

United States District Court
District of New Jersey

ORIGINAL FILED

JUN 15 2010

PATTY SHWARTZ
U.S. MAG. JUDGE

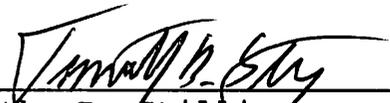
UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL COMPLAINT
 :
 RAQUEL BERGER and : Mag. No. 10-3132
 CESAR DESOUZA, :
 a/k/a "GERALDO DESOUZA" :

I, Timothy B. Stillings, the undersigned complainant being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A.

I further state that I am a Special Agent with the Federal Bureau of Investigation and that this complaint is based on the following facts:

SEE ATTACHMENT B.



Timothy B. Stillings
Special Agent, Federal Bureau
of Investigation

Sworn to and subscribed before
me in Newark, New Jersey
this 15th day of June, 2010



Hon. Patty Shwartz
U.S. Magistrate Judge

ATTACHMENT A

**Count One
(Wire Fraud Conspiracy)**

From at least as early as in or about October 2009 through in or about April 2010, in the District of New Jersey and elsewhere, defendants

**Raquel Berger and
Cesar DeSouza, a/k/a "Geraldo DeSouza"**

did knowingly and intentionally conspire and agree with each other and others to devise a scheme and artifice to defraud, which would affect financial institutions, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted by means of wire communications in interstate commerce certain writings, signs, signals, pictures, and sounds, contrary to 18 U.S.C. § 1343.

In violation of 18 U.S.C. § 1349.

**Count Two
(Bank Fraud Conspiracy)**

From at least as early as in or about October 2009 through in or about April 2010, in the District of New Jersey and elsewhere, defendants

**Raquel Berger and
Cesar DeSouza, a/k/a "Geraldo DeSouza"**

did knowingly and intentionally conspire and agree with each other and others to execute a scheme and artifice to defraud financial institutions, and to obtain moneys, funds, assets and other property owned by, and under the custody and control of, financial institutions by means of materially false and fraudulent pretenses, representations and promises, contrary to 18 U.S.C. § 1344.

In violation of 18 U.S.C. § 1349.

ATTACHMENT B

I, Timothy B. Stillings, a Special Agent with the Federal Bureau of Investigation, having conducted this investigation and discussed this matter with other law enforcement officers who have participated in the investigation, have knowledge of the facts set forth below. Because this affidavit is being submitted for the limited purpose of establishing probable cause, I have not included every detail of every aspect of the investigation. All conversations and statements described in this attachment are related in substance and in part and are not word-for-word transcripts or quotations.

The Defendants and the Mortgage Company

1. At all times relevant to this Complaint:
 - a. **defendant Raquel Berger** was a real estate agent and the broker of record and franchise owner of a realty company (the "Realty Company") in Hillside, New Jersey, and a resident of Union, New Jersey;
 - b. **defendant Cesar DeSouza**, also known as "Geraldo DeSouza," operated an accounting and tax preparation business in Newark, New Jersey and was a resident of Belleville, New Jersey; and
 - c. co-conspirator Rosa Damasceno ("Damasceno"), **defendant DeSouza's** wife, who is not named as a defendant herein but has already been charged separately with wire fraud conspiracy and bank fraud conspiracy in connection with this investigation, Magistrate Number 10-3125 (PS), was the owner of a Newark, New Jersey company that provided tax services and driver education; Damasceno created fraudulent documents in support of unqualified borrowers on behalf of the **defendants** and other real estate agents, mortgage consultants and loan officers.

2. At all times relevant to this Complaint, the cooperating witness referred to herein ("CW") was a loan officer with a New Jersey mortgage company (the "Mortgage Company"). The in-person and telephonic conversations summarized below to which CW was a party were consensually recorded by CW at the direction of the Federal Bureau of Investigation. CW used a Yahoo! email account in New Jersey to communicate with the **defendants**. These emails necessarily were transmitted in interstate commerce because once a user submits a connection request to website servers such as Yahoo!'s or data is transmitted from those website servers back to the user, the data has traveled in interstate commerce. All

emails to or from CW described herein pertain to this Yahoo! email account.

3. As of May 20, 2009, the Mortgage Company was a "financial institution" as defined in 18 U.S.C. § 20 because it was a "mortgage lending business[]" as defined in 18 U.S.C. § 27. It was an organization which finances or refines debts secured by interests in real estate and whose activities affected interstate commerce.

Mortgage Lending Generally

4. Mortgage loans are loans funded by banks, mortgage companies and other institutions ("lenders") to enable borrowers to finance the purchase of real estate. In deciding whether the borrowers meet the lenders' income, credit eligibility and down payment requirements, the lenders are supposed to evaluate the financial representations set forth in loan applications and other documents from the borrowers and assess the value of the real estate that will secure the loan.

5. A common type of mortgage loan is issued in connection with an insurance program administered by the Federal Housing Administration ("FHA"), which is a division of the United States Department of Housing and Urban Development ("HUD"), an agency of the United States. The FHA encourages designated lenders to make mortgage loans to qualified borrowers by protecting against loan defaults through a government-backed payment guarantee if the borrower defaults on the mortgage loan. When lenders process an application for an FHA-insured mortgage loan, they use a system called "FHA Connection" that provides internet access to data residing in HUD's computer systems. HUD maintains these computer systems outside of New Jersey.

6. Another common type of mortgage loan is called the "conventional" mortgage loan. Lenders underwrite and fund conventional mortgage loans using their own funds and credit lines. After funding the conventional mortgage loans, the lenders can either service the loans during the mortgage loan period or sell the loans to institutional investors in the secondary market.

The Mortgage Fraud Conspiracy

7. The investigation has uncovered evidence that the defendant Raquel Berger and Cesar DeSouza have conspired with each other and others to obtain mortgage loans through fraudulent

means. The **defendants** intended these loans to finance real estate transactions in and near Newark, New Jersey and elsewhere. To obtain these loans, the **defendants** caused to be submitted materially false and fraudulent mortgage loan applications and supporting documents to mortgage companies while engaging in or causing wire communications in interstate commerce, including email exchanges and the use of FHA Connection, to facilitate the conspiracy.

A. The Transaction Involving Borrower-1 and Borrower-2

8. On or about October 2, 2009, **defendant Berger** asked an associate to tell CW to contact **defendant Berger** because **defendant Berger** wanted to do business with CW again. Years earlier, CW and **defendant Berger** had worked on real estate transactions together.

9. On or about October 23, 2009, **defendant Berger** was contacted by CW and agreed to meet CW to discuss the programs the **Mortgage Lender** was then offering to borrowers.

10. On or about October 29, 2009, a client of **defendant Berger** ("Borrower-1") contacted CW and proposed a meeting. Borrower-1 and CW agreed to meet at **defendant Berger's** office at the Realty Company on or about November 2, 2009. **Defendant Berger** was then contacted by CW and told that Borrower-1 had called CW and that an appointment had been scheduled at the Realty Company on or about November 2, 2009.

11. On or about November 2, 2009, at the Realty Company, **defendant Berger** met CW, Borrower-1, and another client of **defendant Berger** ("Borrower-2"). **Defendant Berger** told CW that Borrower-1 and Borrower-2 were common-law husband and wife. However, Borrower-2 was legally married to another individual ("Borrower-2's Husband") and filed taxes jointly with him. **Defendant Berger** told CW that she had made copies of everything CW would need in order to tell Borrower-1 and Borrower-2 what they would need to do to qualify for a mortgage. Among the documents that **defendant Berger** gave to CW were the 2006, 2007, and 2008 federal and state income tax returns that had been jointly filed by Borrower-2 and Borrower-2's Husband. According to the tax returns, Borrower-2 and Borrower-2's Husband earned combined income of \$21,846 in 2006, \$15,600 in 2007, and \$25,320 in 2008. The entirety of the couple's income for 2006 and 2007 was earned by Borrower-2's Husband. **Defendant DeSouza** prepared and signed the 2008 tax returns.

12. During the same meeting, **Defendant Berger** explained that Borrower-1 and Borrower-2 owned a house on Frelinghuysen Avenue in Newark, New Jersey (the "Frelinghuysen Avenue Property") that they had purchased using another individual's name. Borrower-1 and Borrower-2 had stopped making payments on the mortgage in 2008 and owed over \$400,000 on the mortgage. Borrower-1 and Borrower-2 wanted to purchase the Frelinghuysen Avenue Property in their own names in a short sale transaction for approximately \$260,000 so that they could continue to reside in the house. A short sale is a sale of property where the sale proceeds fall short of the balance owed on the existing mortgage loan that encumbers the property. **Defendant Berger** said that she was working on getting approval for the short sale from the bank that held the mortgage on the Frelinghuysen Avenue Property.

13. During the same meeting, **defendant Berger**, Borrower-1, Borrower-2, and CW discussed the personal circumstances, income, and credit status of Borrower-1 and Borrower-2, and reviewed the documents that **defendant Berger** had copied for CW. Borrower-1 and Borrower-2 earned combined annual income of approximately \$42,000. Borrower-1 and Borrower-2 were informed by CW that their income was insufficient to qualify for a mortgage to finance the purchase of the Frelinghuysen Avenue Property. Borrower-1 and Borrower-2 were told by CW that in order to qualify for a mortgage, they would either need to amend their income tax returns for the previous two years to reflect combined annual income of approximately \$66,000, or find a co-signor to make up the difference. Borrower-1 and Borrower-2 stated that **defendant DeSouza** prepared their tax returns and that they would contact **defendant DeSouza** regarding the additional income that needed to be reflected on their tax returns. Borrower-1 and Borrower-2 then accepted CW's offer to have CW contact **defendant DeSouza** regarding the additional income amount.

14. In or about November 2009, **defendant Berger** and CW discussed that they would be seeking an FHA-insured mortgage loan for Borrower-1 and Borrower-2.

15. On or about November 24, 2009, during a telephone conversation, **defendant Berger** was told by CW that CW had been trying unsuccessfully to contact **defendant DeSouza**. **Defendant Berger**, with CW still on one telephone, called **defendant DeSouza** on another telephone and asked him why he had not wanted to speak to CW. **Defendant Berger** then told CW that **defendant DeSouza's** wife, Rosa Damasceno, had given CW the wrong telephone number for **defendant DeSouza**. At **defendant DeSouza's** request, **defendant Berger** gave CW the correct telephone number for **defendant**

DeSouza.

16. On or about November 30, 2009, defendant DeSouza was told by CW that CW had met with two of defendant DeSouza's clients, Borrower-1 and Borrower-2, at defendant Berger's office at the Realty Company, and that the clients wanted to buy a house and needed some modifications to their income tax returns to show higher incomes. Defendant DeSouza said that he could not give any information to CW over the telephone, and that Borrower-1 and Borrower-2 should come to his office. Defendant DeSouza told CW that Borrower-1 and Borrower-2 should tell defendant DeSouza what they wanted him to do with respect to their tax returns, and that he would prepare their returns accordingly while they were in his office.

17. On or about December 9, 2009, defendant Berger faxed to CW, by way of an "eFax" to CW's Yahoo! email account, the false 2007 and 2008 federal and state income tax returns for Borrower-1, prepared by defendant DeSouza. According to the returns, Borrower-1 earned \$38,494 in 2007 and \$40,580 in 2008.

18. On or about December 15, 2009, during a meeting at defendant DeSouza's office in Newark, defendant DeSouza was told by CW that CW had received the false tax returns that defendant DeSouza had prepared for Borrower-1, but that the stated income on those false returns was still too low to qualify for a mortgage. Defendant DeSouza said that he would falsely increase the income on Borrower-2's tax returns by \$17,000 to arrive at a combined income that would allow Borrower-1 and Borrower-2 jointly to qualify for a mortgage. Defendant DeSouza was assured by CW that the lender would not require the borrowers to submit an IRS Form 4506, which would allow the lender to verify their income with the IRS. Defendant DeSouza asked CW to provide him with a copy of Borrower-2's actual 2007 returns.

19. Later that day, during a telephone call, defendant DeSouza was given information by CW about Borrower-2's actual 2007 tax returns. Defendant DeSouza told CW that he wanted Borrower-2 to come to defendant DeSouza's office the following day and to bring her actual 2007 tax returns so that defendant DeSouza could make changes to them, as well as to the 2008 returns. Defendant DeSouza already had a copy of Borrower-2's 2008 returns, since he had prepared those. Defendant DeSouza told CW that he would only make fraudulent changes to Borrower-2's tax returns, not to Borrower-1's tax returns. Defendant DeSouza was told by CW that CW would contact Borrower-2 and tell

her to go to defendant DeSouza's office the following day.

20. On or about December 17, 2009, defendant Berger faxed to CW, by way of an "eFax" to CW's Yahoo! email account, false joint federal and state income tax returns for Borrower-2 and Borrower-2's Husband for tax years 2007 and 2008. Defendant DeSouza was listed as the preparer of the returns. The returns falsely indicated that Borrower-2 earned \$28,400 in 2007 and \$26,200 in 2008. Borrower-2's original returns had indicated that she earned no income in 2007, and \$8,200 in 2008.

21. When the income amounts shown on Borrower-2's false tax returns were added to the income amounts shown on Borrower-1's false tax returns, the result was a combined annual salary that was slightly more than \$66,000, the amount that defendant DeSouza had been told by CW was required in order for Borrower-1 and Borrower-2 to qualify for a mortgage.

22. Since the sale of the Frelinghuysen Avenue Property was to be a short sale, it could not proceed until the bank holding the original mortgage had approved the sale, an approval process that often took months to complete.

B. The Transaction Involving Borrower-3 and Borrower-4

23. On or about February 22, 2010, during a telephone conversation, defendant Berger told CW that she had a client ("Seller") who owned a house on East Bigelow Street in Newark (the "East Bigelow Street Property") and was having difficulty making the mortgage payments. According to defendant Berger, the Seller was not able to obtain a loan modification, and therefore wanted to sell the house through a short sale. Defendant Berger told CW that she had other clients ("Borrower-3" and "Borrower-4") who were willing to buy the East Bigelow Street Property through a short sale. According to defendant Berger, Borrower-3 was the mother of Borrower-4. Defendant Berger said she thought the East Bigelow Street Property could be sold for \$230,000, but defendant Berger was not sure if Borrower-3 and Borrower-4 would be able to qualify for a mortgage to finance the purchase. Defendant Berger asked CW to help qualify Borrower-3 and Borrower-4 for a mortgage for the purchase of the East Bigelow Street Property.

24. On or about April 1, 2010, at a meeting that defendant Berger had arranged, defendant Berger, Borrower-3 and Borrower-4 met with CW at defendant Berger's office at the Realty Company. Defendant Berger told CW that Borrower-4 was going to purchase

the East Bigelow Street Property for \$190,000 in a short sale transaction. Defendant Berger stated that, in order to falsely inflate Borrower-4's assets for purposes of obtaining a mortgage, Borrower-4's name could be added to a bank account held by the Seller's wife. Defendant Berger further stated that the Seller and his wife had different last names, so the Mortgage Company would not be able to determine that the bank account was associated with the Seller. Defendant Berger, Borrower-3, and Borrower-4 were told by CW that Borrower-4 did not have enough income to qualify for a mortgage to finance the purchase of the East Bigelow Street Property and would need a total of at least \$60,000 in annual income in order to qualify for a mortgage for the property.

25. At the same meeting, Borrower-3 and Borrower-4 stated that Damasceno prepared their tax returns. Defendant Berger told CW that she would ask Damasceno to prepare tax returns for Borrower-4 showing sufficient income to qualify for a mortgage. Borrower-4 called Damasceno to discuss the proposed transaction, and learned that falsely amending Borrower-4's tax returns with a higher income amount would negatively affect Borrower-4's Social Security benefits. After her discussion with Damasceno, Borrower-4 stated that she did not wish to go through with the transaction.

26. At the same meeting, defendant Berger asked CW whether Borrower-3, rather than Borrower-4, could purchase the East Bigelow Street Property. Defendant Berger stated that she would improve Borrower-3's credit score by paying the outstanding credit amounts reflected on Borrower-3's credit report and having Damasceno falsely inflate Borrower-3's income to \$60,000 on tax returns. Defendant Berger then suggested fraudulently adding Borrower-3's name to utility bills that were in Borrower-4's name. Defendant Berger said that the mortgage loan underwriter would be falsely led to believe that Borrower-3 had been on the utility bill for a longer period of time. Defendant Berger stated that she would file false amended tax returns showing a higher income for Borrower-3 and have the Seller pay the taxes that Borrower-3 would owe due to the filing of the amended return. Defendant Berger also said that she would have the Seller pay for the outstanding credit amounts reflected on Borrower-3's credit report, in order to improve Borrower-3's credit score. Defendant Berger said she would arrange a meeting with the Seller, Borrower-3, and Borrower-4 to work out a deal.

27. In or about April, 2010, defendant Berger and CW discussed that they would be seeking an FHA-insured mortgage loan

for Borrower-3.

28. On or about April 6, 2010, Borrower-3 and CW discussed obtaining false amended tax returns from Damasceno related to Borrower-3's purchase of the East Bigelow Street Property.

29. On or about April 12, 2010, Borrower-3 received a telephone call from CW while Borrower-3 was at the office of Damasceno. Borrower-3 put Damasceno on the telephone with CW, and Damasceno and CW discussed what Borrower-3's false tax returns needed to show in order for Borrower-3 to qualify for a mortgage.

30. On or about April 23, 2010, during a meeting at defendant Berger's office at the Realty Company, defendant Berger gave CW a 2009 federal income tax return for Borrower-3 showing a false total income of \$63,572 and listing Damasceno's company as the preparer.