

1 JEANE HAMILTON (CSBN 157834)  
ALBERT B. SAMBAT (CSBN 236472)  
2 DAVID J. WARD (CSBN 239504)  
3 CHRISTINA M. WHEELER (CSBN 203395)  
MANISH KUMAR (CSBN 269493)  
4 U.S. Department of Justice  
Antitrust Division  
5 450 Golden Gate Avenue  
6 Box 36046, Room 10-0101  
San Francisco, CA 94102  
7 christina.wheeler@usdoj.gov  
8 Telephone: (415) 436-6660

E-filing

FILED  
2011 OCT 27 A 10:01  
RICHARD W. HENNING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

9 Attorneys for the United States

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA

CR 11 0802

JSW

) INFORMATION

14 v.

) VIOLATIONS: 15 U.S.C. § 1 –

) Bid Rigging (Count One);

) 18 U.S.C. § 1349 – Conspiracy to

) Commit Mail Fraud (Count Two)

17 HENRI PESSAH,

18 Defendant.

20  
21 The United States of America, acting through its attorneys, charges:

22 HENRI PESSAH,

23 the defendant herein, as follows:

24 BACKGROUND

25 1. When California homeowners default on their mortgages, the lender or loan  
26 servicer can institute foreclosure proceedings through a non-judicial public foreclosure auction.  
27 These public auctions typically take place at or near the county courthouse. At the auction an  
28 auctioneer sells the property to the bidder offering the highest purchase price. Proceeds from the

INFORMATION – HENRI PESSAH – 1

1 sale are then used to pay off the mortgage and other debt attached to the property. Proceeds  
2 remaining from the sale are then paid to the homeowner.

3 COUNT ONE: 15 U.S.C. § 1 – Bid Rigging (San Mateo County)

4 THE COMBINATION AND CONSPIRACY

5 2. Beginning as early as April 2010 and continuing until in or about October 2010,  
6 the defendant HENRI PESSAH and co-conspirators entered into and engaged in a combination  
7 and conspiracy to suppress and restrain competition by rigging bids to obtain title to selected real  
8 estate offered at San Mateo County, California public real estate foreclosure auctions in the  
9 Northern District of California, in unreasonable restraint of interstate trade and commerce, in  
10 violation of the Sherman Act, Title 15, United States Code, Section 1.

11 3. The charged combination and conspiracy consisted of a continuing agreement,  
12 understanding, and concert of action among the defendant and co-conspirators to suppress  
13 competition by agreeing to refrain from or stop bidding against each other to obtain title to  
14 selected real estate offered at San Mateo County, California public real estate foreclosure  
15 auctions at non-competitive prices.

16 4. For the purpose of forming and carrying out the charged combination and  
17 conspiracy, the defendant and co-conspirators did those things that they combined and conspired  
18 to do, including, among other things:

19 a. agreeing, during meetings, conversations, and communications, not to  
20 compete for title to selected real estate offered at San Mateo County, California public real estate  
21 foreclosure auctions;

22 b. designating which conspirator would win the selected real estate at the  
23 public real estate foreclosure auctions for the group of conspirators; and

24 c. refraining from or stopping bidding for the selected real estate at the  
25 public real estate foreclosure auctions.

26 5. Various entities and individuals, not made defendants in this Information,  
27 participated as co-conspirators in the offenses charged in this Information and performed acts  
28 and made statements in furtherance of them.

INFORMATION – HENRI PESSAH – 2

1 TRADE AND COMMERCE

2 6. During the period covered by this Information, the business activities of the  
3 defendant and co-conspirators that are the subject of this Information were within the flow of,  
4 and substantially affected, interstate trade and commerce. For example, mortgage holders  
5 located in states other than California received proceeds from the public real estate foreclosure  
6 auctions that were subject to the bid-rigging conspiracy.

7 JURISDICTION AND VENUE

8 7. The combination and conspiracy charged in this Information was carried out, in  
9 part, in the Northern District of California, within the five years preceding the filing of this  
10 Information.

11 ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

12 COUNT TWO: 18 U.S.C. § 1349 – Conspiracy to Commit Mail Fraud (San Mateo County)

13 THE CONSPIRACY

14 8. Beginning as early as April 2010 and continuing until in or about October 2010 in  
15 San Mateo County in the Northern District of California, the defendant HENRI PESSAH and  
16 co-conspirators did willfully and knowingly combine, conspire, and agree with each other to  
17 violate Title 18, United States Code, Section 1341, namely, to knowingly devise and intend to  
18 devise and participate in a scheme or artifice to defraud financial institutions, homeowners, and  
19 others and to obtain money and property by means of materially false and fraudulent pretenses,  
20 representations, and promises and, for the purpose of executing or attempting to execute such  
21 scheme or artifice, to knowingly use and cause to be used the United States Postal Service or any  
22 private or commercial interstate carrier, in violation of Title 18, United States Code, Section  
23 1349.

24 9. The objects of the conspiracy were to make payoffs to obtain title to selected real  
25 estate at fraudulently suppressed prices, to receive payoffs, and to divert money to co-  
26 conspirators and away from the mortgage holders and others with a legal interest in select  
27 properties sold at public real estate foreclosure auctions in San Mateo County, California  
28 (“mortgage holders”).

INFORMATION – HENRI PESSAH – 3

1 MEANS AND METHODS

2 The principal means and methods used to accomplish the conspiracy were as follows:

3 10. For the purpose of forming and carrying out the charged combination and  
4 conspiracy, the defendant and co-conspirators did those things that they combined and conspired  
5 to do, including, among other things:

- 6 a. negotiating payoffs with one or more co-conspirators not to compete;
- 7 b. in some instances, falsely participating in foreclosure auctions to create  
8 the appearance that they were bidding competitively when, in fact, they were not;
- 9 c. purchasing selected real estate at fraudulently suppressed prices;
- 10 d. paying co-conspirators monies that otherwise would have gone to the  
11 mortgage holders;
- 12 e. taking steps to conceal both the fact that payoffs were made and the  
13 amounts of the payoffs;
- 14 f. making and causing to be made false and misleading statements on  
15 records of public auctions regarding the total purchase price of the selected real estate to trustees  
16 and others; and
- 17 g. causing the fraudulently suppressed purchase price to be reported and paid  
18 to the mortgage holders.

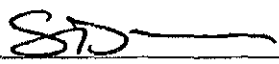
19 11. For the purpose of executing the scheme or artifice to defraud and attempting to  
20 do so, the defendant and co-conspirators knowingly used and caused to be used the United States  
21 Postal Service or private or commercial interstate carriers. For example, trustees used the United  
22 States mail and Federal Express to transmit the Trustee's Deeds Upon Sale and other title  
23 documents to participants in the conspiracy. These mailings were foreseeable to the defendant in  
24 the ordinary course of business.

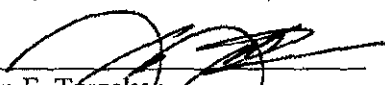
25 JURISDICTION AND VENUE

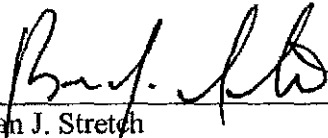
26 12. The combination, conspiracy, and agreement to violate Title 18, United States  
27 Code, Section 1341 charged in this Information was carried out, in part, in the Northern District  
28 of California, within the five years preceding the filing of this Information.

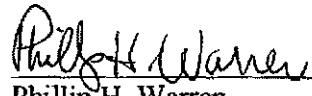
1 ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1349.

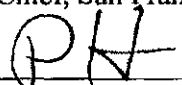
2  
3   
4 Sharis A. Pozen  
Acting Assistant Attorney General

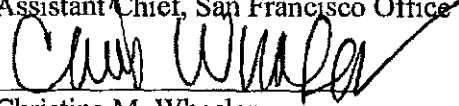
5   
6 Scott D. Hammond  
Deputy Assistant Attorney General

7   
8 John F. Terzaken  
9 Director of Criminal Enforcement  
10 United States Department of Justice  
Antitrust Division

11   
12 Brian J. Stretch  
13 Acting United States Attorney  
14 Northern District of California

  
Phillip H. Warren  
Chief, San Francisco Office

15   
16 Peter K. Huston  
Assistant Chief, San Francisco Office

17   
18 Christina M. Wheeler  
19 Jeane Hamilton  
20 Albert B. Sambat  
21 David J. Ward  
22 Manish Kumar  
23 Trial Attorneys  
24 United States Department of Justice  
25 Antitrust Division