

AUG 27 2013 *U*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**MICHAEL VIRRUSO and
DANNY E. GARCIA,**

Defendants.

CRIMINAL NO. 13-2862

Count 1: 18 U.S.C. § 371: Conspiracy;

Counts 2-9: 18 U.S.C. § 287: False Claims
Against the Government; 18 U.S.C.
§ 2(a): Aiding and Abetting;

Counts 10-12: 18 U.S.C. § 666(a)(1)(A):
Theft Concerning Programs Receiving
Federal Funds.

INDICTMENT

The Grand Jury charges:

Introduction

1. The United States Department of Housing and Urban Development (HUD) is a federal agency whose central mission is to make quality, affordable housing accessible to all Americans. In carrying out its mission, HUD oversees and funds a number of programs designed to provide affordable housing for low-income Americans. One such program is known as the Capital Fund Program.

2. The Capital Fund Program provides HUD grants to thousands of local public housing agencies (PHAs) across the country. PHAs may use Capital Fund Program grants for development, financing, modernization and management improvements of public housing developments.

3. The Gallup Housing Authority (GHA) is a PHA located in Gallup, in McKinley County, in the District of New Mexico. GHA is an agency of the City of Gallup created pursuant

to a municipal housing law with the power to construct, maintain, operate and manage housing projects and affordable housing programs on behalf of the City. GHA administers Capital Fund Program grants and other HUD programs in Gallup on behalf of HUD. GHA operates under the oversight of HUD and a Board of Directors appointed by the Gallup City Council. The GHA Board of Directors appoints an Executive Director to manage the day-to-day operations of GHA. On average, GHA receives approximately \$400,000 in Capital Fund Program grants and approximately \$300,000 in other funds from HUD each year.

4. At all times relevant to this indictment, defendant **DANNY E. GARCIA** was employed as the Executive Director of GHA. Defendant **DANNY E. GARCIA**'s responsibilities in this position included oversight and management of GHA activities and projects, review and approval of invoices payable by GHA and making requests for HUD funds to pay for GHA activities and projects.

5. At all times relevant to this indictment, Cattaneo Construction Company (Cattaneo) was a construction company operating in the Gallup area.

The "Replace Sidewalks Project"

6. GHA follows a procurement protocol for its activities, which requires GHA to conduct an Invitation for Bid (IFB) or Request for Proposals (RFP) procedure for any purchase of goods or services with an aggregate value over \$5,000.

7. On or about May 2010, GHA solicited sealed bids for a construction company to perform removal and replacement of sidewalks throughout GHA's housing development at Ford Drive and Morgan Avenue, in Gallup, in the District of New Mexico, known as the "Replace Sidewalks Project."

8. On or about June 8, 2010, following the project engineer's recommendation, **DANNY E. GARCIA** awarded the contract for the Replace Sidewalks Project to the lowest bidder, IHP Construction (IHP). IHP signed a contract with GHA and commenced work at the site on or about July 26, 2010.

9. On or about June 2010, defendant **MICHAEL VIRRUSO**, a friend of **DANNY E. GARCIA** from a local bowling league, was hired by Cattaneo, who had also submitted a bid for the Replace Sidewalks Project but had not received the contract.

10. **DANNY E. GARCIA** appointed **MICHAEL VIRRUSO** to act as "safety inspector" at the site of the Replace Sidewalks Project. In this capacity **MICHAEL VIRRUSO** received wages from Cattaneo of approximately \$500 per week, and also submitted invoices to GHA for \$1,000 per week for consultant services. **DANNY E. GARCIA** approved the invoices.

11. On or about August 4, 2010, after approximately one week of construction work at the site, **DANNY E. GARCIA** suspended IHP's work on the Replace Sidewalks Project for alleged safety violations.

12. **DANNY E. GARCIA** terminated the contract with IHP and, without a recommendation from the project engineer, awarded the Replace Sidewalks Project to Cattaneo even though Cattaneo was not the next-lowest bidder for the Replace Sidewalks Project.

13. Throughout the duration of the Project, Cattaneo continued to pay wages to **MICHAEL VIRRUSO** as foreman of the Replace Sidewalks Project, and **DANNY E. GARCIA** continued to pay him \$1,000 per week as safety inspector and consultant on the Replace Sidewalks Project.

14. While GHA had a written contract with Cattaneo to perform the Replace Sidewalks Project, at no time did GHA have a contract with **MICHAEL VIRRUSO**, "Michael

Viruso dba Western States Consulting,” “Michael Viruso dba Western States Consulting and Design,” “Michael Viruso dba Construction Cleaning Services,” or “MCL Construction.”

The Arnold Drive Sidewalks

15. On or about March 2011, GHA sought to replace the sidewalks throughout its Arnold Drive housing development area, a development approximately two and a half miles away from the development at Ford Drive and Morgan Avenue but roughly equal in size.

16. Rather than invite bids or request proposals regarding the Arnold Drive project, **DANNY E. GARCIA** unilaterally invited Cattaneo to perform the sidewalk replacement work at Arnold Drive.

17. **MICHAEL VIRRUSO** continued to receive wages from Cattaneo as foreman on the Arnold Drive project. Although no one submitted invoices for inspection services at the Arnold Drive site, **MICHAEL VIRRUSO** did submit invoices to GHA as “Michael Viruso dba Western States Consulting & Design,” for staking and grading the Arnold Drive site, which **DANNY E. GARCIA** reviewed and approved for payment.

18. The staking and grading work at the Arnold Drive site was actually performed by a Cattaneo employee who received regular wages from Cattaneo and received no payments from **MICHAEL VIRRUSO**.

19. On or about May 2011, defendants **MICHAEL VIRRUSO** and **DANNY E. GARCIA** helped found MCL Construction (MCL). MCL was nominally owned and operated by **MICHAEL VIRRUSO**’s girlfriend, M.O., **DANNY E. GARCIA**’s wife, C.G., and one other woman known to the grand jury, but none of them had substantial training or experience in construction. Instead, MCL’s business plan was to obtain preferential treatment on contracts for

work as a minority- and female-owned enterprise, and have **MICHAEL VIRRUSO** and **DANNY E. GARCIA** actually perform and supervise MCL's operations.

20. On or about August 1, 2011, defendant **MICHAEL VIRRUSO** presented to defendant **DANNY E. GARCIA** an invoice from "MCL Construction," requesting payment in the approximate amount of \$44,786 for concrete removal and replacement work at the Arnold Drive site, and **DANNY E. GARCIA** approved the invoice for payment.

Count One

21. From on or about June 1, 2010, and continuing thereafter until on or about October 31, 2012, defendants **MICHAEL VIRRUSO** and **DANNY E. GARCIA** unlawfully, knowingly and intentionally combined, conspired, confederated, and agreed with one another and with other individuals both known and unknown to the Grand Jury to:

- a. commit an offense against the United States: to wit, making and presenting false, fictitious and fraudulent claims, contrary to 18 U.S.C. § 287; and
 - b. defraud the United States and HUD, contrary to 18 U.S.C. § 371;
- and one and more persons did any act to effect the object of the conspiracy.

Manner and Means

22. The manner and means by which defendants **MICHAEL VIRRUSO** and **DANNY E. GARCIA** sought to accomplish the objectives of the conspiracy included, among other things the following:

- a. Between about June 2010 and October 2012, **DANNY E. GARCIA**, while serving as Executive Director of GHA, and **MICHAEL VIRRUSO** engaged in a scheme to steal funds from GHA, including funds received through the federal program described above,

through the issuance of false, fictitious and fraudulent claims for payment to GHA knowing that payments made by GHA would be reimbursed by HUD's Capital Fund Program.

b. **MICHAEL VIRRUSO** would present invoices to **DANNY E. GARCIA** from "Michael VIRRUSO dba Western States Consulting," "Michael VIRRUSO dba Western States Consulting and Design," "Michael VIRRUSO dba Construction Cleaning Services," and "MCL Construction," requesting payment from GHA for work that Cattaneo had performed and for which Cattaneo received payment.

c. As Executive Director of GHA, **DANNY E. GARCIA** would approve the invoices and cause GHA to issue checks which **MICHAEL VIRRUSO** would deposit and cash. **DANNY E. GARCIA** would request that HUD provide Capital Fund Program disbursements to reimburse GHA for the payments made to **MICHAEL VIRRUSO**.

Overt Acts

23. In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the District of New Mexico:

a. On or about the dates referenced in the following table, **MICHAEL VIRRUSO** made and presented a false, fraudulent and fictitious invoice requesting payment from GHA, each of which constitutes a separate overt act.

b. On or about the date referenced in the following table, **DANNY E. GARCIA** accepted and approved the invoice, knowing it to be false, fraudulent and fictitious, and caused GHA to issue a check to **MICHAEL VIRRUSO** in the amount specified, each of which constitutes a separate overt act.

<u>Invoice Date</u>	<u>Invoice From</u>	<u>Approx. Amount</u>	<u>Approved By</u>	<u>GHA Check #</u>	<u>Approx. Date Paid</u>	<u>Described in Count</u>
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<u>Invoice Date</u>	<u>Invoice From</u>	<u>Approx. Amount</u>	<u>Approved By</u>	<u>GHA Check #</u>	<u>Approx. Date Paid</u>	<u>Described in Count</u>
8/-/10	Michael VIRRUSO dba Western States Consulting	\$4000	Danny E. Garcia	17621	8/18/10	2
8/-/10	Michael VIRRUSO	\$2010	Danny E. Garcia	17636	8/27/10	3
10/1/10	Michael VIRRUSO dba Western States Consulting	\$4000	Danny E. Garcia	17717	10/5/10	4
11/1/10	Michael VIRRUSO dba Western States Consulting	\$4000	Danny E. Garcia	17765	11/2/10	5
12/1/10	Michael VIRRUSO dba Western States Consulting	\$6000	Danny E. Garcia	17799	12/1/10	6
3/22/11	Michael VIRRUSO dba Western States Consulting & Design	\$6000	Danny E. Garcia	1059	3/25/11	7
4/7/11	Michael VIRRUSO dba Western States Consulting & Design	\$5800	Danny E. Garcia	18092	4/12/11	8
8/1/11	MCL Construction	\$44,786	Danny E. Garcia	18349	9/8/11	9

In violation of 18 U.S.C. § 371.

Counts 2 through 9

24. The grand jury hereby re-alleges and reincorporates the allegations contained in paragraphs 1 through 23 as though fully set forth herein.

25. From on or about June 1, 2010, and continuing thereafter until on or about October 31, 2012, in the District of New Mexico, the defendants, **MICHAEL VIRRUSO** and **DANNY E. GARCIA**, made and presented to GHA and HUD a claim upon and against HUD and the United States, that is, invoices as described below, knowing that the claim was false, fictitious and fraudulent:

<u>Count</u>	<u>Invoice Date</u>	<u>Invoice From</u>	<u>Approx. Amount</u>	<u>Approved By</u>	<u>GHA Check #</u>	<u>Approx. Date Paid</u>
2	8/-/10	Michael Virruso dba Western States Consulting	\$4000	Danny E. Garcia	17621	8/18/10
3	8/-/10	Michael Virruso	\$2010	Danny E. Garcia	17636	8/27/10
4	10/1/10	Michael Virruso dba Western States Consulting	\$4000	Danny E. Garcia	17717	10/5/10
5	11/1/10	Michael Virruso dba Western States Consulting	\$4000	Danny E. Garcia	17765	11/2/10
6	12/1/10	Michael Virruso dba Western States Consulting	\$6000	Danny E. Garcia	17799	12/1/10
7	3/22/11	Michael Virruso dba Western States Consulting & Design	\$6000	Danny E. Garcia	1059	3/25/11
8	4/7/11	Michael Virruso dba Western States Consulting & Design	\$5800	Danny E. Garcia	18092	4/12/11
9	8/1/11	MCL Construction	\$44,786	Danny E. Garcia	18349	9/8/11

In violation of 18 U.S.C. § 287 and 18 U.S.C. § 2(a).

Count 10

26. The grand jury hereby re-alleges and reincorporates the allegations contained in paragraphs 1 through 4 as though fully set forth herein.

27. Between on or about October 30, 2009, and October 29, 2010, both dates being inclusive, in the District of New Mexico, defendant **DANNY E. GARCIA**, being an agent of GHA, said agency receiving in the one year period beginning October 30, 2009, benefits in excess of \$10,000 under the HUD Capital Fund Program, embezzled, without authority knowingly converted to the use of a person not the rightful owner, and intentionally misapplied property worth at least \$5,000 and owned by GHA by making unauthorized personal purchases using a debit card linked to the GHA operating account.

In violation of 18 U.S.C. § 666(a)(1)(A).

Count 11

28. The grand jury hereby re-alleges and reincorporates the allegations contained in paragraphs 1 through 4 as though fully set forth herein.

29. Between on or about November 8, 2010, and November 7, 2011, both dates being inclusive, in the District of New Mexico, defendant **DANNY E. GARCIA**, being an agent of GHA, said agency receiving in the one year period beginning November 8, 2010, benefits in excess of \$10,000 under the HUD Capital Fund Program, embezzled, without authority knowingly converted to the use of a person not the rightful owner, and intentionally misapplied property worth at least \$5,000 and owned by GHA by making unauthorized personal purchases using a debit card linked to the GHA operating account.

In violation of 18 U.S.C. § 666(a)(1)(A).

Count 12

30. The grand jury hereby re-alleges and reincorporates the allegations contained in paragraphs 1 through 4 as though fully set forth herein.

31. Between on or about November 9, 2011, and October 31, 2012, both dates being inclusive, in the District of New Mexico, defendant **DANNY E. GARCIA**, being an agent of GHA, said agency receiving in the one year period beginning November 9, 2011, benefits in excess of \$10,000 under the HUD Capital Fund Program, embezzled, without authority knowingly converted to the use of a person not the rightful owner, and intentionally misapplied property worth at least \$5,000 and owned by GHA by making unauthorized personal purchases using a debit card linked to the GHA operating account.

In violation of 18 U.S.C. § 666(a)(1)(A).

Forfeiture Allegation

Counts 1 and 10-12 of this Indictment are incorporated as part of this section of the indictment are re-alleged and incorporated by reference for the purpose of alleging forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461.

Upon conviction of any of offense in violation of 18 U.S.C. §§ 371 or 666, defendants **MICHAEL VIRRUSO** and **DANNY E. GARCIA** shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461 any property, real or personal, which constitutes or is derived from proceeds traceable to such violation, or a conspiracy to commit such offenses.

The property to be forfeited to the United States includes but is not limited to the following:

MONEY JUDGMENT:

A sum of money equal to at least **\$105,000**, including any interest accruing to the date of the judgment, representing the amount of money constituting or derived from proceeds of the offense. Of that amount, both defendants are jointly and severally liable for at least **\$75,000**, and defendant **DANNY E. GARCIA** is solely responsible for at least **\$30,000**.

SUBSTITUTE ASSETS:

If any of the above-described forfeitable property, as a result of any act or omission of the Defendants:

- A. Cannot be located upon exercise of due diligence;
- B. Has been transferred or sold to, or deposited with, a third person;
- C. Has been placed beyond the jurisdiction of the Court;
- D. Has been substantially diminished in value;

E. Has been commingled with other property which cannot be subdivided without difficulty;

It is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b) and 28 U.S.C. § 2461(c), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described above.

A TRUE BILL:


FOREPERSON OF THE GRAND JURY


Assistant United States Attorney
7/29/2013 4:28 PM