

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon. Susan D. Wigenton
 :
 v. : Criminal No. 14-724
 : 18 U.S.C. §§ 1343, 1349 and § 2
 JOSEPH DIVALLI : 26 U.S.C. § 7201

SUPERSEDING INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

COUNT ONE
(Conspiracy to Commit Wire Fraud)

Background

1. At various times relevant to Count One of this Superseding Information:

a. Defendant Joseph DiValli (“defendant DIVALLI”), a resident of Jackson, New Jersey, was employed as a loan officer at “Mortgage Company 1,” a mortgage banker located in northern New Jersey.

b. Jose Luis Salguero Bedoya, a/k/a “Jose Salguero”
 (“co-conspirator Salguero”), a resident of Elizabeth and Verona, New Jersey, who is named as a co-conspirator but not as a defendant herein, was a real estate investor.

c. Carmine Fusco (“co-conspirator Fusco”), a resident of East Hanover, New Jersey, who is named as a co-conspirator but not as a defendant

herein, conducted fraudulent real estate closings when he was not a licensed attorney or title agent.

d. Kenneth Sweetman (“co-conspirator Sweetman”), a resident of Lyndhurst and Nutley, New Jersey, who is named as a co-conspirator but not as a defendant herein, conducted fraudulent real estate closings when he was not a licensed attorney or title agent.

e. Paul Chemidlin, Jr. (“co-conspirator Chemidlin”), a resident of Morganville, New Jersey, who is named as a co-conspirator but not as a defendant herein, provided fraudulent real estate appraisals when he was not a licensed real estate appraiser.

f. Jose Martins (“co-conspirator Martins”), a resident of Newark, New Jersey, who is named as a co-conspirator but not as a defendant herein, was an employee of a bank and facilitated fraudulent real estate transactions.

Mortgage Lending Generally

2. Mortgage loans were loans funded by banks, mortgage companies, and other financial institutions (collectively, “Lenders”) to enable borrowers to finance the purchase of real property. In exchange for funding a mortgage loan, Lenders received a secured interest in the property that was being purchased using the loan. In deciding whether to fund a mortgage loan, Lenders typically evaluated whether prospective borrowers met, among other things, income, credit eligibility, and down payment requirements, and evaluated the financial representations set forth in the borrowers’ Uniform Residential Loan

Applications (“URLAs”) and related documents pertaining to the borrowers’ income, assets, credit eligibility, and down payment requirements. Loan officers, such as defendant DIVALLI, caused the completed URLAs and supporting documents to be submitted to Lenders. In addition, Lenders assessed the value of the properties securing the loans to ensure, among other things, there was sufficient equity in the properties.

3. Mortgage bankers, such as Mortgage Company 1, were entities that originated mortgages. Mortgage bankers used their own funds, or funds borrowed from a warehouse lender, to fund mortgages. After a mortgage was originated, a mortgage banker either retained the mortgage in its portfolio or sold it to an investor. Similarly, after a mortgage was originated, a mortgage banker either serviced the mortgage (that is, collected payments and fees on it) or sold the servicing rights to another financial institution. A mortgage banker’s primary business was to earn fees associated with loan origination, and it typically did not retain mortgages it originated in its own portfolio.

4. Licensed real estate appraisers were responsible for determining the fair market value of real estate properties and preparing appraisals which were

relied upon by the parties to a mortgage transaction, including Lenders, in determining whether or not to make a loan.

5. The Federal Housing Administration (“FHA”) was a division of the United States Department of Housing and Urban Development (“HUD”) that encouraged Lenders to make certain types of mortgage loans to qualified

borrowers by protecting against loan defaults through a government-backed payment guarantee if the borrower defaulted on a mortgage loan. The FHA, however, had certain requirements that needed to be met before it guaranteed a mortgage loan. For example, with certain exceptions, the FHA would not insure a mortgage on a property if the seller owned the property for fewer than 90 days before the sale for which the FHA mortgage loan insurance was sought. In addition, for certain transactions where the sale of a property was fewer than 120 days after it was initially purchased, FHA regulations required two independent appraisals in order for the mortgage loan to be approved by the Lender and FHA.

6. Following approval of a mortgage loan by a Lender, the closing attorney or title agent prepared a settlement statement known as a "HUD-1," a form prescribed by HUD that set forth the complete costs, fees, and disbursements associated with a residential real estate transaction. After it was prepared, the closing attorney or title agent sent the HUD-1 to the Lender for approval. If approved, the Lender then caused an electronic wire transfer of funds to be transmitted to the closing attorney or title agent conducting the closing on the property, who subsequently distributed the closing proceeds in accordance with the HUD-1.

7. The Lenders referenced herein were "financial institutions" as defined in Title 18, United States Code, Section 20, and their activities affected interstate commerce.

The Conspiracy

8. From at least as early as in or about March 2011 through in or about November 2012, in Union County, in the District of New Jersey and elsewhere, defendant

JOSEPH DIVALLI

did knowingly and intentionally conspire and agree with co-conspirators Jose Salguero, Carmine Fusco, Kenneth Sweetman, Paul Chemidlin, Jr., Jose Martins, and others known and unknown, 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, which scheme and artifice would affect financial institutions, 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 Title 18, United States Code, Section 1343.

Object of the Conspiracy

9. The object of the conspiracy was for defendant DIVALLI and his co-conspirators to enrich themselves by obtaining mortgage loans through fraudulent means, including but not limited to submitting materially false and fraudulent mortgage loan applications, supporting documents, and closing documents to Lenders.

Methods and Means of the Conspiracy

10. It was part of the conspiracy that co-conspirator Salguero owned a number of properties in northern New Jersey (the "Subject Properties").

11. It was further part of the conspiracy that defendant DIVALLI and his co-conspirators recruited "straw buyers," or individuals who defendant DIVALLI and his co-conspirators knew lacked the financial ability to purchase the Subject Properties on their own, but who would purport on paper to purchase the Subject Properties.

12. It was further part of the conspiracy that defendant DIVALLI and his co-conspirators submitted and caused to be submitted materially false and fraudulent mortgage loan applications, supporting documents, and closing documents to Lenders on behalf of straw buyers with the intention that the Lenders would rely upon those fraudulent documents and representations to provide mortgage loans for the Subject Properties.

13. It was further part of the conspiracy that defendant DIVALLI and his co-conspirators used co-conspirator Martins, who worked at a bank, to create misleading certifications that certain bank accounts contained a specific amount of funds when they actually contained less. Thereafter, defendant DIVALLI and his co-conspirators caused these misleading certifications to be submitted to Lenders in support of mortgage applications.

14. It was further part of the conspiracy that defendant DIVALLI and his co-conspirators caused false appraisal reports for the Subject Properties, often

created by co-conspirator Chemidlin using false identities, to be submitted to Lenders in support of the mortgage applications.

15. It was further part of the conspiracy that, in some instances, defendant DIVALLI and his co-conspirators back-dated deeds to make sales of the Subject Properties appear to have occurred more than 90 days prior to the subject transaction, thereby ensuring that the Subject Properties qualified for FHA-insured loans, as set forth above.

16. It was further part of the conspiracy that defendant DIVALLI and his co-conspirators used unlicensed title agents, including co-conspirators Fusco and Sweetman, to close the fraudulent mortgage loans on the Subject Properties and disburse the mortgage proceeds.

17. It was further part of the conspiracy that defendant DIVALLI and his co-conspirators formed and caused to be formed limited liability companies ("LLCs") in the names of companies similar to those of licensed title companies, and then opened bank accounts in the LLC names to conceal their identities in fraudulent HUD-1s and other documents and to control the receipt and distribution of fraudulently obtained mortgage loan proceeds.

18. It was further part of the conspiracy that co-conspirator Salguero on occasion made payments of approximately \$5,000 in cash and/or cashier's checks to defendant DIVALLI for facilitating these fraudulent transactions.

19. It was further part of the conspiracy that defendant DIVALLI and his co-conspirators engaged in more than twenty fraudulent real estate transactions

and fraudulently induced Lenders to issue more than \$6,000,000 in loans, resulting in a number of defaults and exposing the Lenders and the FHA to more than \$2,000,000 in potential loss to date.

FRAUDULENT ACTS

20. In furtherance of the conspiracy and to effect its unlawful object, defendant DIVALLI and his co-conspirators committed and caused to be committed the following acts, among others:

a. In or around October 2011, defendant DIVALLI, co-conspirator Salguero, and others submitted or caused to be submitted a fraudulent URLA to a Lender on behalf of a straw buyer ("Straw Buyer One") in connection with the sale of a property located on Smith Street in Elizabeth, New Jersey (the "Smith Street Property"). The fraudulent Smith Street Property URLA was submitted in support of an application for a mortgage loan of approximately \$253,409.

b. Defendant DIVALLI falsely certified on the mortgage loan application that he interviewed Straw Buyer One. In fact, co-conspirator Salguero provided information about Straw Buyer One to defendant DIVALLI, including Straw Buyer One's name, date of birth, home address, place of employment, and purported assets.

c. At the time of the sale, co-conspirator Salguero had owned the Smith Street Property for fewer than 90 days and, as a result, it was not eligible for FHA insurance. To make the mortgage loan in Straw Buyer One's name

ostensibly eligible for FHA loan insurance, defendant DIVALLI caused co-conspirators Fusco and Sweetman to submit fraudulent title reports to the Lender, both before and after the closing on the sale of the Smith Street Property, that falsely showed that co-conspirator Salguero bought the Smith Street Property on or about July 27, 2011, when in fact he had purchased it on or about September 23, 2011.

d. In addition, defendant DIVALLI caused co-conspirators Fusco and Sweetman to prepare and submit an altered copy of the deed for the Smith Street Property to the Lender, falsely showing that co-conspirator Salguero had purchased the Smith Street Property on or about July 27, 2011.

e. Further, defendant DIVALLI circumvented the independent appraisal process by choosing co-conspirator Chemidlin, an unlicensed appraiser, to complete appraisals for the Smith Street Property.

f. Co-conspirator Chemidlin, in turn, prepared two appraisal reports that purported to be from two independent, licensed real estate appraisers.

g. On or about November 14, 2012, based in part on the fraudulent information contained within the Smith Street Property URLA, defendant DIVALLI and his co-conspirators caused a Lender to transfer approximately \$244,885.26 from an account in Pennsylvania to co-conspirator Fusco's bank account in New Jersey, to fund a mortgage for Straw Buyer One's purchase of the Smith Street Property.

h. Defendant DIVALLI received approximately \$5,000 in cash from co-conspirator Salguero for his assistance with the fraudulent Smith Street Property transaction.

In violation of Title 18, United States Code, Section 1349.

COUNT TWO
(Wire Fraud)

Background

1. At various times relevant to Count Two of this Superseding Information:

a. Defendant DIVALLI, a resident of Jackson, New Jersey, was employed as a loan officer at "Mortgage Company 1," a mortgage banker located in northern New Jersey.

b. Individual 1 was employed as a loan officer at Mortgage Company 2, a northern New Jersey mortgage brokerage company.

c. Individual 2 was a family member of defendant DIVALLI.

d. L.L., which was eventually acquired by O.L.S.L in or about September 2011 (hereinafter, collectively "O.L.S.L."), was a "financial institution," as defined in Title 18, United States Code, Section 20, and it had offices in Houston, Texas, and Orlando, Florida. O.L.S.L. was in the business of making mortgage loans.

e. O.L.S.L. held a mortgage on defendant DIVALLI's personal residence located in Jackson, New Jersey. Although the loan was in the name of Individual 2, defendant DIVALLI funded payments on the loan and interacted with O.L.S.L. along with Individual 1.

f. A loan modification was a process whereby a borrower could seek to modify the terms of a mortgage with a Lender and obtain, among other things, a lower monthly payment or a modification in principal owed on a loan.

Lenders used certain criteria in determining whether a borrower would be eligible for a loan modification, including but not limited to, whether the borrower had experienced a verifiable loss of income or an increase in living expenses, and whether the borrower had received a loan modification in the last two years.

The Scheme to Defraud

2. From at least as early as in or about March 2011 through in or about June 2012, in Bergen and Somerset Counties, in the District of New Jersey, and elsewhere, defendant

JOSEPH DIVALLI

did knowingly and intentionally devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice affected a financial institution, and for the purpose of executing such scheme and artifice did transmit and cause to be transmitted by means of wire communications in interstate commerce certain writings, signs, signals, pictures, and sounds as set forth below.

Object of the Scheme to Defraud

3. The object of the scheme to defraud was for defendant DIVALLI to fraudulently induce O.L.S.L. to modify the mortgage on defendant DIVALLI's personal residence, thereby resulting in a financial benefit to defendant DIVALLI and Individual 2.

Methods and Means of the Scheme to Defraud

4. It was part of the scheme to defraud that defendant DIVALLI represented to O.L.S.L. that his income was substantially lower than what it actually was.

5. It was further part of the scheme to defraud that defendant DIVALLI submitted payroll ledgers and earnings statements from his employer, Mortgage Company 1, which falsely understated his net earnings.

6. It was further part of the scheme to defraud that, on or about March 10, 2011, defendant DIVALLI caused Individual 1 to fax documents from New Jersey to O.L.S.L. in Texas that falsely stated that defendant DIVALLI's income from January 1, 2011, through February 28, 2011, was approximately \$16,203.89. In fact, defendant DIVALLI received approximately \$44,500 in checks from Mortgage Company 1 during that period.

7. It was further part of the scheme to defraud that, on or about April 26, 2011, defendant DIVALLI caused Individual 1 to fax documents from New Jersey to O.L.S.L. in Texas that falsely stated that defendant DIVALLI's income from January 1, 2011, through March 31, 2011, was approximately \$24,307.84.

In fact, defendant DIVALLI received approximately \$66,500 in checks from Mortgage Company 1 during that period.

8. It was further part of the scheme to defraud that, on or about April 24, 2012, defendant DIVALLI caused Individual 1 to fax documents from New Jersey to O.L.S.L. in Florida that falsely stated that defendant DIVALLI's income

from March 1, 2012, through March 31, 2012, was approximately \$10,500. In fact, defendant DIVALLI received approximately \$49,633.55 in checks from Mortgage Company 1 during that period.

10. It was further part of the scheme to defraud that, on or about May 7, 2012, defendant DIVALLI caused Individual 1 to fax documents from New Jersey to O.L.S.L. in Florida that falsely stated that defendant DIVALLI's income from March 1, 2012, through March 31, 2012, was approximately \$10,500. In fact, defendant DIVALLI received approximately \$49,633.55 in checks from Mortgage Company 1 during that period.

In violation of Title 18, United States Code, Section 1343 and Section 2.

COUNT THREE
(Tax Evasion)

1. The allegations set forth in paragraphs 1 through 7 and 9 through 20 of Count One of this Superseding Information are re-alleged and incorporated herein.

2. During calendar year 2012, defendant DIVALLI received taxable wages, salary, and other employment-related income of more than approximately \$450,000.

3. Upon that taxable income, there was owing to the United States an income tax of approximately \$79,000.

4. Defendant DIVALLI failed to file a Form 1040, U.S. Individual Income Tax Return, or for an extension to file such a return, as required by law, on or before April 15, 2013.

5. During calendar year 2012, defendant DIVALLI engaged in numerous affirmative acts to conceal and attempt to conceal his income in order to evade assessment of a tax, including cashing his paychecks at a check-cashing facility and depositing that cash into another individual's account.

6. From in or about January 2012, through on or about April 15, 2013, in the District of New Jersey, and elsewhere, defendant

JOSEPH DIVALLI

did knowingly and willfully attempt to evade and defeat the income tax due and owing by him to the United States for calendar year 2012 by the affirmative acts of evasion set forth above in paragraph 5.

In violation of Title 26, United States Code, Section 7201.

FORFEITURE ALLEGATIONS

1. The allegations contained in Counts One and Two of this Superseding Information are incorporated by reference as though set forth in full herein for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461.

2. Upon conviction of Counts One and Two charged in this Superseding Information, the Government will seek forfeiture from defendant DIVALLI, in accordance with Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 981(a)(1)(C), of any and all property, real or personal, that constitutes or is derived from proceeds traceable to the violations of Title 18, United States Code, Sections 1343 and 1349.

3. If by any act or omission of defendant DIVALLI any of the property subject to forfeiture herein:

- 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 which cannot be subdivided 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 defendant DIVALLI up to the value of the property described in this forfeiture allegation.



PAUL J. FISHMAN
UNITED STATES ATTORNEY

CASE NUMBER: _____

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SUPERSDING INFORMATION FOR

18 USC 1343 and 1349
26 USC 7201

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