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CLERK US DISTRICT COURT
DISTRICT OF NEVADA
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA, Plaintiff, v. MIGUEL AVILA, Defendant.	CASE NO.: 2:14-cr-0041-JCM-PAL DATE FILED: VIOLATION: 18 U.S.C. § 1349 (conspiracy to commit mail and wire fraud – 1 count)

<u>INFORMATION</u>

<u>INTRODUCTION</u>

THE UNITED STATES CHARGES THAT:

At all times material to this Information:

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

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

3. Under Nevada law, HOA board members are fiduciaries. Any person nominated for the board must make a good faith effort to disclose any financial, business, professional, or personal relationship or interest that would result or would appear to a reasonable person to result in a potential conflict of interest.

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

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

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

7. Under Nevada law, property managers must earn a Community Association Management (CAM) license before being able to work in the state of Nevada. Property managers have fiduciary obligations to act in the best interest of the community, safeguard financial and confidential information for the community, and disclose any affiliation or financial interest with any other person or business that furnishes goods or services to the community.

8. Chateau Versailles, Chateau Nouveau, Park Avenue, Jasmine, Vistana, Sunset Cliffs, Palmilla, Pebble Creek, Mission Ridge, Mission Pointe, and Horizons at Seven Hills, common interest communities, were located in Las Vegas, Nevada. Each had an HOA board consisting of at least three people.

9. Co-conspirator **Leon Benzer**, a Las Vegas resident who is charged elsewhere, owned Silver Lining Construction (SLC), a construction company incorporated in the state of Nevada. SLC purported to specialize in home building and repairs, including repairs involving so-called construction defects (CDs).

10. Defendant **MIGUEL AVILA**, was a "straw purchaser" working for the benefit of **Benzer** and other co-conspirators.

11. Co-Conspirator A was a law firm in Las Vegas that specialized in construction defect litigation. Co-Conspirator B was a Nevada attorney who owned and controlled Co-Conspirator A. Co-Conspirator B was, along with **Benzer**, a mastermind of the conspiracy and also one of its principal sources of funding. Co-Conspirator B participated in the conspiracy until the death of Co-Conspirator B in March 2012. **Benzer** and his co–conspirators, through the use of "straw purchasers" via financed transactions, caused the purchase or transfer of at least 37 condominium units in an effort to take control of HOA boards through the nomination and election of these straw purchasers as HOA board members. The straw purchasers, once elected were under the direction and control of **Benzer** and SLC. As a result of the scheme, 33 of these 37 condominiums went into foreclosure.

COUNT ONE

THE CONSPIRACY

12. From at least in or about August 2003 through at least in or about February 2009, in the District of Nevada and elsewhere, Defendant

MIGEUL AVILA

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

a. to 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, that affected a financial institution; and for the purpose of executing such scheme and artifice, the Defendant or his coconspirators did knowingly place or caused to be placed in a post office and authorized depository for mail matter a thing to be sent and delivered by the U.S. Postal Service or any private or commercial interstate carrier, in violation of Title 18, United States Code, Section 1341; and,

b. to 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, that affected a financial institution; and for the purpose of executing such scheme and artifice, the Defendant or his coconspirators did knowingly transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, in violation of Title 18, United States Code, Section 1343.

OBJECTS OF THE CONSPIRACY

13. The objects of the conspiracy, of which Defendant **MIGUEL AVILA** was a member, which began from at least as early as in or around August 2003 and continued through at least in or around February 2009, were for the co-conspirators to:

a. identify and facilitate the placement of straw purchasers in certain HOAs identified above;

b. facilitate the purchase of units in certain HOAs identified above through straw purchasers to act on behalf of the beneficial owners of the unit;

c. manipulate and influence the elections of HOA board candidates designated by the co-conspirators and thereby gain and maintain control of HOA boards and candidates designated by the co-conspirators;

d. manipulate and influence the conduct of HOA business including, but not limited to, the appointment of designated property managers, the hiring of designated lawyers and law firms, and the hiring of designated contractors; and,

e. unlawfully enrich the co-conspirators as a result of the scheme.

MANNER AND MEANS

14. In order to achieve the objects of the conspiracy, Defendant **MIGUEL AVILA** and others known and unknown to the United States, used the following manner and means, among others:

a. Co-conspirators would and did enlist real estate agents to identify condominium units within HOA communities for purchase by co-conspirators in connection with the scheme.

b. Co-conspirators would and did enlist individuals to act as straw purchasers to complete mortgage loan applications to purchase properties within the HOA communities on behalf of the beneficial owners and made false and fraudulent statements that concealed the identity and financial interest of the true beneficial owners of the properties from banks, mortgage companies, HOAs, and bona fide homeowners. Down payments were often funded by **Benzer** and co-conspirators sent emails and spreadsheets outlining the purchases and payments entitled "Condosinlinetobuy" and "Money back to LB on cash deals." Many of these emails were sent via interstate wire.

c. The co-conspirators would and did use several licensed notaries to assist in fraudulently notarizing documents in furtherance of the conspiracy without the signatory appearing before him/her as required by his/her State of Nevada notary license.

d. Various co-conspirators would and did join the conspiracy when they agreed to become straw purchasers at a particular HOA. Many co-conspirators signed and submitted false and fraudulent loan applications and supporting documents to financial institutions in order to finance and close on the properties.

e. On or about January 9, 2007, Defendant AVILA purchased a unit at the Chateau Noveau HOA. In fact, Defendant AVILA's co-conspirators provided the down payments and monthly payments, including HOA dues and mortgage payments, for this property and were the true owners of the property. Defendant AVILA signed closing documents to the financial institution in order to finance and close on the property on behalf of his co-conspirators.

f. Once the straw purchases were complete, the beneficial owners and co-conspirators would and did often rent the units. The beneficial owners received the rental payments and continued to pay the mortgages and various expenses associated with the straw purchases. Defendant AVILA did not pay rent to live in his unit at Chateau Noveau.

g. In furtherance of the scheme, on or about August 3, 2005, a co-conspirator would and did open and manage five bank accounts on behalf of SLC and **Benzer** under the names of limited liability companies to conceal the identity of the beneficial owners. Numerous interstate wire transfers were made to and from these accounts to fund the conspiracy and to pay co-conspirators for their participation in the scheme. Deposits of $1,981,077, $700,000 and $300,000 into these accounts were provided by Co-Conspirators A and B. In excess of $8,000,000 moved through these five accounts.

h. Several straw purchasers allowed the co-conspirators to transfer a 1% or greater ownership interest in their unit to another co-conspirator to make it appear that the new owner was a legitimate owner in the HOA and was qualified to run for a position on the HOA board of directors.

i. The co-conspirators would and did also refinance the properties in order to increase the conspiracy's capital from which additional condominiums could be purchased.

j. The straw purchasers and those who acquired a transferred interest in the properties would and did agree to run for election to HOA boards.

l. To ensure the co-conspirators would win the elections, co-conspirators would and did employ deceitful tactics, such as creating false phone surveys to gather information about homeowners' voting intentions, using mailing lists to vote on behalf of out-of-town homeowners who were unlikely to participate in the elections, and submitting fake and forged ballots. Co-conspirators also hired private investigators to find "dirt" on bona fide candidates in order to influence the elections.

m. Certain co-conspirators would and did rig certain HOA board elections by preparing forged ballots for out-of-town homeowners and either transported or caused them to be transported or mailed to California and thereafter to have the ballots mailed back to Las Vegas from various locations around California so as to make it appear that the ballots were completed and mailed by bona fide homeowners residing outside Nevada.

n. Co-conspirators would and did attempt to create the appearance that the elections were legitimate by hiring "independent" attorneys to run the HOA board elections. These "special election masters" were obligated to: (i) contact the bona fide homeowners to inform them of the election; (ii) mail the bona fide homeowners election ballots and voting instructions; (iii) collect and secure those election ballots returned by mail until the date of the election; and (iv) preside over the HOA board election, including supervising the counting of ballots. However, in truth and fact, certain "special election masters" were paid in cash, check, or promised things of value, by or on behalf of **Benzer** and SLC for their assistance in rigging the elections.

o. Specifically, or about March 1, 2007, a co-conspirator special election master used the United States Postal Service to mail information packets for the April 23, 2007 election of the Board of Directors to the 564 home owners at Chateau Nouveau. These packets included nomination forms for those who wished to run for election onto Chateau Nouveau HOA Board of Directors. Defendant AVILA then submitted his nomination form. On or about April 23, 2007, Defendant AVILA was elected to the Chateau Nouveau HOA Board of Directors in a rigged election. Once on the board, Defendant AVILA breached his statutory fiduciary duty to the homeowners by accepting from his co-conspirators compensation, gratuity, and other remuneration that improperly influenced, or reasonably appeared to influence, his decisions, resulting in a conflict of interest.

p. Once elected, the straw purchaser board members would and did meet with co-conspirators in order to manipulate board votes, including the selection of property managers, contractors, general counsel and attorneys to represent the HOA.

q. Specifically, Defendant used his position on the Chateau Nouveau HOA Board of Directors to vote in a manner directed by and favorable to certain co-conspirators. Specifically, Defendant AVILA participated in the following Chateau Nouveau HOA Board of Directors' votes, among others: to replace Nicklin Community Management with Platinum; to hire a co-conspirator as attorney for Chateau Nouveau; and to award BENZER's company a remediation contract award, awarding right of first refusal to Silver Lining Construction for a construction defect contract.

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

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