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CLERK US DISTRICT COURT		DISTRICT OF NEVADA	
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9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF NEVADA**
 11 **-oOo-**

13 UNITED STATES OF AMERICA, 14 Plaintiff, 15 v. 16 STEVEN WARK, 17 Defendant. 18)))))))))	CASE NO.: 2:11-cr-00297-LDG-PAL DATE FILED: August 16, 2011 VIOLATION: 18 U.S.C. §1349 (conspiracy to commit mail and wire fraud -- 1 count)
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20 **INFORMATION**

21 **INTRODUCTION**

22 **THE UNITED STATES CHARGES THAT:**

23 At all times material to this Information:

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

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

4 3. Under Nevada law, HOA board members are fiduciaries. As fiduciaries, they are
5 required—among other duties—to act on an informed basis, in good faith and in the honest belief that
6 their actions are in the best interest of the association. Any person nominated for the board must
7 make a good faith effort to disclose any financial, business, professional, or personal relationship or
8 interest that would result or would appear to a reasonable person to result in a potential conflict of
9 interest.

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

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

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

24 7. Under Nevada law, property managers must earn a Community Association
25 Management (CAM) license before being able to work in the state of Nevada. Property managers
26 have fiduciary obligations to act in the best interest of the community, safeguard financial and

1 confidential information for the community, and disclose any affiliation or financial interest with
2 any other person or business that furnishes goods or services to the community.

3 8. Chateau Versailles, a common interest community with 371 units, was located in
4 Las Vegas, Nevada. It had a HOA board consisting of three people.

5 9. Chateau Nouveau, a common interest community with 564 units, was located in
6 Las Vegas, Nevada. It had a HOA board consisting of seven people.

7 10. Park Avenue, a common interest community with 642 units, was located in Las
8 Vegas, Nevada. It had a HOA board consisting of five people.

9 11. Jasmine, a common interest community with 300 units, was located in North
10 Las Vegas, Nevada. It had a HOA board consisting of three people.

11 12. Vistana, a common interest community with 732 units, was located in Las
12 Vegas, Nevada. It had a HOA board consisting of five people.

13 13. Sunset Cliffs, a common interest community with 368 units, was located in Las
14 Vegas, Nevada. It had a HOA board consisting of five people.

15 14. Palmilla, a common interest community with 300 units, was located in North
16 Las Vegas, Nevada. It had a HOA board consisting of three people.

17 15. Pebble Creek, a common interest community with 196 units, was located in Las
18 Vegas, Nevada. It had a HOA board consisting of three people.

19 16. Mission Ridge, a common interest community with 384 units, was located in
20 Las Vegas, Nevada. It had a HOA board consisting of five people.

21 17. Mission Pointe, a common interest community with 248 units, was located in
22 Las Vegas, Nevada. It had a HOA board consisting of three people.

23 18. Horizons at Seven Hills, a common interest community with 328 units, was
24 located in Las Vegas, Nevada. It had a HOA board consisting of three people.

25 19. Co-Conspirator A was a construction company incorporated in the state of
26 Nevada. Co-Conspirator A purported to specialize in home building and repairs, including repairs

1 involving so-called construction defects. Co-Conspirator A was owned and controlled by Co-
2 Conspirator B, a Nevada resident. Co-Conspirator B also owned and controlled other business
3 entities, including a management company (hereinafter "Co-Conspirator E").

4 20. Co-Conspirator C was a law firm in Las Vegas that specialized in construction
5 defect litigation. Co-Conspirator D was a Nevada attorney who owned and controlled Co-
6 Conspirator C.

7 **COUNT ONE**

8 **THE CONSPIRACY**

9 21. From in or about August 2003 through in or about February 2009, in the
10 District of Nevada and elsewhere, Defendant

11 **STEVEN WARK,**

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

14 a. to devise and intend to devise a scheme and artifice to defraud and to obtain
15 money and property by means of materially false and fraudulent pretenses, representations and
16 promises; and for the purpose of executing such scheme and artifice, Defendant and his co-
17 conspirators did knowingly place or caused to be placed in a post office and authorized depository
18 for mail matter a thing to be sent and delivered by the U.S. Postal Service or any private or
19 commercial interstate carrier, in violation of Title 18, United States Code, Section 1341; and,

20 b. to devise and intend to devise a scheme and artifice to defraud and to obtain
21 money and property by means of materially false and fraudulent pretenses, representations, and
22 promises; and for the purpose of executing such scheme and artifice, Defendant and his co-
23 conspirators did knowingly transmit and cause to be transmitted by means of wire communication
24 in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, in violation of
25 Title 18, United States Code, Section 1343.

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OBJECTS OF THE CONSPIRACY

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2 22. The objects of the conspiracy, which Defendant STEVEN WARK joined in or
3 around May 2005, were for the co-conspirators to:

- 4 a. designate and facilitate the placement of straw purchasers in certain common
5 interest communities identified above;
- 6 b. facilitate the purchase of units in certain common interest communities
7 identified above by straw purchasers acting on behalf of the beneficial owners of the unit;
- 8 c. manipulate the elections of board candidates designated by the co-conspirators
9 and to thereby gain and maintain control of HOA boards and candidates designated by the co-
10 conspirators;
- 11 d. manipulate the conduct of HOA business including, but not limited to, the
12 appointment of designated property managers, the hiring of designated lawyers and law firms, and
13 the hiring of designated contractors; and,
- 14 e. unlawfully enrich the co-conspirators at the expense of the HOA and bonafide
15 homeowners.

16 **MANNER AND MEANS**

17 23. In order to achieve the objects of the conspiracy, Defendant STEVEN WARK
18 and others known and unknown to the United States, used the following manner and means, among
19 others:

- 20 a. Co-conspirators enlisted several individuals as straw purchasers to use their own
21 name and credit to purchase mortgage loans for units within the HOA communities on behalf of the
22 beneficial owners. These units were often identified by licensed realtors in the state of Nevada,
23 acting on behalf of the co-conspirators. The straw nominees then purchased the properties while
24 concealing the identity and financial interest of the true beneficial owners of the properties from
25 banks, mortgage companies, HOAs, and bonafide homeowners.
- 26 b. Co-Conspirator B also used his business entities as straw purchasers to

1 purchase mortgage loans for units within the HOA communities. Co-Conspirator B and others
2 caused Defendant WARK to become a principal and managing partner of Co-Conspirator E for the
3 sole purpose of purchasing a unit in the name of Co-Conspirator E and allowing Defendant WARK,
4 as a principal, to appear to have an ownership interest at Vistana. Defendant WARK did not have
5 any real interest in Co-Conspirator E. Since Defendant WARK was not a bonafide owner, at the
6 request of the co-conspirators, he agreed to allow 99 percent of the unit he purportedly claimed to
7 own at Vistana to be transferred to another person. Co-conspirators often transferred a partial
8 interest in a unit to another co-conspirator to make it appear as if the co-conspirator was a bonafide
9 homeowner. In this case, however, the business entity, controlled by the co-conspirators, sold the
10 unit to another co-conspirator and the new straw purchaser transferred a one percent interest in the
11 unit back to Defendant WARK.

12 c. In order to obtain loans to finance these purchases, the straw purchasers falsely
13 stated to mortgage lenders: (i) they were to be the true owners of the properties, (ii) they had made
14 the down payment, (iii) they would make the monthly mortgage payments; and, (iv) they intended
15 to live in the properties. However, the straw purchasers, including Defendant WARK, knew the
16 beneficial owners had often made the down payments and promised to make the monthly mortgage
17 payments for these properties so that there would be little or no cost to the straw purchasers. Many
18 times the straw purchasers represented that the properties were to be "owner occupied" when in fact
19 they were not.

20 d. Once the straw purchases were complete, the beneficial owners and co-
21 conspirators found tenants to rent the units. The beneficial owners received the rental payments
22 and continued to pay the mortgages and various expenses associated with the straw purchase.

23 e. Co-conspirators were hired by Co-Conspirator B and others to manage and
24 operate the payments associated with maintaining these straw properties. The co-conspirators
25 called this business of funding these properties the "Bill Pay Program". The co-conspirators
26 involved in running the Bill Pay Program created several limited liability companies, at the

1 direction of Co-Conspirator B, for the purpose of opening bank accounts and concealing the Bill
2 Pay Program funds. Many of the payments on these properties were wired or caused to be wired
3 from California to Nevada.

4 f. Defendant WARK, the straw purchasers, and those who acquired a transferred
5 interest in the properties agreed with co-conspirators to run for election to the respective HOA
6 boards. Defendant WARK used the one percent remaining interest in the unit at Vistana to become
7 a HOA board member. Defendant WARK and others concealed the nature of their relationship
8 with the co-conspirators from the bonafide homeowners and the HOA.

9 g. To ensure Defendant WARK and the co-conspirators would win the election, co-
10 conspirators employed deceitful tactics, such as creating false phone surveys to gather information
11 about homeowners' voting intentions, using mailing lists to vote on behalf of out-of-town
12 homeowners unlikely to participate in the elections, and submitting fake and forged ballots. Co-
13 conspirators also hired private investigators to find "dirt" on the bonafide candidates in order to
14 create smear campaigns.

15 h. Knowing that certain straw purchasers did not have a real beneficial interest in
16 the community and were being nominated and elected to further the objects of the conspiracy,
17 Defendant WARK agreed and served as Co-Conspirator B's campaign consultant to help the straw
18 purchasers get elected to HOA boards.

19 i. Another tactic co-conspirators used to rig certain HOA board elections was to
20 prepare forged ballots for out-of-town homeowners and cause them to be either transported or
21 mailed to California and thereafter to have the ballots mailed back to Las Vegas from various
22 locations around California so as to make it appear that the ballots were completed and mailed by
23 bonafide homeowners residing outside Nevada.

24 j. On several occasions, co-conspirators attempted to create the appearance that
25 the elections were legitimate by hiring "independent" attorneys to run the HOA board elections.
26 The homeowners were led to believe that these "special election masters" would collect and secure

1 the ballots and preside over the HOA board election, including supervising the counting of ballots,
2 to ensure no tampering occurred. However, the special election masters were paid or promised
3 cash, checks, or things of value for their assistance in rigging the elections. They allowed the co-
4 conspirators to access the ballots for the purpose of opening the ballots and pre-counting the votes
5 entered for each candidate to then know the number of fake ballots which needed to be created to
6 ensure the co-conspirator up for election won the seat on the HOA board.

7 k. Once Defendant WARK, the straw purchasers, and those other co-conspirators
8 who acquired a transferred interest in the properties were elected to the HOA boards, the co-
9 conspirators paid or promised cash, check, or things of value for their participation, all of which
10 resulted in a personal financial benefit to the co-conspirators, including Co-Conspirators A, B, C,
11 and D.

12 l. The co-conspirator board members would meet with the other co-conspirators in
13 order to manipulate board votes, including those votes relating to the selection of property
14 managers, contractors, and general counsel, and attorneys to represent the HOA. These co-
15 conspirator property managers and general counsel would then recommend that the HOA board hire
16 Co-Conspirators A and B for remediation and construction defect repairs and Co-Conspirators C
17 and D to handle the construction defect litigation.

18 m. Often the co-conspirators created and submitted fake bids for “competitors”
19 to make the process appear to be legitimate while ensuring co-conspirators were awarded the
20 contract. In addition, Co-Conspirator A’s initial contract for emergency remediation repairs
21 contained a “right of first refusal” clause to ensure Co-Conspirator A was awarded the construction
22 repair contracts following the construction defect litigation.

23 n. This process created the appearance of legitimacy since bonafide homeowners
24 believed the elected board members, property managers, and general counsel were, as fiduciaries,
25 acting in their best interest rather than to advance the financial interests of co-conspirators. In fact,
26 Defendant WARK and others were paid by or on behalf of their co-conspirators, including Co-

1 Conspirators A and B, for their assistance in purchasing the properties, obtaining HOA membership
2 status, rigging elections, and manipulating their votes to further the goals of the conspiracy and to
3 enrich the co-conspirators at the expense of the HOA and bonafide homeowners.

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

5 **NOTICE OF FORFEITURE**

6 1. As a result of the violations of Title 18, United States Code, Sections 1341 and
7 1343, set forth in this information, Defendant

8 **STEVEN WARK**

9 shall forfeit to the United States of America any property, real or personal, that constitutes or is
10 derived from proceeds traceable to the commission of such offenses, as charged in this information,
11 including, but not limited to, the amount of the unlawfully obtained financing for the unit at Vistana
12 that was purchased on behalf of Defendant WARK as principal of Co-Conspirator E on or about
13 October 25, 2005, and the amount of any salary, payment, or thing of value he received in
14 connection with the conspiracy to commit mail and wire fraud.


15 2. If any of the property subject to forfeiture, as a result of any act or omission of
16 the defendant:

- 17 a. cannot be located upon the exercise of due diligence;
18 b. has been transferred or sold to, or deposited with, a third party;
19 c. has been placed beyond the jurisdiction of the Court;
20 d. has been substantially diminished in value; or
21 e. has been commingled with other property which cannot be divided without
22 difficulty;

23 it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b),
24 incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property
25 of the defendant up to the value of the property subject to forfeiture.

26 All pursuant to Title 18, United States Code, Section 982(a)(2).

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