

11-60183

CR-COHN

MAGISTRATE JUDGE
SELTZER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. [REDACTED]

18 U.S.C. § 1349
18 U.S.C. § 1343
18 U.S.C. § 2
18 U.S.C. § 982(a)(2)(A)

UNITED STATES OF AMERICA

vs.

GHAITH AL NAHAR,
MICHELLE AUSTIN-WILKS,
ROMY DEFAY,
LUCIEN LAGUERRE,
JEFFERY GILBERT, and
PHILIP JAY NEWMAN,

FILED by _____ D.C.
JUL 28 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT
S. D. OF FLA. - MIAMI

Defendants.

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

1. American Brokers Conduit was a New York corporation doing business as a mortgage lender throughout the United States, including in the State of Florida.
2. J.P. Morgan Chase Bank, N.A. ("J.P. Morgan Chase") was a financial institution with offices located in the State of Florida and whose accounts were insured by the Federal Deposit Insurance Corporation ("FDIC").
3. Transcontinental Lending Group ("Transcontinental") was an Arizona corporation doing business as a mortgage lender throughout the United States, including in the State of Florida.

4. United Residential Lending, LLC ("United") was an Arizona corporation doing business as a mortgage lender throughout the United States, including in the State of Florida.

5. Regions Bank ("Regions") was a financial institution with offices located in the State of Florida and whose accounts were insured by the FDIC.

6. The term "lenders" refers to the banks and lending institutions set forth in the preceding paragraphs 1 through 5, each of which extended mortgage loans and disbursed mortgage loan proceeds to fund properties involved in the conspiracy and fraudulent scheme described in this Indictment.

7. The term "closing" is used in the real estate industry to refer to the event at which the legal transfer of real estate from seller to buyer formally took place and the point at which funds were transferred between the various parties, such as from the lending institution to the buyer, or to the seller on the buyer's behalf. The funds transfer at closing was often accomplished by temporarily passing the funds through an intermediary commonly referred to as a "settlement agent" or a "title company."

8. A HUD-1 Settlement Statement ("HUD-1 Statement") was a standard form required to be executed for the closing of a real estate transaction. The HUD-1 Statement itemized for the lenders all aspects of the closing, including an itemized list of payments to be made by the borrower, money due to the seller, and any fees paid to third parties in connection with the closing.

9. The term "straw buyer" referred to an individual who, in exchange for a fee, allowed his or her identity and credit to be used in the purchase of residential property. Defendants **LUCIEN LAGUERRE, JEFFERY GILBERT** and **PHILIP JAY NEWMAN**, among others, acted as straw buyers ("the straw buyers").

10. Direct Title & Escrow Services, Inc. ("Direct Title") was a Florida corporation located in Fort Lauderdale, Florida whose President was **MICHELLE AUSTIN-WILKS**.

11. Fantastic Title Services, Inc. ("Fantastic Title") was a Florida corporation located in Boca Raton, Florida whose President was **MICHELLE AUSTIN-WILKS**.

12. Michelle's Processing Services, Inc. ("Michelle's Processing") was a Florida corporation located in Boca Raton, Florida whose President was **MICHELLE AUSTIN-WILKS**.

13. Best Decision Home Mortgage, Inc. d/b/a Banc Plus Home Mortgage was a Florida corporation located in Lake Worth, Florida whose President was **GHAITH AL NAHAR**.

14. Defendant **GHAITH AL NAHAR** was an individual who resided in Lake Worth, Florida.

15. Defendant **MICHELLE AUSTIN-WILKS**, an individual who resided in Parkland, Florida, was a closing agent who conducted real estate closings on behalf of Direct Title and Fantastic Title.

16. Defendant **ROMY DEFAY**, an individual who resided in West Palm Beach, Florida, worked as a mortgage broker.

17. **LUCIEN LAGUERRE**, an individual who resided in Lauderhill, Florida, was a mortgage applicant for the following properties: (a) 9174 Pineville Drive, Lake Worth, Florida and (b) 9123 Pineville Drive, Lake Worth, Florida.

18. **JEFFERY GILBERT**, an individual who resided in Miramar, Florida, was a mortgage applicant for 9138 Pineville Drive, Lake Worth, Florida.

19. **PHILIP JAY NEWMAN**, an individual who resided in Miami, Florida, was a mortgage applicant for 9180 Oak Alley Drive, Lake Worth, Florida.

COUNT 1
CONSPIRACY TO COMMIT WIRE FRAUD
(18 U.S.C. § 1349)

1. Paragraphs 1 through 19 of the General Allegations section of this Indictment are realleged and incorporated fully herein by reference as though fully set forth herein.

2. From in or around February 2007, and continuing through in or around November 2007, in Broward and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendants,

GHAITH AL NAHAR,
MICHELLE AUSTIN-WILKS,
ROMY DEFAY,
LUCIEN LAGUERRE,
JEFFERY GILBERT, and
PHILIP JAY NEWMAN,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate and agree together and with others known and unknown to the Grand Jury, to 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 they were false and fraudulent when made, and did transmit and cause to be transmitted in interstate commerce, by means of wire communication, certain writings, signs, signals, pictures and sounds, for the purpose of executing the scheme and artifice, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) using straw buyers to purchase and finance residential properties in Palm Beach County, Florida; (b) submitting false and fraudulent mortgage

loan applications and related documents, including but not limited to closing documents, to lenders, thereby inducing the lenders to approve the mortgage loans to purchase the residential properties; (c) causing the lenders to loan more money than they otherwise would have loaned by preparing and submitting to the lenders false and fraudulent HUD-1 Statements that did not accurately reflect the purchase price of the properties, payments made by the borrower and payments made to the seller; and (d) diverting fraud proceeds for their personal use and benefit, and to further the fraud scheme.

MANNER AND MEANS OF CONSPIRACY

The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. **GHAITH AL NAHAR** searched for and selected properties in Palm Beach County, Florida that could be used to defraud lenders by using straw buyers to pose as purchasers for the properties. The properties that **AL NAHAR** selected included, but were not limited to: (a) 9138 Pineville Drive, Lake Worth, Florida (b) 9174 Pineville Drive, Lake Worth, Florida; (c) 9123 Pineville Drive, Lake Worth, Florida; (d) 9220 Pineville Drive, Lake Worth, Florida; (e) 9112 Pineville Drive, Lake Worth Florida; (f) 9214 Pineville Drive, Lake Worth, Florida; (g) 6040 Country Estates Drive, Lake Worth, Florida; (h) 6074 Pond Bluff Court, Lake Worth, Florida; and (i) 9180 Oak Valley Drive, Lake Worth, Florida (collectively, "the Properties").

5. **GHAITH AL NAHAR** and **ROMY DEFAY** recruited straw buyers who, in exchange for a fee, allowed their identities and credit information to be used in false and fraudulent mortgage loan applications associated with the purchase of the Properties. Among the individuals they recruited to act as straw buyers were **LUCIEN LAGUERRE**, **JEFFERY GILBERT** and **PHILIP JAY NEWMAN**.

6. In connection with the purchase of the Properties, **GHAITH AL NAHAR, ROMY DEFAY**, and other co-conspirators prepared and caused to be prepared false and fraudulent mortgage loan applications and other related documents. The mortgage loan applications and related documents, which were subsequently submitted to the lenders, contained numerous false statements and representations relating to, among other matters, the purported borrowers' employment, income, assets, and other information necessary for the lenders to assess the supposed purchasers' qualifications to borrow money.

7. In connection with the purchase of some of the Properties, **MICHELLE AUSTIN-WILKS** prepared and caused to be prepared false and fraudulent HUD-1 Statements which, among other things, falsely represented to the lenders that the straw buyers had met their cash-to-close obligations, when, in fact, the cash-to-close was not supplied. In some instances, **AUSTIN-WILKS** created multiple HUD-1 Statements for the same transaction and submitted different HUD-1 Statements to the seller (the "seller HUD-1") and to the lender ("lender HUD-1"). In some instances, the lender HUD-1 reflected a higher purchase price than that reflected in the seller HUD-1 and was intended to induce the lender to fund the property loans at a higher value. The lender HUD-1 concealed from the lender how the loan proceeds were actually disbursed, including the amount of money that the seller received after the closing of the Properties.

8. The lenders approved the mortgage loan applications based on the false and fraudulent loan applications and HUD-1 statements submitted. Once the applications were approved, the lenders would wire the loan proceeds to the title company, including Direct Title and Fantastic Title, for distribution at the closings of the residential sale transactions.

9. Thereafter, **MICHELLE AUSTIN-WILKS** and **GHAITH AL NAHAR** caused fraudulent payments and disbursements to be made from the mortgage loan proceeds, including payments to **AL NAHAR**, Michelle's Title Processing, and the straw buyers contrary to the representations in the HUD-1 Statements.

10. On occasion, **GHAITH AL NAHAR** made the mortgage loan payments on the Properties or provided the straw buyers with the funds to make the mortgage payments to conceal the fraudulent nature of the transactions until they were able to sell the Properties or the Properties fell into foreclosure.

11. Over the course of the conspiracy, the defendants caused approximately \$9,282,650 in false and fraudulent loans to be funded in this manner. The defendants ultimately stopped making payments on the mortgage loans obtained on the Properties, causing the Properties to go into foreclosure and the lenders to suffer substantial losses.

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

COUNTS 2-6
WIRE FRAUD
(18 U.S.C. §§ 1343 and 2)

1. Paragraphs 1 through 19 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around February 2007, through in or around November 2007, in Broward and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendants,

GHAITH AL NAHAR,
MICHELLE AUSTIN-WILKS,
ROMY DEFAY,
LUCIEN LAGUERRE,
JEFFERY GILBERT, and

PHILIP JAY NEWMAN,

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 they were false and fraudulent when made, and did transmit and cause to be transmitted in interstate commerce, by means of wire communication, certain writings, signs, signals, pictures and sounds, for the purpose of executing the scheme and artifice.

PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for the defendants and their accomplices to unlawfully enrich themselves by, among other things: (a) using straw purchasers to purchase and finance residential properties in Palm Beach County, Florida; (b) submitting false and fraudulent mortgage loan applications and related documents to lenders, thereby inducing the lenders to approve the mortgage loans to purchase the residential properties; (c) causing the lenders to loan more money than they otherwise would have loaned by preparing and submitting to the lenders false and fraudulent HUD-1 Statements that did not accurately reflect the purchase price of the properties, payments made by the borrower and payments made to the seller; and (d) diverting fraud proceeds for their personal use and benefit, and to further the fraud scheme.

THE SCHEME AND ARTIFICE

4. Paragraphs 4 through 11 of the Manner and Means section of Count 1 of the Indictment are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

EXECUTION OF THE SCHEME AND ARTIFICE

5. On or about the dates specified as to each count below, in Broward and Palm Counties, in the Southern District of Florida, and elsewhere, the defendants, as specified in each count below, 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 in interstate commerce, by means of wire communication, certain writings, signs, signals, pictures and sounds, as more particularly described below:

COUNT	APPROX. DATE	DEFENDANTS	DESCRIPTION OF WIRE COMMUNICATION
2	04/25/07	GHAITH AL NAHAR, MICHELLE AUSTIN-WILKS, and LUCIEN LAGUERRE	Wire communication in the amount of \$10,000 sent at the request of Direct Title from Regions Bank in Birmingham, Alabama, to Ghaith Al Nahar's Bank of America account in Lake Worth, Florida, relating to the purchase of 9123 Pineville Drive, Lake Worth, Florida.
3	05/01/07	GHAITH AL NAHAR, MICHELLE AUSTIN-WILKS, and LUCIEN LAGUERRE	Wire communication in the amount of \$16,327 sent at the request of Direct Title from Regions Bank in Birmingham, Alabama, to Ghaith Al Nahar's Bank of America account in Lake Worth, Florida, relating to the purchase of 9174 Pineville Drive, Lake Worth, Florida.

COUNT	APPROX. DATE	DEFENDANTS	DESCRIPTION OF WIRE COMMUNICATION
4	05/25/07	GHAITH AL NAHAR and MICHELLE AUSTIN-WILKS	Wire communication in the amount of \$142,209.88 sent at the request of Direct Title from Regions Bank in Birmingham, Alabama, to Ghaith Al Nahar's Bank of America account in Lake Worth, Florida, relating to the purchase of 9214 Pineville Drive, Lake Worth, Florida.
5	11/02/07	GHAITH AL NAHAR, ROMY DEFAY and JEFFERY GILBERT	Wire communication in the amount of \$103,915.33 sent at the request of the seller from Regions Bank d/b/a AmSouth Bank in Hoover, Alabama, to Ghaith Al Nahar's Bank of America account in Lake Worth, Florida, relating to the purchase of 9138 Pineville Drive, Lake Worth, Florida.
6	11/21/07	GHAITH AL NAHAR, MICHELLE AUSTIN-WILKS, and PHILIP JAY NEWMAN	Wire communication in the amount of \$158,503.99 sent at the request of Fantastic Title from Regions Bank d/b/a AmSouth Bank in Hoover, Alabama, to Ghaith Al Nahar's Bank of America account in Lake Worth, Florida, relating to the purchase of 9180 Oak Alley Drive, Lake Worth, Florida.

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

FORFEITURE
(18 U.S.C. § 982(a)(2)(A))

1. The allegations of this Indictment are realleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of America of certain property in which one or more of the defendants has an interest.

2. Upon conviction of any of the offenses charged in Counts 1 through 6 of this Indictment, the defendants, **GHAITH AL NAHAR, MICHELLE AUSTIN-WILKS, ROMY DEFAY, LUCIEN LAGUERRE, JEFFERY GILBERT, and PHILIP JAY NEWMAN**, shall forfeit to the United States any property, real or personal, which constitutes, or is derived from, proceeds traceable to such violation.

3. The property subject to forfeiture includes but is not limited to the proceeds of the above-referenced fraud in the approximate amount of \$9,282,650.

4. If the above-described forfeitable property, as a result of any act or omission of the defendants--

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) 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), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

All pursuant to Title 18, United States Code, Section 982(a)(2)(A) and the procedures outlined at Title 21, United States Code, Section 853.

A TRUE BILL

FOREPERSON

W. Ferrer, Chief, Criminal Division

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Armando Rosquete

ARMANDO ROSQUETE
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

GHAITH AL NAHAR, et al.,

Defendants. _____/

Superseding Case Information:

Court Division: (Select One)

New Defendant(s) _____ Yes _____ No
Number of New Defendants _____
Total number of counts _____

X Miami _____ Key West
FTL _____ WPB _____ FTP

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 7 days for the parties to try.

5. Please check appropriate category and type of offense listed below:
(Check only one) (Check only one)

I	0 to 5 days	_____	Petty	_____
II	6 to 10 days	<u>X</u>	Minor	_____
III	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u>X</u>
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes: Judge: _____ Case No. _____
(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No) No

If yes: Magistrate Case No. _____
Related Miscellaneous numbers: _____
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? _____ Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? _____ Yes X No


ARMANDO ROSQUETE
ASSISTANT UNITED STATES ATTORNEY
Florida Bar No. 0648434

*Penalty Sheet(s) attached