

CHARLES LA BELLA
Deputy Chief
MARY ANN McCARTHY
Trial Attorney
Fraud Section, Criminal Division
U.S. Department of Justice
1400 New York Avenue, NW
Washington, DC 20530
(202) 598-2240

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANK SUTTON,

Defendant.

CASE NO.: 2:12-cr-0173-JCM-RJJ

DATE FILED:

VIOLATION:

18 U.S.C. §1349 (conspiracy to commit mail
and wire fraud – 1 count)

INFORMATION

INTRODUCTION

THE UNITED STATES CHARGES THAT:

At all times material to this Information:

1. Pursuant to Nevada law, a homeowner's association (HOA) is a corporation that governs a common interest community. A HOA is originally controlled by the developer until the housing units are sold, at which time the control is transferred to the bona fide homeowners. Only bona fide homeowners can be members in the HOA.

2. A HOA is governed by a board of directors with a minimum of three members, all of whom must be bona fide homeowners. The board members are elected by the bona fide homeowners annually.

1 3. Under Nevada law, HOA board members are fiduciaries. Any person
2 nominated for the board must make a good faith effort to disclose any financial, business,
3 professional, or personal relationship or interest that would result or would appear to a
4 reasonable person to result in a potential conflict of interest.

5 4. Consistent with their fiduciary duties and pursuant to Nevada law, HOA
6 board members may not solicit or accept any form of compensation, gratuity, or other
7 remuneration that would improperly influence or reasonably appear to influence the board
8 member's decisions or would result or reasonably appear to result in a conflict of interest.

9 5. Consistent with their fiduciary duties, the board of directors is empowered
10 to make decisions related to the common interests of the homeowners, including but not limited
11 to: adopting and amending bylaws and budgets, hiring managers, employees, agents, attorneys,
12 independent contractors, instituting or defending the community in litigation, and causing
13 additional improvements or maintenance repairs to be made.

14 6. Before hiring individuals and companies to work on behalf of the HOA,
15 the HOA board usually obtains three bids for consideration. The three bids are usually presented
16 during public board meetings with an opportunity for the homeowners to comment and discuss
17 the issues at hand. The property manager is usually selected first, and then the property manager
18 helps to identify and obtain bids for other services.

19 7. Under Nevada law, property managers must earn a Community
20 Association Management (CAM) license before being able to work in the state of Nevada.
21 Property managers have fiduciary obligations to act in the best interest of the community,
22 safeguard financial and confidential information for the community, and disclose any affiliation
23 or financial interest with any other person or business that furnishes goods or services to the
24 community.

25 8. Chateau Versailles, Chateau Nouveau, Park Avenue, Jasmine, Vistana,
26 Sunset Cliffs, Palmilla, Pebble Creek, Mission Ridge, Mission Pointe, and Horizons at Seven

1 Hills, common interest communities, were located in Las Vegas, Nevada. Each had an HOA
2 board consisting of at least three people.

3 9. Co-Conspirator A was a construction company incorporated in the state of
4 Nevada. Co-Conspirator A purported to specialize in home building and repairs, including
5 repairs involving so-called construction defects. Co-Conspirator A was owned and controlled by
6 Co-Conspirator B, a Nevada resident.

7 10. Co-Conspirator C was a law firm in Las Vegas that specialized in
8 construction defect litigation. Co-Conspirator D was a Nevada attorney who owned and
9 controlled Co-Conspirator C.

10 11. Defendant FRANK SUTTON, a Clark County resident, was employed by
11 Co-Conspirator A to perform certain security services beginning in or around 2004.

12 **COUNT ONE**

13 **THE CONSPIRACY**

14 12. From at least in or about August 2003 through at least in or about
15 February 2009, in the District of Nevada and elsewhere, Defendant

16 **FRANK SUTTON,**

17 with others known and unknown to the United States, did knowingly and intentionally conspire,
18 combine, confederate and agree to commit certain offenses against the United States, that is:

19 a. to devise and intend to devise a scheme and artifice to defraud and to
20 obtain money and property by means of materially false and fraudulent pretenses, representations
21 and promises; and for the purpose of executing such scheme and artifice, each Defendant or their
22 coconspirators did knowingly place or caused to be placed in a post office and authorized
23 depository for mail matter a thing to be sent and delivered by the U.S. Postal Service or any
24 private or commercial interstate carrier, in violation of Title 18, United States Code, Section
25 1341; and,
26

b. to 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; and for the purpose of executing such scheme and artifice, each Defendant or their coconspirators did knowingly transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, in violation of Title 18, United States Code, Section 1343.

OBJECTS OF THE CONSPIRACY

13. The objects of the conspiracy, of which Defendant SUTTON was member, and joined at least as early as in or around October 2004 and continued through at least in or around February 2009, was for the co-conspirators to:

a. identify and facilitate the placement of straw purchasers in certain HOAs identified above;

b. facilitate the purchase of units in certain HOAs identified above through straw purchasers to act on behalf of the beneficial owners of the unit;

c. manipulate and influence the elections of HOA board candidates designated by the co-conspirators and thereby gain and maintain control of HOA boards and candidates designated by the co-conspirators;

d. manipulate and influence the conduct of HOA business including, but not limited to, the appointment of designated property managers, the hiring of designated lawyers and law firms, and the hiring of designated contractors; and,

e. unlawfully enrich the co-conspirators as a result of the scheme.

MANNER AND MEANS

14. In order to achieve the objects of the conspiracy, Defendant SUTTON and others known and unknown to the United States used the following manner and means, among others:

a. Co-conspirators would and did enlist real estate agents to identify

1 condominium units within HOA communities for purchase by co-conspirators in connection with
2 the scheme.

3 b. Co-conspirators would and did enlist individuals to act as straw purchasers
4 to complete mortgage loan applications to purchase properties within the HOA communities on
5 behalf of the beneficial owners and made false and fraudulent statements that concealed the
6 identity and financial interest of the true beneficial owners of the properties from banks,
7 mortgage companies, HOAs, and bona fide homeowners. Down payments were often funded by
8 Co-Conspirator B and co-conspirators sent emails and spreadsheets outlining the purchases and
9 payments entitled "Condosinlinetobuy" and "Money back to LB on cash deals." Many of these
10 emails were sent via interstate wire.

11 c. The co-conspirators would and did use several licensed notaries to assist
12 in fraudulently notarizing documents in furtherance of the conspiracy without the signatory
13 appearing before him/her as required by his/her State of Nevada notary license.

14 d. Various co-conspirators would and did join the conspiracy when they
15 agreed to become straw purchasers at a particular HOA. Many co-conspirators signed and
16 submitted false and fraudulent loan applications and supporting documents to financial
17 institutions in order to finance and close on the properties.

18 e. On or about April 12, 2005, Defendant SUTTON signed and submitted a
19 false and fraudulent loan application and supporting documents to a financial institution in order
20 to finance and close on a property at Mission Ridge on behalf of the co-conspirators.

21 f. Once the straw purchases were complete, the beneficial owners and co-
22 conspirators would and did often rent the units. The beneficial owners received the rental
23 payments and continued to pay the mortgages and various expenses associated with the straw
24 purchases.

25 g. In furtherance of the scheme, on or about August 3, 2005, a co-conspirator
26 would and did open and manage five bank accounts on behalf of Co-Conspirators A and B under

1 the names of limited liability companies to conceal the identity of the beneficial owners.
2 Numerous interstate wire transfers were made to and from these accounts to fund the conspiracy
3 and to pay co-conspirators for their participation in the scheme. Deposits of \$1,981,077,
4 \$700,000 and \$300,000 into these accounts were provided by Co-Conspirators C and D. In
5 excess of \$8,000,000 moved through these five accounts.

6 h. Several straw purchasers allowed the co-conspirators to transfer a 1% or
7 greater ownership interest in their unit to another co-conspirator to make it appear that the new
8 owner was a legitimate owner in the HOA and was qualified to run for a position on the HOA
9 board of directors. For instance, on or about August 11, 2005, Defendant SUTTON purchased a
10 unit at Park Avenue with a cashier's check that was funded by one of the co-conspirators. On or
11 about December 8, 2005, Defendant SUTTON sold his Park Avenue unit to another co-
12 conspirator, who then, on or about December 30, 2005, transferred a 1% interest in the same unit
13 back to Defendant SUTTON by quit-claim deed.

14 i. The co-conspirators would and did also refinance the properties in order to
15 increase the conspiracy's capital from which additional condominiums could be purchased.

16 j. The straw purchasers and those who acquired a transferred interest in the
17 properties would and did agree to run for election to HOA boards. These co-conspirators,
18 including Defendant SUTTON, were paid or promised cash, checks, or things of value for their
19 participation, all of which resulted in a personal financial benefit to the co-conspirators.

20 k. On or about April 28, 2005, Defendant SUTTON ran and was elected to
21 the Park Avenue HOA Board of Directors.

22 l. To ensure the co-conspirators would win the elections, co-conspirators
23 would and did employ deceitful tactics, such as creating false phone surveys to gather
24 information about homeowners' voting intentions, using mailing lists to vote on behalf of out-of-
25 town homeowners who were unlikely to participate in the elections, and submitting fake and
26

1 forged ballots. Co-conspirators also hired private investigators to find "dirt" on bona fide
2 candidates in order to influence the elections.

3 m. Certain co-conspirators would and did rig certain HOA board elections by
4 preparing forged ballots for out-of-town homeowners and either transported or caused them to be
5 transported or mailed to California and thereafter to have the ballots mailed back to Las Vegas
6 from various locations around California so as to make it appear that the ballots were completed
7 and mailed by bona fide homeowners residing outside Nevada.

8 n. Co-conspirators would and did attempt to create the appearance that the
9 elections were legitimate by hiring "independent" attorneys to run the HOA board elections.
10 These "special election masters" were obligated to: (i) contact the bona fide homeowners to
11 inform them of the election; (ii) mail the bona fide homeowners election ballots and voting
12 instructions; (iii) collect and secure those election ballots returned by mail until the date of the
13 election; and (iv) preside over the HOA board election, including supervising the counting of
14 ballots. However, in truth and fact, certain "special election masters" were paid in cash, check,
15 or promised things of value, by or on behalf of Co-Conspirators A and B for their assistance in
16 rigging the elections.

17 o. Once elected, the straw purchaser board members would and did meet
18 with co-conspirators in order to manipulate board votes, including the selection of property
19 managers, contractors, general counsel and attorneys to represent the HOA.

20 p. Defendant SUTTON participated in these meetings on several occasions,
21 including on or about March 28, 29, 31 and May 18, 2006.

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1 q. Defendant SUTTON also used his position on the board to vote in a
2 manner directed by and favorable to his co-conspirators, including to use his vote to hire Co-
3 Conspirator C and a co-conspirator property management company.

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

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6
7 /s/
8 DENIS J. McINERNEY
9 Chief
10 Fraud Section, Criminal Division
11 U.S. Department of Justice

12 CHARLES G. LA BELLA
13 Deputy Chief
14 MARY ANN McCARTHY
15 Trial Attorney
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