

STATE OF INDIANA  
MARION COUNTY, ss:

IN THE MARION SUPERIOR COURT  
CRIMINAL DIVISION

THE STATE OF INDIANA )

vs. )

Robert Nelms W/M )

DOB 12/07/1968 )

CAUSE NO. 49G020801FC016272 )

(AS TO COUNT(S) I, II, III, )

IV, V, VI, VII, VIII, IX) )

Debora Johnson-Nelms W/F )

DOB 10/23/1959 )

CAUSE NO. 49G020801FC016273 )

(AS TO COUNT(S) I, II, III, )

IV, V, VI, VII, VIII, IX) )

INFORMATION

COUNT I

THEFT, CLASS C FELONY I.C. 35-43-4-2

COUNT II

THEFT, CLASS C FELONY I.C. 35-43-4-2

COUNT III

THEFT, CLASS C FELONY I.C. 35-43-4-2

COUNT IV

THEFT, CLASS C FELONY I.C. 35-43-4-2

COUNT V

THEFT, CLASS C FELONY I.C. 35-43-4-2

COUNT VI

FRAUDULENT OR DECEITFUL ACTS, CLASS C FELONY I.C. 23-2-1-12

COUNT VII

LOANS PERPETUAL CARE FUND PROHIBITED, CLASS A MISDEMEANOR, I.C. 23-14-51-3

COUNT VIII

VIOLATION OF CEMETERY PERPETUAL CARE FUND, CLASS C FELONY, I.C. 23-14-48-9

COUNT IX

VIOLATION OF CEMETERY PERPETUAL CARE FUND, CLASS C FELONY, I.C. 23-14-48-9

On this date, the undersigned came before the Prosecuting Attorney of the Nineteenth Judicial Circuit and, being duly sworn (or having affirmed), stated that in Marion County, Indiana

COUNT I

Robert Nelms and Debora Johnson-Nelms, on or about December 29, 2004, did knowingly exert unauthorized control over the property, that is: perpetual care trust and/or pre-need trust money of Memory Gardens Management Corporation, with intent to deprive Memory Gardens Management Corporation of any part of the value or use of said property, and said funds were in an amount of more than One Hundred Thousand Dollars (\$100,000);

COUNT II

Robert Nelms and Debora Johnson-Nelms, on or about December 29, 2004, did knowingly exert unauthorized control over the property, that is: perpetual care trust and/or pre-need trust money of Memory Gardens Management Corporation, with intent to deprive Memory Gardens Management Corporation of any part of the value or use of said property, and said perpetual care trust and/or pre-need trust monies were in an amount greater than One Hundred Thousand Dollars (\$100,000.00);

COUNT III

Robert Nelms and Debora Johnson-Nelms, on or about December 29, 2004, did knowingly exert unauthorized control over the property, that is: perpetual care trust and/or pre-need trust money of Memory Gardens Management Corporation, with intent to deprive Memory Gardens Management Corporation of any part of the value or use of said property, and said perpetual care trust

and/or pre-need trust monies were in an amount greater than One Hundred Thousand Dollars (\$100,000.00);

COUNT IV

Robert Nelms and Debora Johnson-Nelms, on or about December 29, 2004, did knowingly exert unauthorized control over the property, that is: perpetual care trust and/or pre-need trust money of Memory Gardens Management Corporation, with intent to deprive Memory Gardens Management Corporation of any part of the value or use of said property, and said perpetual care trust and/or pre-need monies were in an amount greater than One Hundred Thousand Dollars (\$100,000.00);

COUNT V

Robert Nelms and Debora Johnson-Nelms, on or about April 14, 2005, did knowingly exert unauthorized control over the property, that is: perpetual care trust and/or pre-need trust money of Memory Gardens Management Corporation, with intent to deprive Memory Gardens Management Corporation of any part of the value or use of said property, and said perpetual care trust and/or pre-need monies were in an amount greater than One Hundred Thousand Dollars (\$100,000.00);

COUNT VI

Robert Nelms and Debora Johnson-Nelms, between December 1, 2004 and January 14, 2008, did offer securities, that is: unregistered debentures to employ a device, scheme or artifice

to defraud, specifically: issued predated and/or unregistered and/or inadequately funded debentures to conceal the removal of monies from the perpetual care trust and/or pre-need trust of Memory Gardens Management Corporation;

COUNT VII

Robert Nelms and Debora Johnson-Nelms, on or about December 29, 2004, did knowingly pledge money, that is: an amount in excess of Eight Hundred Thousand Dollars (\$800,000.00) from the perpetual care fund of Memory Gardens Management Corporation, for the benefit of the owners, namely: Robert Nelms and Debora Johnson-Nelms;

COUNT VIII

Robert Nelms and Debora Johnson-Nelms, on or about December 29, 2004, did knowingly use funds in a perpetual care fund for purposes other than the perpetual care of the cemetery for which the perpetual care fund or endowment was established, that is: transfer monies from the perpetual care trust fund to the account of Craig Bush;

COUNT IX

Robert Nelms and Debora Johnson-Nelms, on or about April 14, 2005, did knowingly use funds in a perpetual care fund for purposes other than the perpetual care of the cemetery for which the perpetual care fund or endowment was established, that is:

transfer monies from the perpetual care trust fund to an account  
in the name of David Becher;

all of which is contrary to statute and against the peace  
and dignity of the State of Indiana.

I swear or affirm under penalty of perjury as specified by  
IC. 35-44-2-1 that the foregoing representations are true.

\_\_\_\_\_  
Affiant

01/17/2008  
Date

**CARL J. BRIZZI**  
Marion County Prosecutor  
19th Judicial Circuit

State's Witnesses:

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Deputy Prosecuting Attorney

T. TRATHEN                      T5854              MCPO  
KIMBERLY HASKINS  
CHARLES WILLIAMS  
JOEL SEALE  
TED HOFFMAN  
SHANON COLLINS  
CLARK HARLOW  
MATTHEW GOLDGURG  
BRIAN ZUCKER  
GEORGE JUNKER  
JAMES MEYER  
ARTHUR BOCK  
DAVID BECHER

# AFFIDAVIT

## For Probable Cause

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**State Of Indiana, County of Marion, SS:** Thomas G. Trathen, Investigator for the Marion County Prosecutor's Office swears (affirms) that: I am a law enforcement officer in the State of Indiana and that I have been a law enforcement officer for 38 years. All information in this affidavit has been gathered by me during this investigation or is from other law enforcement sources, bank and financial records or witnesses in this matter.

In 2004 Fred Meyer, owner of Memory Gardens Management Corporation (MGMC) 3733 North Meridian Street, Indianapolis, Indiana, decided to sell his business. The business consisted of several cemeteries and funeral homes. Additionally, it included a bronze company in Arkansas and a monument company. In 2004, the total assets of MGMC were approximately \$27,000,000.00. In the early part of 2004, the Meyer family was introduced to Robert E. Nelms and his wife Debora Johnson-Nelms (who were residents of New Jersey) by a former employee of MGMC. Mr. Meyers wanted to sell his business to a family rather than a corporation. Negotiations regarding the purchase price for MGMC began in 2004. Nelms and the Meyer family reached an agreement in which Nelms would purchase MGMC for \$27 Million, including a cash payment of \$13.5 Million as a down payment on the business, and financing the balance through a note to be carried by the Meyer family.

According to statements given to investigators by Debora Johnson-Nelms, Robert E. Nelms did not have \$13.5M or anything close to that to buy MGMC in 2004.

Robert E. Nelms and Debora Johnson-Nelms were experienced funeral home operators in New Jersey and New York. They knew that all cemeteries and funeral homes were legally required to maintain trust funds for the perpetual care of the cemetery. Robert and Debora Nelms knew that the perpetual care trust fund consists of fifteen percent of the cost of each funeral paid by each bereaved family. The money is deposited into the trust for the exclusive purpose of the care and maintenance of each grave site and the cemetery, in perpetuity. The Nelms also knew that under Indiana law (**Indiana Code, IC 23-14-51-3**), **"no loans, pledges of money or property shall be made from the perpetual care fund of a cemetery. 1. to or for the benefit of the owner of the cemetery; or 2. To any shareholder, officer, director, or employee of the cemetery"**. Robert E. Nelms and Debora Johnson-Nelms also knew that MGMC had approximately Twenty-Four Million Dollars (\$24,000,000.00) on deposit in the perpetual care trust fund.

Robert E. Nelms and Debora Johnson-Nelms were associated with the following people: Sherri Katz-Crank, a Michigan Attorney; Craig Bush, a Michigan Attorney; Mark Singer, a vice president with Smith Barney Investments in Pennsylvania; Clayton Smart, an Oklahoma businessman; and David Becher, the president of Community Trust &

Investment of Noblesville, Indiana. All of these individuals were aware that a funeral business could be purchased, and the purchasers would then gain control of the trust funds. Once the purchaser has obtained ownership of the company, they would have access to the trust funds, even though there are various state laws specifically governing the use of the perpetual care trusts.

In 2004, Robert E. Nelms and Debora Johnson-Nelms devised the following plan. Nelms and Johnson-Nelms did not have sufficient cash in order to purchase MGMC, so they attempted to get the Meyer family to release the trust funds prior to closing. This plan would allow Nelms to take the \$13.5 Million that was needed for a down payment directly from the trust, without borrowing any of the purchase money. When the Meyer family refused to release the trust funds prior to closing, Nelms then went to Craig Bush and Mark Singer to arrange a "bridge loan" from Bush's Smith Barney account. As payment for loaning the \$13.5 Million for one week, Bush would earn \$246,664.00 from Nelms and Johnson-Nelms.

In 2004, prior to the purchase of MGMC, all perpetual care and pre-need trust funds were on deposit in the Forethought Federal Savings Bank in Batesville, Indiana, and the Bank served as trustee for the perpetual care trust fund. Nelms knew that he needed to find a new trustee, who would allow Nelms to get at the trust funds without interference from the trustee. During this investigation, investigators have obtained emails between Mark Singer and Nelms. In those emails, Singer advised Nelms to locate a small financial institution as trustee that would allow him to use debentures. Singer stated that bigger banks would not allow the use of debentures. Through Clayton Smart, Nelms found that "smaller trustee" in Community Trust and Investment, located in Noblesville, Indiana. David Becher was the Community Trust & Investment loan officer that worked with Nelms. Nelms ordered Becher to transfer the trust money to Community Trust & Investment as soon as the cemetery purchase deal closed with the Meyer family business. Nelms explained to Becher that the trust monies would be initially transferred to Community Trust & Investment, and then to Smith Barney for investment. Debentures would then be issued to Community Trust & Investment to secure the transactions. Debentures according to Webster Dictionary are: **a corporate security other than an equity security, a bond backed by general credit of the issuer rather than a specific lien on particular assets. Under Indiana Code ss 23-2-1-1(k), a debenture is defined as a security. As a security the issuance and/or sale must comply with the Indiana Securities Act, Indiana Code 23-1-1.**

Also in 2004, Robert E. Nelms met with a business partner in New Jersey named Matthew Goldberg. Matthew Goldberg is a successful businessman from New Jersey who had been acquainted with Nelms for approximately four to five years at that time. In 2002, Goldberg invested money with Nelms to acquire some funeral homes in New Jersey and New York. Nelms asked Goldberg to be president of Indiana Investment Corporation, which would manage trust monies. During the summer, 2004, Indiana Investments was incorporated by Nelms in New Jersey. Goldberg stated to investigators that he told Nelms that he did not know anything about managing trusts, and that he did not have time to run another company. According to Goldberg, Nelms then assured

Goldberg that his only duty was to be the “**figure head**” of the corporation, and that all transactions would be handled by Mark Singer of Smith Barney. Additionally, Nelms told Goldberg that he, Nelms, could not be involved in Indiana Investments because he owned MGMC and that would be improper for him to be involved. Nelms told Goldberg that Indiana Investments would manage approximately \$22 Million, and that they would receive approximately ten percent interest on the investment. Nelms also told Goldberg about the debentures plan, and said that Goldberg would receive five percent to either pay off the debentures or any other desired use. In reality there was less than \$6M deposited in Indiana Investments Corporation as the rest of the trust was diverted to other uses.

During the summer, 2004, Nelms arranged for Goldberg to meet Craig Bush and Mark Singer at Sparks Steak House in Manhattan, New York. During that meeting, Goldberg learned that Singer was a successful broker at Smith Barney. As a result of the Nelms – arranged meeting, Goldberg agreed to manage Indiana Investments Corporation.

By December 2004 Nelms and Johnson-Nelms were ready to close on MGMC. On December 1, 2004 debentures were drafted by attorney Sherri Katz-Crank and Robert E. Nelms. The first forty-nine debentures were titled either as Nelms Investments XI LLC or Nelms Investments XII LLC, and all were signed by Matthew Goldberg. Debentures 50 through 239 were all titled Indiana Investments, and all were signed by Matthew Goldberg. During interviews with investigators, Goldberg admitted signing debentures. However, when shown a sample debenture, Goldberg stated that he did not recognize the signature as his. At least two sets of debentures are known to exist at this time. During the execution of search warrants at Nelms’ business and residence, several unsigned copies of debentures were seized. The seized debentures were in the name of Robert E. Nelms.

On December 21, 2004, Craig Bush had Mark Singer wire \$13,511,590.39 from his Smith Barney account #735-12993-13 to a Bank One account of Title Services. These funds were the down payment to be used by Nelms and Johnson-Nelms for the purchase of MGMC. On December 21, 2004 Nelms and Johnson-Nelms purchased MGMC. At that time, both Nelms and Johnson-Nelms signed documents taking control of the business.

By December 29, 2004, at the direction of Robert E. Nelms, all perpetual care trust monies had been transferred to Community Trust & Investment in Noblesville from Forethought Federal Saving Bank. A total of \$23,310,258.35 was deposited with Community Trust & Investment. Pursuant to instructions provided by Robert E. Nelms, David Becher the trustee at Community Trust & Investment made the following disbursements.

1. On December 29, 2004, Becher wired \$13,758,253.58 from Community Trust & Investment to Smith Barney account # 735-12993-13 to repay the “bridge loan” to Craig Bush.
2. On December 29, 2004, Becher wired \$4,210,258.00 from Community Trust & Investment to a Chase Bank account # 686650482 for Indiana Investments.



3. On December 29, 2004, Becher wired \$1,241,747.42 from Community Trust & Investment to a Chase Bank account # 686650482 Indiana Investments. On January 4, 2005, these monies were transferred to a Chase Bank account of MGMC # 193507316. On January 5, 2005, these funds were wired to The Talon Group as payment for the closing costs on a house for personal use by Nelms and Johnson-Nelms. This house and adjacent land, located at 1495 West Curry Road in Greenwood, Indiana, were being sold to them by James Myers. Both Robert E. Nelms and Debora Johnson-Nelms signed documents transferring ownership of the residence on West Curry Road in Greenwood.
4. On December 29, 2004, \$3,000,000.00 was wired to Equity Derivatives at Smith Barney. This was a stock swap.

By the end of the day on December 29, 2004, \$22,210,259.00 had been taken from the perpetual care trust funds. These monies have never been replaced. In April, 2005, Nelms used the remaining \$1,100,000.00 to buy into the Corinthian Services Company in Iowa. David Becher sent the funds to Midwest One Bank in Iowa [account number 2185612]. By April 5, 2005, all the trust monies were gone.

With the above information I have probable cause to believe that, **Robert E. Nelms** W/M/DOB: 12/07/1968 committed the following offenses. **Theft IC 35-43-4-2** over \$100,000.00 a class C felony, **Conspiracy to Commit Theft IC 35-41-5-2** class C felony, **Fraud on a Financial Institution IC 53-43-5-4**, **Fraudulent, Deceitful Acts in Connection with a Purchase or Sale of a Security IC 23-2-1-12**, **Violations of the Cemetery Acts IC 23-14-48-9** a class C felony, and **IC 23-14-51-3** a class A misdemeanor. There is also probable cause to charge **Debora Johnson-Nelms** W/F/DOB: 10/23/1959 with **Theft IC 35-43-4-2** a class C felony, **Conspiracy to commit Theft IC 35-41-5-2** a class C felony, **Fraud on a Financial Institution IC 53-43-5-4** a class C felony, and **Violations of the Cemetery Acts IC 23-14-48-9** a class C felony and **IC 23-14-51-3** a class A misdemeanor.

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AFFIANT

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Deputy Prosecuting Attorney 19<sup>th</sup> Judicial  
Circuit

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Date

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JUDGE, Marion Superior Court