

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

2008 JUN 18 PM 3:31

UNITED STATES OF AMERICA

:

v.

:

SAMIR NEL CABRERA

:

CASE NO. 2:08-cr-94 -FTM-34DNF  
18 U.S.C. §§ 1343; 1346; 1349; 2

CLERK U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

INDICTMENT

The Grand Jury charges that:

COUNT ONE

A. INTRODUCTION

At all times material to this Indictment:

1. STR & Associates, LLC, was a Florida Limited Liability Company formed on June 1, 2005, which had its principal place of business located in Fort Myers, Florida.
2. Samir Nel Cabrera held a controlling interest in and was the Operating Manager as well as the Registered Agent of STR & Associates, LLC.
3. The stated purpose of STR & Associates, LLC, was to engage in the business of real estate development.
4. Cabrera GP, LLC, was a Florida Limited Liability Company formed on December 22, 2005, which had its principal place of business located in Fort Myers, Florida.
5. Samir Nel Cabrera was the Owner, Manager/Managing Member as well as the Registered Agent of Cabrera GP, LLC.
6. Samir Cabrera, 13701 Fiddlesticks Blvd, LLC, was a Florida Limited Liability

Company formed on January 9, 2006, which had its principal place of business located in Fort Myers, Florida.

7. Cabrera GP, LLC, was the Manager and Registered Agent of Samir Cabrera, 13701 Fiddlesticks Blvd, LLC.

8. Samir Nel Cabrera formed Samir Cabrera, 13701 Fiddlesticks Blvd, LLC, to acquire and develop for eventual resale, a parcel of land consisting of approximately ten acres located at 13701 Fiddlesticks Blvd., Fort Myers, Florida.

9. Samir Cabrera, 13800 Fiddlesticks Blvd, LLC, was a Florida Limited Liability Company formed on December 22, 2005, which had its principal place of business located in Fort Myers, Florida.

10. Cabrera GP, LLC, was the Manager and Registered Agent of Samir Cabrera, 13800 Fiddlesticks Blvd, LLC.

11. Samir Nel Cabrera formed Samir Cabrera, 13800 Fiddlesticks Blvd, LLC, to acquire and develop a parcel of land for eventual resale, consisting of approximately nine acres located at 13800 Fiddlesticks Blvd., Fort Myers, Florida.

12. Samir Nel Cabrera, through Samir Cabrera, 13701 Fiddlesticks Blvd, LLC, and Samir Cabrera, 13800 Fiddlesticks Blvd, LLC, ("the companies") offered investments in units of preferred interests in each of the two companies to potential investors, some of whom invested and were referred to as "Preferred Interest Holders" also know as "Preferred Members" (hereinafter referred to as "Preferred Members").

13. By virtue of their investments, Preferred Members in aggregate were entitled to receive a portion of the profits and cash distributions in the form of return of capital.

14. Samir Nel Cabrera and others held a Managing Interest in the companies; these “Managing Interest Holders” also known as “Managing Members” were also entitled to share in the profits of the companies, and receive cash distributions in the form of return of capital.

15. The establishment and existence of Florida Limited Liability Companies and the duties of loyalty, care, good faith and fair dealing, all required of Managers of Florida Limited Liability Companies, were governed by the Florida Limited Liability Company Act, Florida Statutes, Section 608.401 through Section 608.705.

16. Samir Nel Cabrera, through Cabrera GP, LLC, maintained exclusive control and authority over all aspects of the operation and management of the companies.

17. Samir Nel Cabrera served as a principal, Managing Interest Holder, fiduciary, promoter, controlling person, and sponsor of, among others, the following Florida Limited Liability Companies engaged in the acquisition and development of land: Samir Cabrera, 13701 Fiddlesticks Blvd, LLC; and Samir Cabrera, 13800 Fiddlesticks Blvd, LLC.

18. The Operating Agreements for Samir Cabrera, 13701 Fiddlesticks Blvd, LLC; and Samir Cabrera, 13800 Fiddlesticks Blvd, LLC, granted Manager Cabrera GP, LLC, specified rights to certain management fees and other compensation.

#### B. THE SCHEME TO DEFRAUD

19. From a time unknown to the Grand Jury, but at least by in or about January 2006, and continuing until the return of this Indictment, in Lee County, in the Middle District of Florida, and elsewhere,

SAMIR NEL CABRERA,

defendant herein, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud certain persons and entities, namely the Preferred Members of Samir Cabrera, 13701 Fiddlesticks Blvd, LLC; and Samir Cabrera, 13800 Fiddlesticks Blvd, LLC, and to deprive them of the intangible right of honest services, and to obtain monies by means of materially false and fraudulent pretenses, representations, and promises.

C. MANNER AND MEANS OF THE SCHEME

20. It was part of the scheme to defraud and to obtain money that the defendant would and did solicit, and cause others to solicit potential investors as Preferred Members in Samir Cabrera, 13701 Fiddlesticks Blvd, LLC, and Samir Cabrera, 13800 Fiddlesticks Blvd, LLC.

21. It was part of the scheme to defraud and to obtain money that on January 30, 2006, the defendant would and did through STR & Associates, LLC, purchase and secure ownership of the unimproved real property located at 13701 Fiddlesticks Blvd., Fort Myers, Florida, for \$3,900,000.

22. It was further part of the scheme to defraud and to obtain money that on January 30, 2006, the defendant would and did through STR & Associates, LLC, sell and convey to Samir Cabrera, 13701 Fiddlesticks Blvd, LLC, the same unimproved real property located at 13701 Fiddlesticks Blvd., Fort Myers, Florida, for \$4,800,000.

23. It was further part of the scheme to defraud and to obtain money that the defendant would and did conceal from potential and actual Preferred Members his prior ownership interest in the real property sold by STR & Associates, LLC, to Samir Cabrera, 13701 Fiddlesticks Blvd, LLC.

24. It was further part of the scheme to defraud and to obtain money that the defendant would and did conceal from potential and current Preferred Members that STR & Associates, LLC, a company in which the defendant held a controlling interest, would and did purchase the real property located at 13701 Fiddlesticks Blvd., Fort Myers, Florida, for \$3,900,000 on January 30, 2006, which real property it then would and did reconvey or "flip" to Samir Cabrera, 13701 Fiddlesticks Blvd, LLC, on the very same day for \$4,800,000 at a profit to the defendant and other principals of STR & Associates, LLC, of approximately \$900,000.

25. It was further part of the scheme to defraud and to obtain money that the defendant would and did misrepresent the price of the unimproved real property to potential and actual Preferred Members for whom the defendant would and did act as fiduciary and trustee.

26. It was further part of the scheme to defraud and to obtain money that the defendant would and did withhold and conceal material information from potential and actual Preferred Members, namely that he had an undisclosed interest adverse to that of Samir Cabrera, 13701 Fiddlesticks Blvd, LLC.

27. It was further part of the scheme to defraud and to obtain money that the defendant would and did cause persons and entities to invest in 13701 Fiddlesticks Blvd, LLC, as a result of the defendant's misrepresentations and omissions as fiduciary, trustee and Manager of 13701 Fiddlesticks Blvd, LLC.

28. It was further part of the scheme to defraud and to obtain money that the defendant would and did profit as the result of these misrepresentations and omissions and that Preferred Members suffered financial detriment as a result thereof.

29. It was part of the scheme to defraud and to obtain money that on March 30, 2006, the defendant would and did, through STR & Associates, LLC, purchase and secure ownership of the unimproved real property located at 13800 Fiddlesticks Blvd., Fort Myers, Florida, for \$3,015,000.

30. It was further part of the scheme to defraud and to obtain money that on March 30, 2006, the defendant would and did through STR & Associates, LLC, sell and convey to Samir Cabrera, 13800 Fiddlesticks Blvd, LLC, that same unimproved real property located at 13800 Fiddlesticks Blvd., Fort Myers, Florida, for \$4,915,000.

31. It was further part of the scheme to defraud and to obtain money that the defendant would and did conceal from certain potential and actual Preferred Members his ownership interest in the real property sold by STR & Associates, LLC, to Samir Cabrera, 13800 Fiddlesticks Blvd, LLC.

32. It was further part of the scheme to defraud and to obtain money that the defendant would and did conceal from certain potential and current Preferred Members that STR & Associates, LLC, a company in which the defendant held a controlling interest, would and did purchase the real property located at 13800 Fiddlesticks Blvd., Fort Myers, Florida, for \$3,015,000 on March 30, 2006, which real property it then would and did reconvey or "flip" to Samir Cabrera, 13800 Fiddlesticks Blvd, LLC, on that very same day for \$4,915,000, for a profit to the defendant and other principals of STR & Associates, LLC, of approximately \$1,900,000.

33. It was further part of the scheme to defraud and to obtain money that the defendant would and did misrepresent the price of the unimproved real property to

certain potential and actual Preferred Members for whom the defendant would and did act as fiduciary and trustee.

34. It was further part of the scheme to defraud and to obtain money that the defendant would and did withhold and conceal material information from certain potential and actual Preferred Members in that he had an interest adverse to that of Samir Cabrera, 13800 Fiddlesticks Blvd, LLC, not disclosed until after certain Preferred Members tendered their investments.

35. It was further part of the scheme to defraud and to obtain money that the defendant would and did cause persons and entities to invest in Samir Cabrera, 13800 Fiddlesticks Blvd, LLC, as a result of the defendant's misrepresentations and omissions as fiduciary, trustee and Manager of Samir Cabrera, 13800 Fiddlesticks Blvd, LLC.

36. It was further part of the scheme to defraud and to obtain money that the defendant would and did profit as the result of these misrepresentations and omissions and that Preferred Members suffered financial detriment as a result thereof.

37. It was further part of the scheme to defraud and to obtain money that the defendant would and did receive, and cause others to receive, a share of the proceeds from the "land flips," directly funded by investors' monies, referred to by the defendant and his associates as "kicker fees".

38. It was further part of the scheme to defraud and to obtain money that the defendant would and did attempt to disguise and conceal the "kicker fees" from Preferred Members, of Samir Cabrera, 13800 Fiddlesticks Blvd, LLC, by calling the "kicker fees" loan payments on cash flow ledgers provided to investors.

39. It was further part of the scheme to defraud and to obtain money that the defendant would and did misappropriate and convert to his own use approximately \$194,062.92 in "kicker fees" from investors' monies as a result of the undisclosed flip of the real property located at 13701 Fiddlesticks Blvd., Fort Myers, Florida.

40. It was further part of the scheme to defraud and to obtain money that the defendant would and did misappropriate and convert to his own use and the use of others approximately \$800,559.07 in total "kicker fees" from investors monies as a result of the undisclosed flip of the property located at 13701 Fiddlesticks Blvd., Fort Myers, Florida.

41. It was further part of the scheme to defraud and to obtain money that the defendant would and did misappropriate and convert to his own use approximately \$436,226.25 in "kicker fees" from investors' monies as a result of the flip of the property located at 13800 Fiddlesticks Blvd., Fort Myers, Florida, which was undisclosed to certain Preferred Members.

42. It was further part of the scheme to defraud and to obtain money that the defendant would and did misappropriate and convert to his own use and the use of others approximately \$1,617,784.58 in total "kicker fees" from investors' monies as a result of the flip of the property located at 13800 Fiddlesticks Blvd., Fort Myers, Florida, which was undisclosed to certain Preferred Members.

43. It was further part of the scheme to defraud and to obtain money that the defendant would and did embezzle, steal, and convert to his own use additional monies to which he was not entitled from Samir Cabrera, 13701 Fiddlesticks Blvd, LLC, in the amount of approximately \$20,100.00.

D. THE WIRE

44. On or about January 27, 2006, in Lee County, in the Middle District of Florida, and elsewhere,

SAMIR NEL CABRERA,

defendant herein, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain monies, and attempting to do so, knowingly transmitted and caused to be transmitted by means of wire communication in interstate commerce from Minnesota, to Fort Myers, Florida, certain writings, signs, signals, and sounds, namely, a wire transfer of \$50,000.00 from the account of a Preferred Member at US Bank to an account in the name of Samir Cabrera 13701 Fiddlesticks Blvd LLC at Wachovia Bank.

In violation of Title 18, United States Code, Section 1343, Section 1346, Section 1349, and Section 2.

COUNT TWO

1. The Grand Jury realleges and incorporates by reference paragraphs one through forty-three of Count One of this Indictment as though fully set forth herein.

2. On or about February 1, 2006, in Lee County, in the Middle District of Florida, and elsewhere,

SAMIR NEL CABRERA,

defendant herein, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain monies, and attempting to do so, knowingly transmitted and caused to be transmitted by means of wire communication in interstate commerce from Ohio to Fort Myers, Florida, certain writings, signs, signals, and sounds, namely, a wire transfer of \$25,000.00 from the account of a Preferred Member at Home Savings Bank

to an account in the name of Samir Cabrera 13701 Fiddlesticks Blvd LLC at Wachovia Bank.

In violation of Title 18, United States Code, Section 1343, Section 1346, Section 1349 and Section 2.

COUNT THREE

1. The Grand Jury realleges and incorporates by reference paragraphs one through forty-three of Count One of this Indictment as though fully set forth herein.

2. On or about February 1, 2006, in Lee County, in the Middle District of Florida, and elsewhere,

SAMIR NEL CABRERA,

defendant herein, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain monies, and attempting to do so, knowingly transmitted and caused to be transmitted by means of wire communication in interstate commerce from Michigan to Fort Myers, Florida, certain writings, signs, signals, and sounds, namely, a wire transfer of \$50,000.00 from the account of a Preferred Member at Flagstar Bank to an account in the name of Samir Cabrera 13701 Fiddlesticks Blvd LLC at Wachovia Bank.

In violation of Title 18, United States Code, Section 1343, Section 1346, Section 1349 and Section 2.

COUNT FOUR

1. The Grand Jury realleges and incorporates by reference paragraphs one through forty-three of Count One of this Indictment as though fully set forth herein.

2. On or about February 21, 2006, in Lee County, in the Middle District of Florida, and elsewhere,

SAMIR NEL CABRERA,

defendant herein, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain monies, and attempting to do so, knowingly transmitted and caused to be transmitted by means of wire communication in interstate commerce from Minnesota to Fort Myers, Florida, certain writings, signs, signals, and sounds, namely, a wire transfer of \$50,000.00 from the account of a Preferred Member at Wells Fargo Bank to an account in the name of Samir Cabrera 13701 Fiddlesticks Blvd LLC at Wachovia Bank.

In violation of Title 18, United States Code, Section 1343, Section 1346, Section 1349 and Section 2.

#### FORFEITURE

1. The allegations contained in Counts One through Four of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 982(a)(1).

2. Upon conviction of Counts One through Four, the defendant 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 each violation.

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,

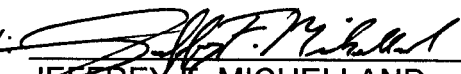
the United States of America shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 982(b).

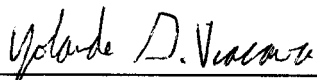
A TRUE BILL.

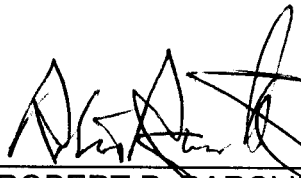
  
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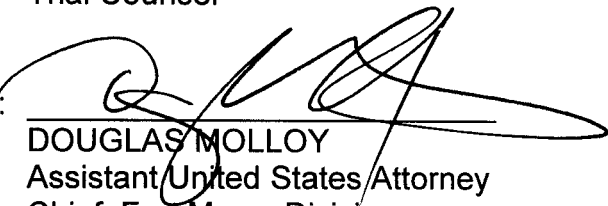
Date: 6/18/08

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Chief, Fort Myers Division

No.

**UNITED STATES DISTRICT COURT**

Middle District of Florida  
Fort Myers Division

THE UNITED STATES OF AMERICA

vs.

SAMIR NEL CABRERA

**INDICTMENT**

Violations:

- 18 U.S.C. § 1343
- 18 U.S.C. § 1346
- 18 U.S.C. § 1349
- 18 U.S.C. § 2

A true bill,



Foreperson

Filed in open court this 18<sup>th</sup> day

of May, A.D. 2008.

\_\_\_\_\_  
Clerk

Bail \$ \_\_\_\_\_