

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA :
 :
 v. : Hon.
 :
 : Crim. No. 11-
 ERIK MUELLER :
 : 18 U.S.C. § 1349

I N F O R M A T I O N

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

BACKGROUND

A. The Defendant and Others

1. At various times relevant to this Information:

a. Defendant ERIK MUELLER was a resident of Ocean, New Jersey, and was an attorney licensed to practice law in New Jersey.

b. ALLEN WEISS, a co-conspirator who is not named as a defendant herein, was a resident of Marlboro, New Jersey, and worked as a commercial and residential real estate developer.

c. CC-2, a co-conspirator who is not named as a defendant herein, was a resident of Toms River, New Jersey, and worked as a commercial and residential real estate developer.

d. CC-3, a co-conspirator who is not named as a defendant herein, was a resident of Toms River, New Jersey, and worked as a professional information technology specialist.

e. Palmer Avenue Investment Associates ("Palmer") was

a New Jersey limited liability company formed by defendant ERIK MUELLER, ALLEN WEISS, CC-2, and CC-3 for the purpose of acquiring, developing, constructing, and financing commercial property, including medical offices to be erected in, among other places, the Township of Holmdel, New Jersey.

f. BMFC, LLC ("BMFC"), was a New Jersey limited liability company formed by defendant ERIK MUELLER, ALLEN WEISS, CC-2, and CC-3 for the purpose of acquiring, developing, constructing, and financing commercial property, including medical offices to be erected in, among other places, the Township of Hazlet, New Jersey.

g. HMA Group, LLC ("HMA"), was a New Jersey limited liability company formed by defendant ERIK MUELLER, ALLEN WEISS, CC-2, and CC-3 for the purpose of acquiring, developing, constructing, and financing commercial property, including medical offices to be erected in, among other places, the Township of Neptune, New Jersey.

h. Palmer, BMFC, and HMA each operated as a holding company for discrete properties and sites that were associated with a broader real estate development project managed by ALLEN WEISS, with the assistance of CC-2, CC-3, and defendant ERIK MUELLER (the "Real Estate Development Project").

i. Vantage Developers, LLC ("Vantage"), was a New Jersey limited liability company formed and controlled by ALLEN

WEISS, and was unrelated to the Real Estate Development Project.

j. P.P., A.A., L.S., M.D., and A.D. were residents of New Jersey, and, in reliance on material misrepresentations from ALLEN WEISS, CC-2, CC-3, defendant ERIK MUELLER, and their co-conspirators, invested money in the Real Estate Development Project.

k. R.S. was a resident of Fair Lawn, New Jersey, and the owner of residential property located in Colts Neck, New Jersey (the "Colts Neck Property"). In or about 2007, CC-2 worked with R.S. to facilitate R.S.'s purchase of the Colts Neck Property. During early 2009, R.S. hired ALLEN WEISS to oversee remodeling work on the Colts Neck Property, which R.S. was preparing to sell at that time.

l. W-Bank, a bank operating in New Jersey, processed incoming electronic transfers of funds ("wires") through their processing department in Florida. Wires originating in New Jersey and intended for accounts maintained by W-Bank in New Jersey were routed outside of New Jersey.

B. The Real Estate Development Project

2. In or about summer 2008, ALLEN WEISS, CC-2, and others agreed to solicit investors to finance the purchase and development of real property for use in the Real Estate Development Project. Among other things, the Real Estate Development Project included plans to purchase existing real

property and convert that property into medical offices that would be sold to physicians throughout New Jersey. Among other locations, the Real Estate Development Project included proposed development sites in the Townships of Holmdel, Hazlet, and Neptune, New Jersey.

3. Between in or about July 2008 and in or about January 2009, Defendant ERIK MUELLER, ALLEN WEISS, CC-2, CC-3, and others incorporated Palmer, BMFC, and HMA, with the purpose of using those entities as holding companies for discrete properties and sites that were associated with the broader Real Estate Development Project. ALLEN WEISS and CC-2 used their real estate development experience to operate the various corporate entities that comprised the Real Estate Development Project. Defendant ERIK MUELLER served as legal counsel to the Real Estate Development Project. CC-3 provided information technology and other services for the Real Estate Development Project.

4. Between in or about February 2009 and in or about January 2010, based on representations from ALLEN WEISS, CC-2, CC-3, defendant ERIK MUELLER, and others, investors including P.P., A.A., L.S., M.D., and A.D. invested approximately \$1,000,000 in the Real Estate Development Project. Investors in the Real Estate Development Project invested by either becoming members of Palmer, BMFC, or HMA, or by making loans to one or more of those entities or to ALLEN WEISS.

THE CONSPIRACY

5. From at least as early as in or about August 2009 through in or about February 2010, in Monmouth County, in the District of New Jersey, and elsewhere, defendant

ERIK MUELLER

did knowingly and intentionally conspire and agree with ALLEN WEISS, CC-2, CC-3, and others, to execute a scheme and artifice to defraud investors and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing this scheme and artifice to defraud, to transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, certain signs, signals, and sounds, contrary to Title 18, United States Code, Section 1343.

OBJECT OF THE CONSPIRACY

6. It was the object of the conspiracy to profit by inducing investments in real estate projects by making material misrepresentations about the progress of the projects and the security of the investments.

MANNER AND MEANS OF THE CONSPIRACY

7. It was part of the conspiracy that, between in or about February 2009 and in or about January 2010, ALLEN WEISS and CC-2 represented to investors in the Real Estate Development Project that their investment funds would be used to advance the goals of

the Real Estate Development Project when, in fact, ALLEN WEISS and CC-2 diverted a large portion of it for their personal use.

8. It was further part of the conspiracy that, to induce investments in the Real Estate Development Project, ALLEN WEISS and CC-2 falsely promised prospective investors large returns. For example, ALLEN WEISS and CC-2 falsely promised P.P. and A.A. a return of approximately 30% on their investments.

9. It was further part of the conspiracy that, in other instances, ALLEN WEISS and CC-2 induced prospective investors with the false promise of a large return and a written guaranty or other security agreement. For example, L.S. agreed to invest in the Real Estate Development Project after ALLEN WEISS promised L.S. a return of 20% and delivered to L.S. a false written personal guaranty from the members of HMA.

10. It was further part of the conspiracy that, the money invested in the Real Estate Development Project by P.P., A.A., L.S., M.D., A.D., and others was held in the attorney trust account of defendant ERIK MUELLER. Between in or about February 2009 and in or about January 2010, at the request of ALLEN WEISS and CC-2, defendant ERIK MUELLER transferred varying amounts of those investment funds by wire transfer from defendant ERIK MUELLER's attorney trust account to bank accounts controlled by ALLEN WEISS and CC-2, including bank accounts held by Vantage. For example, on or about February 23, 2009, at the instruction of

ALLEN WEISS, defendant ERIK MUELLER caused a wire of approximately \$200,000 to be sent from defendant ERIK MUELLER's attorney trust account at W-Bank to an account at W-Bank controlled by Vantage. Defendant ALLEN WEISS and CC-2 depleted those funds, and funds similarly transferred by defendant ERIK MUELLER to accounts controlled by ALLEN WEISS and CC-2, on personal expenses and other expenses not related to the Real Estate Development Project.

11. It was further part of the conspiracy that, between in or about August 2009 and January 2010, defendant ERIK MUELLER, ALLEN WEISS, CC-2, CC-3, and others made material misrepresentations to investors in the Real Estate Development Project about the security of their investments. The misrepresentations were intended to lull certain investors who had contributed funds to the Real Estate Development Project but grown concerned about its solvency, and to induce prospective investors who were uncertain about whether to contribute funds. To support those material misrepresentations, ALLEN WEISS created and caused defendant ERIK MUELLER and CC-3 to create certain false documents that ALLEN WEISS caused to be delivered to certain investors in the Real Estate Development Project including M.D., A.D., P.P., and others. For example:

a. In or about March 2009, ALLEN WEISS, acting with the approval of CC-2, sought an investment of approximately

\$150,000 from M.D., who refused to invest in the Real Estate Development Project without assurances that the investment was secure. On or about March 10, 2009, ALLEN WEISS created a false lien in the name of R.S. on the Colts Neck Residence, without R.S.'s knowledge or consent (the "Colts Neck Lien"). ALLEN WEISS further created a false "Note," purportedly from R.S., that contained a section with the purported representations and signatures of P.P. and other investors in the Real Estate Development Project, personally guaranteeing M.D.'s investment. P.P. and the other investors who were named as guarantors of M.D.'s investment did not sign their names to the Note or authorize their signatures.

b. On or about March 10, 2009, ALLEN WEISS presented a copy of the false Colts Neck Lien, purportedly signed by R.S., to defendant ERIK MUELLER, to have it notarized. ALLEN WEISS falsely represented to defendant ERIK MUELLER that R.S. had signed the Colts Neck Lien. Defendant ERIK MUELLER caused the Colts Neck Lien to be notarized even though defendant ERIK MUELLER had not witnessed R.S. sign it.

c. On or about March 10, 2009, ALLEN WEISS delivered a copy of the Colts Neck Lien to M.D. in further representation that M.D.'s investment was secure. Thereafter, M.D. invested approximately \$150,000 in the Real Estate Development Project.

d. In or about August 2009, ALLEN WEISS, acting with

the approval of CC-2, sought an investment of approximately \$150,000 from A.D., who refused to invest in the Real Estate Development Project without assurances that the investment was secure. In response to A.D.'s request, ALLEN WEISS and CC-2 instructed defendant ERIK MUELLER to prepare a letter, dated August 31, 2009, in which defendant ERIK MUELLER falsely stated that defendant ERIK MUELLER's attorney trust account contained approximately \$834,000 in funds invested by others for the benefit of the Real Estate Development Project, when in fact, on or about August 31, 2009, defendant ERIK MUELLER's attorney trust account balance was approximately \$164 (the "August 31, 2009 Letter").

e. On or about September 1, 2009, ALLEN WEISS and defendant ERIK MUELLER caused a copy of the August 31, 2009 Letter to be delivered to A.D. in further representation that A.D.'s investment was secure. Thereafter, A.D. invested approximately \$75,000 in the Real Estate Development Project.

f. In or about October 2009, at the request of ALLEN WEISS, CC-3 created a false account statement for defendant ERIK MUELLER's attorney trust account, dated on or about September 30, 2009. ALLEN WEISS instructed CC-3 to create the false account statement after P.P. requested evidence that P.P.'s investment in the Real Estate Development Project was secure. In response to P.P.'s request, ALLEN WEISS caused defendant ERIK MUELLER to fax

to P.P. a copy of the false account statement, prepared by CC-3, which indicated a balance in defendant ERIK MUELLER's attorney trust account of approximately \$612,461, when, in fact, the actual balance of defendant ERIK MUELLER's attorney trust account on or about September 30, 2009, was approximately \$8,973.

12. It was further part of the conspiracy that on or about January 10, 2010, ALLEN WEISS and CC-2 held a meeting with P.P. and certain other investors in the Real Estate Development Project ("the January 10, 2010 Meeting"). During the January 10, 2010 Meeting, ALLEN WEISS told P.P. and the other investors in attendance that virtually all of the approximately \$1,000,000 that had been invested in the Real Estate Development Project was gone. ALLEN WEISS offered to recoup the money if P.P. and other investors contributed additional funds toward the Real Estate Development Projects. P.P. and the other investors refused.

13. It was further part of the conspiracy that none of the developments at any of the proposed sites associated with the Real Estate Development Project was ever completed.

In violation of Title 18, United States Code, Section 1349.


PAUL J. FISHMAN
United States Attorney

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INFORMATION FOR

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PAUL J. FISHMAN

U.S. ATTORNEY NEWARK, NEW JERSEY

ANDRÉ M. ESPINOSA

ASSISTANT U.S. ATTORNEY

NEWARK, NEW JERSEY

973.645.2915
