

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA

v.

BARRY C. WESTERGOM

Case No.: 3:09-cr- 286-f - 25 TEM
Ct. 1: 18 U.S.C. § 1349
Forfeitures: 18 U.S. § 981(a)(1)(C)
28 U.S.C. § 2461(c)

INFORMATION

The United States Attorney charges:

COUNT ONE

A. Introduction

At all times material to this Information, unless otherwise specified:

1. A Purchase and Sale Agreement is a written contract used in the sale of real estate and sets forth the terms of the real estate transaction, including identifying the property to be sold, the seller of the property, the buyer of the property, the purchase price, and other conditions of the sale.
2. A Uniform Residential Loan Application, commonly referred to as a mortgage loan application or a Form 1003, is a universally used mortgage application developed by federal government agencies that is utilized by financial institutions in the mortgage loan approval process. The Form 1003 requires the borrower to submit his or her financial history, including employment information, monthly income, assets and liabilities, and the specific details of the residential real estate transaction.
3. A HUD-1 Settlement Statement is a United States Department of Housing and Urban Development form that is universally used in closings of the sales of

residential properties in the United States. A HUD-1 is used to identify and allocate the various expenses associated with the sale of residential real estate between the buyer and the seller of the property.

4. A property appraisal is an impartial analysis and evaluation conducted by a qualified appraiser according to established criteria to assess the current market value of a property. Among other methods of valuation, appraisers compare the subject property to nearby similar properties, making adjustments as necessary to reflect differences between the properties that add to or subtract from the value.

5. Mortgage lenders rely upon property appraisals to give them an objective assessment of the market value of a property, which they use to determine the amount of the loan that will be extended on a property. Because mortgage loans are secured by the property, lenders generally will not extend loans greater than the fair market value of the property to ensure that if the borrower defaults on the loan they can recover the proceeds of the loan through sale of the property by foreclosure.

6. The defendant, BARRY C. WESTERGOM, was a property appraiser duly licensed in the State of Florida.

B. Charge

From in or about February, 2004, through in or about October, 2005, in Jacksonville, in the Middle District of Florida, and elsewhere,

BARRY C. WESTERGOM,

the defendant herein, did knowingly, willfully, and intentionally, combine, conspire, confederate, and agree with other persons known and unknown, to commit the following offenses against the United States, that is:

1. To transmit and cause to be transmitted by wire in interstate commerce writings, signs, signals, pictures, sounds, and communications, having devised and intended to devise a scheme and artifice to defraud, for the purpose of executing such scheme and artifice, and affecting a financial institution, in violation of Title 18, United States Code, Section 1343; and

2. To knowingly execute and attempt to execute a scheme and artifice to defraud a financial institution and to obtain money, funds, credits, assets, and other property owned by, and under the custody or control of, a financial institution, by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

C. Manner and Means

1. It was part of the conspiracy that co-conspirator Juan Carlos Gonzalez negotiated the purchase of residential real estate properties, either on behalf of himself personally, on behalf of an entity he controlled, or on behalf of a third-party buyer. Gonzalez, the entity, or the buyer entered into a Purchase and Sale Agreement with the owners/sellers of the properties.

2. It was further part of the conspiracy that, for most of the properties, Gonzalez retained WESTERGOM to appraise the property at a significantly inflated price. WESTERGOM appraised the property at the price that Gonzalez requested, using inappropriate comparable properties and otherwise departing from accepted standards of appraisal practice.

3. It was further part of the conspiracy that when the property was being purchased by a third-party buyer but the Purchase and Sale Agreement was between

the owners/sellers and Gonzalez or one of the entities he controlled, Gonzalez would create, or cause to be created, a second Purchase and Sale Agreement between the owners/sellers and the buyer at the higher, fraudulently inflated appraisal price.

4. It was further part of the conspiracy that, at Gonzalez's direction, the second Purchase and Sale Agreement listing the higher price was submitted to lenders in support of the buyers' applications for loans based upon the higher price.

5. It was further part of the conspiracy that, at Gonzalez's direction, false financial information pertaining to the buyers' income and assets, which was specifically designed to mislead financial institutions and other lenders, was submitted in support of the loan applications. For some properties, Gonzalez caused documents, such as bank statements, containing the false financial information to be altered or created for submission to a lender. The purpose of providing the false information was to convince the lenders to loan money on the properties in an amount sought by Gonzalez.

6. It was further part of the conspiracy that the false financial information and the inflated appraisals were submitted to lenders, including federally insured financial institutions, so that the buyers could obtain mortgage loans in higher amounts than the lender would have approved if the buyers submitted true financial information. Submission of this information was often accomplished by wire transmission, such as by facsimile transmission or electronic mail ("e-mail"). The loan or loans that were obtained with the false financial information exceeded the actual purchase price of the property.

7. It was further part of the conspiracy that the lender was not informed that the selling price listed in transaction documents was higher than the actual selling price negotiated with the owner/seller.

8. It was further part of the conspiracy that, at or shortly after the closings for the sales of the properties, Gonzalez or an entity controlled by him would receive the difference between the loan amount and the actual purchase price, usually described with terms such as "assignment fee" or "payoff of second mortgage" or similar terms.

9. It was further part of the conspiracy that, at the closings for some of the transactions, Gonzalez or someone acting on his behalf would tell the owners/sellers that the contract sales price listed in the documents was higher than the actual price for which they sold the property because the buyers were required to pay an assignment fee or some other such costs that were added to the sales price.

10. It was further part of the conspiracy that the conspirators' fraudulent acts would cause lenders, including federally insured financial institutions, to disburse loan funds, sometimes by wire transfer, to the buyers for use at the closings.

11. It was further part of the conspiracy that the conspirators would perform acts and make statements to hide and conceal and cause to be hidden and concealed the purpose of the conspiracy and the acts committed in furtherance thereof.

D. Overt Acts

In furtherance of the conspiracy and to affect the objects thereof, the following overt acts, among others, were committed in the Middle District of Florida and elsewhere:

1. In or about July and August, 2005, acting as a buyer's agent through an entity called Property Associates, which was controlled by WESTERGOM, WESTERGOM negotiated with a sellers' agent for the purchase by Gonzalez of residential real estate property located at 8703 Harpers Glen Court, Jacksonville, Florida, which was listed for sale at \$510,000.

2. In or about July or August, 2005, WESTERGOM sent a Purchase and Sale Agreement to the sellers' agent by facsimile transmission setting forth the terms of an offer to buy the property. Subsequent negotiations between WESTERGOM and the sellers' agent resulted in an agreed purchase price of \$490,000.

3. The contract sent by WESTERGOM stated that the purchaser was to be JCI and Associates, an entity controlled by Gonzalez, and the sellers were described as "owner of record." This contract was executed by Gonzalez and the sellers on August 8, 2005.

4. Some time after August 8, 2005, WESTERGOM conducted an appraisal of the property on behalf of Gonzalez. Gonzalez told WESTERGOM to appraise the property in the amount of \$625,000.

5. WESTERGOM appraised the property and, using inappropriate comparable properties and otherwise deviating from accepted standards of appraisal practice, issued an appraisal report valuing the property at the \$625,000 figure requested by Gonzalez.

6. Some time in or about September, 2005, at Jacksonville, Florida, Gonzalez caused a person to alter Bank of America account statements for the periods of June 25, 2005, through July 25, 2005, and July 26, 2005, through August 25, 2005,

for an account in his and his wife's names to reflect significantly larger cash balances than were actually in the account.

7. In or about October, 2005, at Jacksonville, Florida, Gonzalez completed, or caused to be completed, two Uniform Residential Loan Applications, or Forms 1003, stating that the buyer of the Harpers Glen property was his wife, that the balance in the Bank of America account was the fraudulently inflated balance set forth in the altered statements, and that the purchase price of the property was \$625,000 when in fact the purchase price was \$490,000.

8. In or about October, 2005, at Jacksonville, Florida, Gonzalez sent the fictitious bank statements, fraudulent Forms 1003, and fraudulent appraisal, or caused them to be sent, to a mortgage broker.

9. In or about October, 2005, the mortgage broker submitted the fraudulent documents to a lender, 4UDirect, Inc., doing business as Nations Home Lending Center, to obtain a first mortgage loan in the amount of \$437,500 and a second mortgage loan in the amount of \$125,000 for the Harpers Glen property.

10. In or about October, 2005, based primarily on the false information set forth in these documents, 4UDirect approved the loans.

11. On or about October 6, 2005, at Jacksonville, Florida, a closing on the Harpers Glen property was conducted by a title company.

12. On or about October 6, 2005, at Gonzalez's direction, his wife signed a HUD-1 stating that she was the buyer of the Harpers Glen property and reflecting a "contract sales price" of \$625,000, which was not the true sales price of the property.

13. On or about October 6, 2005, at the closing on the property, a representative of the title company, acting as closing agent, told the sellers that the contract had been assigned to another person and that the difference in the actual sales price and the price listed on the HUD-1 represented an assignment fee.

14. On or about October 6, 2005, 4UDirect disbursed the loan funds for use at the closing on the Harpers Glen property.

15. On or about October 6, 2005, the title company, as closing agent, issued a check in the amount of \$134,000 to JCI and Associates, an entity controlled by Gonzalez, which amount was listed on the HUD-1 as an "Assignment of Contract Fee." The title company issued a check in the amount of \$12,250 to Property Associates, an entity controlled by WESTERGOM, which amount was listed on the HUD-1 as a "Sales/Broker's Commission." The title company also issued a check in the amount of \$550 to JAX Appraisals, Inc., an entity controlled by WESTERGOM, which amount was listed on the HUD-1 as an "Appraisal Fee."

All in violation of Title 18, United States Code, Section 1349.

FORFEITURES

1. The allegations contained in Count One of this Information are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. From his engagement in the violations alleged in Count One of this Information, the defendant, BARRY C. WESTERGOM, shall forfeit to the United States

of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), all of his interest in any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including but not limited to a sum of money equal to \$100,000 in U.S. currency, which represents the proceeds the defendant obtained as a result of the offense.

3. If any of the property described above, as a result of any act or omission of the defendant:


- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

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By: 

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Assistant United States Attorney

By: 

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