count of credit card fraud and six counts of fraud in loan brokering. The State thereafter dismissed one count of unlicensed loan broker transaction, one count of fraud in loan brokering, and the lone count of credit card fraud. A trial was held on the remaining counts, after which the jury found Keigley guilty as charged on all counts. The trial court merged the counts such that judgment of conviction was entered on one count of identity deception and five counts of fraud in loan brokering.

The trial court sentenced Keigley to concurrent two-year sentences for each of the convictions of fraud in loan brokering, to be served consecutively to the four-year sentence imposed for his conviction of identity deception. The court noted that Keigley had been convicted in 2007 in Hendricks County of selling unregistered securities, transacting business as an unregistered broker-dealer, fraud in connection to the sale of a security, and fraud as an unregistered broker-dealer and was sentenced on those offenses to an executed term of ten years imprisonment. The trial court determined that the sentence in the instant case would be served consecutively to the sentence for the Hendricks County case. Keigley appeals his convictions, as well as the decision that his sentence in the instant case be served

consecutively to the sentence in the Hendricks County case.

1.

Keigley was convicted of five counts of fraud in loan brokering under I.C. § 23-2-5-20. He was convicted under the relevant counts of having committed essentially the same offense with respect to five separate victims (Counts IV (Vidal), VI (Payne), VIII (Hippensteel), X (Bays), and XIV (Preston)) i.e., of procuring a mortgage loan while failing to disclose to his client that he was not licensed to broker loans at the time he did so. He contends the evidence was not sufficient to support these convictions. Specifically, he contends "[t]here was no showing that anyone was victimized by any fraud by [Keigley] or that any material misrepresentation was made." *Appellant's Brief* at 6.

Our standard of review for challenges to the sufficiency of evidence supporting a conviction is well settled.

> When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley v. State*, 881 N.E.2d 639, 652 (Ind. 2008). "We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence." *Id*. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id*.

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009).

The provision under which Keigley was charged, i.e., I.C. § 23-2-5-20(a) provides in relevant part as follows:

> A person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly, do any of the following:
>
> (1) Employ any device, scheme, or artifice to defraud.

> (2) Make any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they are made, not misleading.
>
> (3) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.
>
> (4) Collect or solicit any consideration, except a bona fide third party fee, in connection with a residential mortgage loan until the loan has been closed.

In addressing this issue, the parties focus their attention upon the question of whether Keigley defrauded the named victims. Keigley contends that he did not do so because the definition of defraud includes the element of injury or loss[3] and the State failed to prove that any of the victims suffered a loss. We conclude that this offense, as defined above, does not necessarily require proof that the victim suffered a pecuniary loss as a result of the defendant's conduct.

As set out above, I.C. § 23-2-5-20(a)(3) provides that "[a] person shall not, in connection with a contract for the services of a loan broker, either directly or indirectly … [e]ngage in any act, practice, or course of business that operates or would operate as a fraud *or deceit* upon any person[.]" (Emphasis supplied.) There was evidence that, in conjunction

[3] In support of this contention, Keigley cites *Black's Law Dictionary* 434 (7th ed. 1999), which defines "defraud" as "To cause injury or loss to (a person) by deceit."

with assisting each of the victims to procure a mortgage, Keigley actively created the impression, or more accurately – *mis*impression – that he and/or 1st Place were licensed loan brokers by holding himself out as affiliated with 1st Place in completing the application process. For instance, with respect to the Vidal, Preston, and Payne applications, there were notations on the loan application documents indicating that Keigley was employed by and working for 1st Place at the time. Bays testified that he transacted his loan application business involving Keigley at 1st Place's place of business.

Finally, Hippensteel communicated with Keigley with respect to his mortgage loan application primarily through email. He communicated with Keigley using an email address incorporating 1st Place's business name, and the emails from Keigley contained signature-block-type notations indicating that Keigley was affiliated with 1st Place. We note as an aside that each of the victims testified that they believed they were dealing with a licensed loan broker and that the knowledge that Keigley did not possess a loan broker's license would have affected their decision to retain his services. Such was sufficient to prove that Keigley engaged in conduct that deceived the victims as to Keigley's status as a licensed loan broker. The harm in such cases was not pecuniary loss such as would be suffered in the case of fraud; rather, the harm was that each victim was deceived as to Keigley's credentials. Further, in each case the victim indicated that the deception affected his or her choice of brokers. Therefore, the evidence was sufficient to support the convictions of fraud in loan brokering.

2.

Citing *Study v. State*, 602 N.E.2d 1062 (Ind. Ct. App. 1992), Keigley contends the entry of multiple convictions for fraud in loan brokering violates double jeopardy.[4] Specifically, he argues:

> If there were actual victims of his failure to be licensed, if there was a loss to a borrower or a financial institution, there might be a distinction that would warrant multiple convictions. However, as noted in the preceding section of this Brief, there were no actual victims because no one was defrauded; no one lost anything by reason of [] Keigley's failure to be licensed. Because nothing about his conduct of not having a license distinguished one count from another so as to support the separate charges of Loan Broker Fraud, the reasoning of *Study* must apply. Therefore, separate judgments and sentences for the same offense cannot stand.

Transcript at 159. We review a trial court's legal conclusions on the question of whether multiple convictions violate double jeopardy utilizing the de novo standard. *See Sloan v. State*, 947 N.E.2d 917 (Ind. 2011).

In *Study*, the defendant was unlicensed yet acted as broker for an individual. In conjunction with that transaction, the client remitted two checks to Study that were intended for use as collateral for a loan and for purchasing certificates of deposit. Instead, Study converted those funds for his personal use. He was subsequently charged with and convicted of two violations of the Indiana Loan Broker's Act, i.e., I.C. § 23-2-5-4 (West, Westlaw through 2011 Pub. Laws approved & effective through 6/28/2011). This court reversed one

[4] We note that in presenting this issue, Keigley invokes article 1, section 14 of the Indiana Constitution and the Fifth Amendment of the United States Constitution, but fails to develop an argument specific to either of those provisions. Thus, the State's argument that he waived the issue with respect to both the state and federal constitutions is not without merit. *See, cf.*, *Jackson v. State*, 925 N.E.2d 369, 372 n.1 (Ind. 2010) (finding appellant's state double jeopardy argument waived because of his failure to "provide any authority or argument supporting a separate standard under the Indiana Constitution"). Nevertheless, we proceed to address the issue on its merits.

of those convictions on the ground that it violated double jeopardy principles. We explained:

> IC 23-2-5-4, as enacted by our legislature, requires any person who does an act of loan brokering to register with the securities commissioner. A person who knowingly fails to do so commits a class D felony. IC 23-2-5-16. The definition consists of the prohibited conduct, failing to register with the securities commissioner, and the presence of an attendant circumstance, a knowing or intentional act of loan brokering. So defined, an individual who fails to register continuously commits an offense, i.e., by failing to register, the individual commits a criminal act that continues, and is continuous, until such time as the individual is prosecuted for the offense. Therefore, we conclude the legislature intended that an act of loan brokering without first registering constitutes one single indivisible offense, punishable by a single conviction and sentence. Consequently, Study committed only one violation of the Act when he knowingly did an act of loan brokering without registering with the securities commissioner on April 18, 1990, and that that offense continued and included the conduct on May 3, 1990, i.e., only one crime occurred regardless of the number of subsequent acts of loan brokering. In this way, the offense of violating the Act is similar to the offense of theft where only one crime occurs when a thief exercises unauthorized control over the property of the owner with the intent to deprive the owner of the use and benefit of the property on day 1, and continues to deprive the owner of property of its use and benefit for many days thereafter. Therefore, imposition of separate judgments and sentences for multiple counts of Act violations is improper.

Study v. State, 602 N.E.2d at 1068. Keigley contends the same result should attain in the instant case pursuant to the same rationale, i.e., he committed only one violation of the Indiana Loan Broker's Act because the failure to register constituted a single continuous offense. This argument ignores significant differences between *Study* and the instant case.

It appears that Study was charged with violating I.C. § 23-2-5-4, which provides in relevant part, "[a] person may not engage in the loan brokerage business in Indiana unless the person first obtains a loan broker license from the commissioner." Keigley, on the other hand, was charged with violating I.C. § 23-2-5-16, which we explain above prohibits, among

other things, engaging in an act in conjunction with loan brokering that deceives a person with respect to, among other things, the relevant licensure credentials. Keigley did this when he created the impression that he and 1st Place were licensed brokers. Moreover, and this is the second critical difference, Keigley's deceptive acts involved five separate people and thus there were five separate victims. Double jeopardy principles under the Indiana Constitution are not violated where each conviction involves a different victim. *See Bald v. State*, 766 N.E.2d 1170 (Ind. 2002) (affirming multiple convictions for felony and arson where there were separate victims); *Burnett v. State*, 736 N.E.2d 259 (Ind. 2000) (multiple confinement convictions do not violate double jeopardy where there are multiple victims), *overruled on other grounds by Ludy v. State*, 784 N.E.2d 459 (Ind. 2003); *Richardson v. State*, 717 N.E.2d 32, 56 (Ind. 1999) ("where separate victims are involved or the behavior or harm that is the basis of the enhancement is distinct and separate, no relief will be provided").

The same rationale applies with regard to the Fifth Amendment. Keigley's Fifth Amendment argument rests upon the faulty premise that he committed a single, continuing offense with no victims. We rejected both premises of this argument above, concluding that he committed separate offenses involving completely different acts against five separate victims. Obviously, this does not implicate Fifth Amendment concerns. Therefore, Keigley's multiple convictions for fraud in loan brokering do not violate the prohibition against double jeopardy.

3.

More than eighteen months prior to sentencing in the instant case, Keigley was

sentenced to an executed term of ten years in Hendricks County Superior Court after being convicted on four criminal counts, including fraud in connection with the sale of a security and loan broker fraud. The trial court ordered the six-year executed sentence in the instant case to be served consecutively to the ten-year executed sentence in the Hendricks County case. *See Keigley v. State*, No. 32A01-0805-CR-229 (Ind. Ct. App. April 9, 2009). Keigley contends that the resulting sixteen-year sentence for both causes is improper because the total sentence for both cases is capped by I.C. § 35-50-1-2(c), which provides, in pertinent part, as follows:

> [E]xcept for crimes of violence, the total of consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class higher than the most serious of the felonies for which the person has been convicted.

Keigley's contention is based upon the claim that the crimes in the instant case arise out of the same episode of criminal conduct as the ones in Hendricks County case and therefore that I.C. § 35-50-1-2(c) limits the total sentence for both to the maximum sentence for the most serious conviction, i.e., ten years for a class C felony. Once again, we reject the premise of Keigley's argument.

The only commonality between the Marion County and Hendricks County prosecutions was that Jeri Ann Jones was a victim in both. The Hendricks County prosecution centered upon Keigley's actions in selling an unregistered security to Jeri Ann and her husband, which included the refinancing of the Joneses' home and the purchase of the Stinsons' home. The Marion County prosecution with respect to Jones did not involve

either of those incidents. Rather, it concerned Keigley's use of Jeri Ann Jones's identifying information to obtain a loan from Capital One, thus perpetrating a fraud on Capital One. Keigley's use of Jeri Ann Jones's identifying information in Marion County to perpetrate a fraud on Capital One was separate and distinct from his sale of an unregistered security and loan broker fraud in connection with the Joneses in Hendricks County. Therefore, Defendant's acts do not constitute a "single episode of criminal conduct" within the meaning of I.C. § 35-50-1-2(c). Therefore, the trial court did not abuse its discretion in ordering that the sentence imposed in the instant case be served consecutively to the sentence imposed in Hendricks County.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.