

DDG/2010R00396

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

Hon. *Dme*

v.

Criminal No. 10- *572*

PHIL A. SIMON

18 U.S.C. § 1343
18 U.S.C. § 1349
18 U.S.C. § 2

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey,
sitting at Newark, charges:

COUNT ONE

(Conspiracy to Commit Wire Fraud)

1. At all times relevant to this Indictment:

a. Defendant PHIL A. SIMON, a resident of Brooklyn, New York, owned and controlled the operations of Home Savers Consulting Corporation ("Home Savers"), which held itself out as a home foreclosure rescue company. Home Savers was located at 946 Fulton Street, Brooklyn, New York and 350 North Main Street, Freeport, New York and did business in New Jersey, New York and elsewhere.

b. Garth Celestine, a co-conspirator who is named but is not indicted herein, was a partner of defendant PHIL A. SIMON and co-owner of Home Savers.

c. Defendant PHIL A. SIMON and Garth Celestine maintained a checking account in the name of Home Savers at JP

Morgan Chase Bank (the "Home Savers Account").

d. Defendant PHIL A. SIMON and Garth Celestine owned and controlled entities in the names of 527 Maple Court Corporation ("527 Maple Court"); 858 Atlantic Avenue Corporation ("858 Atlantic Avenue"); and Keep What's Yours, Inc. ("Keep What's Yours").

e. First Franklin, BNC Mortgage Company, Argent Mortgage Company and New Century Mortgage Corporation were financial institutions engaged in the business of issuing mortgage loans.

The Conspiracy

2. From as early as in or about 2004 to in or about 2007, at Essex County, in the District of New Jersey and elsewhere, defendant

PHIL A. SIMON

did knowingly and intentionally conspire and agree with Garth Celestine and others 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, which scheme and artifice is set forth below in substance and in part, and for the purpose of executing such scheme and artifice, caused to be transmitted by means of wire communications in interstate commerce certain writings, signs and signals, contrary to Title 18, United States Code, Section 1343.

The Object of the Conspiracy

3. The object of the conspiracy was for defendant PHIL A. SIMON and his co-conspirators to obtain money and property from financially distressed homeowners facing foreclosure and from mortgage lenders by making materially false and fraudulent misrepresentations.

The Means of the Conspiracy

4. It was a part of the conspiracy that defendant PHIL A. SIMON and his co-conspirators, using mailings, flyers and newspaper advertisements, targeted persons in New Jersey and New York who had substantial equity in their homes but were facing foreclosure because of their inability to make their monthly payments (the "Distressed Homeowners").

5. It was a further part of the conspiracy that defendant PHIL A. SIMON, Garth Celestine and others recruited individuals with good credit scores to act as third party purchasers of the homes facing foreclosure (the "Straw Buyers"). Defendant PHIL A. SIMON, Garth Celestine and others typically told the Straw Buyers that they were helping someone to "save" their home and they would receive a fee of up to approximately \$10,000 per property for agreeing to participate in the transaction.

6. It was a further part of the conspiracy that defendant PHIL A. SIMON, Garth Celestine and others fraudulently promised to help the Distressed Homeowners avoid foreclosure, keep their

homes and repair their damaged credit. Defendant PHIL A. SIMON and his co-conspirators instructed the Distressed Homeowners to transfer title to their homes into the names of the Straw Buyers for between approximately six months to one year, during which defendant PHIL A. SIMON, Garth Celestine and others promised to improve the Distressed Homeowners' credit ratings, help them obtain more favorable mortgages on their homes and ultimately, return to them the title to their homes.

7. It was a further part of the conspiracy that defendant PHIL A. SIMON, Garth Celestine and others typically told the Distressed Homeowners that the equity withdrawn from their properties would be kept in escrow and used to pay the mortgages and expenses on their homes.

8. It was a further part of the conspiracy that, using the homeowners' properties and the good credit ratings of the individuals who were acting as Straw Buyers of the properties, defendant PHIL A. SIMON, Garth Celestine and others applied for mortgages to extract the maximum available equity from the homes. To increase the credit-worthiness of the Straw Buyers and to ensure they would be approved for the loans, defendant PHIL A. SIMON, Garth Celestine and others submitted and caused to be submitted to financial institutions (the "Mortgage Lenders") fraudulent loan applications in the Straw Buyers' names. These applications contained materially false personal and financial

information about the Straw Buyers, such as their stated employment history and income, upon which the Mortgage Lenders relied when deciding whether to approve the loans.

9. It was a further part of the conspiracy that, in addition to the false statements concerning the Straw Buyers' financial condition, defendant PHIL A. SIMON, Garth Celestine and others also falsely represented to the Mortgage Lenders that the Straw Buyers intended to occupy the property that would secure each mortgage loan as their primary residence, when, in fact, the homeowners were going to continue to reside in their homes.

10. It was a further part of the conspiracy that defendant PHIL A. SIMON and Garth Celestine, either alone or together, attended each loan closing and directed the payout of the loan proceeds. After each Distressed Homeowner's debt was paid off and other fees were satisfied, defendant PHIL A. SIMON and Garth Celestine caused the remainder of the loan proceeds to be deposited in the bank accounts of 527 Maple Court, 858 Atlantic Avenue and Keep What's Yours, and kept a significant portion of the proceeds for themselves. In nearly every case, defendant PHIL A. SIMON and Garth Celestine eventually failed to make the promised mortgage payments and thereby caused the loans to default.

11. As a result of this conspiracy, defendant PHIL A. SIMON and Garth Celestine caused the Mortgage Lenders to fund dozens of

fraudulent loans worth more than \$10 million.

PROPERTIES

12. It was a further part of the conspiracy that defendant PHIL A. SIMON and his co-conspirators committed and caused to be committed the following acts in connection with the following properties:

GLENWOOD DRIVE NORTH
BERGENFIELD, NEW JERSEY

a. In or about August 2005, for the purpose of inducing Mortgage Lender First Franklin, a division of National City Bank of Indiana, to issue and close a mortgage loan to Straw Buyer A.G. for the purported purchase of a property located at Glenwood Drive North, Bergenfield, New Jersey, defendant PHIL A. SIMON and Garth Celestine submitted and caused to be submitted to First Franklin a loan application that falsely stated, among other things, that: A.G. worked for a billing company; his gross monthly income was \$8,000; and A.G. was going to occupy the property as his primary residence.

b. On or about August 26, 2005, for the purported purchase of the Glenwood Drive North property, defendant PHIL A. SIMON and Garth Celestine caused First Franklin to wire transfer approximately \$427,765.63 from a bank account in Indiana to the closing attorney's escrow account located at Wachovia Bank in Maplewood, New Jersey (the "Glenwood Drive North Loan").

c. On or about August 29, 2005, defendant PHIL A.

SIMON and Garth Celestine caused a check for approximately \$5,088.31, representing a portion of the Glenwood Drive North Loan proceeds, to be deposited into the Home Savers Account.

d. On or about August 29, 2005, defendant PHIL A. SIMON and Garth Celestine caused a check for approximately \$35,600, representing a portion of the Glenwood Drive North Loan proceeds, to be deposited into a checking account maintained by them at JP Morgan Chase Bank, in the name of 527 Maple Court.

e. On or about August 29, 2005, defendant PHIL A. SIMON and Garth Celestine caused a check for approximately \$20,647.44, representing a portion of the Glenwood Drive North Loan proceeds, to be deposited into a checking account maintained by PHIL A. SIMON at M & T Bank, in the name of Keep What's Yours.

f. On or about August 29, 2005, defendant PHIL A. SIMON and Garth Celestine caused a check for approximately \$20,674.44, representing a portion of the Glenwood Drive North Loan proceeds, to be deposited into a checking account maintained by Garth Celestine, at People's Alliance Federal Credit Union, in the name of Garth Celestine.

DEHART PLACE
ELIZABETH, NEW JERSEY

g. In or about September 2005, for the purpose of inducing Mortgage Lender BNC Mortgage Company ("BNC Mortgage") to issue and close a mortgage loan to Straw Buyer Y.L. for the purported purchase of a property located at Dehart Place,

Elizabeth, New Jersey, defendant PHIL A. SIMON and Garth Celestine submitted and caused to be submitted to BNC Mortgage a loan application that falsely stated, among other things, that: Y.L. worked for a collections company; her gross monthly income was \$11,020; and Y.L. was going to occupy the property as her primary residence.

h. On or about September 30, 2005, for the purported purchase of the Dehart Place property, defendant PHIL A. SIMON and Garth Celestine caused BNC Mortgage to wire transfer approximately \$473,896.93 from a bank account in New York to the closing attorney's escrow account located at Wachovia Bank in Maplewood, New Jersey (the "Dehart Place Loan").

i. On or about October 5, 2005, defendant PHIL A. SIMON and Garth Celestine caused a check for approximately \$69,076, representing a portion of the Dehart Place Loan proceeds, to be deposited into a checking account maintained by them at JP Morgan Chase Bank, in the name of 527 Maple Court.

j. On or about October 5, 2005, defendant PHIL A. SIMON and Garth Celestine caused a check for approximately \$17,212, representing a portion of the Dehart Place Loan proceeds, to be deposited into a checking account maintained by defendant PHIL A. SIMON at M & T Bank, in the name of Keep What's Yours.

k. On or about October 6, 2005, defendant PHIL A.

SIMON and Garth Celestine caused a check for approximately \$17,212, representing a portion of the Dehart Place Loan proceeds, to be deposited into a checking account maintained by Garth Celestine, at People's Alliance Federal Credit Union, in the name of Garth Celestine.

SOUTH PROSPECT AVENUE
BERGENFIELD, NEW JERSEY

1. In or about November 2005, for the purpose of inducing Mortgage Lender Argent Mortgage Company ("Argent Mortgage") to issue and close a mortgage loan to Straw Buyer A.H. for the purported purchase of a property located at South Prospect Avenue, Bergenfield, New Jersey, defendant PHIL A. SIMON and Garth Celestine submitted and caused to be submitted to Argent Mortgage a loan application that falsely stated, among other things, that A.H.'s gross monthly income was \$7,400 and A.H. was going to occupy the property as her primary residence.

m. On or about December 6, 2005, for the purported purchase of the South Prospect Avenue property, defendant PHIL A. SIMON and Garth Celestine caused Argent Mortgage to wire transfer approximately \$362,162.60 from a bank account in California to the closing attorney's escrow account located at Wachovia Bank in Maplewood, New Jersey (the "South Prospect Avenue Loan").

n. On or about December 6, 2005, defendant PHIL A. SIMON and Garth Celestine caused a wire transfer of approximately \$48,827.62, representing a portion of the South Prospect Avenue

Loan proceeds, from the closing attorney's escrow account to a checking account maintained by them at JP Morgan Chase Bank, in the name of 527 Maple Court.

o. On or about December 8, 2005, defendant PHIL A. SIMON and Garth Celestine caused a check for approximately \$28,495.67, representing a portion of the South Prospect Avenue Loan proceeds, to be deposited into a checking account maintained by defendant PHIL A. SIMON at M & T Bank, in the name of Keep What's Yours.

p. On or about December 8, 2005, defendant PHIL A. SIMON and Garth Celestine caused a check for approximately \$22,912.00, representing a portion of the South Prospect Avenue Loan proceeds, to be deposited into a checking account maintained by Garth Celestine, at People's Alliance Federal Credit Union, in the name of Garth Celestine.

NORTH 3RD STREET
PATERSON, NEW JERSEY

q. In or about May 2006, for the purpose of inducing Mortgage Lender BNC Mortgage to issue and close a mortgage loan to Straw Buyer J.W. for the purported purchase of a property located at North 3rd Street, Paterson, New Jersey, defendant PHIL A. SIMON and Garth Celestine submitted and caused to be submitted to BNC Mortgage a loan application that falsely stated, among other things, that: J.W. worked for Keep What's Yours; his gross monthly income was \$11,710; and J.W. was going to occupy the

property as his primary residence.

r. On or about May 31, 2006, for the purported purchase of the North 3rd Street property, defendant PHIL A. SIMON and Garth Celestine caused Mortgage Lender BNC Mortgage to wire transfer approximately \$408,909.10 from a bank account in Delaware to the closing attorney's escrow account located at Wachovia Bank in Maplewood, New Jersey (the "North 3rd Street Loan").

s. On or about June 2, 2006, defendant PHIL A. SIMON and Garth Celestine caused a wire transfer of approximately \$57,598.17, representing a portion of the North 3rd Street Loan proceeds, from the closing attorney's escrow account to a checking account maintained by them at JP Morgan Chase Bank, in the name of 527 Maple Court.

CROSBY AVENUE
PATERSON, NEW JERSEY

t. In or about July 2006, for the purpose of inducing Mortgage Lender New Century Mortgage Corporation ("New Century") to issue and close a mortgage loan to Straw Buyer J.W. for the purported purchase of a property located at Crosby Avenue, Paterson, New Jersey, defendant PHIL A. SIMON and co-conspirator Garth Celestine submitted and caused to be submitted to New Century a loan application that falsely stated, among other things, that: J.W. worked for Keep What's Yours; his gross monthly income was \$10,300; and J.W. was going to occupy the

property as his primary residence.

u. On or about July 18, 2006, for the purported purchase of the Crosby Avenue property, defendant PHIL A. SIMON and co-conspirator Garth Celestine caused New Century to wire transfer approximately \$273,619.71 and \$68,250.00 from a bank account in New York to the closing attorney's escrow account located at Wachovia Bank in Maplewood, New Jersey (the "Crosby Avenue Loan").

v. On or about July 20, 2006, defendant PHIL A. SIMON and co-conspirator Garth Celestine caused a wire transfer of approximately \$76,687.50, representing a portion of the Crosby Avenue Loan proceeds, from the closing attorney's escrow account to a checking account maintained by them at JP Morgan Chase Bank, in the name of 527 Maple Court.

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

COUNTS TWO THROUGH SIX
(Wire Fraud)

1. The allegations set forth in paragraphs 1 and 3 through 12 of Count One of this Indictment are realleged and incorporated herein.

2. On or about the dates listed below, at Essex County, in the District of New Jersey, and elsewhere, defendant

PHIL A. SIMON,

having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly and with fraudulent intent transmit and cause to be transmitted by means of wire communication in interstate commerce certain writings, signs and signals, namely the specified wire transfers stated below, for the purpose of executing such scheme and artifice:

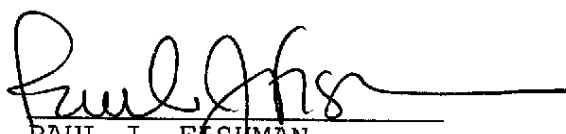
<u>Count</u>	<u>Date</u>	<u>Amount</u>	<u>Property</u>	<u>From</u>	<u>To</u>
2	08/26/05	\$427,765	Glenwood Drive No. Bergenfield, NJ	Indiana	New Jersey
3	09/30/05	\$473,896	Dehart Place Elizabeth, NJ	New York	New Jersey
4	12/06/05	\$362,162	South Prospect Ave. Bergenfield, NJ	New York	New Jersey
5	05/31/06	\$408,909	North 3rd St. Paterson, NJ	Delaware	New Jersey
6	07/18/06	\$273,619	Crosby Ave. Paterson, NJ	New York	New Jersey

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

A TRUE BILL

~~FOREPERSON~~

APPROVED:


PAUL J. FISHMAN
UNITED STATES ATTORNEY

CASE NUMBER:

10-572 (DMC)

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

PHIL A. SIMON

INDICTMENT FOR

18 U.S.C. § 1349
18 U.S.C. § 1343
18 U.S.C. § 2

A True Bill

Foreperson

PAUL J. FISHMAN
UNITED STATES ATTORNEY
NEWARK, NEW JERSEY

DONNA GALLUCIO
Assistant U.S. Attorney
973-645-2786