

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA FLORIDA

UNITED STATES OF AMERICA

v.

CASE NO. 8:14-cr- 404 T 30 TGW

GUILLERMO RINCON and
ENRIQUE HERNANDEZ

SEALED

18 U.S.C. § 1349
18 U.S.C. §§ 1341 and 2
18 U.S.C. §§ 1344 and 2
18 U.S.C. §§ 1014 and 2
18 U.S.C. § 982(a)(2)

INDICTMENT

The Grand Jury charges:

COUNT ONE
(Conspiracy - 18 U.S.C. § 1349)

A. Introduction

At times material to this Indictment:

1. The Federal Deposit Insurance Corporation ("FDIC") was an agency of the United States of America, established to protect depositors against substantial loss with the purpose of preventing bank collapse and instilling public confidence in the nation's banks.

2. Lehman Brothers Bank FSB ("Lehman Brothers"), Merrill Lynch Bank & Trust Co., FSB ("Merrill Lynch"), and Bank of America, National Association ("Bank of America"), were financial institutions the accounts of which were FDIC-insured. First Franklin Financial Corp. ("First Franklin") was a subsidiary of Merrill Lynch.

3. It was the practice of many lending institutions, including the above-named financial institutions, to make loans secured by real property to borrowers. Such loans were often simply called mortgages or mortgage loans. In determining whether or not to extend any such loan, it was also the practice of the lending institutions to rely upon the information contained in a borrower's mortgage-related documents, such as the Uniform Residential Loan Application, the United States Department of Housing and Urban Development Settlement Statement, and the mortgage itself.

4. A Uniform Residential Loan Application (or a "Fannie Mae Form 1003"), commonly referred to as a mortgage loan application, was generally utilized by lending institutions and other lenders in the mortgage loan approval process. The Fannie Mae Form 1003 was designed to be completed by the applicant borrower(s) with the lender's assistance and required the borrower to truthfully provide to the lender various types of material information, including employment information, monthly income, detailed financial information (including asset and liability information), and other specifics of the residential property transaction, such as the purchase price and whether the borrower would use the property as a primary residence, secondary residence, or an investment.

5. Near the end of the Fannie Mae Form 1003 in the Acknowledgment and Agreement section, the form included, in pertinent parts, the following or similar language:

Each of the undersigned specifically represents to Lender and to Lender's actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors and assigns and agrees and acknowledges that:

(a) the information provided in this application is true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I have made on this application, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1001, et seq.;

(b) the loan requested pursuant to this application (the "Loan") will be secured by a mortgage or deed of trust on the property described in this application;

(c) all statements made in this application are made for the purpose of obtaining a residential mortgage loan;

(d) the property will be occupied as indicated in this application; and

(e) the Lender and its agents, brokers, insurers, services, successors and assigns may continuously rely on the information contained in the application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the Loan.

To complete and submit the Fannie Mae Form 1003 to secure a mortgage loan, the prospective borrower(s) were required to sign and date the Acknowledgment and Agreement section of the form.

6. A United States Department of Housing and Urban Development Settlement Statement (or a "HUD-1 Settlement Statement") was a form generally used in closings of the sales of residential properties in the United States. A HUD-1 Settlement Statement was used to identify and allocate the various receipts, disbursements, expenses, and payments associated with the sale of residential real estate between the buyer and the seller of the property. Each HUD-1 Settlement Statement included the following or similar warning at the bottom of the form:

It is a crime to knowingly make false statements to the United States on this or any similar form.

7. The HUD-1 Settlement Statement also frequently included the following or similar statement and certification by the prospective borrower and seller:

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

8. The Settlement Agent responsible for handling the closing of the sale of residential property was also required to sign the HUD-1 Settlement Statement attesting to the following or similar statement:

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

9. Elite Mortgage Funding, Inc. ("Elite Mortgage"), was a Florida corporation created in or about February 2005.

10. Statton Title Agency, Inc. ("Statton Title Agency"), and Title Tech Networks, Inc. ("Title Tech"), were also Florida corporations.

11. First Financial Consulting, LLC ("First Financial Consulting"), was a Florida limited liability company created in or about March 2007.

12. Jesus Sira, also known as Jay Sira, was the incorporator and the initial president and secretary of Elite Mortgage and was the owner of First Financial Consulting.

13. Enrique Hernandez and Nestor Urdaneta-Gonzalez worked at Elite Mortgage where they facilitated the mortgage loan process.

14. Guillermo Rincon lived, at least for a time, in Tampa, Florida, and completed Fannie Mae Form 1003s associated with the purchase of property in Polk and Hillsborough County, Florida.

15. Vanessa Urdaneta, also known as Vanessa Valentin, worked at Statton Title Agency as an administrative clerk and account executive.

B. The Conspiracy

16. Beginning by early 2007, and continuing through in or about December 2007, within the Middle District of Florida, and elsewhere,

**GUILLERMO RINCON and
ENRIQUE HERNANDEZ,**

defendants herein, along with Jesus Sira and Nestor Urdaneta-Gonzalez, did knowingly and willfully combine, conspire, confederate and agree with each other and with others to commit the following offenses:

- (a) mail fraud affecting a financial institution, in violation of Title 18, United States Code, Section 1341; and
- (b) bank fraud, in violation of Title 18, United States Code, Section 1344.

C. Manner and Means

17. The manner and means by which the defendants and others sought to accomplish the objects of the conspiracy included, among others, the following:

- (a) It was part of the conspiracy that one or more of the conspirators would and did create various entities, including First Financial Consulting;
- (b) It was further part of the conspiracy that one or more of the conspirators would and did cause various bank accounts to be opened, including a bank account held in the name of First Financial Consulting;

(c) It was further part of the conspiracy that one or more of the conspirators would and did agree to purchase certain properties in exchange for a fee or commission;

(d) It was further part of the conspiracy that one or more of the conspirators would and did complete or cause to be completed Fannie Mae Form 1003s, which applications included false and fraudulent information concerning the applicant borrowers' purpose of the loan, source of down payment, employment information, and/or monthly income;

(e) It was further part of the conspiracy that one or more of the conspirators would and did sign or cause to be signed Fannie Mae Form 1003s, knowing that the applications contained false and fraudulent information;

(f) It was further part of the conspiracy that one or more of the conspirators would and did submit or cause to be submitted completed false and fraudulent Fannie Mae Form 1003s to lending institutions, many of which were financial institutions the accounts of which were FDIC-insured, or to subsidiaries of such financial institutions;

(g) It was further part of the conspiracy that one or more of the conspirators would and did often cause the seller of a property to execute a disbursement letter directing that a material portion of the proceeds from the sale of the property be disbursed to First Financial Consulting;

(h) It was further part of the conspiracy that, for many transactions, one or more of the conspirators would and did submit or cause to

be submitted the above-described disbursement letters to Statton Title Agency, Title Tech, or other title company;

(i) It was further part of the conspiracy that one or more of the conspirators would and did sign or cause to be signed HUD-1 Settlement Statements, knowing that the statements included false and fraudulent information and/or that they failed to include important disbursement information;

(j) It was further part of the conspiracy that one or more of the conspirators would and did often create or cause to be created reports that included information from the above-described disbursement letters to ensure that funds from the transactions were disbursed as desired, which was often to a bank account held in the name of First Financial Consulting;

(k) It was further part of the conspiracy that the conspirators would and did distribute and/or share funds acquired during the conspiracy, often using bank accounts held in the names of Elite Mortgage and First Financial Consulting; and

(l) It was further a part of the conspiracy that the conspirators would and did engage in multiple meetings, perform and cause acts, and make statements, to carry out and achieve the objects of the conspiracy and to conceal the purposes of the conspiracy and the acts committed in furtherance thereof.

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

COUNTS TWO THROUGH SIX
(Mail Fraud Affecting a Financial Institution - 18 U.S.C. § 1341)

A. Introduction

1. The Grand Jury re-alleges the paragraphs in section A of Count One of this Indictment as though fully set forth herein.

B. The Scheme

2. Beginning by early 2007, and continuing through in or about December 2007, within the Middle District of Florida and elsewhere, the defendants listed in Counts Two through Six below, aided and abetted by each other, and with others, did devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises.

C. Manner and Means of Scheme

3. The substance of the scheme and artifice and its manner and means are described in the paragraphs contained in section C of Count One of this Indictment, and the Grand Jury re-alleges those allegations as though fully set forth herein.

D. Execution of the Scheme

4. On or about the dates set forth below in each count, within the Middle District of Florida and elsewhere, for the purpose of executing and attempting to execute the aforesaid scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, the listed defendants, aided and abetted by each

other, and with others, did knowingly and willfully place and cause to be placed in a post office and authorized depository for mail matters and things to be sent and delivered by the Postal Service, and did knowingly and willfully deposit and caused to be deposited matters and things to be sent and delivered by a private and commercial interstate mail carrier, that is, a check, all of which affected the listed financial institution:

| COUNT | DATE | DEFENDANT(S) (Relevant Property) | FROM | TO | FINANCIAL INSTITUTION |
|-------|-----------|----------------------------------------------------------------------|----------------------|-----------------------------|-----------------------|
| Two | 4-13-2007 | GUILLERMO RINCON ENRIQUE HERNANDEZ (416 Calabria Ave.) | Statton Title Agency | America's Servicing Company | Merrill Lynch |
| Three | 4-23-2007 | GUILLERMO RINCON ENRIQUE HERNANDEZ (8908 Metheny Cir.) | Statton Title Agency | GMAC Mortgage | Lehman Brothers |
| Four | 5-16-2007 | ENRIQUE HERNANDEZ (222 La Mirage St.) | Statton Title Agency | Bank United, FSB | Lehman Brothers |
| Five | 5-23-2007 | ENRIQUE HERNANDEZ (352 Calabria Ave.) | Statton Title Agency | America's Servicing Company | Merrill Lynch |
| Six | 5-25-2007 | ENRIQUE HERNANDEZ (12293 Country White Cir.) | Statton Title Agency | Ted J. Couch (Rev Trust) | Lehman Brothers |

All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT SEVEN

(Loan and Credit Application Fraud - 18 U.S.C. §§ 1014 and 2)

1. On or about April 19, 2007, in the Middle District of Florida,

**GUILLERMO RINCON and
ENRIQUE HERNANDEZ,**

defendants herein, aided and abetted by each other, and with others, for the purpose of influencing the actions of Lehman Brothers, a financial institution the accounts of which were insured by the FDIC, upon an application, commitment, and loan in the amount of approximately \$220,000, applied for and received by **GUILLERMO RINCON** to purchase a residential home property located at 8908

Metheny Circle, Tampa, Florida 33615, did knowingly make and cause to be made false statements, in that the defendants stated and represented, and caused to be stated and represented:

- (a) that the property purchased would be used by **GUILLERMO RINCON's** as his primary residence;
- (b) that the "Source of Down Payment, Settlement Charges and/or Subordinate Financing" would be **GUILLERMO RINCON's** Checking/Savings Account(s); and
- (c) that **GUILLERMO RINCON** was then being paid \$7,900 in monthly base employment income by Printer of New York, Inc.;

whereas, in truth and fact as the defendants then and there well knew,

- (d) that **GUILLERMO RINCON** was not going to use the property purchased as his primary residence;
- (e) that **GUILLERMO RINCON's** Checking/Savings Account(s) was not the source of the approximately \$4,359 listed on the HUD-1 Settlement Statement as a down payment/settlement charge purportedly paid by **GUILLERMO RINCON**; and
- (f) that **GUILLERMO RINCON** was not then being paid \$7,900 in monthly base employment income by Printer of New York, Inc.

All in violation of Title 18, United States Code, Sections 1014 and 2.

COUNT EIGHT

(Loan and Credit Application Fraud - 18 U.S.C. §§ 1014 and 2)

1. On or about May 24, 2007, in the Middle District of Florida,

ENRIQUE HERNANDEZ,

defendant herein, aided and abetted by others, for the purpose of influencing the actions of Lehman Brothers, a financial institution the accounts of which were

insured by the FDIC, upon an application, commitment, and loan in the amount of approximately **\$152,000** applied for and received by **MV**, a person known to the Grand Jury, to purchase a residential home property located at 12293 Country White Circle, Tampa, Florida 33635, did knowingly make and cause to be made false statements, in that the defendant stated and represented, and caused to be stated and represented:

- (a) that the property purchased would be used by **MV** as his primary residence;
- (b) that the "Source of Down Payment, Settlement Charges and/or Subordinate Financing" would be **MV's** Checking/Savings Account(s); and
- (c) that **MV** was then being paid \$5,100 in monthly base employment income by Copy Control Management, Inc.;

whereas, in truth and fact as the defendant then and there well knew,

- (d) that **MV** was not going to use the purchased property as his primary residence;
- (e) that **MV's** Checking/Savings Account(s) was not the source of the approximately \$3,869 listed on the HUD-1 Settlement Statement as a down payment/settlement charge purportedly paid by **MV**; and
- (f) that **MV** was not then being paid \$5,100 in monthly base employment income by Copy Control Management, Inc.

All in violation of Title 18, United States Code, Sections 1014 and 2.

FORFEITURES

1. The allegations contained in Counts One through Eight of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to the provisions of Title 18, United States Code, Section 982(a)(2).

2. From their engagement in any or all of the violations alleged in Counts One through Eight of this Indictment, in violation of Title 18, United States Code, Sections 1014, 1341, and 1349,

**GUILLERMO RINCON and
ENRIQUE HERNANDEZ,**

shall forfeit to the United States upon conviction, pursuant to Title 18, United States Code, Section 982(a)(2), any and all of the defendants' right, title and interest in any property, real and personal, which constitutes or is derived from proceeds traceable to such offense including, but not limited to, a forfeiture money judgment in the amount the defendants obtained directly or indirectly as a result of such violations.

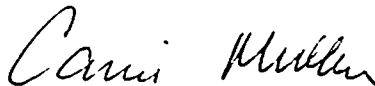
3. If any of the property described above, as a result of any act or omission of the defendant:

- (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 subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property.

A TRUE BILL,



Foreperson


A. LEE BENTLEY, III
United States Attorney

By:



JAY G. TREZEVANT
Assistant United States Attorney

By:



ROBERT A. MOSAKOWSKI
Assistant United States Attorney
Chief, Economic Crimes

UNITED STATES DISTRICT COURT
Middle District of Florida
Tampa Division

THE UNITED STATES OF AMERICA

vs.

GUILLERMO RINCON, ET. AL

INDICTMENT

Violations:

18 U.S.C. § 1349, 18 U.S.C. § 1341, 18 U.S.C. § 1344, 18 U.S.C. § 1014, and 18 U.S.C. § 2

A true bill,

Carrie Mullen

Foreperson

Filed in open court this 24th day

of September, 2014.

Clerk

Bail \$ _____
