

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	DATE FILED:	_____
v.	:	CRIMINAL NO.	<u>05-252</u>
BRAD MARKS EDWIN RIVERA	:	VIOLATION:	18 U.S.C. § 1341 (mail fraud - 5 counts) 18 U.S.C. § 1343 (wire fraud - 9 counts) 18 U.S.C. § 2 (aiding and abetting)

SECOND SUPERSEDING INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

BACKGROUND

1. Defendant BRAD MARKS resided at 31 Jericho Road, Holland, PA, 18966. During the 1990s, defendant MARKS worked as a used car salesman and learned how to obtain financing for his customers.
2. Beginning in 1998 and extending through 2001, defendant BRAD MARKS represented himself as a person engaged in the business of home improvements. He did business under a number of names, each succeeding the other: Quality Builders, Inc., Millennium Home Remodeling, Inc., and Quality Home Remodeling, Inc.
3. Defendant BRAD MARKS first operated Quality Builders, Inc. from 1810 Byberry Road, Philadelphia.

4. Defendant BRAD MARKS had no prior experience in the home improvement business, and at no time performed any manual labor. Defendant MARKS marketed, sold, arranged financing for the promised home improvement services, and assumed responsibility for hiring subcontractors to perform the actual work.

5. Defendant BRAD MARKS had a silent partner, known to the grand jury and identified here as JM, in his first home improvement company, Quality Builders. JM loaned defendant MARKS money to start Quality Builders, and permitted defendant MARKS to obtain credit in JM's name. Defendant MARKS, in return, agreed to pay JM an undetermined amount of the proceeds from Quality Builder's business. JM did not work for Quality Builders, and did not participate in its day-to-day operations.

6. Defendant EDWIN RIVERA resided at 10431 Academy Road, Unit E, Philadelphia, PA, 19114. During the 1990s, defendant RIVERA sold, and on occasion produced, advertising in the Philadelphia Hispanic media market. Defendant RIVERA is of Hispanic descent and speaks Spanish fluently. The vast majority of the advertisements he sold and produced were in Spanish.

7. Defendant BRAD MARKS hired defendant EDWIN RIVERA to work for Quality Builders in 1999.

8. Defendant BRAD MARKS gave defendant EDWIN RIVERA responsibility for sales and marketing, and made defendant RIVERA Quality Builder's second highest paid employee (after defendant MARKS).

9. Defendant BRAD MARKS hired defendant EDWIN RIVERA because defendant RIVERA spoke Spanish, was of Latin descent, and could use his cultural heritage to obtain the trust of prospective Hispanic customers in the greater-Philadelphia region.

10. Defendant BRAD MARKS knew the approximate amount mortgage companies would lend to customers based on his practical experience and on credit industry databases.

11. Defendants BRAD MARKS and EDWIN RIVERA also knew that mortgage companies typically disburse home improvement loans in multiple checks as opposed to one check. The process, commonly referred to as "staged funding," permits homeowners to pay their contractors in stages as contractors complete work. Homeowners can protect themselves--and the value of the bank's security interest in their home--by withholding second or subsequent checks until a contractor performs.

12. Defendants BRAD MARKS and EDWIN RIVERA were to make money from the difference between the amount they charged customers (financed by home equity loans) and the amount they paid subcontractors to perform the work.

THE SCHEME

13. From in or about February 1999 to in or about August 2000, defendants

BRAD MARKS and EDWIN RIVERA

devised and intended to devise a scheme to defraud homeowners, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

False Advertising

14. Defendants BRAD MARKS and EDWIN RIVERA engaged in a false and misleading advertising campaign directed at Hispanics and other minorities with low incomes and little formal education.

15. Defendants BRAD MARKS and EDWIN RIVERA represented to members of the Hispanic community in the Philadelphia area that Hispanics owned and operated Quality Builders.

16. With defendant BRAD MARKS' approval, endorsement, and encouragement, defendant EDWIN RIVERA produced and placed radio and television advertisements for Quality Builders on regional Spanish networks.

17. Defendant EDWIN RIVERA also produced and distributed Quality Builders fliers, brochures, and newspaper advertisements with defendant BRAD MARKS' approval, endorsement, and encouragement.

18. Defendants BRAD MARKS and EDWIN RIVERA represented in their advertisements that Quality Builders renovated kitchens and bathrooms, built decks and sunrooms, and installed replacement windows.

19. Defendants BRAD MARKS and EDWIN RIVERA further represented in their advertisements that Quality Builders obtained favorable financing for its customers regardless of credit and employment history. This favorable financing, according to the advertising of

defendants MARKS and RIVERA, meant no fees, no points, no closing costs, and low monthly loan payments which fit their customers' budgets.

20. As part of this advertising and marketing campaign, defendant EDWIN RIVERA, with defendant BRAD MARKS' approval, endorsement, and encouragement, distributed a business card which touted Quality Builders as "UN NOMBRE DE CONFIANZA!" which means "A NAME YOU CAN TRUST!"

21. Numerous Spanish-speaking prospects called Quality Builders in response to the advertising by defendants BRAD MARKS and EDWIN RIVERA.

22. Defendant EDWIN RIVERA spoke to prospective customers in Spanish, told them he was a religious man who attended church regularly, and courted their trust based on shared heritage, language, and religion.

Unfair Lending Practices

23. Defendants BRAD MARKS and EDWIN RIVERA solicited home equity loans for their customers from mortgage brokers and banks.

24. Defendants BRAD MARKS and EDWIN RIVERA adjusted the scope and price of their proposals for home improvements to match the loan amount for which they could obtain approval.

25. Defendants BRAD MARKS and EDWIN RIVERA falsely advertised and told customers that the loans required no fees, no points, and no closing costs, and required only low monthly loan payments which their customers could afford. Contrary to these representations, the loans arranged by defendants MARKS and RIVERA charged fees, points, and other closing costs, presented a hardship to their customers, and saddled them with debt.

26. Defendants BRAD MARKS and EDWIN RIVERA either took loan documents to their customers' homes for signature or directed customers to come to Quality Builders' offices to sign the documents.

27. Defendants BRAD MARKS and EDWIN RIVERA presented stacks of loan documents to their customers for signature at these meetings.

28. All of the loans which defendants BRAD MARKS and EDWIN RIVERA arranged were documented in English even though defendants MARKS and RIVERA knew many of their customers spoke only Spanish and could not read or understand these documents. In many cases, defendants MARKS and RIVERA arranged loans with terms of more than 15 years for customers who were over 60 years old.

29. Defendants BRAD MARKS and EDWIN RIVERA did not translate or explain the loan documents for their Spanish-speaking customers even though they knew these customers looked to them for guidance as to the terms.

30. Virtually all of the home equity loans arranged by defendants BRAD MARKS and EDWIN RIVERA disbursed loan proceeds through a "staged funding" process. Under this procedure, rather than disburse a loan in the form of one large check, banks divided each loan into several smaller checks, and made most if not all of the checks payable jointly to Quality Builders and the customer. This mechanism permitted customers to withhold their endorsement of the loan checks--and prevent their negotiation--until Quality Builders completed the home improvement.

31. Virtually all of the home equity loans arranged by defendants BRAD MARKS and EDWIN RIVERA also included a safeguard called a "Completion Certificate." The lenders on

these loans required borrowers to attest to the completion of the home improvement by signing this form before the bank disbursed loan proceeds.

32. Defendants BRAD MARKS and EDWIN RIVERA did not explain the staged-funding process or completion-certificate requirement to their customers.

33. Defendants BRAD MARKS and EDWIN RIVERA knew that many of their customers did not understand their loan documents and were not aware of their right to disburse their loan proceeds in stages as the defendants completed work.

34. Knowing they would not fulfill their promises and obligations to their customers, defendants BRAD MARKS and EDWIN RIVERA directed customers to sign the completion-certificates, endorse all of the loan checks, and give all of the loan checks to defendants MARKS and RIVERA before defendants MARKS and RIVERA started the work.

35. Defendants BRAD MARKS and EDWIN RIVERA thwarted the staged-funding safeguard by telling customers that defendants MARKS and RIVERA needed all the checks up front to buy materials and to pay for labor before they started work.

36. Defendants BRAD MARKS and EDWIN RIVERA on occasion demolished their customers' kitchens, bathrooms, or other areas of their residences, and then told their customers they could not proceed without full payment. Defendants BRAD MARKS and EDWIN RIVERA referred to this practice as a "stake out," and used it to force their customers to pay in full before they completed the work, which they routinely failed to complete or completed unsatisfactorily.

37. Defendants BRAD MARKS and EDWIN RIVERA did not explain to their customers the difference between secured and unsecured loans and the fact that their loans required customers to grant a security interest in their homes to the lender.

38. Defendants BRAD MARKS and EDWIN RIVERA on occasion forged their customers' signatures on the loan documents.

39. Defendants BRAD MARKS and EDWIN RIVERA on occasion forged their customers' endorsements of the staged-funding checks.

40. Defendants BRAD MARKS and EDWIN RIVERA told customers who withheld payment from them that defendants MARKS and RIVERA would sue them and that the customers would lose their homes.

Misapplication of Funds

41. Defendants BRAD MARKS and EDWIN RIVERA took their customers' loan proceeds on the promise they would improve their customers' homes.

42. Defendants BRAD MARKS and EDWIN RIVERA depleted their customers' funds through payments to themselves for salaries and personal expenses.

43. The personal consumption of the loan proceeds by defendants BRAD MARKS and EDWIN RIVERA left insufficient funds to purchase materials and pay for labor.

44. Defendants BRAD MARKS and EDWIN RIVERA in some instances converted 100% of a customer's loan proceeds to their personal use.

45. Defendants BRAD MARKS and EDWIN RIVERA used loan proceeds from their most recent customers to pay for past-due work for prior customers, a practice which made it impossible for them to perform their most recent contracts.

46. The misapplication of the loan proceeds by defendants BRAD MARKS and EDWIN RIVERA prompted a qualified and licensed subcontractor whom defendants MARKS and RIVERA had used until that point to cease doing business with them for non-payment.

47. Defendants BRAD MARKS and EDWIN RIVERA turned to untrained, unskilled, unlicensed, and unprofessional workers in late 1999.

48. Defendants BRAD MARKS and EDWIN RIVERA failed to complete the home improvements they had promised in a timely, competent, standard and workmanlike manner, and consistently damaged their customers' homes, leaving the homes in substantially worse condition than they were before.

49. Defendants BRAD MARKS and EDWIN RIVERA in some instances failed to perform any work on a contract.

Deceptive Business Practices

50. To entice prospective customers, defendants BRAD MARKS and EDWIN RIVERA showed photographs of newly renovated kitchens, baths, and exteriors as samples of their work when, in fact, they had not performed the work depicted in the photographs.

51. Defendant BRAD MARKS showed one customer a model sunroom at a showroom, and told the customer that he had ordered that particular model for the customer, when, in fact, defendant MARKS never ordered or paid for the sunroom despite having taken all of the customer's loan proceeds.

52. Defendants BRAD MARKS and EDWIN RIVERA falsely guaranteed they would replace free of charge all faulty material and poor workmanship discovered any time during the first year following completion of their work.

53. Defendants BRAD MARKS and EDWIN RIVERA in some instances never performed the agreed upon work in the first place, and in others refused to fulfill their warranty guarantee despite numerous complaints from their customers.

54. Defendant BRAD MARKS employed defendant EDWIN RIVERA's wife as a receptionist at Quality Builders' offices, which, in early 1999, were located at the Smylie Times Building, Suite 500, 8001 Roosevelt Boulevard, Philadelphia.

55. Defendant BRAD MARKS directed defendant EDWIN RIVERA's wife to tell customers who called with complaints and who demanded a meeting with defendant MARKS to meet defendant MARKS at Quality Builders' offices on Friday mornings, knowing he would not appear and would avoid the face-to-face meetings.

56. On occasion, defendant BRAD MARKS falsely assured customers he would complete their work by drafting checks payable to them and telling them they could hold the checks as a guarantee. Defendant MARKS made the "guarantee" checks non-negotiable by either (a) including himself as a joint payee (which made the check non-negotiable without his endorsement), (b) not signing the checks, or (c) drafting the checks on an account he had already closed or intended to close.

57. In late 1999, defendant BRAD MARKS moved Quality Builders from the Smylie Times Building to Four Neshaminy Interplex, Suite 205, Trevose, Pennsylvania to avoid rent and angry victims.

False Denials of Responsibility

58. Defendants BRAD MARKS and EDWIN RIVERA falsely blamed defendant MARKS' silent partner for their failure to perform their home improvement obligations and denied responsibility for their misapplication of funds, false advertising, unfair lending practices and deceptive business practices.

59. Defendants BRAD MARKS and EDWIN RIVERA separated from Quality Builders and from defendant MARKS' silent partner, JM, in 2000.

60. Defendants BRAD MARKS and EDWIN RIVERA jointly formed Millennium Home Remodeling, Inc. as a successor business to Quality Builders.

61. Defendants BRAD MARKS and EDWIN RIVERA continued to misapply funds, to advertise falsely, and to engage in unfair and deceptive lending and business practices while doing business as Millennium Home Remodeling, Inc.

The Harm

62. Defendants BRAD MARKS and EDWIN RIVERA defrauded over 20 homeowners, causing both economic and non-economic harm. The harm included the cost of completing unfinished work, the cost of repairing shoddy work, the cost of obtaining credit for unfinished and shoddy work, and the cost of obtaining credit on terms misrepresented by the defendants. The economic component of these losses was in the hundreds of thousands of dollars.

THE CHARGES

63. On or about June 9, 2000, in the Eastern District of Pennsylvania and elsewhere, defendants

**BRAD MARKS and
EDWIN RIVERA,**

for the purpose of executing the scheme described above, and attempting to do so, and aiding and abetting its execution, knowingly caused to be delivered by commercial interstate carrier according to the directions thereon Express Financial Services check no. 125556 in the amount of \$3,497.50, disbursed on behalf of Cruz Martinez and EquiCredit Corporation to “Millenium Home Remodeling” and sent by Airborne Express to “Millenium Home, 4 Neshaminy Interplex, #205, Trevos, PA 19053, Description: Edwin.”

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS TWO THROUGH FIVE**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 62 of Count One are incorporated here.
2. On or about the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendants

**BRAD MARKS and
EDWIN RIVERA,**

for the purpose of executing the scheme described above, and aiding and abetting its execution, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below for each count, each transmission constituting a separate count:

COUNT	DATE	DESCRIPTION
2.	May 4, 2000	The negotiation through the Federal Reserve Bank of the check for \$5,678 drawn by Conseco Finance Home Improvement Division, 332 Minnesota St., Suite 610, St. Paul, MN to Quality Builders, Inc., Francisca Martinez, and Jose Rivera.
3.	May 4, 2000	The negotiation through the Federal Reserve Bank of the check for \$4,258.50 drawn by Conseco Finance Home Improvement Division, 332 Minnesota St., Suite 610, St. Paul, MN to Quality Builders, Inc., Francisca Martinez, and Jose Rivera.

COUNT	DATE	DESCRIPTION
4.	May 4, 2000	The negotiation through the Federal Reserve Bank of the check for \$2,839 drawn by Conseco Finance Home Improvement Division, 332 Minnesota St., Suite 610, St. Paul, MN to Quality Builders, Inc., Francisca Martinez, and Jose Rivera.
5.	June 8, 2000	Funds in the approximate amount of \$24,229 wired from EquiCredit Corporation of America, Jacksonville, Florida, to an account maintained by National Penn Bank, Boyertown, Pennsylvania, for Capital Assurance Group, LLC, acting as settlement agent for Juana Margarita Ramos

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS SIX THROUGH NINE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 12 and 14 through 62 of Count One are incorporated here.
2. Defendants BRAD MARKS and EDWIN RIVERA blamed each other for their failure to perform their home improvement obligations while doing business under the name Millennium Home Remodeling, Inc., and continued to deny individual responsibility for misapplying funds, advertising falsely, and engaging in unfair and deceptive lending and business practices.
3. Defendants BRAD MARKS and EDWIN RIVERA separated in 2000. Defendant MARKS formed a successor company which did business under the name Quality Home Remodeling, Inc.; and defendant RIVERA formed a successor company which did business under the names Millennium Dream Home, Inc. and 2000 Dream Homes, Inc.
4. Defendants BRAD MARKS and EDWIN RIVERA continued to defraud home improvement customers independently of one another after they separated.
5. Defendants BRAD MARKS and EDWIN RIVERA later dissolved these businesses.
6. From in or about June 2000 to in or about December 2001, defendant

BRAD MARKS

devised and intended to devise a scheme to defraud homeowners, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

7. On or about the dates listed below, in the Eastern District of Pennsylvania and elsewhere, defendant

BRAD MARKS,

for the purpose of executing the scheme described above, and attempting to do so, knowingly caused the checks identified below to be delivered by commercial interstate carrier according to the directions thereon:

COUNT	DATE	DESCRIPTION
6.	August 16, 2000	Express Financial Services, Inc. check no. 128407 made payable to Margaret A. Miller for \$3,650.62 sent from Express Financial Services, Inc., 7 Great Valley Parkway, Suite 350, Malvern PA 19355 by Airborne Express to Margaret Miller, 1718 N. 3 rd Street, Philadelphia, PA 19122
7.	August 24, 2000	Express Financial Services, Inc. check no. 128690 made payable to Margaret Miller for \$2,551.33 sent from Express Financial Services, Inc., 7 Great Valley Parkway, Suite 350, Malvern PA 19355 by Airborne Express to Quality Builder, 221 West Street Rd, Feasterville, PA 19053
8.	August 31, 2000	Express Financial Services, Inc. check no. 129151 made payable to Margaret A. Miller for \$5,102.66 sent from Express Financial Services, Inc., 7 Great Valley Parkway, Suite 350, Malvern PA 19355 by Federal Express to Brad Marks, Quality Home Remodeling, Inc. 221 West Street Rd, Ste 21 B, Feasterville, PA 19053
9.	September 19, 2000	Express Financial Services, Inc. check nos. 129885 and 129886, made payable to Margaret Miller/Quality Home in the amount of \$7,000 each, totaling \$14,000, sent from Express Financial Services, Inc., 7 Great Valley Parkway, Suite 350, Malvern PA 19355 by Airborne Express to Margaret Miller, 1718 N. 3 rd Street, Philadelphia, PA 19122

All in violation of Title 18, United States Code, Section 1341.

COUNTS TEN THROUGH TWELVE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 12 and 14 through 62 of Count One and paragraphs 2 through 5 of Count Six are incorporated here.

2. From in or about June 2000 to in or about December 2001, defendant

BRAD MARKS

devised and intended to devise a scheme to defraud homeowners, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

3. On or about each of the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendant

BRAD MARKS,

for the purpose of executing the scheme described above, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below for each count, each transmission constituting a separate count:

COUNT	DATE	DESCRIPTION
10.	June 8, 2000	Funds in the approximate amount of \$18,520.25 wired from Superior Bank FSB, Hinsdale, Illinois, to an account maintained by Commerce Bank, Camp Hill, Pennsylvania, for Community Settlement Services, acting as the settlement agent for Francenia Parker

COUNT	DATE	DESCRIPTION
11.	July 28, 2000	Funds in the approximate amount of \$32,360 wired from EquiCredit Corporation of America, Jacksonville, Florida, through Bank of America in Chicago, Illinois to an account maintained by Corestates Bank, N.A., doing business as First Union National Bank PA/NJ/NY, for Express Financial Services, acting as settlement agent for Sarah Carr
12.	October 17, 2001	Funds in the approximate amount of \$22,646.75 wired from Yardville National Bank, New Jersey, to FirstTrust Bank, Pennsylvania, for the benefit of Quality Abstract Services acting as settlement agent for Maggey Salley

All in violation of Title 18, United States Code, Section 1343.

COUNTS THIRTEEN AND FOURTEEN

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 12 and 14 through 62 of Count One and paragraphs 2 through 5 of Count Six are incorporated here.

2. From in or about June 2000 to in or about March 2002, defendant

EDWIN RIVERA

devised and intended to devise a scheme to defraud homeowners, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

3. On or about the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendant

EDWIN RIVERA,

for the purpose of executing the scheme described above, and aiding and abetting its execution, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below for each count, each transmission constituting a separate count:

COUNT	DATE	DESCRIPTION
13.	July 20, 2000	Negotiation and clearance of First Union check 283828694 dated July 17, 2000 in the amount of \$24,378.20 through the interstate banking system at Denver, CO. The check was made payable and delivered to Conti Mortgage in Pennsylvania to pay-off a first mortgage on 4608 Leshar Street, Philadelphia, PA, 19124, a property at which Quality Builders, Inc. and defendant Edwin Rivera had promised to make repairs and improvements for Hilda Miranda.

COUNT	DATE	DESCRIPTION
14.	February 8, 2002	Wire transfer of funds in the approximate amount of \$24,748.51 sent from Bank One, NA of Chicago by order of Aegis Mortgage Corporation to Sovereign Bank, Wyomissing, Pennsylvania for disbursement by Grateful Abstract, LLC for the benefit of Emereida Montalvo.

All in violation of Title 18, United States Code, Sections 1343 and 2.

A TRUE BILL:

GRAND JURY FOREPERSON

PATRICK L. MEEHAN
United States Attorney