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STEVEN M. LARIMORE CLERK U.S. DIST. CT. S.D. OF FLA. MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
14-20572-CR-COOKE/TORRES

CASE NO: _____

18 U.S.C. § 1349

18 U.S.C. § 981(a)(1)(C)

UNITED STATES OF AMERICA

vs.

DAYRON PEÑA,

Defendant.

INFORMATION

The United States Attorney charges that:

GENERAL ALLEGATIONS

At all times relevant to this Information:

1. Great Country Mortgage Bankers ("GCMB") was a Florida corporation doing business as a mortgage lender, with its principal place of business located in Coral Gables, Florida. H.H. and his wife owned and controlled GCMB.

2. GCMB was a direct endorsement Federal Housing Administration ("FHA") lender, which meant that the Department of Housing and Urban Development ("HUD") allowed GCMB to use GCMB personnel to approve loans that HUD would then insure, protecting GCMB in the event of default. After a loan closed, the loan file was sent to HUD to ensure that all the appropriate documents were submitted and then HUD endorsed the loan, at which time the loan was insured.

3. The FHA was a division of HUD that provided mortgage insurance to approved commercial lending institutions to enable low-and moderate-income home buyers to obtain loans

to purchase homes. FHA insured loans were only for potential home buyers who intended to be a primary resident in the home to be purchased. By offering FHA insured loans, HUD assisted potential buyers in obtaining mortgages at more favorable terms than those otherwise commercially available.

4. To be eligible to receive an FHA insured loan, home buyers were required to establish that their incomes were sufficient to meet the mortgage payments. HUD required the lenders making the loans to verify the home buyers' employment for the two most recent years. These verifications could be accomplished by having the home buyers' employers complete and sign "Verification of Employment" ("VOE") forms. The loan processors were responsible for verifying the authenticity of the VOEs and ensuring that the VOEs were not handled by or transmitted from or through interested third parties, such as real estate agents, builders, or sellers. HUD also required the buyers to provide copies of their most recent paystubs.

5. To be eligible to receive a FHA loan, home buyers were also required to make a minimum equity investment in their homes of at least 3% of the cost of the home. Home buyers were permitted to use gifts from relatives, employers, unions, charitable organizations, or governmental agencies to meet this 3% equity investment. Home buyers were not, however, permitted to meet the equity requirement with gifts from persons or entities with an interest in the sale of the home, such as sellers of the homes. Home buyers and sellers were both required to certify at closing of the real estate transaction that the home buyers had not received undisclosed payments for closing costs and/or down payments on the property to be purchased.

6. HUD granted "direct endorsement authority" for FHA insured loans to certain lenders. Under the direct endorsement authority program, the lender determined whether the

home buyer was eligible for an FHA insured loan. If the lender determined that the buyer was eligible, the lender then submitted to HUD for final approval of FHA insurance eligibility the buyer's application and all documentation supporting the lender's decision to approve the loan, including the VOE form, the home buyer's most recent pay stubs, and documents establishing the home buyer's equity investment of 3% of the cost of the property.

7. A HUD-1 Settlement Statement ("HUD-1") was a standard form required to be executed for the closing of all real estate transactions. The HUD-1 itemized for the lenders all aspects of the closing, including an itemized list of payments to be made by the borrower, money due to the seller, and any fees paid to third parties in connection with the closing.

8. GCMB hired loan officers, loan processors, underwriters, and others known and unknown to assist in the sale and financing of mortgage loans for condominium units in Miami-Dade County and elsewhere.

9. The term "closing" was used in the real estate industry to refer to the event at which the legal transfer of real estate from seller to buyer formally took place and the point at which funds were transferred between the various parties, such as from the lending institution to the buyer and/or to the seller on the buyer's behalf. The transfer of funds at closing was often accomplished by temporarily passing funds through an intermediary commonly referred to as a "settlement agent" (which sometimes was also a title company).

10. Nehemiah Corporation of America ("NCA") was a California non-profit corporation, with its principal place of business located in Sacramento, California.

11. Home Downpayment Gift Foundation ("HDGF") was a Michigan non-profit corporation, with its principal place of business located in Clinton Township, Michigan.

12. NCA and HDGF provided assistance to borrowers who qualified for FHA residential loans by funding the borrowers' down payment obligations at closing in exchange for a charitable donation in the amount of the down payment plus a funding fee.

13. Defendant DAYRON PEÑA was a Miami-Dade County resident. PEÑA was recruited by one of the developers of the properties and was subsequently hired to work as a loan officer for GCMB. In that capacity, PEÑA assisted in the sale and financing of the condominium units.

**CONSPIRACY TO COMMIT WIRE FRAUD
(18 U.S.C. § 1349)**

1. The General Allegations section of this Information is hereby realleged and incorporated as though fully set forth herein.

2. From in or around the spring of 2005, and continuing through in or around August 2008, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

DAYRON PEÑA,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate and agree with others known and unknown to the United States, to knowingly, and with intent to defraud, 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, knowing that they were false and fraudulent when made, and transmitting and causing to be transmitted in interstate commerce, by means of wire communication, certain writings, signs, signals, pictures and sounds, for the purpose of executing the scheme and artifice, in violation of Title 18, United States Code, Section 1343.

OBJECT OF THE CONSPIRACY

3. It was the object of the conspiracy for the defendant and his co-conspirators to obtain money by: (a) recruiting unqualified borrowers to purchase and finance residential condominiums through FHA insured loans; and (b) creating and submitting false and fraudulent FHA mortgage loan applications and related documents to GCMB, a lending institution, and HUD, thereby causing unqualified loan applicants to receive FHA insured loans, for which the borrowers could not otherwise qualify for the purchase of the property, and (c) selling these fraudulent loans to financial institutions.

MANNER AND MEANS OF CONSPIRACY

The manner and means by which the defendant and his co-conspirators sought to accomplish the object of the conspiracy included, among others, the following:

4. Developers, including H.H., R.B., C.R., and L.R., and others known and unknown, purchased certain apartment buildings in Miami-Dade County and elsewhere and converted them into condominium complexes to be resold.

5. Developers, including H.H., R.B., C.R., and L.R., and others known and unknown, used GCMB as the lender in the sale of condominium units. GCMB provided sales support, including marketing materials, office support, and on-site sales personnel to sell the units to prospective buyers. Additionally, the sales personnel, including **DAYRON PEÑA** and other co-conspirators, worked as loan officers, processing prospective buyers' loan applications on behalf of GCMB.

6. **DAYRON PEÑA** and the other co-conspirator loan officers known and unknown, recruited individuals to purchase condominium units. Many, if not all, of the prospective buyers could not qualify for mortgage loans to purchase the condominium units

because they had insufficient income and assets, high levels of debt, and outstanding collection amounts. **PEÑA** knew that these borrowers were unqualified to purchase mortgage loans.

7. To qualify the buyers, **DAYRON PEÑA** and other co-conspirators known and unknown prepared and caused to be prepared false and fraudulent FHA insured mortgage loan applications and other related documents on behalf of the buyers, and submitted and caused to be submitted those false documents to GCMB and HUD in connection with the purchase of the condominium units.

8. The mortgage loan applications prepared on behalf of the buyers contained false representations of employment, income, and other information necessary for the lender to assess the buyers' qualifications to borrow funds to purchase the units.

9. The loan processors, underwriters, and loan officers, including **DAYRON PEÑA**, knew the loan applications contained false and fraudulent documents, including VOsEs, bank records, paystubs, driver's licenses, and letters of explanation, but processed or caused to be processed the false applications.

10. **DAYRON PEÑA** and other co-conspirators known and unknown knew that non-profit organizations, including NCA and HDGF, paid the buyers' cash-to-close obligations. Those organizations wired the cash-to-close funds in interstate commerce to GCMB's bank account in Florida.

11. Based on the materially false and fraudulent representations in the buyers' loan applications, GCMB approved the FHA mortgage applications and funded the purchases of the condominium units.

12. After the closing, many of the unqualified buyers failed to continue to make mortgage payments, ultimately causing the units to go into foreclosure. HUD was required to

take title to the units and pay the outstanding loan balances to the lenders, resulting in substantial losses to the agency.

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

FORFEITURE
(18 U.S.C. § 981(a)(1)(C))

1. The allegations contained in this Information are realleged and incorporated by reference as though fully set forth herein for the purposes of alleging forfeiture to the United States of America of certain property in which the defendant, **DAYRON PEÑA**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1349, as alleged in this Information, the defendant, **DAYRON PEÑA**, shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to the violation, pursuant to Title 18, United States Code, Section 981(a)(1)(C), as made applicable by Title 28, United States Code, Section 2461(c).


3. The property subject to forfeiture includes, but it is not limited to, at least \$857,349 in United States currency, representing the loss the defendant caused from the offense alleged in this Information, in the form of a forfeiture money judgment.

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


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

difficulty; it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 28, United States Code, Section 2461(c), Title 18, United States Code, Section 981(a)(1)(C), and the procedures set forth in Title 21, United States Code, Section 853.


WIFREDO A. FERRER
United States Attorney

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Criminal Division
U.S. Department of Justice


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Senior Litigation Counsel
Criminal Division, Fraud Section
U.S. Department of Justice

UNITED STATES OF AMERICA

CASE NO. _____

vs.

DAYRON PEÑA,

CERTIFICATE OF TRIAL ATTORNEY*

Defendant.

Superseding Case Information:

Court Division: (Select One)

X Miami Key West
 FTL WPB FTP

New Defendant(s) _____
Number of New Defendants _____
Total number of counts _____

Yes _____ No _____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect _____

4. This case will take 0 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<u>X</u>	Petty	_____
II	6 to 10 days	_____	Minor	_____
III	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u>X</u>
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:

Judge: _____

Case No. _____

(Attach copy of dispositive order)

Has a complaint been filed in this matter?

(Yes or No) No

If yes:

Magistrate Case No. _____

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

Defendant(s) in state custody as of _____

Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes X No



DAVID A. BYBEE
DOJ TRIAL ATTORNEY
Court ID No. A5501838

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: DAYRON PEÑA

Case No: _____

Count #:

Conspiracy to Commit Wire Fraud

Title 18, United States Code, Section 1349

* Max. Penalty: 20 years' imprisonment

Count #:

*Max. Penalty:

Count #:

*Max. Penalty:

Count #:

*Max. Penalty:

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**