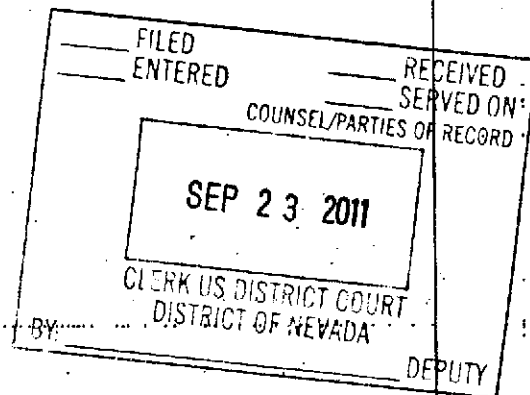


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9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF NEVADA**

11 **-oOo-**

12
 13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 DEBORAH GENATO,

17 Defendant.

CASE NO 2:11-cr-00339-LDG -GWF

DATE FILED:

VIOLATION:

18 U.S.C. §1349 (conspiracy to commit mail
 and wire fraud - 1 count)

18 **INFORMATION**

19 **INTRODUCTION**

20 **THE UNITED STATES CHARGES THAT:**

21 At all times material to this Information:

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

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
5 are required among other duties to act on an informed basis, in good faith and in the honest belief
6 that their actions are in the best interest of the association. Any person nominated for the board
7 must make a good faith effort to disclose any financial, business, professional, or personal
8 relationship or interest that would result or would appear to a reasonable person to result in a
9 potential conflict of 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. From in or about November 2006, Defendant GENATO worked for a property
4 management company in Las Vegas. She became a licensed CAM on or about February 27, 2007.

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

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

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

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

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

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

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

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

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

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

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

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OBJECTS OF THE CONSPIRACY

23. The objects of the conspiracy, which Defendant DEBORAH GENATO joined in or around February 2007, were for the co-conspirators to:

a. designate and facilitate the placement of straw purchasers in certain common interest communities identified above;

b. facilitate the purchase of units in certain common interest communities identified above by straw purchasers to act on behalf of the beneficial owners of the unit;

c. manipulate the elections of 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 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 at the expense of the HOA and bonafide homeowners.

MANNER AND MEANS

24. In order to achieve the objects of the conspiracy, Defendant DEBORAH GENATO and others known and unknown to the United States used the following manner and means, among others:

a. Co-conspirators enlisted several individuals as straw purchasers to apply for and complete mortgage loans using their own name and credit for the purchase of properties within the HOA communities on behalf of the beneficial owners. These units were often identified by licensed realtors in the state of Nevada, acting on behalf of the co-conspirators. The straw nominees then purchased the properties while concealing the identity and financial interest of the true beneficial owners of the properties from banks, mortgage companies, HOAs, and bonafide homeowners.

b. Once the straw purchases were complete, the beneficial owners and co-

1 conspirators found tenants to rent the units. The beneficial owners received the rental payments and
2 continued to pay the mortgages and various expenses associated with the straw purchase.

3 c. Co-conspirators were hired by Co-Conspirator B and others to manage and
4 operate the payments associated with maintaining these straw properties. The co-conspirators
5 called this business of funding these properties the "Bill Pay Program." The co-conspirators
6 involved in running the Bill Pay Program maintained several limited liability companies, at the
7 direction of Co-Conspirator B, for the purpose of opening bank accounts and concealing the Bill
8 Pay Program funds. Many of the payments on these properties were wired or caused to be wired
9 from California to Nevada.

10 d. On several occasions, instead of making a straw purchase, the co-conspirators
11 transferred a partial interest in a unit to another co-conspirator for the purpose of making it appear
12 as if the co-conspirator was a bonafide homeowner.

13 e. The straw purchasers and those who acquired a transferred interest in the
14 properties agreed with co-conspirators to run for election to the respective HIOA boards. These co-
15 conspirators were paid or promised cash, checks, or things of value for their participation, all of
16 which resulted in a personal financial benefit to the co-conspirators, including Co-Conspirators A,
17 B, C, and D.

18 f. To ensure the co-conspirators would win the elections, co-conspirators
19 employed deceitful tactics, such as creating false phone surveys to gather information about
20 homeowners' voting intentions, using mailing lists to vote on behalf of out-of-town homeowners
21 unlikely to participate in the elections, and submitting fake and forged ballots. Co-conspirators also
22 hired private investigators to find "dirt" on the bonafide candidates in order to create smear
23 campaigns. Defendant GENATO participated in rigging the HOA board elections at Vistana, Park
24 Avenue, and Chateau Nouveau by using her position as the property manager to provide the mailing
25 lists, labels, and other voting material that the co-conspirators used to create fake ballots. She also
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1 allowed the co-conspirators to gain access to those ballots that were mailed to the property
2 management company by the bonafide homeowners before the election date.

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

8 h. On several occasions, co-conspirators attempted to create the appearance that
9 the elections were legitimate by hiring "independent" attorneys to run the HOA board elections.
10 The homeowners were led to believe that these "special election masters" would collect and secure
11 the ballots and preside over the HOA board election, including supervising the counting of ballots,
12 to ensure no tampering occurred. However, the special election masters were paid or promised
13 cash, checks, or things of value for their assistance in rigging the elections. They allowed the co-
14 conspirators to access the ballots for the purpose of opening the ballots and pre-counting the votes
15 entered for each candidate to then know the number of fake ballots which needed to be created to
16 ensure the co-conspirator up for election won the seat on the HOA board. These attorneys would
17 run the board election knowing the co-conspirators had tampered with the ballots and concealing
18 their relationship with the co-conspirators from the bonafide homeowners.

19 i. Once elected, the straw purchaser board members would meet with the co-
20 conspirators in order to manipulate board votes, including the selection of property managers,
21 contractors, general counsel and attorneys to represent the HOA. These co-conspirator property
22 managers and general counsel would then recommend that the HOA board hire Co-Conspirators A
23 and B for remediation and construction defect repairs and Co-Conspirators C and D to handle the
24 construction defect litigation.

25 j. Often the co-conspirators created and submitted fake bids for "competitors"
26

1 to make the process appear to be legitimate while ensuring co-conspirators were awarded the
 2 contract. In addition, Co-Conspirator A's initial contract for emergency remediation repairs
 3 contained a "right of first refusal" clause to ensure Co-Conspirator A was awarded the construction
 4 repair contracts following the construction defect litigation.

5 **K** Defendant GENATO used her position as the property manager at Vistana, Park
 6 Avenue, and Chateau Nouveau to recommend to those HOAs that they hire individuals and
 7 companies designated by her co-conspirators, while concealing her relationship to the co-
 8 conspirators from the bonafide homeowners. Defendant GENATO recommended that the Vistana
 9 and Park Avenue HOA boards hire Co-Conspirators A and B for remediation and construction
 10 defect repairs and Co-Conspirators C and D for the construction defect litigation.

11 **L** This process created the appearance of legitimacy since bonafide homeowners
 12 believed the elected board members and property managers were, as fiduciaries, acting in their best
 13 interest rather than to advance the financial interests of co-conspirators. In fact, Defendant
 14 GENATO and others were paid or received things of value by or on behalf of their co-conspirators,
 15 including Co-Conspirators A, B, C, and D, for their assistance in purchasing the properties,
 16 obtaining HOA membership status, rigging elections, using their positions to manipulate the HOA's
 17 business and to further the goals of the conspiracy, and to enrich the co-conspirators at the expense
 18 of the HOA and the bonafide homeowners.

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

20 **NOTICE OF FORFEITURE**

21 1. As a result of the violations of Title 18, United States Code, Sections 1341 and
 22 1343, set forth in this information, Defendant

23 **DEBORAH GENATO,**

24 shall forfeit to the United States of America any property, real or personal, that constitutes or is
 25 derived from proceeds traceable to the commission of such offenses, as charged in this information,
 26 including, but not limited to, the value of any salary, payment, and thing of value she received in

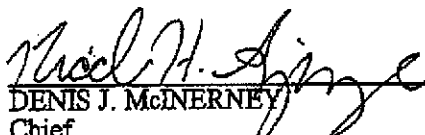
1 connection with the conspiracy to commit mail and wire fraud.

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

- 4 (a) cannot be located upon the exercise of due diligence;
5 (b) has been transferred or sold to, or deposited with, a third party;
6 (c) has been placed beyond the jurisdiction of the Court;
7 (d) has been substantially diminished in value; or
8 (e) has been commingled with other property which cannot be divided
9 without difficulty;

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

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

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