

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
11-20524-CR-SEITZ/SIMONTON
18 U.S.C. § 1341
18 U.S.C. § 1343
18 U.S.C. § 981(a)(1)(C)

UNITED STATES OF AMERICA,

vs.

DAVID A. DONET, SR.,

Defendant.

INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times relevant to this Information:

1. Defendant **DAVID A. DONET, SR.** was an attorney practicing law in the Southern District of Florida.
2. As a service to certain clients, **DAVID A. DONET, SR.** functioned as the settlement agent to close certain real estate transactions.
3. His responsibilities as a settlement agent included ensuring the completion of all necessary paperwork to close the real estate sale, collecting funds from the purchaser or lender, transferring funds to the seller and paying off any other outstanding loans or obligations, and transferring property to the buyer.
4. When acting as a settlement agent, **DAVID A. DONET, SR.** was required to place funds for the purchase, sale, and refinancing of property into his attorney trust account, meaning an

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4. When acting as a settlement agent, **DAVID A. DONET, SR.** was required to place funds for the purchase, sale, and refinancing of property into his attorney trust account, meaning an

account used for the deposit of funds received or held by an attorney or law firm on behalf of a client, estate, or ward.

5. Within the State of Florida, attorney trust accounts must be maintained in compliance with the ethics rules of the Florida Bar.

6. **DAVID A. DONET, SR.** maintained his attorney trust account at a Bank of America branch in Coral Gables, Florida, in an account ending with the numbers 7742.

7. Apart from his role as a settlement agent, **DAVID A. DONET, SR.** provided other services to clients which led him to place their funds in his attorney trust account.

COUNTS 1-6
MAIL FRAUD
(18 U.S.C. § 1341)

1. Paragraphs 1 through 7 of the General Allegations section of this Information are re-alleged and incorporated by reference as though fully set forth herein.

2. From at least in or around January, 2003, and continuing through in or around at least June, 2010, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

DAVID A. DONET, SR.,

knowingly and with intent to defraud did devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice, and attempting so to do, did knowingly cause to be delivered certain mail matter by the United States Postal Service and by private and commercial interstate carriers, according to the directions thereon.

PURPOSE OF THE SCHEME AND ARTIFICE

3. The purpose of the scheme and artifice was for the defendant to unjustly enrich himself and support his legal practice by misappropriating loan and other proceeds placed in his attorney trust account and held temporarily in trust for others, diverting them to his own use, and commingling them with funds in the operations account for his law firm.

THE SCHEME AND ARTIFICE

The manner and means by which the defendant sought to accomplish the purpose of the scheme and artifice including, among others, the following:

4. After the defendant received funds in his attorney trust account on behalf of certain clients from the representation of those clients, the defendant encouraged those clients to leave their funds in his trust account, falsely stating that the client funds would be invested, when in truth and in fact, and as the defendant then and there well knew, no investment of client funds would occur.

5. The defendant falsely represented to certain clients that by keeping their funds in his attorney trust account: a) the funds would be insured and secure while the defendant invested the funds; b) the funds would provide 10% annual interest, to be paid in monthly installments; and c) clients could withdraw their principal at any time.

6. Instead of investing the funds held in trust for the clients who agreed to invest, the defendant used those funds towards his own interests and commingled them with funds in the separate operations account for his law firm.

7. To conceal his misappropriation of funds from the clients who accepted the defendant's offer to invest, while he had sufficient funds available, the defendant issued monthly

checks to those clients which he falsely claimed were interest payments on the investments which the defendant in fact never made.

8. The defendant further offered his services as a settlement agent in connection with the refinancing of certain residential mortgage loans, falsely and fraudulently undertaking the role of a neutral third party who would ensure, among other matters, that proceeds from a newer lender would be transferred to the defendant's attorney trust account and, upon closing, used to pay off the outstanding loan balance of the original lender.

9. Instead of transmitting funds from a newer lender provided on behalf of individual homeowners to refinance an outstanding loan, the defendant retained those funds and used them towards his own interests, commingling them with funds from the separate operations account for his law firm.

10. To conceal his misappropriation of loan funds intended to pay the balance of an earlier existing loan, the defendant failed to disclose refinancings to original lenders.

11. To further conceal his misappropriation of refinancing proceeds, while he had sufficient funds available, the defendant issued monthly checks to original lenders, creating the false and fraudulent appearance that homeowners were continuing to make payments on their first mortgages, and placing those homeowners at risk of default and foreclosure once the defendant lacked funds to provide the original lenders with monthly checks.

12. The defendant offered his services as a settlement agent in connection with a foreign national's sale of property located in the Southern District of Florida, falsely and fraudulently undertaking the role of a neutral third party who would ensure, among other matters, that proceeds

from the buyer of the property would be used not only to pay the seller but to pay the seller's tax obligations to the Internal Revenue Service (IRS) resulting from the sale.

13. Upon closing of the sale, however, and once monies from the buyer were deposited in the defendant's attorney trust account, the defendant failed to transfer any funds to the IRS, retaining and misappropriating approximately \$36,000 in funds which were supposed to pay the seller's tax obligations.

14. The defendant offered his services on behalf of a homeowner who already had a conventional first residential mortgage, as a settlement agent in connection with reverse mortgages, falsely and fraudulently undertaking the role of a neutral third party who would ensure that settlement proceeds from the reverse mortgages would be used, among other matters, to pay the homeowner's conventional first mortgage.

15. Instead, the defendant retained certain funds placed in his attorney trust account to close the reverse mortgages, failing to pay off the existing first mortgage, and retaining and misappropriating the funds to further his own interests, and commingling those funds with the separate operations account for his law firm.

16. As a result of the various ways the defendant misused his attorney trust account, the defendant misappropriated in excess of \$1 million.

USE OF THE MAILS

17. On or about the dates specified as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant, for the purpose of executing the aforesaid scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and attempting so to do, did knowingly

cause to be delivered by the United States Postal Service and by private and commercial interstate carriers, according to the directions thereon, the items identified below in each count:

COUNT	APPROX. DATE	DESCRIPTION OF MAILING
1	September 19, 2008	Letter from DAVID A. DONET, SR. 's law firm sent from Miami, Florida via Federal Express to Wells Fargo Home Mortgage in Minneapolis, Minnesota on behalf of borrowers R.S. and M.S.
2	February 11, 2010	Check signed by DAVID A. DONET, SR. and sent from Miami, Florida via Federal Express to GMAC Mortgage in Louisville, Kentucky covering monthly payment for loan issued to borrower E.I.
3	March 12, 2010	Check signed by DAVID A. DONET, SR. and sent from Miami, Florida via U.S. mail to GMAC Mortgage in Louisville, Kentucky covering monthly payment for borrower E.I.
4	April 10, 2010	Check signed by DAVID A. DONET, SR. and sent from Miami, Florida via U.S. mail to GMAC Mortgage in Louisville, Kentucky covering monthly payment for borrower E.I.
5	May 10, 2010	Check signed by DAVID A. DONET, SR. and sent from Miami, Florida via U.S. mail to GMAC Mortgage in Louisville, Kentucky covering monthly payment for borrower E.I.
6	June 7, 2010	Check signed by DAVID A. DONET, SR. and sent from Miami, Florida via U.S. mail to GMAC Mortgage in Louisville, Kentucky covering monthly payment for borrower E.I.

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

COUNTS 7-8
WIRE FRAUD
(18 U.S.C. § 1343)

1. Paragraphs 1 through 7 of the General Allegations section of this Information are re-alleged and incorporated by reference as though fully set forth herein.

2. From at least in or around January, 2003, and continuing through in or around at least June, 2010, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

DAVID A. DONET, SR.,

did knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and did transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds for the purpose of executing said scheme and artifice.

PURPOSE OF THE SCHEME AND ARTIFICE

3. The purpose of the scheme and artifice was for the defendant to unjustly enrich himself and support his legal practice by misappropriating loan and other proceeds placed in his attorney trust account and held temporarily in trust for others, diverting them to his own use, and commingling them with funds in the operations account for his law firm.

SCHEME AND ARTIFICE

4. Paragraphs 4 through 16 of the Scheme and Artifice section of Counts 1-6 of this Information are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

USE OF THE WIRES

5. On or about the dates specified as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, **DAVID A. DONET, SR.**, for the purpose of executing and in furtherance of the aforesaid scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, as more particularly described below:

COUNT	APPROXIMATE DATE	DESCRIPTION OF WIRE COMMUNICATION
7	January 7, 2007	Electronic mail communication from DAVID A. DONET, SR. 's law firm in Miami, Florida forwarding closing documents to lender in Draper, Utah for refinancing of loan to borrowers M.M. and V.M.
8	October 16, 2009	Wire transfer of funds from DAVID A. DONET, SR. 's attorney trust account routed through Bank of America in New York, New York to the account of the mortgage broker for borrower Z.O., to an account with U.S. Century Bank in Doral, Florida

In violation of Title 18, United States Code, Sections 1343 and 2.

FORFEITURE
(18 U.S.C. § 981(a)(1)(C))

1. The allegations of this Information are re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant has an interest.

2. Upon conviction of a violation alleged in this Information, the defendant, **DAVID A. DONET, SR.**, shall forfeit to the United States all of his right, title and interest in any property, real or personal, which constitutes, or is derived from, any proceeds traceable to such violation, pursuant to Title 18, United States Code, Section 981(a)(1)(C), as made applicable by Title 28, United States Code, Section 2461(e).

3. If the property described above as being subject to forfeiture, as a result of any act or omission of the defendant,

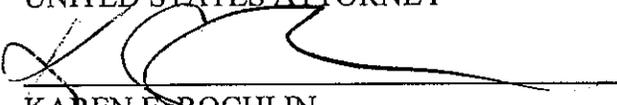
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be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

it is the intent of the United States of America, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

All pursuant to Title 28, United States Code, Section 2461(c), Title 18, United States Code, Section 981(a)(1)(C), and the procedures set forth at Title 21, United States Code, Section 853.



WIFREDO A. FERRER
UNITED STATES ATTORNEY



KAREN E. ROCHLIN
ASSISTANT UNITED STATES ATTORNEY