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F. #2013R01192

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U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

★ JUL 17 2014 ★

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LONG ISLAND OFFICE

UNITED STATES OF AMERICA

INDICTMENT

- against -

Cr. No. **CR 14 403**
(T. 18, U.S.C., §§ 981(a)(1)(C), 1344, 1349,
2 and 3551 et seq.; T. 21, U.S.C., § 853(p);
T. 28, U.S.C., § 2461(c))

SOFIA ATIAS,
JOSEPH ATIAS,
NICHOLAS A. PELLEGRINI, and
PAULA BERCKHOFF,
also known as "Paula Pellegrini,"

HURLEY, J

Defendants.

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WALL, M.J.

THE GRAND JURY CHARGES:

At all times relevant to this Indictment, unless otherwise indicated:

INTRODUCTION

The Defendants

1. The defendant SOFIA ATIAS was a resident of Hempstead, New York and Great Neck, New York. The defendant JOSEPH ATIAS was the husband of defendant SOFIA ATIAS.
2. The defendant NICHOLAS A. PELLEGRINI was a resident of Garden City, New York and an attorney admitted to practice in New York State.
3. The defendant PAULA BERCKHOFF, also known as "Paula Pellegrini, " was a resident of Garden City, New York and the wife of defendant NICHOLAS A. PELLEGRINI.

The defendant PAULA BERCKHOFF was the secretary and treasurer of Jefferson Real Property Corp.

The Involved Party

4. Sacred Heart Academy was an all-girls Catholic high school located on Cathedral Avenue in Hempstead, New York. Beginning in or about 2011, Sacred Heart Academy sought to acquire property adjacent to its campus in order to build an athletic field for its students.

The Real Property and Lenders

5. On or about September 19, 2003, the defendant NICHOLAS A. PELLEGRINI sold a house and residential property located at 83 Cathedral Avenue, Hempstead, New York (the "real property"), to John Doe 1, an individual whose identity is known to the Grand Jury, and who was a relative of the defendant SOFIA ATIAS.

6. On or about March 29, 2007, John Doe 1 deeded the real property to himself and SOFIA ATIAS.

7. Countrywide FSB and Bank of America were financial institutions, as defined in Title 18, United States Code, Section 20.

8. On or about June 6, 2007, the defendant SOFIA ATIAS signed loan documents for a mortgage of \$636,000 on the real property from Countrywide FSB which was subsequently acquired by Bank of America (hereinafter collectively referred to as "Bank of America"). On June 6, 2007, defendant SOFIA ATIAS also signed loan documents for a line of credit of \$79,500 from Bank of America on the real property.

9. Beginning in or about 2011, both the mortgage and the line of credit issued by Bank of America on the real property were in arrears and foreclosure proceedings were started by Bank of America.

10. On or about June 21, 2011, Sacred Heart Academy delivered a letter to SOFIA ATIAS stating its interest in purchasing the real property. During the summer and fall of 2011, the defendants SOPHIA ATIAS, JOSEPH ATIAS and NICHOLAS PELLEGRINI negotiated the sale of the real property to Sacred Heart Academy. During those negotiations, Sacred Heart Academy offered to purchase the real property for \$925,000.

11. On or about October 21, 2011, the defendant SOFIA ATIAS sent a letter to Bank of America requesting that the bank agree to a short sale of the real property.

12. A short sale is a sale of real estate in which the proceeds from selling the property will fall short of the outstanding debt secured by liens against the property. A lender may agree to a short sale when the borrower can no longer afford to repay the mortgage, and where the lender agrees to release its lien on the real estate and accept less than the total amount it is owed. Any unpaid balance owed to the lender is known as a deficiency. In some instances, as in this case, a lender may agree to release the borrower from any obligation to pay the deficiency that results from a short sale.

The Fraudulent Scheme

13. It was part of the scheme to defraud that, in requesting a short sale of the real property, the defendant SOFIA ATIAS falsely reported that she had no ability to repay the outstanding balance on her mortgage and line of credit, when in truth and in fact, as the

defendant well knew and believed, Sacred Heart Academy had offered to pay \$925,000 for the real property, thus making a short sale unnecessary.

14. It was a further part of the scheme to defraud that the defendants SOFIA ATIAS and PAULA BERCKHOFF presented to Bank of America a sham short sale contract for sale of the real property in which they falsely represented themselves to be operating at arms-length from each other. In fact, the defendant PAULA BERCKHOFF, acting as Secretary/Treasurer of Jefferson Real Property Corp., acted as a straw buyer for SOFIA ATIAS to cancel her debt to Bank of America in connection with the sale of the real property to Sacred Heart Academy. The sham short sale contract purported that the real property would be sold to the defendant PAULA BERCKHOFF for \$385,000. The purported sales price was later increased to \$480,000.

15. It was a further part of the scheme to defraud that the defendants SOFIA ATIAS and PAULA BERCKOFF falsely represented that neither would receive any proceeds from the transaction, that the short sale was not "flipping" or "straw buying," and that there was no omission of facts that would have prevented Bank of America from entering the short sale if it had known such facts.

16. It was a further part of the scheme to defraud that the sham short sale resulted in a net loss, or deficiency, to Bank of America of \$539,867. Based on the false representations by defendant SOFIA ATIAS that she could not repay the amount owed to the bank, Bank of America released the defendant SOFIA ATIAS from any obligation to repay the deficiency that resulted from the sham short sale.

17. It was a further part of the scheme that, on March 19, 2012, the defendants SOFIA ATIAS, JOSEPH ATIAS, NICHOLAS A. PELLEGRINI and PAULA BERCKHOFF caused the real property to be sold by Jefferson Real Property Corp. to the Sacred Heart Academy for \$925,000, the price negotiated in 2011.

COUNT ONE
(Bank Fraud)

18. The allegations contained in paragraphs one through seventeen are realleged and incorporated as though fully set forth in this paragraph.

19. In or about and between June 2011 and April 2012, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, defendants SOFIA ATIAS, JOSEPH ATIAS, NICHOLAS PELLEGRINI and PAULA BERCKHOFF, also known as "Paula Pellegrini," together with others, did knowingly and intentionally execute and attempt to execute a scheme and artifice to defraud Bank of America, a financial institution the deposits of which were insured by the Federal Deposit Insurance Corporation, and to obtain money and funds under the custody and control of Bank of America, by means of materially false and fraudulent pretenses, representations and promises, to wit: inducing Bank of America to agree to a short sale of the real property by concealing the fact that there was a ready and willing buyer that would obviate the need for a short sale.

(Title 18, United States Code, Sections 2, 1344 and 3551 et seq.)

COUNT TWO
(Conspiracy to Commit Bank Fraud)

20. The allegations contained in paragraphs one through seventeen are realleged and incorporated as though fully set forth in this paragraph.

21. In or about and between June 2011 and April 2012, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SOFIA ATIAS, JOSEPH ATIAS, NICHOLAS PELLEGRINI and PAULA BERCKOFF, also known as "Paula Pellegrini," together with others, did knowingly and intentionally conspire to execute a scheme and artifice to defraud a financial institution, to wit: Bank of America, the deposits of which were insured by the Federal Deposit Insurance Corporation, and to obtain moneys and funds owned by and under the custody and control of said financial institution by means of materially false and fraudulent pretenses, representations and promises, contrary to Title 18, United States Code, Section 1344.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION FOR COUNTS ONE AND TWO

22. The United States hereby gives notice to the defendants charged in Counts One and Two that, upon their conviction of any such offense, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offenses to forfeit any property constituting or derived from proceeds obtained directly or indirectly as a result of such offenses, including but not limited to a sum of money equal to at least approximately five hundred and thirty nine thousand and eight hundred and sixty seven dollars (\$539,867.00) in United States currency, for which the defendants are jointly and severally liable.

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

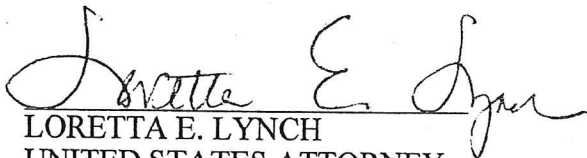
- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without

difficulty; it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of such defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE BILL


FOR PERSON


LORETTA E. LYNCH
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK
CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

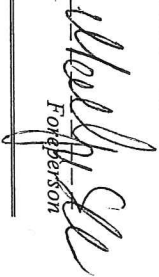
SOFIA ATIAS, JOSEPH ATIAS,
NICHOLAS A. PELLEGRINI,
and PAULA BERCKHOFF,
also known as "Paula Pellegrini",

Defendants.

INDICTMENT

(T. 18, U.S.C., §§ 981(a)(1)(C), 1344, 1349, 2 and 3551 et seq.;
T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

A true bill.


Foreperson

Filed in open court this _____ day,

of _____ A.D. 20 _____

Clerk

Bail, \$ _____

Allen L. Bode, Assistant U.S. Attorney (63J) 715-7828