

A Lie is a Lie: US Attorney in Cleveland knowingly Use government witness Kathryn Clover's perjury in a Dozen Cases to "win" Convictions

Federal Prosecutor Mark Bennett stated in writing that government witness Kathryn Clover "provided false testimony" at criminal trials, yet continued utilizing her as a witness in a dozen other proceedings. Now, the FreeTonyViola.com investigative team has assembled key documents about the Justice Department's intentional use of fabricated testimony to "win" cases. Please join us as we step inside the US Attorney's Office and review a fully documented instance of federal prosecutors breaking the law to "win" a case.

Government witness Kathryn Clover signed a plea deal with the government, and agreed to provide "substantial assistance" to Prosecutors Mark Bennett and Assistant Ohio Attorney General Dan Kasaris. But shortly after her trial testimony in USA v. Viola, 08-cr-506, N.D. Ohio, she had a breakdown and alerted Bennett and Kasaris that she wanted to withdraw her perjured testimony, which falsely claimed Tony Viola conspired with her to commit mortgage fraud. Clover asked to be recalled to the stand to correct her false testimony, but Bennett and Kasaris refused, stating that her false testimony "was in the interests of justice" and that withdrawing her false statements "jeopardized the outcome of the case."

The United States Supreme Court has long held that it is an unconstitutional violation of the guarantee of due process of law for prosecutors to obtain the conviction of an American citizen by knowingly presenting false testimony to jurors. Furthermore, evidence known to be false must be withdrawn immediately, Napue v. Illinois, 360 US 264 (1959). In many cases when government witnesses lie, prosecutors claim they were unaware the testimony was false but, here, former Assistant US Attorney Mark Bennett – now a defense attorney – stated in writing that "Clover provided false testimony during the trial of this matter," USA v. Clover, 10-cr-75, Docket # 46.

Not only did Prosecutors Bennett and Kasaris fail to withdraw Clover's false testimony, they CONTINUED to utilize her as a government witness in a dozen cases, until she finally recanted her false testimony at Tony's second trial, where he established his innocence, Ohio v. Viola, 10-cr- 536877. At that trial, Clover admitted her plea agreement was false, and that she did not conspire with Viola to commit fraud, saying "I told Bennett that was wrong," then said, "I take the Fifth."

Former US Attorneys Justin Herdman and Stephen Dettelbach, along with Ohio Attorney General Dave Yost, cannot plead ignorance to the use of perjured

testimony, as all were named in litigation asking a federal court to order prosecutors to withdraw false testimony, Viola v. Dave Yost, et. al., 20-cv-765-PAB, N.D. Ohio.

“Even though prosecutors and attorneys are required to report misconduct by colleagues and withdraw false testimony, those obligations have been ignored by law enforcement officials in order to protect Kasaris and Bennett,” said Tony Viola. “However, an increasing number of victims of these prosecutors are coordinating efforts and will continue to litigate these cases until justice is done, no matter how long it takes.”

The following supporting documents are available in the FreeTonyViola.com Evidence Locker:

- Clover’s Plea Agreement, obligating her to testify truthfully;
- Mark Bennett’s written statement that Clover committed perjury;
- Written confirmation that Prosecutors Bennett and Kasaris continued to present Clover as a fact witness despite knowledge of her perjury;
- AUSA Bennett says perjury is in the interests of justice; and
- Clover’s recantation of her federal court testimony at Tony’s second trial.

To learn more about Tony’s case, or to review these documents for yourself, please visit www.FreeTonyViola.com.

###

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 1:10 CR 75
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
KATHRYN CLOVER,)	GOVERNMENT'S RESPONSE IN
)	OPPOSITION TO CLOVER'S
)	MOTION FOR EARLY
Defendant.)	TERMINATION OF PROBATION

Now comes the United States of America, by and through its counsel, Steven M. Dettelbach, United States Attorney, and Mark S. Bennett, Assistant United States Attorneys, and hereby respectfully moves this Honorable Court to issue an order denying Defendant Kathryn Clover's Motion for Early Termination of Probation for the following reasons:

- (1) This Court sentenced Clover on September 28, 2011 4 years probation with 10 months of house arrest. Clover has only served 1 year and 4 months - not even half of her sentence;

-2-

- (2) The issue of restitution still needs to be determined. However, the parties agreed in the written plea agreement that the loss caused to the lenders by Clover's fraudulent conduct exceeded \$1 million. Accordingly, Clover will have a substantial restitution amount to pay, and her probation should be continued to allow the Court to oversee her restitution;
- (3) As this Court knows, Clover provided false testimony during the trial of this matter. Because of her false testimony, the government did not move for the full amount of 5K1.1 contemplated by the plea agreement and, as such, Clover's sentencing guideline range 15 to 21 months in Zone D, based on an offense level of 14 with a criminal history category of I. Accordingly, Clover should have been sentenced to a term of imprisonment. However, the Court granted defense's request for a further reduction of levels pursuant to 5K1.1 and placed Clover in a range and zone allowing for a sentence of probation. Clover has already been given an extremely favorable sentence and this Court should not give her the additional benefit of the early termination of her probation;
- (4) As part of her plea agreement, Clover was not prosecuted for her role in other mortgage fraud schemes, nor did the government request that this Court take into consideration at the time of sentencing her involvement in other mortgage fraud schemes as "other relevant" conduct, which would have greatly increased her guideline sentencing range. Clover has already

-3-

been given an extremely favorable sentence and this Court should not give her the additional benefit of the early termination of her probation;

- (5) The federal government did not prosecute Clover for bankruptcy fraud, nor did the Cuyahoga County Prosecutor's office prosecute Clover for filing a false police report based on her false statements regarding the loss of her diamond ring. Clover has already been given an extremely favorable sentence and this Court should not give her the additional benefit of the early termination of her probation; and,
- (6) The Cuyahoga County Prosecutor's office did not prosecute Clover for her involvement in the companion state prosecution of this mortgage fraud scheme, or for her involvement in various other mortgage fraud schemes. Clover has already been given an extremely favorable sentence and this Court should not give her the additional benefit of the early termination of her probation.

-4-

For the foregoing reasons, the United States respectfully moves this Honorable Court to issue an order denying Defendant Kathryn Clover's Motion for Early Termination of Probation.

Respectfully submitted,

STEVEN M. DETTELBACH
United States Attorney

By: *s/Mark S. Bennett*
Mark S. Bennett (0069823)
Assistant U.S. Attorney
801 West Superior Avenue
Cleveland, Ohio 44113
(216) 622-3878; (216) 522-8355 (fax)
mark.bennett2@usdoj.gov

Kaplan Consulting & Counseling, Inc.

□ 3401 Enterprise Parkway
Suite 340
Beachwood, Ohio 44122-7340

Phone: (216) 766-5743
Fax: (216) 937-0187
Email: RKaplan@KaplanCC.com
www.KaplanCC.com

□ 14650 Detroit Avenue
Suite 118
Lakewood, Ohio 44107-4210

Psychological Report

Name: Kathryn Clover

Social Security No.: xxx-xx-7297

Docket No.: 1:10CR00075-003

Date of Birth: 10/15/79

Date of Examination: 5/16/11

Date of Report: 6/1/11

Examiner: Robert G. Kaplan, Ph.D., B.C.F.E., D.A.B.P.S.

Diagnostic Procedures: Personality Assessment Inventory
Millon Clinical Multiaxial Inventory-III
Substance Abuse Subtle Screening Inventory-3
Trauma Symptom Inventory-2
Detailed Assessment of Posttraumatic Stress
Three-Hour Structured Diagnostic Clinical Interview

Records Reviewed:

- Presentence Investigation Report of Valencia Small, dated 4/09/10
- Proffer Agreement of Kathryn Fairfield, a.k.a. Kathryn Clover, dated 3/09/09
- Plea Agreement, undated
- Waiver of an Indictment, undated
- Pretrial Release Reporting Instructions, dated 3/09/10
- Order for Presentence Investigation Report, dated 3/11/10
- Sentencing Table of the 2008 Federal Sentencing Guidelines Manual
- Chapter 5 - Part B - Probation of the 2008 Federal Sentencing Guidelines Manual
- Charge Information of William J. Edwards, undated

RE: Kathryn Clover
Docket No.: 1:10CR00075-003

Page 5

Depressive Disorder, with recurrent episodes of serious depression. All of these mental disorders, in combination with her personality disorder, cause her to be a mentally unstable individual who can quickly regress in the face of stress. The psychological testing indicates that her judgment and ability to act in her best interests can be readily overwhelmed by stress. The effects of alcohol only further aggravate her mental problems. Although it seems more likely that she is Alcohol Dependent, it may be possible that her use of alcohol was only abusive, particularly given that it has greatly curtailed after she was no longer being sexually assaulted, repeatedly, by her husband. Therefore, the diagnosis of Alcohol Abuse may be indicated instead of Alcohol Dependence, but this possibility remains to be ruled out with further observation of her alcohol use over more time. Currently, her alcohol use is in remission. Dr. Nelson, a treating psychiatrist, also diagnosed that she had a Bipolar Disorder, but the psychological testing and findings of the instant mental status examination do not support this diagnosis. Symptoms of Borderline Personality Disorder, particularly those of emotional instability, can mimic symptoms of Bipolar Disorder. Therefore, while the diagnosis of a Bipolar Disorder is possible, it cannot be made with reasonable psychological certainty. In any event, the prescription of a mood stabilizer, such as Lamictal, would be indicated simply to address the emotional instability that was caused by her personality disturbance. It is highly unlikely that she could have done as well as she did, academically, in high school and college, if she had an Attention Deficit/Hyperactivity Disorder and it would seem unlikely that she would meet the DSM-IV-TR diagnostic criteria for this diagnosis. However, the prescription of Adderall could be helpful in supporting her ability to concentrate on her legal studies in the face of the disruptive influence of her other psychological symptoms. The instant mental status examination indicates that she is having concentration problems due to her psychopathology.

Currently, Ms. Clover has found a new way to redeem herself, by acting as a material witness for prosecutors. Beyond the obvious benefits of a reduced sentence, her capacity to materially assist in the prosecution of criminals has become a new source of self-esteem for her and she appears personally motivated to remain in this role. Unfortunately, she has jeopardized remaining in this new role by not fully disclosing during a recent cross-examination everything she believed about a police report she filed during her bankruptcy. It appears that her misjudgment occurred in the face of several stressors. First, she had already been subjected to days of cross-examination, which fatigued and distressed her. Second, she was experiencing bladder pain at the time due to the residual effects of her husband's sexual abuse of her. Third, and perhaps most, she felt victimized by the aggressive manner in which the attorney who asked about the allegedly false report questioned her. During the instant examination, she indicated that she still felt frightened when older men yelled at her, since this is what an older man did to her when he molested her at age four. The attorney who questioned her looked like the man that molested her as a child. His image and behavior served as a trigger for traumatic stress reactions that overwhelmed her already fragile mental stability, and caused an impairment of her judgment. As previously indicated, the psychological testing indicates that her judgment is readily impaired by stress. Fourth, it appeared that she didn't want to relinquish the new role she found as a material witness to repair her badly damaged self-esteem, and thereby jeopardize her usefulness to the prosecution of that case and other cases. It also appeared that she didn't want to disappoint the prosecutors,

RE: Kathryn Clover
Docket No.: 1:10CR00075-003

Page 6

who were men. Additionally, she feared the consequences of being subject to additional charges if she disclosed everything she believed about the police report and didn't have any opportunity to consult with her attorney about how to respond to such a question. She was apparently too overwhelmed at the moment, even as a law student, to realize her fifth amendment right to refuse to answer such a question on the grounds that it could incriminate her.

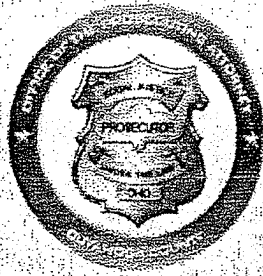
Following her lapse in judgment, Ms. Clover was able to realize that she needed the assistance of her attorney. She and her attorney asked the prosecutors to recall her to testify again during the trial. However, the prosecutors did not recall her since they reportedly believed that it jeopardized the outcome of their case. If that is the case, then it would appear that the prosecutors would also have felt that it served the best interests of justice to allow her testimony to remain unchanged. Therefore, it would be difficult to imagine how she could be punished for serving what the prosecutor believed was in the best interests of justice. It might be argued that, if the best interests of justice were not served, she would not be the only one who would be responsible.

In spite of the great emotional damage that she suffered, the psychological testing indicates that her prognosis for recovery is good. Her youth, intelligence, verbal ability, insight, and motivation for treatment favor a good treatment outcome. With regard to treatment interventions, she will need cognitive-behavioral therapy to restructure her negative self-image and assertiveness training to help her to develop more functional social relationships. Medications for anxiety, depression, and mood stability will also help her recover and should be part of the treatment plan. Abstinence from alcohol will also be necessary for her recovery. Now that she no longer fears her husband, she is able to be truly open with a psychotherapist and needs a therapist who will be warm and caring to provide her with a sense of nurturance that she never had. Such a therapeutic relationship would also serve as a model for her to seek in other relationships, since she has never really known what such a relationship is like. It will take years for her to recover, but the ultimate outcome is favorable. If she is to remain an effective material witness, such treatment should be required in order to prevent any future lapse in judgment. Treatment should also be more frequent when she is subjected to cross-examination.

Opinion

With reasonable psychological certainty, it can be stated that:

1. Ms. Kathryn Clover has severe mental disorders of: Posttraumatic Stress Disorder, Chronic; Major Depressive Disorder, Recurrent, Moderate Severity, Chronic; Generalized Anxiety Disorder; Alcohol Dependence, in Early Full Remission; and Borderline Personality Disorder, with Dependent and Histrionic Traits.



Bill Mason
CUYAHOGA COUNTY PROSECUTOR

Jaye M. Schlachet, Esq.
The Law Office of Jaye M. Schlachet
55 Public Square, Suite 1600
Cleveland, Ohio 44113

September 16, 2011

Re: U.S. Government v. Kathryn Clover

Dear Attorney Schlachet:

I have been informed that Kathryn Clover's sentencing date in the United States District Court for the Northern District of Ohio has been scheduled by the Honorable Judge Don Nugent for September 28, 2011. I am writing you concerning the sentencing date.

As you know you're at the present time is heavily involved in assisting the State of Ohio in several "Mortgage Fraud" investigations and pending cases. She is scheduled to testify on or about October 17, 2011 in the State of Ohio v. Turner Nash in the Courtroom of Daniel Gaul. In addition at the present time she is assisting the State Government in the investigation of top Argent executives who may have been responsible for committing fraud in the selling of mortgage backed securities to investors, and others who may have participated in the tampering with internal Argent loan documents. Her work as already lead to the indictment of several former Argent employees for tampering with these internal loan documents, thereby allowing at least 100 loans to be approved when the approval was contrary to Argent's stated guidelines. She has already testified before a State Grand Jury in that matter and more Grand jury testimony is expected. Moreover, she is also working with State Government Prosecutors in investigating two mortgage brokers and a title company of dubious repute who it appears was closing deals with two huds (and I am not referring to Family Title).

Given the above and on behalf of the State of Ohio and at your request the State Government is requesting that her sentencing be continued until at least the middle of November so that the above matters may be concluded.

OFFICE OF THE PROSECUTING ATTORNEY

The Justice Center • Courts Tower • 1200 Ontario Street • Cleveland, Ohio 44113
(216) 443-7800 • Fax (216) 443-7601 • Email: prosecutor@cuylahogacounty.us
www.prosecutormason.com

Sincerely

A handwritten signature in black ink, appearing to read 'Kasaris', written in a cursive style.

Daniel J. Kasaris
Assistant County Prosecutor
Supervisor Mortgage Fraud Unit
Cuyahoga County, Ohio
1200 Ontario ST, 9th Floor
216-443-7863
216-698-2270 (fax)



NAPUE v. ILLINOIS

[Print](#)

Font size:

A

A

[Reset](#)

United States Supreme Court

NAPUE v. ILLINOIS(1959)

No. 583

Argued: April 30, 1959Decided: June 15, 1959

At petitioner's trial in a state court in which he was convicted of murder, the principal state witness, an accomplice then serving a 199-year sentence for the same murder, testified in response to a question by the Assistant State's Attorney that he had received no promise of consideration in return for his testimony. The Assistant State's Attorney had in fact promised him consideration, but he did nothing to correct the witness' false testimony. The jury was apprised, however, that a public defender had promised "to do what he could" for the witness. Held: The failure of the prosecutor to correct the testimony of the witness which he knew to be false denied petitioner due process of law in violation of the Fourteenth Amendment. Pp. 265-272.

(a) The established principle that a State may not knowingly use false testimony to obtain a tainted conviction does not cease to apply merely because the false testimony goes only to the credibility of the witness. Pp. 269-270.

(b) The fact that the jury was apprised of other grounds for believing that the witness may have had an interest in testifying against petitioner was not sufficient to turn what was otherwise a tainted trial into a fair one. Pp. 270-271.

(c) Since petitioner claims denial of his rights under the Federal Constitution, this Court was not bound by the factual conclusion reached by the Illinois Supreme Court, but reexamined for itself the evidentiary basis on which that conclusion was founded. Pp. 271-272.

13 Ill. 2d 566, 150 N. E. 2d 613, reversed.

George N. Leighton argued the cause and filed a brief for petitioner.

William C. Wines, Assistant Attorney General of Illinois, argued the cause for respondent. With him on the brief were Latham Castle, Attorney General of Illinois, Raymond S. Sarnow and A. Zola Graves, Assistant Attorneys General. [360 U.S. 264, 265].

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

2010 MAR 13 11:11:20

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	Case No. 1:08CR506
)	
Plaintiff.)	
)	Judge Donald C. Nugent
v.)	
)	
KATHRYN CLOVER,)	<u>PLEA AGREEMENT</u>
)	
Defendant.)	

Pursuant to Rule 11(c)(1)(A) and (C) of the Federal Rules of Criminal Procedure, and in consideration of the mutual promises set forth below, the United States Attorney's Office for the Northern District of Ohio (hereinafter "USAO"), by and through its undersigned attorney, and the defendant, KATHRYN CLOVER (hereinafter "Defendant"), agree as follows:

Defendant's Initials: kc

Plea Agreement of KATHRYN CLOVER - page 2 of 17

**MAXIMUM PENALTIES AND OTHER
CONSEQUENCES OF PLEADING GUILTY**

1. **Waiver of Constitutional Trial Rights.** Defendant understands that Defendant has the right to plead not guilty and go to trial. At trial, Defendant would be presumed innocent, have the right to trial by jury or the Court, with the consent of the, United States, the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses and subpoena witnesses to testify for the defense, and the right against compelled self-incrimination. Defendant understands that Defendant has the right to an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent Defendant. Defendant understands that, if Defendant pleads guilty and that plea is accepted by the Court, there will not be a further trial of any kind, so that by pleading guilty Defendant waives the right to a trial.

2. **Maximum Sentence.** The statutory maximum sentence for the counts to which Defendant agrees to plead guilty is as follows:

<u>Counts</u>	<u>Statute</u>	<u>Maximum sentence per count</u>
1 & 2	18 U.S.C. § 371	Imprisonment: 5 years Fine: \$250,000 Supervised release: 3 years

Plea Agreement of KATHRYN CLOVER - page 3 of 17

3. **Alternative Maximum Fine.** The maximum fine that the Court may impose is the greater of the statutory maximum stated above or twice the gross pecuniary loss or gain from the offense of conviction.

4. **Sentencing and Sentencing Guidelines.** Defendant understands that the Court must impose a sentence sufficient but not greater than necessary to comply with the sentencing purposes set forth in 18 U.S.C. § 3553(a)(2) and that the Court must consider the advisory U.S. Sentencing Guidelines and other sentencing factors set forth in § 3553(a) in determining the sentence.

5. **Special Assessment.** Defendant will be required to pay a mandatory special assessment of \$200.00, due immediately upon sentencing.

6. **Costs.** The Court may order Defendant to pay the costs of prosecution and sentence, including but not limited to imprisonment, community confinement, home detention, probation, and supervised release.

7. **Restitution.** The Court may order Defendant to pay restitution as a condition of the sentence, probation, and/or supervised release.

8. **Violation of Probation/Supervised Release.** If Defendant violates any term or condition of probation or supervised release, such violation could result in a period of incarceration or other additional penalty as imposed by the Court. In some

Plea Agreement of KATHRYN CLOVER - page 4 of 17

circumstances, the combined term of imprisonment under the initial sentence and additional period of incarceration could exceed the maximum statutory term.

ELEMENTS OF THE OFFENSE(S)

9. The elements of the offense to which Defendant will plead guilty are:

18 U.S.C. § 371: Conspiracy to Commit Wire Fraud	
One:	Two or more persons conspired, or agreed, to commit the crime alleged in the information;
Two:	The Defendant knowingly and voluntarily joined the conspiracy; and
Three:	A member of the conspiracy did one of the overt acts described in the information which occurred within the five year statute of limitations for conspiracy for the purpose of advancing or helping the conspiracy.

AGREEMENTS AND STIPULATIONS OF THE PARTIES

GUILTY PLEAS / OTHER CHARGES

10. **Agreement to Plead Guilty.** Defendant agrees to plead guilty to counts 1 and 2 of the Information in this case.

11. **Agreement Not to Bring Certain Other Charges.** The USAO will not bring any other criminal charges against Defendant with respect to (1) conduct charged in the Information, and (2) Defendant's involvement in other mortgage fraud schemes based on facts currently within the knowledge of the USAO.

Plea Agreement of KATHRYN CLOVER - page 5 of 17

FACTUAL BASIS AND RELEVANT CONDUCT

The parties stipulate to the following facts, which satisfy all of the elements of the offense to which Defendant agrees to plead guilty and constitute relevant conduct for purposes of determining the Advisory Sentencing Guidelines offense level:

12A. Defendant KATHRYN CLOVER ("CLOVER") acted as the "straw buyer" (an individual who purchases a property with no intention of making the property her primary residence) of 15 properties located in the Cleveland, Ohio area, all of which were purchased within approximately a two month period from on or about June 2, 2005 through on or about August 4, 2005. CLOVER was also one of the owners of Chateau Management Investments, LLC ("Chateau"), a company created by CLOVER in part to receive cash back at the closings of some of the properties detailed in the Information.

B. CLOVER also recruited defendant Paul A. Lesniak ("Lesniak") to act as a "straw buyer" on another 19 properties located in the Cleveland, Ohio area, of which 13 of the 19 properties were all purchased on or about August 16, 2005, with the last property being purchased on or about April 18, 2006.

C. In addition to conspiring with Lesniak, CLOVER also conspired with defendants Nicholas Myles ("Myles"), Uri Gofman ("Gofman"), Gennadiy Simkhovich ("Simkhovich"), Anthony Capuozzo ("Capuozzo"), Anthony L. Viola ("Viola"), David

Plea Agreement of KATHRYN CLOVER - page 6 of 17

Pirichy ("Pirichy"), and Noah Bloch ("Bloch") to engage in a scheme to defraud mortgage companies by submitting falsified loan applications to secure loans in her name on the 15 properties listed in the Information and located in the Cleveland, Ohio area, in amounts thousands of dollars in excess of the true market value of the properties and on the 19 properties in Lesniak's name listed in the Information and located in the Cleveland, Ohio area, of which 13 of the properties closed on or about August 16, 2005, in amounts thousands of dollars in excess of the true market value of the properties.

D. CLOVER knowingly and intentionally caused fraudulent loan applications to be submitted in her name and in Lesniak's name through Central National Mortgage ("Central National"), a mortgage company owned by defendants Viola and Myles, to prospective lenders in order to obtain financing to purchase the 34 properties. These fraudulent loan applications included any or all of the following false information concerning CLOVER and Lesniak: employer, income, assets and the source of down-payment funds by concealing the fact that defendants Gofman and Simkhovich, through their company Real Asset, provided the down-payment funds. CLOVER and others falsified all of this information in order to obtain financing to purchase the 34 properties.

E. CLOVER and others used the services of Myles and Pirichy, through Central National, as the mortgage brokers to complete these loan applications, and

Plea Agreement of KATHRYN CLOVER - page 7 of 17

Capuozzo, through Family Title Service, Inc. ("Family Title"), as the title agent in order to aid and assist them in their fraudulent real estate transactions.

F. Neither CLOVER nor Lesniak provided the down payments on any of the thirty-four properties. Instead, Gofman and Simkhovich conspired with Myles, Pirichy and Capuozzo to have Gofman and Simkhovich purchase official checks payable to Family Title in the amount of the various down payment amounts with either CLOVER's or Lesniak's name listed as the "remitter" of the official check. These official checks would then be faxed to Capuozzo at Family Title to be included in the loan file sent to the lender to make it appear that CLOVER or Lesniak provided the down payments from their personal funds, when in fact it was Gofman's and Simkhovich's funds in their Real Asset account. These official checks were then redeposited into Real Asset's account the day after closing.

G. Also as part of the scheme, Viola, through Realty Corporation of America ("Realty Corp"), recruited CLOVER and Lesniak, as well as other straw buyers, to purchase the properties owned and/or controlled by Gofman, Simkhovich and Real Asset with promises that the straw buyers could purchase the properties with no down payment money and would receive money back at the closings on the properties.

H. In or about April 2006, defendants CLOVER, Lesniak, Gofman, Simkhovich, and Viola, and others, conspired in a real estate transaction involving a

Plea Agreement of KATHRYN CLOVER - page 8 of 17

property located at 6731 Gertrude Avenue, Cleveland, Ohio. It was part of their agreement and conspiracy that the property was purchased in the name of Lesniak. In order to qualify for a mortgage loan and deceive the mortgage lender, a false and fraudulent mortgage application was completed with CLOVER's assistance through Viola's new mortgage company, Transcontinental Lending Group ("TLG"), in Lesniak's name falsifying his employer, his income, his assets and the source of his down-payment funds. TLG submitted the false loan application to the lending company representing that all of the information provided on the loan application was true and accurate.

I. From in or about May 2005, until in or about April 2006, based on the false and fraudulent mortgage loan applications submitted in CLOVER's and Lesniak's name, various lending companies, including but not limited to Long Beach Mortgage Company, MortgageIT, Inc. and Argent Mortgage Company, LLC, approved CLOVER's and Lesniak's loan applications and funded the purchase of the properties by wire transferring the funds from outside the State of Ohio to Family Title in the Northern District of Ohio. Capuzzo, through Family Title, and others then fraudulently distributed the monies to CLOVER, Chateau Management, Lesniak, and defendants Gofman, Simkhovich, Viola, Myles and others.

J. CLOVER's and defendants' fraudulent conduct resulted in substantial losses to the various lenders.

Plea Agreement of KATHRYN CLOVER - page 9 of 17

WAIVER OF APPEAL AND POST-CONVICTION ATTACK

13. Defendant acknowledges having been advised by counsel of Defendant's rights, in limited circumstances, to appeal the conviction or sentence in this case, including the appeal right conferred by 18 U.S.C. § 3742, and to challenge the conviction or sentence collaterally through a post-conviction proceeding, including a proceeding under 28 U.S.C. § 2255. The Defendant expressly waives those rights, except as reserved below. Defendant reserves the right to appeal: (a) any punishment in excess of the statutory maximum and (b) any sentence to the extent it exceeds the greater of any statutory mandatory minimum sentence or the maximum of the sentencing range determined under the advisory Sentencing Guidelines in accordance with the sentencing stipulations and computations in this agreement, using the Criminal History Category found applicable by the Court. Nothing in this paragraph shall act as a bar to the Defendant perfecting any legal remedies Defendant may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct.

RESTITUTION

14. Defendant agrees to make full restitution, as may be determined by the Court, made payable immediately on such terms and conditions as the Court may impose, for the losses caused by Defendant's relevant conduct in this case, as defined under

Plea Agreement of KATHRYN CLOVER - page 10 of 17

Guideline § 1B1.3. Defendant agrees not to seek the discharge of any restitution obligation, in whole or in part, in any present or future bankruptcy proceeding.

OTHER OBLIGATIONS OF THE PARTIES

15. **Financial Statement.** Defendant agrees to submit to the USAO, prior to the date of sentencing, a complete and accurate financial statement, on government form OBD-500.

SENTENCING STIPULATIONS AND AGREEMENTS

16. **Recommendation to Use the Advisory Sentencing Guidelines**

Computation. After considering the sentencing factors in 18 U.S.C. § 3553(a), the parties agree to recommend that the Court impose a sentence of the kind and within the range determined pursuant to the advisory Sentencing Guidelines in accordance with the computations and stipulations set forth below. The USAO will not request a sentence higher than that advisory Sentencing Guidelines range and Defendant will not request a sentence lower than that advisory Sentencing Guidelines range.

17. **Stipulated Advisory Guideline Computation.** The parties agree that the following calculation represents the correct computation of the applicable offense level in this case under the advisory Sentencing Guidelines Manual effective November 1, 2008, prior to any adjustment for acceptance of responsibility and possible substantial assistance

Plea Agreement of KATHRYN CLOVER - page 11 of 17

pursuant to §5K1.1. The parties agree that no other Sentencing Guideline adjustments apply.

Counts 1 & 2	Guideline § 2B1.1	
Base offense level	6	§2B1.1(a)(2)
Amount of Loss exceeding \$1,000,000	16	§2B1.1(b)(1)(I)
Mitigating Role (minimal participant)	- 3	§3B1.2
Subtotal before Acceptance of Responsibility	19	

18. **Acceptance of Responsibility.** The USAO has no reason to believe at this time that Defendant has not clearly and affirmatively accepted personal responsibility for Defendant's criminal conduct. Additionally, if Defendant pleads guilty pursuant to this Agreement at the earliest opportunity provided by the Court and the Court determines that Defendant has accepted responsibility at the time of sentencing, the USAO agrees to move the Court for an additional one-level reduction under § 3E1.1(b)(2), for a total acceptance of responsibility reduction of 3 levels. Defendant understands, however, that the Court will determine acceptance of responsibility based on Defendant's overall conduct as of the date of sentencing. If the Court follows the parties' stipulations and gives Defendant credit for acceptance of responsibility, the total adjusted offense level will be 16.

Plea Agreement of KATHRYN CLOVER - page 12 of 17

19. **Cooperation.** Defendant agrees to cooperate fully with the United States of America and any other state or local government in investigations and prosecutions, as and when requested by the USAO. Such cooperation shall include providing all information, attending all interviews, testifying before all tribunals, providing all documents and records, and providing all other forms of cooperation requested by government agents and prosecutors. Such cooperation also includes the obligation to provide truthful and complete information and the obligation not to commit any additional crimes. Defendant understands that if Defendant provides any false or misleading information, documents, or testimony, refuses to testify or otherwise fails to cooperate, or commits any additional crimes, such conduct will constitute a breach of this agreement. In addition, Defendant may be subject to separate prosecution for such criminal conduct, and nothing in this agreement will preclude the use of Defendant's sworn or unsworn statements against Defendant in this or any other prosecution.

20. Defendant agrees not to reveal any information derived from Defendant's cooperation to any third party before any such third party is charged with a criminal offense without the prior consent of the USAO and to instruct Defendant's attorney(s) to do the same.

Plea Agreement of KATHRYN CLOVER - page 13 of 17

21. Defendant agrees to inform the USAO of any attempts by any third party, prior to the filing of any charges against such third party, to interview, depose, or communicate in any way with Defendant regarding this case or Defendant's cooperation.

22. **Substantial Assistance Departure.** If Defendant fully complies with Defendant's obligation to cooperate, as set forth above, and accepts responsibility for Defendant's own criminal conduct, the USAO will, at the time of sentencing, move for a downward departure of no more than 6 levels under Guideline § 5K1.1. The USAO may request a continuance in the sentencing until Defendant has substantially completed the agreed cooperation. Defendant understands, however, that the USAO, in its discretion, will determine whether and to what extent to seek such a departure based on the actual nature and extent of the cooperation provided. Additionally, Defendant understands that no promise has been made that the Court will grant Defendant such a downward departure.

23. **Criminal History Category.** The parties have no agreement as to the Criminal History Category applicable in this case. Defendant understands that the Criminal History Category will be determined by the Court after the completion of a Pre-Sentence Investigation by the U.S. Probation Office.

Plea Agreement of KATHRYN CLOVER - page 14 of 17

OTHER PROVISIONS

24. **Agreement Silent as to Matters Not Expressly Addressed.** This agreement is silent as to all aspects of the determination of sentence not expressly addressed herein, and the parties are free to advise the Court of facts and to make recommendations to the Court with respect to all aspects of sentencing not agreed to herein.

25. **Sentencing Recommendations Not Binding on the Court.** Defendant understands that the recommendations of the parties will not be binding upon the Court, that the Court alone will decide the applicable sentencing range under the advisory Sentencing Guidelines, whether there is any basis to depart from that range or impose a sentence outside of the Guidelines, and what sentence to impose. Defendant further understands that once the Court has accepted Defendant's guilty pleas. Defendant will not have the right to withdraw such pleas if the Court does not accept any sentencing recommendations made on Defendant's behalf or if Defendant is otherwise dissatisfied with the sentence.

26. **Consequences of Breaching the Plea Agreement.** Defendant understands that if Defendant breaches any promise in this agreement or if Defendant's guilty pleas or conviction in this case are at any time rejected, vacated, or set aside, the USAO will be released from all of its obligations under this agreement and may institute or maintain any

Plea Agreement of KATHRYN CLOVER - page 15 of 17

charges and make any recommendations with respect to sentencing that would otherwise be prohibited under the terms of the agreement. Defendant further agrees that in such a circumstance, the USAO may use the information from all of Defendant's sworn or unsworn statements against Defendant as well as to impeach Defendant or any witnesses on Defendant's behalf. Defendant understands, however, that a breach of the agreement by Defendant will not entitle Defendant to withdraw, vacate, or set aside Defendant's guilty pleas or conviction.

27. Agreement not Binding on other Jurisdictions and Agencies. Defendant understands that this plea agreement is binding only on the United States Attorney's Office for the Northern District of Ohio (USAO). It does not bind any other United States Attorney, any other federal agency, or any state or local government.

28. Defendant is Satisfied with Assistance of Counsel. Defendant makes the following statements: I have discussed this case and this plea agreement in detail with my attorney, Jaye Schlachet, who has advised me of my Constitutional and other trial and appeal rights, the nature of the charges, the elements of the offenses the United States would have to prove at trial, the evidence the United States would present at such trial, possible defenses, the advisory Sentencing Guidelines and other aspects of sentencing, and other potential consequences of pleading guilty in this case. I have had sufficient time and opportunity to discuss all aspects of the case in detail with my attorney and have

Plea Agreement of KATHRYN CLOVER - page 16 of 17

told my attorney everything I know about the charges, any defenses I may have to the charges, and all personal and financial circumstances in possible mitigation of sentence. I am satisfied with the legal services and advice provided to me by my attorney.

29. **Agreement Is Complete and Voluntarily Entered.** Defendant and Defendant's undersigned attorney state that this agreement constitutes the entire agreement between Defendant and the USAO and that no other promises or inducements have been made, directly or indirectly, by any agent or representative of the United States government concerning any plea to be entered in this case. In particular, no promises or agreements have been made with respect to any actual or prospective civil or administrative proceedings or actions involving Defendant, except as expressly stated herein. In addition, Defendant states that no person has, directly or indirectly, threatened or coerced Defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

[SIGNATURE ON THE NEXT PAGE]

Plea Agreement of KATHRYN CLOVER - page 17 of 17

SIGNATURES

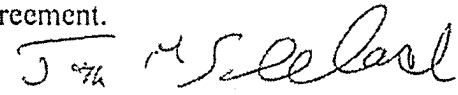
Defendant: I have read this entire plea agreement and have discussed it with my attorney. I have initialed each page of the agreement to signify that I have read, understood, and approved the provisions on that page. I am entering this agreement voluntarily and of my own free will. No threats have been made to me, nor am I under the influence of anything that could impede my ability to understand this agreement.



KATHRYN CLOVER

3-10-10
Date


Defense Counsel: I have read this plea agreement and concur in Defendant pleading in accordance with terms of the agreement. I have explained this plea agreement to Defendant, and to the best of my knowledge and belief, Defendant understands the agreement.



Jaye M. Schlachet
55 Public Square, Suite 1300
Cleveland, Ohio 44113

3-10-10
Date

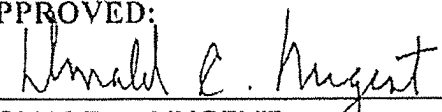
United States Attorney's Office: I accept and agree to this plea agreement on behalf of the United States Attorney for the Northern District of Ohio.



Mark S. Bennett (0069823)
Assistant U. S. Attorney
801 West Superior Avenue, Suite 400
Cleveland, Ohio 44113-1852
216.622.3878; 216.522.2403
mark.bennett2@usdoj.gov

3/10/10
Date

APPROVED:



DONALD A. NUGENT
UNITED STATES DISTRICT JUDGE

March 10, 2010
Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE STATE OF OHIO,)
)
COUNTY OF CUYAHOGA.) SS: DANIEL GAUL, J.

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION

THE STATE OF OHIO,)
)
Plaintiff,))
)
-v-) Case No. 536877
)
ANTHONY VIOLA,) TRIAL EXCERPT
)
Defendant.))

- - - - -

TRANSCRIPT OF PROCEEDINGS
TESTIMONY OF KATHRYN CLOVER

- - - - -

Whereupon the following proceedings
were had in Courtroom No. 19-D, the Justice
Center, Cleveland, Ohio, before the Honorable
Judge Daniel Gaul commencing on Tuesday, March
20, 2012, upon the indictment filed heretofore.

APPEARANCES:

WILLIAM D. MASON, ESQ., Prosecuting Attorney,
by: DANIEL M. KASARIS, ESQ., and NICK
GIEGERICH, ESQ., Assistant County Prosecutors,

on behalf of the Plaintiff;

ANTHONY VIOLA, PRO SE,

on behalf of the Defendant.

Carla V. Kuhn, RMR, CRR
Official Court Reporter
Cuyahoga County, Ohio

1 THE COURT: Did you provide any
2 nonfactual information to them?

3 THE WITNESS: Yes.

4 MR. VIOLA: Okay.

5 BY MR. VIOLA:

6 Q Now we're going to talk about Transcontinental
7 Lending Group. Is it not a fact that I opened an
8 office of Transcontinental Lending, my own branch, my
9 branch at our location downtown opened up and was
10 licensed by the state on August 7th, 2006, correct?

11 A Yes.

12 Q Now, did you have an occasion to make a plea in
13 federal court to your involvement in the mortgage fraud
14 scheme?

15 A Yes, I did.

16 Q Does this look like a copy of your plea
17 agreement?

18 A Yes, it does.

19 Q You stood up in front of Judge Donald Nugent in
20 federal court, correct?

21 A That's correct.

22 Q When you pled guilty to conspiring with me at
23 Transcontinental when Mr. Lesniak bought the house on
24 Gertrude; is that correct?

25 A It was in that -- in the plea agreement but I had

1 already told Mark Bennett, as I stated in the federal
2 trial, that that was incorrect.

3 Q That's not my question.

4 My question was, you pled guilty to conspiring
5 with Viola's new mortgage company, Transcontinental
6 Lending Group, on the transaction on Gertrude, right?

7 A Correct.

8 Q That's what you pled guilty to?

9 A Correct.

10 Q You were aware that this was false when you pled
11 guilty?

12 A I told Bennett that that was incorrect, that you
13 did not own that branch.

14 THE COURT: Who's Mr. Bennett?

15 THE WITNESS: The federal prosecutor.

16 THE COURT: When did you tell him that?

17 THE WITNESS: In one of our meetings.

18 THE COURT: You read this document?

19 THE WITNESS: Yes.

20 THE COURT: You told him that was
21 incorrect?

22 THE WITNESS: I told him that was
23 incorrect and there's --

24 THE COURT: What did he say?

25 THE WITNESS: There's writing -- I don't

1 think he listened to me.

2 THE COURT: I'm going to sustain my
3 whole question and permit you to question the
4 witness.

5 MR. VIOLA: I actually liked when you
6 were doing it, your Honor.

7 BY MR. VIOLA:

8 Q So let's -- Mr. Bennett is aware that this plea
9 agreement has this factual defect in it, correct?

10 A I told him that, yes.

11 Q You -- how -- at what point before your plea was
12 Mr. Bennett made aware of this? Was it a matter of
13 hours? Days? Weeks?

14 A I'm not sure and I honestly can't recollect if it
15 was hours, days, weeks.

16 Q When you stood before Judge Nugent you -- when
17 you were in federal court in front of Judge Nugent
18 entering this guilty plea, did it occur to you at that
19 time to say, Hey, your Honor, there's something I need
20 to address with the Court, or I would like a sidebar,
21 or anything along those lines?

22 A No.

23 Q But you've been in law school, right?

24 A I was following -- I was in my second semester at
25 that time and I was following the advice of my counsel.

1 Q Mr. Schlachet?

2 A Correct.

3 Q So he was aware this was incorrect?

4 A Jaye knows everything that I know.

5 Q Okay.

6 THE COURT: This was in what year,
7 please? This plea agreement was in what year?

8 THE WITNESS: 2010.

9 THE COURT: You were in law school at
10 the time?

11 THE WITNESS: No. Actually I had to
12 withdraw.

13 THE COURT: As a result of this
14 indictment?

15 THE WITNESS: No. As a result of my
16 ex-husband.

17 BY MR. VIOLA:

18 Q This is dated March 10th, 2010, correct?

19 A Correct.

20 Q Mr. Schlachet's signing that, right, and
21 Mr. Bennett and Judge Nugent is signing it?

22 A Correct.

23 Q All these people are signing a document and
24 you're telling him it's all false? Judge Nugent didn't
25 know about it?

1 MR. GIEGERICH: Objection. That's a
2 mischaracterization of what her testimony was.

3 THE COURT: You asked two questions.
4 Break it down. I'm going to sustain the
5 objection.

6 MR. VIOLA: I apologize.

7 BY MR. VIOLA:

8 Q You're saying that on March 10th, 2010 when
9 Mr. Schlachet signed this document, he did so knowing
10 that it was incorrect?

11 A The reason I contacted the state is I did not
12 think that the federal government was listening to me
13 so that's why I contacted them --

14 THE COURT: Wait a second.

15 A -- four days before --

16 THE COURT: Just a moment, please,
17 Ms. Clover. You know, when I ask you for a
18 moment of time, I expect you to adhere to that
19 request and not continue to speak in front of the
20 jury about something that could be
21 objectionable.

22 Mr. Viola's asking you a question. I'd
23 like you to answer his question directly.

24 Would you put the question to the
25 witness? If you'd like, we can read the question

1 back.

2 The question was whether Jaye Schlachet,
3 when he signed this document, knew that the
4 information contained in it was incorrect.

5 THE WITNESS: I've told him. I don't
6 know if they listened.

7 THE COURT: Next question.

8 BY MR. VIOLA:

9 Q When Mr. Bennett signed this document on behalf
10 of the United States of America, you feel that before
11 this date, March 10th of 2010, that Mr. Bennett was
12 aware this information about me owning Transcontinental
13 was incorrect?

14 MR. GIEGERICH: Objection. She can't --

15 THE COURT: I'm going to sustain it as
16 to what she felt, yes. If you ask her if she
17 told him --

18 BY MR. VIOLA:

19 Q You told Mr. Bennett prior to this signature that
20 this information was incorrect?

21 A I think it was prior but I don't know one hundred
22 percent.

23 Q So we don't know if it was the date of March
24 10th? We don't know, correct?

25 A Correct.

1 Q Did you ever indicate anything to Judge Nugent --

2 A Yes.

3 Q -- that there was information that was incorrect?

4 A Yes.

5 Q You told Judge Nugent?

6 A In the federal trial, yes.

7 Q What did Judge Nugent say?

8 A I don't remember what -- it was your attorney
9 that was asking me the question.

10 Q You're talking about testimony in trial. I'm
11 asking when you're entering this plea agreement and
12 signing off on this, is Judge Nugent aware that there's
13 information in this plea agreement that you feel is
14 incorrect?

15 A I didn't say anything.

16 Q So at the time that his Honor signed this on
17 March 10th, he did not have any information that
18 indicated that this was incorrect?

19 A So far as I know.

20 Q This is Defendant 92. This is your loan officer
21 history, okay?

22 A Okay.

23 Q Of the companies that you -- where you had your
24 loan officer license at various times. I'd like to go
25 through it with you. Let's start out. This is a

1 letter that I received from a lady at the Department of
2 Financial Institutions because I made a public records
3 request. Actually Abby in my office helped me with
4 this. It says that you worked at Central National
5 Mortgage, Transcontinental and Pacific Guarantee. Do
6 you agree with that?

7 A Yes.

8 Q This is really the only piece of paper in this
9 exhibit that I wanted to ask you about. This document
10 indicates that you're joining Pacific Guarantee
11 Mortgage, correct?

12 A Correct.

13 Q What's the date that you're signing off on that?

14 A 9/28/06.

15 Q 9/28/06.

16 Our Transcontinental branch opened, we saw
17 earlier from the exhibit, in August of '06.

18 A Correct.

19 Q So in September of 2006 you're going to Pacific
20 Guarantee, correct?

21 A Correct.

22 Q I'm going to use this board to recap, in summary
23 form, some of the things that you've done wrong as I
24 understand it. Now, I would like you to agree or
25 disagree with me on these things as we go because I

1 don't want to show exhibits and keep the jury here --

2 MR. KASARIS: Your Honor, can we
3 approach on this issue?

4 THE COURT: Yes. Come on up, please,
5 gentlemen.

6 - - - - -

7 (Thereupon, a discussion was had
8 between Court and counsel at sidebar.)

9 - - - - -

10 BY MR. VIOLA:

11 Q I'm going to go through some wrongdoing. If you
12 don't agree or you haven't done it or you want to see
13 the documents, we're going to do it that way, but I'd
14 prefer to do it without the document so tell me what
15 you think as we go through this list.

16 When you buy houses in Akron, you go to a place
17 where people are smoking pot, right?

18 A Correct.

19 Q And you buy all these houses and they change the
20 property addresses on you?

21 A Correct.

22 Q You fill out a loan application for hard money
23 loans, right?

24 A I don't remember.

25 Q Is there any inaccurate information in any of the

1 loan applications you did in Akron?

2 A I don't think we have any loan applications.

3 Q So we'll put a question mark here.

4 Paul Lesniak, are you aware that Mr. Lesniak's
5 ATF statement, he says he didn't give you --

6 MR. GIEGERICH: Objection, your Honor.
7 It's going to be hearsay.

8 THE COURT: Sustained at this point.

9 You can ask a question but you can't
10 necessarily attribute it to a person.

11 BY MR. VIOLA:

12 Q Did Mr. Lesniak --

13 THE COURT: No, no, no, no, no. You
14 cannot say what someone else said unless that
15 person is testifying in this proceeding. You can
16 say, Are you aware of allegations that you --
17 fill in the blank.

18 BY MR. VIOLA:

19 Q Are you aware of allegations that Mr. Lesniak's
20 cash back went to Chateau Management instead of to
21 Mr. Lesniak?

22 A We split it and that was the arrangement between
23 Paul and Chateau.

24 MR. VIOLA: Do I have the ability to
25 show the statement?

1 THE COURT: You do.

2 MR. VIOLA: Okay.

3 THE COURT: How's the jury doing?
4 Okay? We'll break around 12; is that okay?

5 MR. VIOLA: I should be done by then.

6 THE COURT: Don't rush. Be efficient
7 but timely.

8 MR. GIEGERICH: While he's looking for
9 that document, can we have a quick sidebar?

10 THE COURT: Yeah. Let's find the
11 document before you publish it.

12 Come on up.

13 - - - - -

14 (Thereupon, a discussion was had
15 between Court and counsel at sidebar.)

16 - - - - -

17 THE COURT: Thanks, guys. Appreciate
18 it.

19 BY MR. VIOLA:

20 Q Can we agree at closing when Mr. Lesniak
21 purchased properties the check from the title company
22 for the cash back was made payable to Chateau?

23 A Yes.

24 Q Now, when Mr. and Mrs. Burton bought houses,
25 Mr. Burton bought houses that closed at a company

1 called Mountaineer Title, right? Some of the
2 properties, right?

3 A Three of them, yes.

4 Q What did you guys do with the commissions on
5 these?

6 A There were no commissions.

7 Can you move the TV screen so I can see what
8 you're writing?

9

- - - - -

10 (Thereupon, a discussion was had
11 off the record.)

12

- - - - -

13 BY MR. VIOLA:

14 Q Let's go to Viola 277, okay? This is on the
15 screen here. We're looking at Michael Goldberg
16 subpoenaing Mountaineer Title on these Burton
17 transactions, okay?

18 A Okay.

19 Q We found out what happened was that you had
20 all monies paid to Chateau Management and not Realty
21 Corporation of America. So in this case you sent
22 them an invoice and said, Please make a check
23 payable to Chateau Management for \$24,000.

24 A Correct.

25 Q Does that look like your signature?

1 A That is.

2 Q Isn't it a fact that what you guys did was
3 you took some transactions of Mr. Burton, some
4 properties he was buying, took them over to
5 Mountaineer Title so I wouldn't know about them and
6 went ahead and had money paid directly to you?

7 A Correct.

8 Q Do you know how much money you stole
9 approximately?

10 A Well, that includes the down payment plus the
11 ten percent, so I don't know.

12 Q I got a property on Dudley, 105th, Tacoma,
13 Parkview and West 93rd, and the only two
14 transactions that I can find closing statements for
15 or checks to you -- Mountaineer Title said they
16 didn't have these three -- was Dudley and West 105,
17 24 grand to Chateau and \$22,524, right?

18 A Correct.

19 Q And then we got the other three properties,
20 we don't know what happened, but we know that no
21 money went to Realty Corp of America.

22 A That's not correct.

23 Q That's not correct?

24 A No, because your title company actually
25 closed two of the properties.

1 Q I'm talking about the ones that were closed
2 by Mountaineer Title.

3 A Three were closed by Mountaineer.

4 Q Well, I found these five. I found Dudley,
5 West 105th, Tacoma and West 92nd, so four, four
6 properties.

7 A Okay.

8 Q Are you familiar with those?

9 A Yes.

10 Q Does that sound like properties that
11 Mr. Burton bought?

12 A Yes.

13 Q So we got the commission theft.
14 We're making up Mr. Lesniak's employment,
15 right? Right?

16 A Correct.

17 Q We're stealing the books from the Suzette
18 modeling company, correct?

19 MR. GIEGERICH: Objection.

20 THE COURT: Overruled.

21 A I disagree.

22 Q It's okay to steal their books?

23 A I didn't steal their books.

24 Q Xerox the books, make copies and give them to
25 an attorney and say, I want to set up a business and

1 compete with that company?

2 A I didn't -- all right. I see your point.

3 Q Then we got a whole series of transactions
4 that you were the loan officer where you were
5 rehabing the properties and Realty Corporation of
6 America is not given any money.

7 We've got Moore and Barnett, right? We got
8 two transactions with those folks.

9 A One of those transactions was Lucas's
10 property so there would be no reason for us to give
11 you a commission on that, but you did get commission
12 from the TLG portion.

13 Q No. The TLG portion was Mr. Tamburello's
14 branch. We got a Miller Avenue --

15 MR. GIEGERICH: Objection, your
16 Honor. If he's going to testify he needs to
17 take the stand.

18 MR. VIOLA: I am taking the stand.

19 THE COURT: A couple things. Just
20 real quickly here. I'm going to sustain the
21 objection, and next question.

22 BY MR. VIOLA:

23 Q We got a scheme on Miller Avenue, we got a
24 Victor Duqum scheme, right?

25 A Yes.

1 THE COURT: A what?

2 THE WITNESS: Victor Duqum.

3 BY MR. VIOLA:

4 Q This gentleman bought an apartment building
5 and went to you for financing, correct?

6 A Correct.

7 Q You charged him a 50 percent prepayment
8 penalty?

9 A I did not; the lender did.

10 Q He was charged a 50 percent prepayment
11 penalty on a \$200,000 loan?

12 A That's from what I understand, correct, yes.

13 Q The next day he sells the apartment building
14 and he owes the bank \$300,000, correct?

15 A Yes. It was a seven-year lockout, yes.

16 Q Seven years he owes them this money.

17 Then you testified in federal court to a
18 bankruptcy scam where you were taking a dive for
19 your family, you were going to put your properties
20 into bankruptcy, but you were going to take the
21 rents from those houses and put them over into CMI,
22 right?

23 A Upon advice of counsel, I plead the fifth.

24 Q Okay.

25 Were you an off-the-books partner of CMI

1 Investments?

2 A Upon advice of counsel, I plead the fifth.

3 Q You guys set up this company called New
4 Horizons, right?

5 A That's correct.

6 Q What was that?

7 A That was when you told us that we should take
8 some money and start doing down payments.

9 Q Uh-huh.

10 A So we modeled it after Chris Calo's company.

11 Q Did you get any legal advice from Jonathan
12 Rich?

13 A No, just from you.

14 Q Just from me, legal advice.

15 Now, let's talk about the time when you and
16 Lucas Fairfield went down into one of your
17 properties and you filed a fake police report.

18 A Upon advice of counsel, I plead the fifth.

19 Q Did you then discharge a --

20 A Upon advice of counsel, I plead the fifth.

21 Q Then you're doing some transactions with
22 Sarah Sidana, right?

23 A I did not. I did not ever close a
24 transaction with Sarah Sidana.

25 Q Didn't you take a loan application for

1 someone named Hen Hgoan Chau?

2 A I did and I did send it to the bank and I was
3 disinclined to continue.

4 Q At some point when this matter came to the
5 attention of the government you gave your computers
6 to someone named Rodney?

7 A That is correct.

8 Q Who's Rodney?

9 A Rodney was Matt's best friend who was a
10 computer geek.

11 Q Did you want the computers wiped off?

12 A Lucas did.

13 Q Mr. Bennett, are you aware of Mr. Bennett
14 sending a letter to several attorneys in the federal
15 case about this massage parlor issue?

16 MR. KASARIS: Objection, your Honor.

17 THE COURT: Would you repeat the
18 question.

19 BY MR. VIOLA:

20 Q Are you aware of the fact that Mr. Bennett
21 sent a letter to the defendant's attorney in the
22 federal case about your involvement with this
23 massage parlor?

24 MR. KASARIS: Objection, your Honor.

25 THE COURT: Overruled.

1 BY MR. VIOLA:

2 Q Were you involved with a massage parlor in
3 2008?

4 A Not a massage parlor. They got the wording
5 wrong. I was a massage therapist. I have seen what
6 they wrote. They wrote incorrect statements.

7 Q What about it? What about it was improper
8 according to you or as your understanding?

9 A Because I did not declare my income but I
10 amended that.

11 Q So you were paid in cash and did not declare
12 income?

13 A Correct, and then amended my taxes.

14 Q Would you agree that you knew that CMI
15 Construction was doing improper activities in North
16 and South Carolina, correct?

17 A Yes.

18 Q Yet you accepted money from CMI Construction
19 for your rent, correct?

20 A Not technically.

21 Q Explain.

22 A My rent was supposed to come from the houses
23 that I flipped, that I did the loans for. It was
24 not supposed to have anything to do with the North
25 Carolina money.