

CRIMINAL COMPLAINT

CASE FILE

UNITED STATES DISTRICT COURT	CENTRAL DISTRICT OF CALIFORNIA
UNITED STATES OF AMERICA v. ARMANDO GRANILLO	DOCKET NO.
	MAGISTRATE'S CASE NO. 13- M 13 00678

Complaint for violation of 18 U.S.C. §§ 1343, 1346

NAME OF MAGISTRATE JUDGE Alicia G. Rosenberg		UNITED STATES MAGISTRATE JUDGE	LOCATION Los Angeles, CA
DATE OF OFFENSE In or about January 2013 to on or about March 5, 2013	PLACE OF OFFENSE Los Angeles County and Elsewhere	ADDRESS OF ACCUSED (IF KNOWN)	

COMPLAINANT'S STATEMENT OF FACTS CONSTITUTING THE OFFENSE OR VIOLATION:

SEE ATTACHMENT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE

BASIS OF COMPLAINANT'S CHARGE AGAINST THE ACCUSED:

(See attached affidavit which is incorporated as part of this Complaint)

MATERIAL WITNESSES IN RELATION TO THIS CHARGE: None

Being duly sworn, I declare that the foregoing is true and correct to the best of my knowledge.

SIGNATURE OF COMPLAINANT

James Shields

OFFICIAL TITLE

SPECIAL AGENT -- FHFA OIG

Sworn to before me and subscribed in my presence,

SIGNATURE OF MAGISTRATE JUDGE (1)

DATE

March 5, 2013

1) See Federal Rules of Criminal Procedure rules 3 and 54.

Attachment "A" to GRANILLO Complaint

The Scheme

1. From in or about January 2013 to on or about March 5, 2013, in the Central District of California, and elsewhere, defendant ARMANDO GRANILLO knowingly devised and intended to devise a scheme and artifice to defraud the Federal National Mortgage Association ("Fannie Mae") and the Federal Housing Finance Agency of their right to the honest and faithful services of defendant ARMANDO GRANILLO through kickbacks and the concealment of material information.

Purpose of the Scheme

2. The purpose of the scheme and artifice was for defendant GRANILLO to secretly use his official position as a Foreclosure Specialist/REO (Real Estate Owned) Sales Associate for Fannie Mae to enrich himself by soliciting and accepting gifts, payments, and other things of value from A.M., and others unknown, in exchange for favorable official action.

Means and Manner of the Scheme

3. The scheme and artifice was carried out in the following means and manner, among others:

a. Defendant GRANILLO solicited and accepted gifts, payments, and other things of value in the amount of at least \$11,000 from A.M. The things of value consisted of U.S. currency.

b. Defendant GRANILLO provided favorable official action on behalf of A.M., namely, Fannie Mae REO sales listings opportunities that had occurred and would continue to occur; and

c. Defendant GRANILLO took steps to hide, conceal, and cover-up his activity and the nature and scope of his dealings with A.M., including by directing A.M. to pay defendant GRANILLO in cash and by using a cellular telephone to communicate with A.M. where the usage of such telephone could not be traced like an ordinary telephone account.

Execution of the Scheme

4. On or about February 1, 2013, in the Central District of California, and elsewhere, defendant GRANILLO, for the purpose of executing the above-described scheme and artifice to defraud and deprive, transmitted and caused to be transmitted by means of wire communication in interstate commerce, the following: a telephone call between defendant GRANILLO in Orange County, California, and A.M. in Tucson, Arizona.

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, James Shields, being duly sworn, do hereby depose and say as follows:

1. I am a duly authorized and sworn special agent ("SA") of the Federal Housing and Finance Agency ("FHFA"), Office of Inspector General ("FHFA OIG"), and have been so employed since January 2013. Between about November 2009 and January 2013, I was a duly authorized and sworn SA of the United States Department of Housing and Urban Development, Office of Inspector General ("HUD OIG"). I completed the Criminal Investigator Training Program for federal agents at the Federal Law Enforcement Training Center ("FLETC"). Prior to my employment with HUD OIG, I was for two years a sworn officer with the United States Department of Homeland Security, Department of Customs and Border Protection. I graduated in 2006 with honors from the University of La Verne with a Bachelor's Degree in Organizational Management. Between 1997 and 2007, I was on active duty with the United States Navy, Chief Petty Officer. I am on inactive reserve. I am currently assigned to investigate fraud, waste, and abuse regarding assets and interests of FHFA including criminal activity involving or against the Federal National Mortgage Association, also known as Fannie Mae, an entity currently under conservatorship by the FHFA. As part of my training and experience, I have consulted with federal agents with the FHFA OIG, HUD OIG, Federal Bureau of Investigation, and

county law enforcement officers who have many years experience with investigating bank fraud, loan fraud, and bribery and kickback schemes.

2. This affidavit is made in support of a complaint and request for the issuance of an arrest warrant charging ARMANDO GRANILLO ("GRANILLO") with a violation of 18 U.S.C.

§§ 1343 and 1346, executing a scheme to defraud another of the intangible right of honest services by use of wire communications.

3. The information contained in this affidavit is based on evidence gathered from a variety of sources including, but not limited to, recorded statements made by GRANILLO. This affidavit is intended to show that there is probable cause for the requested complaint and arrest warrant and does not purport to set forth all of my knowledge of or investigation into this matter.

4. 18 U.S.C. § 1346 provides that a "'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services." Such a scheme includes a "scheme or artifice to defraud . . . [by a person who] transmits or causes to be transmitted by means of wire, radio, or television communication in interstate . . . commerce any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice"

5. The elements of a violation of 18 U.S.C. §§ 1343 (wire

fraud) and 1346 are as follows:

- First, defendant devised or knowingly participated in a scheme or plan to deprive the victim of his right of honest services;
- Second, the scheme or plan consists of a bribe or kickback in exchange for the defendant's services. The "exchange" may be express or may be implied from all the surrounding circumstances;
- Third, defendant acted with the intent to defraud by depriving the victim of his right of honest services;
- Fourth, defendant's act was material; that is, it had a natural tendency to influence, or was capable of influencing, a person's or an entity's acts; and
- Fifth, wire communications in interstate commerce were used to advance, or further, or carry out an essential part of the scheme.

Ninth Circuit Model Instructions, 8.121, 8.123, 8.124 (2010 Ed., with 2012 Revisions).

6. In Skilling v. United States, 130 S.Ct. 2896 (2010), the *Enron* appeal, the Supreme Court held that "honest services" wire (or mail) fraud under 18 U.S.C. § 1346 extends only to bribery and kickback schemes. "[W]e now hold that § 1346 criminalizes only the bribe-and-kickback core of the pre-McNally case law." 130 S.Ct. at 2930. An employer-employee relationship imposes a "fiduciary duty" on the employee under Skilling. Id.;

see also United States v. Conner, 752 F.2d 566, 572-73 (11th Cir. 1985) ("fiduciary" duty includes corporate employee); United States v. Bohonus, 628 F.2d 1167, 1172 (9th Cir. 1980)

("depriving an employer of one's honest services and of its right to have its business conducted honestly can constitute a 'scheme to defraud' [under mail fraud or wire fraud statute]" - each using nearly identical language regarding definition of "scheme to defraud"); United States v. Milovanovic, 678 F.3d 713, 728-29 (9th Cir. 2012) (en banc) ("We hold that a fiduciary relationship is an element of honest services fraud under 18 U.S.C. §§ 1341 [or 1343] and 1346, but that the fiduciary relationship need not be a formal, or classic, fiduciary relationship. Rather, §§ 1341 [or 1343] and 1346 similarly reach those who assume a comparable duty of loyalty, trust, and confidence, the material breach of which, with the intent to defraud, deprives the victim of the intangible right to honest services.").

7. In January 2013, I received information from another FHFA OIG SA that an individual, later identified as GRANILLO, worked in a Fannie Mae office in Orange County, California and had solicited payment from a real estate broker in the Tucson area in exchange for steering real estate listings to the broker. I interviewed the broker, whom I identified as A.M., who told me the following, among other things:

a. In early 2012, A.M. obtained approval from Fannie Mae to list Fannie Mae REO properties for sale;

b. In mid-2012, GRANILLO became A.M.'s contact at Fannie Mae, to whom A.M. would present REO offers for sales approval;

c. GRANILLO offered to increase A.M.'s Fannie Mae REO listings that, up to about October or November 2012, had totaled approximately 12-15 in number. Then, A.M.'s Fannie Mae REO listings increased to approximately 100 in number. GRANILLO told A.M. that GRANILLO was responsible for the increase in the number of Fannie Mae REO listings that had been awarded to A.M. GRANILLO told A.M. that he (GRANILLO) wanted "some kind of arrangement" where, in exchange for the increase in A.M.'s REO listings, A.M. would pay GRANILLO 20% of A.M.'s real estate sales commissions that were to close in any given month. A.M. told GRANILLO that he "would think about it," and A.M. then contacted an FBI SA who, in turn, contacted an FHFA OIG SA;

d. A.M. thought GRANILLO's proposed "arrangement" was wrong and on his own A.M. began recording his telephone calls - about 10 in number - with GRANILLO. There was at least one call between GRANILLO and A.M. that was not recorded, in which he and GRANILLO discussed GRANILLO's kickback proposal; and

e. A.M. stalled GRANILLO and, in late January 2013, GRANILLO told A.M. that "we need to figure out if you are in or out."

8. I have learned from Leslie Arrington, whom I know to be employed in management at Fannie Mae, that REO listings are

assigned to real estate brokers, like A.M., by Fannie Mae Foreclosure Specialists or REO Sales Representatives who are typically employees of Fannie Mae (as opposed to contractors of Fannie Mae). Such individuals are paid a salary by Fannie Mae that is not tied to sales volume, sales prices, or closing figures, but such individuals may receive a bonus for performance. Such individuals are not entitled to receive compensation in the form of commissions tied to a specific percentage of the amount or value of a specific sale.

9. At my direction, A.M. remained in contact with GRANILLO and agreed to wear a recording device if he were to meet with GRANILLO. On February 1, 2013, A.M. and GRANILLO had several telephone calls between A.M. in Tucson and GRANILLO in Orange County, California, during which they discussed that GRANILLO would drive from California to Tucson on February 2 to discuss A.M. paying GRANILLO for past and future Fannie Mae REO listings.

10. At some point just prior to the planned meeting on February 2 in Tucson, GRANILLO called A.M. and moved the meeting location to a restaurant in a mall in Tempe Arizona (Phoenix area). GRANILLO then met A.M. in a restaurant in Tempe. The entire meeting was video and audio-recorded. I reviewed the recordings and learned that, during the meeting, GRANILLO told A.M. in substance (or, if quoted below, verbatim) the following:

a. GRANILLO had initially approached A.M. with a proposal for A.M. to pay GRANILLO for REO listings because A.M.

sounded "laid back" on the phone;

b. He would keep A.M. at 100 REO listings as long as they worked together;

c. He would help A.M. grow his business;

d. The REO listings that GRANILLO had sent to A.M. included "nicer" properties in the Tucson area that would be easier to sell at a higher price;

e. He would limit his fee (i.e., the kickback) to 20% of the listing agent's 2.5% commission and he (GRANILLO) would not seek any money from the buyer's agent;

f. A.M. had to be responsible for taxes due and A.M. could not write-off the 20% paid to GRANILLO as a business expense;

g. GRANILLO would use email to keep track of the number and activity of REO listings that he would send to A.M.;

h. Other Fannie Mae employees in his (GRANILLO's) office are engaged in similar conduct and he (GRANILLO) did not want A.M. dealing with any of them;

i. GRANILLO would not negotiate the 20% fee; he would quickly get A.M.'s clients' loans approved and would help A.M. put other realtors in Tucson out of business;

j. He would coach A.M. on how to bid and counterbid for the ultimate purchase price for REO listings sent by GRANILLO;

k. He would assist in approving A.M.'s purchase of

any REO properties for his (A.M.'s) own account;

l. He would deny the payment arrangement if asked;

m. A.M. would have to pay GRANILLO 20% starting with the first REO listing that A.M. had gotten from GRANILLO at Fannie Mae;

n. GRANILLO wanted to be able to put money away and will buy gold with the money from A.M. rather than deposit it in a bank account;

o. GRANILLO has been in the real estate field for 17 years and feels "expendable," and Fannie Mae employees are routinely fired;

p. He would lose his job if the deal were uncovered, but 20% is a "natural part of business;"

q. The (kickback) deal violates the Real Estate Settlement Procedures Act but taking the 20% fee was just like getting baseball tickets for doing a deal;

r. He would try to steer owner-occupied buyers toward A.M.'s REO listings because that would yield the best return; and

s. He was pitching the 20% deal because his daughter has autism and his wife is home a lot with her; GRANILLO's take-home pay was not enough to cover his expenses.

11. GRANILLO and A.M. continued to speak about the kickback arrangement after their February 2, 2013 meeting. In mid-February 2013, GRANILLO told A.M., in a recorded call, that he (GRANILLO) wanted \$11,200 in cash. At my direction, A.M. told

GRANILLO that he (A.M.) would pay GRANILLO and that he (A.M.) needed time to obtain the funds. During the evening of March 4, 2013, GRANILLO and A.M. agreed to meet the next morning for A.M. to deliver the cash to GRANILLO.

12. On March 5, 2013, at about 5:50 a.m., A.M. met GRANILLO at a Starbucks parking lot located at 1601 Wilshire Blvd. (corner of Union) in Los Angeles. The purpose of the meeting was for A.M. to give GRANILLO \$11,200 (as mentioned in paragraph 11, above). Prior to the meeting, A.M. was outfitted with an audio and video recorder. I saw another FHFA OIG SA give A.M. \$11,200 in cash shortly before the meeting. I instructed A.M. to leave the money in his (A.M.'s) truck and to tell GRANILLO that the money was in the truck, and to deliver the money to GRANILLO. I saw GRANILLO arrive at the parking lot, driving a White late-model Range or Land Rover, park in the Starbucks lot, and approach A.M. who was standing outside of the Starbucks building. A.M. and GRANILLO exchanged greetings and the two walked together to A.M.'s truck. I monitored their communications via wireless device and heard them discuss the money. FHFA OIG SA's and I approached and arrested GRANILLO. As GRANILLO raised his hands in compliance with my instructions, I saw him holding the manila envelope containing the cash. FHFA OIG SA William Thom recovered the envelope and determined that the envelope contained all of the controlled funds. I advised GRANILLO of his Miranda rights. GRANILLO invoked his rights and

elected to remain silent.

13. Based on the foregoing, I believe there is probable cause to believe that ARMANDO GRANILLO committed a violation of 18 U.S.C. §§ 1343 and 1346, executing a scheme to defraud another of the intangible right of honest services by use of wire communications.

JAMES SHIELDS
Special Agent
Federal Housing Finance Agency
Office of the Inspector General

Subscribed and sworn to before me
this 5th day of March, 2013.

Honorable Alicia G. Rosenberg
U.S. Magistrate Judge