

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANTHONY L. VIOLA,

Plaintiff

-vs.-

FEDERAL DEPOSIT INSURANCE
CORPORATION, et. al.,

Defendants.

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Civil Action No. 18-2351 (JEB)

Hon. James E. Boasberg

MOTION FOR RELIEF FROM JUDGMENT

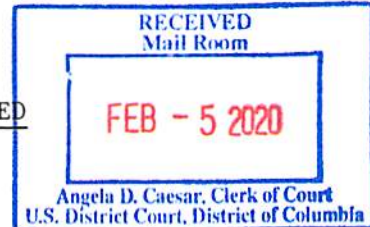
Fed. R. Civ. P. 60(B)

Now comes Anthony L. Viola, respectfully submitting this motion seeking relief from the Court's final judgment in this case, for all the reasons set forth below.

BACKGROUND - COMPLAINT FOR DECLARATORY JUDGMENT

The Plaintiff was ordered to pay restitution in a criminal case but after eight years of payments, none of the victims listed on the restitution order appear to have any funds, prompting this suit seeking a declaratory judgment that the undersigned is entitled to an accounting for restitution payments and disbursements. This Court ruled that the undersigned had not suffered any injury and also noted several substantive defects in the complaint and dismissed the case without prejudice. Recently obtained documents have prompted the undersigned to submit information concerning the distribution of restitution to non-victims and confirmation that payments made by co-defendants do not appear to have been credited to the restitution balance. Also presented herein is information confirming that victims have also made restitution payments to other parties. Plaintiff respectfully requests that this Court review these materials to determine whether or not this case should be re-opened.

PART ONE: OVERVIEW OF CRIMINAL PROCEEDINGS AND RELATED
LITIGATION CONCERNING THE SAME MORTGAGE LOANS



In 2008, the Department of Justice funded and staffed a multi-jurisdictional Mortgage Fraud Task Force to prosecute mortgage fraud cases in Northeast Ohio, Bureau of Justice Assistance Grant # 2009-SC-B9-0080. The Plaintiff was indicted three times by this Task Force, and tried twice on identical charges, with opposite results; see

U.S.A. v. Viola, 08-cr-506, N.D. Ohio and Ohio v. Viola, 10-cr-543886 and 10-536877, Cuyahoga County Common Pleas Court. All indictments allege the undersigned devised a mortgage fraud scheme that duped lenders including Citigroup and JP Morgan into making 'no money down' mortgage loans that did not meet the banks' underwriting guidelines and that lenders were misled by material misrepresentations on loan applications about borrowers' income and assets.

The Justice Department stated that all mortgage loans "would have to satisfy the lender's guidelines before any money was distributed" and that any loans that did not comply with the lending guidelines were "fraudulently obtained," USA v. Viola trial trans. pages 8, 35, 441, 1521, 1811, 2929-31, 3241 and 3417 and Government Statement of Facts, page 15, Appellate Brief, Case # 12-3112, 6th Circuit.

Following a conviction in federal court, but prior to the commencement of the second trial, the Task Force's Office Manager, Dawn Pasela, alleged federal prosecutors shifted exculpatory evidence from the U.S. Attorney's Office to the Task Force location before the first trial, then provided the undersigned with that evidence, which confirmed lenders offered borrowers 'no money down' loan products and knowingly approved, in writing, 'no income, no asset' mortgage loans that did not contain any representations about a borrower's income or assets. Ms. Pasela also provided an FBI 302 interview summary with the lender executive who testified at both trials stating that bank employees had the authority to approve 'no money down, cash back' loans. Utilizing this substantially different evidence at the subsequent trial, the Plaintiff was acquitted on all charges. Please see Exhibit "A" attached hereto, which compares the federal and state indictments and includes a letter from the Judge who presided over the second trial, Judge Daniel Gaul, who believes the undersigned is wrongfully incarcerated.

After the second trial, the Task Force continued prosecuting criminal cases concerning the same mortgage loans and transactions at issue in the Viola prosecutions, but using a different theory of criminality. In Ohio v. Harris, et. al., Case # 551555, Cuyahoga County Common Pleas Court, the Task Force claimed that banks knowingly approved 'no money down' mortgage loans without regard to the borrower's ability to repay the loans, and even though lenders were aware the loans in question did not meet underwriting guidelines. Please see Exhibit B for a comparison of the properties at issue in both the Viola and Harris cases.

Subsequent to the Viola and Harris proceedings, banks portrayed as innocent victims of mortgage fraud schemes spent tens of billions of dollars settling claims brought by purchasers of banks' mortgage backed securities. The titled owner of almost all of the mortgages in the Viola criminal cases were owned by Deutsche Bank National

Trust Company as Trustee for Long Beach Loan Trust 2005 WL3, please see Exhibit C. This entity was recipient of a large financial settlement in Deutsche Bank v. Federal Deposit Insurance Corp., case No. 09-cv-1656, District of Columbia District Court. In settlements of residential mortgage backed securities litigation, and in similar multi-billion dollar civil fraud settlements between banks and the Department of Justice, banks including JP Morgan and Citigroup's Argent Mortgage Company have admitted knowingly making 'no money down' mortgage loans that the bank knew did not meet lending guidelines, then lying about that practice when re-selling loans on Wall Street. Admissions by banks in these lender settlements wholly undermine testimony at criminal trials. Please see Exhibit D for a comparison of admissions by JP Morgan in its \$13 billion civil fraud settlement with the government with testimony at the Viola criminal trial. Exhibit E compares admissions by Citigroup when settling civil fraud claims with its trial testimony.

Despite an obligation of Candor Towards the Tribunal, no attorney has ever withdrawn false lender testimony at criminal trials, contrary to Rule of Professional Conduct 3.3. Furthermore, none of these multi-billion dollar settlements contains any accounting mechanism to track payments when mortgage loans are included in both restitution orders and lender settlements. Defendant FDIC is an expert at this double game -- it is collecting restitution from indigent federal and state prisoners, while it has also extracted a financial settlement from the "victim" of the fraud, JP Morgan Chase, in the case captioned above. But the pursuit of mutually exclusive theories of criminality regarding the same conduct violates the restitution statutes, because an entity cannot be both an innocent victim of a mortgage fraud scheme (entitled to restitution to compensate for losses suffered as a result of fraud) and a perpetrator of fraud (obligated to pay purchasers of its mortgage-backed securities for losses suffered as a result of the bank's fraudulent behavior), concerning the exact same real estate transactions and mortgage loans, In Re Wellcare, 754 F.3d 1234, 1239-40 (11th Cir. 2014)(collecting cases). Defendants FDIC and Citigroup are being unjustly enriched by not reporting the amount of these recoveries to the Clerk of Court collecting restitution because the Clerk is required to reduce the restitution obligation by any amount the victim recovers as compensatory damages for the same loss, 18 U.S.C. §§ 3663(a)(1) and 3664(f)(1)(A); United States v. Elson, 577 F.3d 713, 733-34 (6th Cir. 2009).

PART TWO: NEWLY DISCOVERED EVIDENCE

In 2019, civil litigation against the Task Force was adjudicated, and discovery

in that proceeding was posted on the case docket, Carlton Barton, et. al., vs. Cuyahoga County, et. al., Case # 16-cv-857905, Cuyahoga County Common Pleas Court. Documents filed in that matter include a ledger with restitution collections and disbursements in mortgage fraud cases, including collections from co-defendants Uri Gofman and James Leoni. According to the disbursement ledger, funds collected as restitution have not been forwarded to victims listed on restitution orders but instead used to pay:

- The Sheraton Hotel;
- USAir;
- The Comfort Inn;
- Dozens of other entities, Please see Exhibit F, attached hereto.

Since the Task Force prosecuted co-defendants of the undersigned in both state and federal court, and since the same mortgage loans and victims are at issue in multiple criminal cases, payments by co-defendants to the same victims should be credited towards the Plaintiff's obligation -- especially since everyone is jointly and severally liable for restitution -- but such is not the case here. But the law is clear: when multiple defendants are jointly and severally liable to pay restitution, the victim's recovery is limited to the total amount of losses identified in the restitution order, United States v. Thorpe, 1998 U.S. App. LEXIS 18796, citing United States v. Gottlieb, 140 F.3d 865, 873-74 (10th Cir. 1998).

PART THREE: THIS SUBMISSION ADDRESSES DEFICIENCIES CITED
IN THE COURT'S RULING DATED JUNE 14, 2019

In its 2019 ruling, this Court stated that the complaint did not identify "discrete agency action that it is required to take," citing Norton v. S. Utah Wilderness All., 542 U.S. 55, 64 (2004). This submission identifies that action -- Defendant FDIC should institute a proper accounting mechanism when the same mortgages are involved in both restitution orders and lender settlements to which the FDIC was a party. And attorneys at the Justice Department should adhere to their obligation of exhibiting Candor Towards the Tribunal and withdraw false lender testimony at criminal trials. This new pleading also demonstrates that the undersigned has sustained an actual injury as a result of the actions of the defendants.

Finally, Citigroup has pled ignorance to its acquisition of Argent Mortgage

earlier in this litigation -- which should prompt Citigroup shareholders to wonder why the bank paid billions of dollars in a settlement with the Justice Department on behalf of Argent Mortgage. Regardless, the Plaintiff is attaching hereto a case in which Citigroup defended Argent, stating it was the "successor in interest" to Argent Mortgage, Exhibit G. Also please see City of Ann Arbor Employees v. Citigroup, et. al., 572 F. Supp. 2d 314, 2008 U.S. Dist LEXIS 62590 (E.D. NY).

Finally, as this Court knows, Fed. R. Civ. 60(B) permits a party to seek relief from a final judgment or order "under a limited set of circumstances, including fraud, mistake, and newly discovered evidence," Gonzalez v. Crosby, 545 U.S. 524, 528 (2005). Rule 60(B)(6) "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice," Klapprott v. United States, 335 U.S. 601, 614-15 (1949).

REQUESTED RELIEF

The Plaintiff respectfully requests this Court grant the following relief:

- (1) Require the FDIC to institute a proper accounting mechanism to ensure restitution balances are credited when civil fraud settlements concern properties in both those settlements and restitution orders;
- (2) Given the complexity of this matter, and the likelihood of its potential impact on thousands of restitution orders, consider the appointment of counsel, 28 U.S.C. § 1915(e)(1);
- (3) Consider opining on the obligation of the Department of Justice to withdraw false bank trial testimony when it reaches multi-billion dollar settlements that contain admissions wholly contradicting lender testimony at trial; and
- (4) Any additional relief deemed equitable.

Thank you very much for your consideration.

Respectfully Submitted,



Anthony L. Viola # 32238-160
Lewisburg Federal Prison Camp
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Lewisburg, PA 17837

CERTIFICATE OF SERVICE

I, Anthony L. Viola, hereby swear and affirm that I caused a copy of the foregoing pleading to be served upon the following individuals, via regular U.S. Mail, postage prepaid, on this 3rd day of February, 2020:

Ms. Denise Clark, Esq.
Counsel for Federal Defendants
555 4th Street, NW
Washington, DC 20530

Mr. Bryan Harrison, Esq.
1155 F. Street, NW - Suite 500
Washington, DC 20530

Respectfully Submitted,



Anthony L. Viola