

2012 JUL -5 PM 3:08
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

February 2012 Grand Jury

CR12-0631

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
KELLY GEARHART,)
)
Defendant.)
)
)
)
)

CR 12- CR12-0631
I N D I C T M E N T
[18 U.S.C. § 1341: Mail Fraud;
18 U.S.C. § 1343: Wire Fraud;
18 U.S.C. § 1957: Money
Laundering; 18 U.S.C. § 2(b):
Causing an Act To Be Done]

The Grand Jury charges:

COUNTS ONE THROUGH TEN
[18 U.S.C. § 1341]

A. THE SCHEME TO DEFRAUD

1. Beginning in or about November 2004, and continuing through in or about December 2008, in San Luis Obispo County, within the Central District of California, and elsewhere, defendant KELLY GEARHART ("defendant GEARHART"), together with others known and unknown to the Grand Jury, knowingly and with intent to defraud, devised, participated in, and executed a scheme to obtain money and property from individuals and entities

NR

1 (collectively, the "victims") by means of material false and
2 fraudulent pretenses, representations, and promises, and the
3 concealment of material facts relating to certain real estate
4 projects.

5 2. The fraudulent scheme operated, in substance, in
6 the following manner:

7 a. Defendant GEARHART solicited funds from the
8 victims by falsely representing, and causing others to falsely
9 represent, that:

10 (i) The funds from the victims (in the form of
11 loans to defendant GEARHART) would be used to develop specific
12 real estate projects;

13 (ii) Defendant GEARHART owned the land underlying
14 the real estate projects and had clear title to that land;

15 (iii) The victims' loans would be secured by
16 specific lots underlying specific real estate projects;

17 (iv) The victims' loans would be paid back with
18 interest;

19 (v) Defendant GEARHART would sell specific lots
20 underlying specific real estate projects to individual victims
21 and would rent those lots back from the respective victims; and

22 (vi) Defendant GEARHART would transfer title of
23 the promised lots to the respective victims at the close of
24 escrow.

25 b. Also as part of the fraudulent scheme, defendant
26 GEARHART failed to disclose to, and concealed from, victims the
27 following material facts, among others:

28

1 (i) Defendant GEARHART did not own the land
2 underlying the real estate projects and did not have clear title
3 to that land;

4 (ii) Defendant GEARHART was using victims' funds
5 to pay for his and his wife's lavish living expenses and other
6 luxury items;

7 (iii) Defendant GEARHART was using victims' funds
8 to make interest payments to other investors in the real estate
9 projects;

10 (iv) Defendant GEARHART was using victims' funds
11 intended for specific real estate projects to develop different
12 real estate projects;

13 (v) Victims' loans were not secured by the
14 promised lots;

15 (vi) Defendant GEARHART was selling the same
16 individual lots to multiple victims; and

17 (vii) At the close of escrow, defendant GEARHART
18 did not intend to transfer the promised lots to the victims.

19 c. Also as part of the scheme to defraud, defendant
20 GEARHART concealed his material misrepresentations and omissions
21 from victims, and lulled, and caused others to lull, victims into
22 maintaining their loans with defendant GEARHART by:

23 (i) Using victims' funds to make interest
24 payments to other investors in the real estate projects; and

25 (ii) Misrepresenting the progress of the real
26 estate projects to the victims.

27 d. Also as part of the scheme to defraud, defendant
28

1 GEARHART led one victim - M.A. - to believe that he had
 2 transferred title of the promised lot to him by making at least
 3 one purported rent payment as promised.

4 B. THE USE OF THE MAILS

5 3. On or about the dates set forth below, in San Luis
 6 Obispo County, within the Central District of California and
 7 elsewhere, defendant GEARHART, for the purpose of executing and
 8 attempting to execute the above-described scheme to defraud,
 9 caused the following items to be placed in an authorized
 10 depository for mail matter to be sent and delivered by the United
 11 States Postal Service, according to the directions thereon:

COUNT	DATE	ITEM MAILED
ONE	August 1, 2007	A check for \$1,900 from Hurst Financial to D.R. and N.K.
TWO	August 2, 2007	A check for \$940 from Hurst Financial to J.P.
THREE	August 31, 2007	A check for \$500 from Hurst Financial to J.W.
FOUR	August 31, 2007	A check for \$500 from Hurst Financial to A.L.
FIVE	January 4, 2008	A check for \$1,900 from Hurst Financial to D.R. and N.K.
SIX	January 4, 2008	A check for \$940 from Hurst Financial to J.P.
SEVEN	January 4, 2008	A check for \$500 from Hurst Financial to J.W.
EIGHT	January 5, 2008	A check for \$500 from Hurst Financial to A.L.
NINE	February 15, 2008	A letter to "MWAY, LLC" and M.A. with a check for \$4,500

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT	DATE	ITEM MAILED
TEN	May 29, 2008	A letter to J.P. stating that defendant GEARHART was moving forward with the Vista Del Hombre project, which would include 950,000 square feet of buildings that would be worth \$26 million.

COUNTS ELEVEN THROUGH FOURTEEN

[18 U.S.C. § 1343]

4. The Grand Jury repeats and re-alleges paragraphs one and two of this Indictment as though fully set forth herein.

THE USE OF THE WIRES

5. On or about the dates set forth below, within the Central District of California and elsewhere, defendant GEARHART, for the purpose of executing the above-described scheme to defraud, transmitted, caused the transmission of, and aided and abetted the transmission of, the following items by means of wire and radio communication in interstate and foreign commerce:

COUNT	DATE	ITEM WIRED
ELEVEN	October 5, 2007	Wire of \$500,000 from Wells Fargo Bank account number XXXXXX0999 in San Luis Obispo County, California, through the Federal Reserve Wire Network in New Jersey, to City National Bank account number XXXXX9707 in San Luis Obispo County, California
TWELVE	October 5, 2007	Wire of \$500,000 from Wells Fargo Bank account number XXXXXX0999 in San Luis Obispo County, California, through the Federal Reserve Wire Network in New Jersey, to City National Bank account number XXXXX9707 in San Luis Obispo County, California
THIRTEEN	October 5, 2007	Wire of \$500,000 from Wells Fargo Bank account number XXXXXX0999 in San Luis Obispo County, California, through the Federal Reserve Wire Network in New Jersey, to City National Bank account number XXXXX9707 in San Luis Obispo County, California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT	DATE	ITEM WIRED
FOURTEEN	August 21, 2007	Wire of \$1,000,000 from Union Bank of California account number XXXXXX2505 in San Luis Obispo County, California, through the Federal Reserve Wire Network in New Jersey, to City National Bank account number XXXXX9707 in San Luis Obispo County, California

COUNTS FIFTEEN THROUGH SIXTEEN

[18 U.S.C. §§ 1957, 2(b)]

6. The Grand Jury repeats, re-alleges, and incorporates paragraphs one and two of this Indictment as though fully set forth herein.

7. On or about the following dates, in San Luis Obispo County, within the Central District of California and elsewhere, defendant GEARHART, together with others known and unknown to the Grand Jury, knowing that the funds involved represented the proceeds of some form of unlawful activity, conducted and willfully caused others to conduct, the following monetary transactions affecting interstate commerce in criminally derived property of a value greater than \$10,000, which property, in fact, was derived from specified unlawful activity, namely, wire fraud, in violation of Title 18, United States Code, section 1343:

COUNT	DATE	MONETARY TRANSACTION
FIFTEEN	October 5, 2007	Rabo Bank Account #XXXXXX8311 Check #5871 for \$25,600 made payable to Pe-Ji-Ho-Ta, L.L.C.

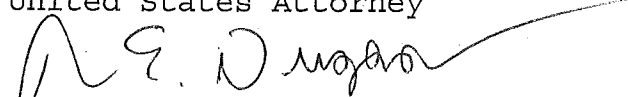
COUNT	DATE	MONETARY TRANSACTION
SIXTEEN	October 9, 2007	Rabo Bank Account #XXXXXX8311 Check #5874 for \$23,400 made payable to ACI

A TRUE BILL

151

Foreperson

ANDRÉ BIROTTE JR.
United States Attorney



ROBERT E. DUGDALE
Assistant United States Attorney
Chief, Criminal Division

RICHARD E. ROBINSON
Assistant United States Attorney
Chief, Major Frauds Section

JILL T. FEENEY
Assistant United States Attorney
Deputy Chief, Major Frauds Section

STEPHEN I. GOORVITCH
Assistant United States Attorney
Major Frauds Section