UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-20198 CR - KING

18 U.S.C. § 1349
18 U.S.C. § 1341
18 U.S.C. § 844(n)
18 U.S.C. § 844(i)
18 U.S.C. § 513(a)
18 U.S.C. § 2
18 U.S.C. § 982

McALILEY

FILED by TB D.C.
JUL 26 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT
S. D. of FLA. – MIAMI

UNITED STATES OF AMERICA

vs.

GERARDO WILHELM,
JUAN J. FLORES, and
ALEJANDRO FIGUEREDO,

Defendants.
_____/

## INDICTMENT

The Grand Jury charges that:

## GENERAL ALLEGATIONS

At all times relevant to this Indictment:

1. First Savings Mortgage Corporation ("First Savings") was a Virginia corporation doing business as a mortgage lender throughout the United States, including in the State of Florida.

2. Homecomings Financial, LLC ("Homecomings Financial") was a Delaware corporation doing business as a mortgage lender throughout the United States, including in the State of Florida.

3. A "mortgage" was a loan to finance the purchase of real estate property, usually with specified payment periods and interest rates, where the borrower/mortgagor gave the

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Steven M. Larimore, Clerk
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Southern District of Florida
By Adrea L. Christian
Deputy Clerk
Date 8/2/11

lender/mortgagee a lien on the property as collateral for the loan.

4. The term "lender" referred collectively to the mortgage lenders set forth in the preceding paragraphs 1 and 2, each of which extended mortgage loans and disbursed mortgage loan proceeds to fund the financing of real estate properties in the State of Florida. The lender was often referred to as the "lien holder."

5. The term "straw buyer" referred to an individual who allowed his or her identity to be used in the purchase of real estate property.

6. The term "short sale" was used in the real estate industry to refer to a sale of real estate property in which the sale proceeds fell short of the balance owed on the property's loan or loans to a mortgage lender. It occurred when a borrower could no longer make monthly payments on the mortgage loan or loans on the property, and the mortgage lender chose to sell the property rather than engage in litigation and expend further fees in enforcing its lender rights against the borrower. The borrower and the mortgage lender both were required to consent to the short sale.

7. The term "closing" was used in the real estate industry to refer to the legal event at which the transfer of an interest in real estate from seller to buyer formally took place, as well as 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, which transfer was often accomplished by temporarily passing the funds through an intermediary commonly referred to as a "settlement agent" or "title company."

8. A HUD-1 Settlement Statement ("HUD-1 Statement") was a standard form required to be executed for the closing of real estate transactions. A HUD-1 Statement itemized all aspects of a closing for the lender, including any payments made by the borrower, money due to the seller, and

any fees paid to third parties in connection with the closing.

9. The term "cash-to-close" was used in the real estate industry to refer to the monetary obligations to be met by a party, usually the buyer, in order for a closing on a particular real estate transaction to be completed.

10. Defendant **GERARDO WILHELM** was an individual who resided in Miami, Florida.

11. Defendant **JUAN J. FLORES** was an individual who resided in Ocala, Florida.

12. Defendant **ALEJANDRO FIGUEREDO** was an individual who resided in Miami, Florida.

13. A.B. was **GERARDO WILHELM's** wife.

14. E.E.R. was **GERARDO WILHELM's** mother.

15. E.R.L. was a friend and/or relative of **GERARDO WILHELM.**

16. A.A. was a friend and/or relative of **GERARDO WILHELM.**

17. Real Property 7849 Inc. was a Florida corporation located in Miami, Florida whose president was E.R.L and vice president was E.E.R.

18. 7849 NW 108th Place, Doral, Florida ("the Property") was a townhouse purchased by **GERARDO WILHELM** and A.B. in or around February 2006. The Property was involved in a fire in or around January 2008, and sold in a short sale from **GERARDO WILHELM** and A.B. to A.A. in or around June 2009. In or around July 2010, the Property was transferred by A.A. to Real Property 7849 Inc.

19. First Savings was the initial lender involved in the purchase of the Property in or around February 2006.

20. Homecomings Financial subsequently acquired the two loans associated with the sale of the Property, and was the lender involved in the subsequent short sale of the Property in or around June 2009.

21. The Property was insured through an insurance policy with First Home Insurance Company ("First Home"), a Florida corporation. The Property's insurance policy with First Home provided coverage in the event of accidental fire to the Property in the approximate amount of $178,200.

22. A "sworn proof of loss" was a formal document used in the insurance industry, signed and submitted by an insurance policyholder to an insurance company seeking payment on an insurance claim.

23. Micro Parts Unlimited Corp ("Micro Parts") was a Florida corporation located in Miami, Florida, whose vice president and registered agent was **GERARDO WILHELM**.

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

1. Paragraphs 1, 3, 4, 7, 10, 13, 18, and 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 January 2006, and continuing through in or around February 2006, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**GERARDO WILHELM,**

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate and agree with A.B 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 the pretenses, representations, and promises were false and fraudulent when made, and to knowingly cause to be delivered certain mail matter by the United States Postal Service and by private or commercial interstate carrier, according to the directions thereon, in violation of Title 18, United States Code, Section 1341.

## PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendant and his co-conspirator to unlawfully enrich themselves by, among other things: (a) submitting false and fraudulent mortgage loan applications and related documents to First Savings, thereby inducing First Savings to approve mortgage loans to purchase the Property; (b) using the fraudulently obtained Property for their personal use and benefit; and (c) 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 defendant and co-conspirator A.B. sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. **GERARDO WILHELM** and A.B. identified the Property as a real estate property that could be used to defraud lenders.

5. **GERARDO WILHELM** and A.B. prepared, caused to be prepared, and signed false and fraudulent mortgage loan applications and other related documents submitted to lenders in connection with the purchase of the Property. Two false and fraudulent mortgage loan applications were prepared by and on behalf of **GERARDO WILHELM** and A.B. and submitted to First Savings in connection with the February 9, 2006 purchase of the Property, to induce First Savings to

fund two mortgage loans on the Property. The two mortgage loan applications prepared by and on behalf of **GERARDO WILHELM** and A.B. were signed by **GERARDO WILHELM** and A.B., and contained false and fraudulent representations of employment, income, funds on deposit, and other information necessary to assess their qualifications to borrow funds in the amounts of $247,500 and $49,500. The false and fraudulent loan applications included, among other things, inflated statements of **GERARDO WILHELM's** and A.B.'s incomes, funds on deposit, intent to use the property as a primary residence, and other information necessary for First Savings to assess the purchasers' qualifications to borrow money.

6. Based on the materially false and fraudulent misrepresentations in **GERARDO WILHELM** and A.B.'s loan applications, First Savings approved the mortgage applications, and the loan proceeds were disbursed at the closing of the February 2006 purchase of the Property.

7. After the closing, **GERARDO WILHELM** and A.B. used the Property as a rental property, collected rental fees and obtained other pecuniary benefits from the Property, which they used for their personal benefit and to further the fraudulent scheme.

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

## COUNT 2
## MAIL FRAUD
## (18 U.S.C. § 1341)

1. Paragraphs 1, 3, 4, 7, 10, 13, 18, and 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 January 2006, and continuing through in or around February 2006, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**GERARDO WILHELM,**

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 knowingly cause to be delivered certain mail matter by private or commercial interstate carrier, according to the directions thereon.

## PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for the defendant and his accomplice to unlawfully enrich themselves by, among other things: (a) submitting false and fraudulent mortgage loan applications and related documents to First Savings, thereby inducing First Savings to approve mortgage loans to purchase the Property; (b) using the fraudulently obtained Property for their personal use and benefit; and (c) diverting fraud proceeds for their personal use and benefit, and to further the fraud scheme.

## THE SCHEME AND ARTIFICE

4. Paragraphs 4 through 8 of the Manner and Means Section of Count 1 are realleged and incorporated by reference herein as a description of the scheme and artifice.

## USE OF THE MAILS

5. On or about the date enumerated below, the defendant, for the purpose of executing and in furtherance of the scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly cause to be delivered certain mail matter by a private or commercial interstate carrier, according to the directions thereon, as more particularly described below:

| COUNT | APPROX. DATE | DESCRIPTION OF MAILING |
|---|---|---|
| 2 | February 10, 2006 | Documents from settlement agent in Miami, Florida sent by FedEx shipment to First Savings in McLean, Virginia relating to the closing of the Property. |

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

**COUNT 3**
**CONSPIRACY TO COMMIT ARSON**
**(18 U.S.C. § 844(n))**

From at least in or around December 2007, the exact date unknown to the Grand Jury, and continuing through on or about January 19, 2008, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**GERARDO WILHELM,**
**JUAN J. FLORES, and**
**ALEJANDRO FIGUEREDO,**

did knowingly and willfully, that is, with the intent to further the object of the conspiracy, combine, conspire and confederate, and agree with each other, to maliciously damage and destroy, by means of fire, any building and other real and personal property, that is, 7849 NW 108th Place, Doral, Florida, which was used in interstate commerce and in any activity affecting interstate commerce, in violation of Title 18, United States Code, Section 844(i).

All in violation of Title 18, United States Code, Section 844(n).

**COUNT 4**
**ARSON**
**(18 U.S.C. § 844(i))**

On or about January 19, 2008, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**GERARDO WILHELM,**
**JUAN J. FLORES, and**
**ALEJANDRO FIGUEREDO,**

did maliciously damage and destroy, and attempt to damage and destroy, and cause to be damaged and destroyed, by means of fire, any building and other real and personal property, that is, 7849 NW 108th Place, Doral, Florida, which was used in interstate commerce and in any activity affecting interstate commerce, in violation of Title 18, United States Code, Sections 844(i) and 2.

## COUNT 5
## MAIL FRAUD
## (18 U.S.C. § 1341)

1. Paragraphs 2, 3, 4, 10, 18, and 20 through 22 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 December 2007, and continuing through in or around March 2009, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**GERARDO WILHELM,**

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 knowingly cause to be delivered certain mail matter by the United States Postal Service, according to the directions thereon.

### PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for the defendant and his accomplices to unlawfully enrich themselves by, among other things: (a) submitting a materially false and fraudulent sworn proof of loss and related documents to First Home, thereby inducing it to pay an insurance

claim based upon a fire; (b) using the fraudulently obtained insurance proceeds for their personal use and benefit; and (c) diverting fraud proceeds for their personal use and benefit, and to further the fraud scheme.

## THE SCHEME AND ARTIFICE

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

4. In or around December 2007, **GERARDO WILHELM** terminated the rental agreement he had with the tenant of the Property, and directed the tenant to remove himself and his belongings from the Property by a certain date. The Property was unoccupied by the end of December 2007.

5. In or around January 2008, **GERARDO WILHELM** caused his associates to set fire to the Property.

6. From on or about July 25, 2008, to on or about March 3, 2009, **GERARDO WILHELM** signed and submitted and caused to be submitted a sworn proof of loss and related documents to First Home requesting payment of insurance proceeds from First Home to **GERARDO WILHELM**, and making materially false and fraudulent representations, including that **GERARDO WILHELM** was not responsible for the $218,220.94 claimed loss caused by the fire to the Property.

7. On or about February 18, 2009, First Home tendered the insurance policy limits by issuing a $178,200 check made payable to **GERARDO WILHELM**; Homecomings Financial, the Property's lien holder; and another individual, known to the Grand Jury, as a result of the false and fraudulent sworn proof of loss and related documents signed and submitted by **GERARDO WILHELM**.

## USE OF THE MAILS

8. On or about the date enumerated below, the defendant, for the purpose of executing and in furtherance of the scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly cause to be delivered certain mail matter by the United States Postal Service, according to the directions thereon, as more particularly described below:

| COUNT | APPROX. DATE | DESCRIPTION OF MAILING |
|---|---|---|
| 6 | February 18, 2009 | Insurance Check from First Home's agent in Miami, Florida sent by U.S. Mail to North Miami, Florida relating to the insurance claim on the Property submitted by **GERARDO WILHELM**. |

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

## COUNT 6
## CHECK FRAUD
## (18 U.S.C. § 513(a))

On or about March 12, 2009, in Miami-Dade County, in the Southern District of Florida, the defendant,

**GERARDO WILHELM,**

did knowingly possess and utter a forged security of an organization that operated in and affected interstate commerce, that is, a forged check number 0000054331, drawn on a First Home Insurance Company account at BB&T, with the intent to deceive another person and organization, in violation of Title 18, United States Code, Sections 513(a) and 2.

## COUNT 7
## CONSPIRACY TO COMMIT MAIL FRAUD
## (18 U.S.C. § 1349)

1. Paragraphs 2 through 10, 13 through 18, 20, and 23 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 October 2008, and continuing through in or around March 2011, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**GERARDO WILHELM,**

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate and agree with A.B., A.A., and with others, 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 the pretenses, representations, and promises were false and fraudulent when made, and to knowingly cause to be delivered certain mail matter by the United States Postal Service and by private or commercial interstate carrier, according to the directions thereon, in violation of Title 18, United States Code, Section 1341.

### PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by, among other things: (a) making material misrepresentations to Homecomings Financial that a short sale of the Property between the defendant and A.S.A was an arms-length transaction for a legitimate purpose and price, thereby inducing Homecomings Financial to approve the short sale and release its liens on the Property at a loss before a sale transferring clear title to A.A. could take place; (b) transferring the Property from A.A. back to the defendant's control

after the short sale, allowing the defendant to use the Property for the defendant's personal benefit and for the benefit of his co-conspirators; (c) diverting fraud proceeds for the defendant and his co-conspirators' personal use and benefit, and to further the fraud scheme.

## MANNER AND MEANS OF CONSPIRACY

The manner and means by which the defendant and co-conspirators A.B. and A.A. sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. **GERARDO WILHELM** and his co-conspirators identified the Property as a property that could be used to defraud Homecomings Financial, the Property's lien holder.

5. In or around October 2008, the Property was subject to foreclosure for **GERARDO WILHELM's** failure to pay its two mortgage loans, and Homecomings Financial began foreclosure proceedings on the Property.

6. In or around October 2008, **GERARDO WILHELM** and A.B. owed approximately $250,000 to Homecomings Financial on the first mortgage loan on the Property and $50,000 on the second mortgage loan on the Property.

7. **GERARDO WILHELM**, A.B., and A.A. prepared, caused to be prepared, and signed a false and fraudulent residential sales and purchase contract of the Property, with **GERARDO WILHELM** and A.B. as the sellers, and A.A. as the buyer. The purchase price was $77,000.

8. **GERARDO WILHELM** submitted the residential sales and purchase contract and other related documents to Homecomings Financial, requested that it approve the sale as a short sale. The defendant requested that Homecomings Financial agree to release its two liens in exchange for A.A.'s purchase price, which was far less than the outstanding liens.

9. **GERARDO WILHELM** and A.B. made false and material misrepresentations to Homecomings Financial, including that there were no affiliations between the sellers and buyer in order to induce Homecomings Financial to approve the short sale.

10. Homecomings Financial approved the short sale and the sale was consummated at a real estate closing on or about June 12, 2009, as a result of the materially false and fraudulent misrepresentations made by **GERARDO WILHELM** and A.B. to Homecomings Financial.

11. **GERARDO WILHELM**, A.B., and A.A. prepared, caused to be prepared, and submitted to Homecomings Financial a fraudulent HUD-1 Statement as part of the closing procedure. The HUD-1 Statement fraudulently stated that A.A. procured and supplied the $77,000 cash-to-close for the Property's short sale closing. In fact, **GERARDO WILHELM** and his company, Micro Parts, had supplied the entire $77,000 cash-to-close funds.

12. A.A. received title to the Property after the closing.

13. **GERARDO WILHELM** and his co-conspirators continued to exercise dominion and control over the Property after the closing, and used the Property for their personal benefit and to further the fraudulent scheme.

14. On or about July 15, 2010, A.A. transferred title to the Property to Real Property 7849.

15. On or about March 28, 2011, Real Property 7849 sold the Property for $240,000.

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

## COUNT 8
## MAIL FRAUD
## (18 U.S.C. § 1341)

1. Paragraphs 2 through 10, 13 through 18, 20, and 23 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 October 2008, and continuing through in or around March 2011, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**GERARDO WILHELM,**

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 knowingly cause to be delivered certain mail matter by private or commercial interstate carrier, according to the directions thereon.

### PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for the defendant and his accomplices to unlawfully enrich themselves by, among other things: (a) making material misrepresentations to Homecomings Financial that a short sale of the Property between the defendant and A.S.A was an arms-length transaction for a legitimate purpose and price, thereby inducing Homecomings Financial to approve the short sale and release its liens on the Property at a loss before a sale transferring clear title to A.A. could take place; (b) transferring the Property from A.A. back to the defendant's control after the short sale, allowing the defendant to use the Property for the defendant's personal benefit and for the benefit of his accomplices; (c) diverting fraud proceeds for the defendant and his accomplices' personal use and benefit, and to further the fraud scheme.

## THE SCHEME AND ARTIFICE

4. Paragraphs 4 through 15 of the Manner and Means Section of Count 7 are realleged and incorporated by reference herein as a description of the scheme and artifice.

## USE OF THE MAILS

5. On or about the date enumerated below, the defendant and his accomplices, for the purpose of executing and in furtherance of the scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly cause to be delivered certain mail matter by a private or commercial interstate carrier, according to the directions thereon, as more particularly described below:

| COUNT | APPROX. DATE | DESCRIPTION OF MAILING |
|---|---|---|
| 8 | June 17, 2009 | Short sale checks from settlement agent in Miami, Florida sent by FedEx shipment to Homecomings Financial in Waterloo, Iowa. |

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

## FORFEITURE
**(18 U.S.C. §981(a)(1)(C) and 18 U.S.C. §982(a)(2))**

1. The allegations of Counts 1 through 8 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 offense charged in Counts 1 through 2 and 6 through 8 of this Indictment, **GERARDO WILHELM** shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A), any property constituting, or derived from, proceeds he obtained,

directly or indirectly, as the result of a violation of Title 18, United States Code, Sections 1341 and 1349.

3. Upon conviction of an offense charged in Count 5 of this Indictment, **GERARDO WILHELM** shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), any property constituting, or derived from, proceeds he obtained, directly or indirectly, as the result of a violation of Title 18, United States Code, Section 513(a).

4. Upon conviction of an offense charged in Count 3 or 4 of this Indictment, **GERARDO WILHELM, JUAN J. FLORES**, and **ALEJANDRO FIGUEREDO** shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(B), any property constituting, or derived from, proceeds the person obtained, directly or indirectly, as the result of a violation of Title 18, United States Code, Section 844.

5. All pursuant to Title 18, United States Code, Section 982, and Title 18, United States Code, Section 981(a)(1)(C), as incorporated by Title 28, United States Code, Section 2461.

A TRUE BILL

FOREPERSON

WIFREDO FERRER
UNITED STATES ATTORNEY

ROGER CRUZ
ASSISTANT UNITED STATES ATTORNEY