

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

UNITED STATES OF AMERICA,) CASE NO.
)
Plaintiff,)
) JUDGE
v.)
)
FUNDS IN THE AMOUNT OF)
\$1,057,000.00,)
)
FUNDS IN THE AMOUNT OF)
\$39,062.79,)
)
and)
)
REAL PROPERTY LOCATED AT)
2445 WEST GULF DRIVE, UNIT C-4,)
SANIBEL, FLORIDA, PERMANENT)
PARCEL #35-46-22-T2-0130C-0040,)
)
Defendants.) **COMPLAINT IN FORFEITURE**

NOW COMES plaintiff, the United States of America, and files this Complaint in Forfeiture, respectfully alleging on information and belief the following:

JURISDICTION AND INTRODUCTION

1. This Court has jurisdiction over this in rem proceeding under 28 U.S.C. § 1345 and § 1355(a), and 18 U.S.C. § 981(a)(1)(C).

2. This Court has venue in this matter pursuant to 28 U.S.C. § 1355(b) and § 1395.

3. On December 8, 2009, Teresa Damiani (hereinafter, "Teresa Damiani") voluntarily turned over a quit claim deed to the United States for the defendant real property located at 2445 West Gulf Drive, Unit C-4, Sanibel, Florida, Permanent Parcel Number 35-46-22-T2-0130C-0040.

4. On March 2, 2010, Teresa Damiani voluntarily turned over the defendant \$39,062.79 to the United States. Specifically, Teresa Damiani voluntarily turned over an official bank check in the amount of \$39,062.79.

5. On May 17, 2010, Teresa Damiani voluntarily turned over the defendant \$1,057,000.00 to the United States. Specifically, Teresa Damiani voluntarily turned over an official bank check in the amount of \$1,057,000.00.

6. Teresa Damiani is the widow of Louis C. Damiani (hereinafter, "Damiani").

7. The defendant \$1,057,000.00 and the defendant \$39,062.79 presently are in the custody of the federal government.

8. The defendant properties are subject to forfeiture to the United States under 18 U.S.C. § 981(a)(1)(C) in that they constitute, or are derived from, proceeds traceable to the illegal activity of Teresa Damiani's deceased husband; namely: violation(s) of 18 U.S.C. § 1951 (Hobbs Act Conspiracy).

DESCRIPTION OF THE DEFENDANT REAL PROPERTY

9. The legal description of the defendant real property is as follows: Situated in the City of Sanibel, County of Lee, State of Florida; to wit: *Apartment Unit No. C-4 of Pointe Santo de Sanibel Condominium, according to the Condominium Declaration thereof on file and recorded in the office of the Clerk of the Circuit Court in Official Record Book 1084, Page 2108, and as amended and as per Plat thereof recorded in Condominium Plat Book 4, at Page 207, all in the Public Records of Lee County, Florida, together with all appurtenances thereunto appertaining and specified in said Condominium Declaration.*

THE 18 U.S.C. § 1951 CONSPIRACY

10. The Cuyahoga County Auditor's Office ("Auditor's Office") had responsibility, among other duties, for ensuring that every parcel of land in Cuyahoga County, Ohio, and the buildings thereon were fairly and uniformly appraised and then assessed for tax purposes. Under Ohio law, the Auditor's Office was required to conduct a general reappraisal every six years and an update every three years. The Auditor's Office was headed by an elected public official and its operations affected interstate commerce.

11. Public Official 2 ("PO2") was an elected County official with overall responsibility for all County funds. He had the power to influence contracts and expenditures within the Auditor's Office.

12. Santina Klimkowski was employed at the Auditor's Office as a Department of Appraisal Specialist, responsible for overseeing the commercial real estate appraisal process.

13. Louis C. Damiani ("Damiani") was an attorney licensed to practice law in the State of Ohio until his death on or about September 4, 2006. Damiani was one of four partners in the law firm of Armstrong, Mitchell, Damiani and Zaccagnini ("AMDZ") located in Cleveland, Ohio.

14. Bruce Zaccagnini was an attorney licensed to practice law in the State of Ohio. Zaccagnini was a partner in AMDZ until its dissolution in or around December 2006.

15. Timothy J. Armstrong was an attorney licensed to practice law in the State of Ohio. Armstrong was a partner in AMDZ until its dissolution in or around December 2006.

16. Attorney 2 was an attorney licensed to practice law in the State of Ohio. Attorney 2 was a partner in AMDZ until its dissolution in or around December 2006.

17. In or around March, 1998, Business 16 and Business 18 formed a joint venture, Business 19. Business 18 was wholly owned by Business 17. In or around January, 2007, Business 20 assumed Business 16's share in Business 19.

18. Business 19 was formed to perform commercial appraisal work for the Auditor's Office. Damiani, while not a party to the joint venture, had substantial control over Business 19.

19. Belcuy Partners ("Belcuy") was created in or around December 2006 as a partnership between Zaccagnini and Damiani's widow, Teresa Damiani.

20. The operations of AMDZ, Business 19, Business 17, and Belcuy affected interstate commerce.

21. The 18 U.S.C. § 1951 conspiracy began in or about March 1998 and continued until in or about March 2009. It was the object of the conspiracy that PO2 and Klimkowski abuse their official positions in the Auditor's Office by performing official acts and promising to perform official acts for the benefit of Business 16, Business 17, Business 18, Business 19, AMDZ, Belcuy Partners, Damiani, Zaccagnini, Armstrong, Attorney 2, and others in return for PO2 and Klimkowski receiving property not due to them; namely, cash kickbacks totaling approximately \$1.3 million from others with their consent, under color of official right.

22. Between in or about March 1998 and in or about January 2008, PO2 performed official acts to assist Business 19 in obtaining contracts with the Auditor's Office (collectively hereinafter, the "Commercial Appraisal Contracts"), which had a total approximate value of \$21,480,000.00.

23. The County paid Business 19 on the Commercial Appraisal Contracts in installments that occurred approximately monthly, according to a negotiated fee schedule.

24. From in or around 1998 through in or around December

2006, Klimkowski hand-delivered most of the County's payments on the Commercial Appraisal Contracts to representatives of AMDZ.

25. From in or around 1998 through on or about December 31, 2006, AMDZ performed all Business 18 and Business 19 bookkeeping, invoicing, and banking functions. This included depositing the County's check to Business 19, paying Business 18's and Business 19's bills, and transferring large sums of money among Business 19's and Business 18's bank accounts and ultimately to AMDZ's bank account.

26. Nearly every month, after AMDZ transferred the money to AMDZ's bank account, Damiani or Zaccagnini issued draw checks to the law firm's partners, which included proceeds of the County's payments to Business 19.

27. When Damiani or Zaccagnini distributed the draw checks, they told each of the law partners the amount of each partner's cash contribution to the kickback and the date on which the cash was due. If a law partner was not in the office, Zaccagnini affixed a post-it note on the partner's draw check listing a date and an amount. The law firm partners understood that the information on the post-it note represented the amount of cash the attorney was to contribute toward the kickback and the date the money was due. Armstrong and Attorney 2 gave their contributions to the kickbacks to either Damiani, or to Zaccagnini to give to Damiani. Zaccagnini gave his contribution

to the kickback to Damiani.

28. On occasion, instead of collecting cash from the law partners directly, Zaccagnini, at Damiani's direction, withdrew cash from AMDZ's bank account to give to Damiani.

29. Damiani delivered the cash kickbacks.

30. In or around March 2005, in addition to giving Klimkowski \$10,000.00 in cash for PO2, Damiani began giving Klimkowski \$3,000.00, and later \$4,000.00 in cash for her to keep.

31. In or around June 2006, Damiani was diagnosed with a terminal illness. He instructed Zaccagnini to assume Damiani's role in delivering the near-monthly kickbacks. Zaccagnini agreed and delivered the cash.

32. In or around the end of August 2006, Klimkowski, Damiani and Zaccagnini met near the Southpark Mall in Strongsville, Ohio. Klimkowski told Damiani, outside of Zaccagnini's presence, that PO2 said that the Auditor's Office would award another three-year commercial appraisal contract to Business 19, valued at approximately \$6 million.

33. Approximately two days later, Klimkowski told Damiani that the Business 19 contract would be worth approximately \$5.7 million, with an add-on of approximately \$95,000.00 to the then-current appraisal contract. Damiani relayed this information to Zaccagnini.

34. In or around December 2006, AMDZ dissolved and the kickbacks continued under Zaccagnini's direction, with Belcuy performing the role AMDZ had performed. Teresa Damiani, a partner in Belcuy, had no involvement with Business 19.

35. Once Belcuy was established, Attorney 2 and Armstrong no longer contributed to the kickbacks and no longer shared in Business 19 proceeds. Instead, the two Belcuy partners shared the Business 19 proceeds equally. When Belcuy received distributions, the Belcuy partners each contributed approximately \$7,000.00 in cash, which Zaccagnini used to continue paying kickbacks to PO2 and Klimkowski.

36. Klimkowski hand-delivered many of the County's payments on the Commercial Appraisal Contracts to Zaccagnini.

37. Beginning in or around January 2007 and continuing through in or around July 2008, Zaccagnini met Klimkowski approximately monthly to deliver a kickback.

38. In or around January 2008, Zaccagnini increased Klimkowski's share of each kickback from \$4,000.00 to \$6,000.00.

39. On or about July 24, 2008, Zaccagnini delivered a regular cash kickback to Klimkowski, which she intended to deliver to PO2 on July 28, 2008.

40. In or around January 2009, Zaccagnini gave Klimkowski approximately \$2,000.00 in cash.

41. In or around February 2009, Zaccagnini gave Klimkowski approximately \$2,000.00 in cash.

42. During the course of the conspiracy, PO2 received approximately \$1,220,000.00 in kickbacks.

43. During the course of the conspiracy, Klimkowski received approximately \$154,000.00 in kickbacks.

44. During the course of the conspiracy, AMDZ's revenue from Businesses 18 and 19 was approximately \$8,985,380.00. AMDZ's services to Businesses 18 and 19 did not justify the high fees received.

45. During the course of the conspiracy, Belcuy's revenue from Businesses 18 and 19 was approximately \$3,689,000.00. The services provided to Businesses 18 and 19 by Belcuy did not justify the high fees received.

46. On September 18, 2009, a six (6) count information was filed against Klimkowski, Zaccagnini, and Armstrong. Count 1 of the information charged each defendant with Hobbs Act Conspiracy, in violation of 18 U.S.C. § 1951. Klimkowski, Zaccagnini, and Armstrong entered pleas of guilty to Count 1 of the information on October 2, 2009, October 1, 2009 and September 29, 2009, respectively.

FORFEITURE

47. On December 8, 2009, the United States and Teresa Damiani entered into an Agreement (hereinafter, "the Agreement"). In the Agreement, Teresa Damiani acknowledged that the following properties were derived from Louis C. Damiani's illegal activity

during the course of the conspiracy and as part of the conspiracy:

a.) The defendant Real Property located at 2445 West Gulf Drive, Unit C-4, Sanibel, Florida, Permanent Parcel Number 35-46-22-T2-0130C-0040; Appraised Value: \$500,000.00.

b.) Real Property located at 2445 West Gulf Drive, Unit A-1, Sanibel, Florida, Permanent Parcel Number 35-46-22-T2-0130A-0010; plus Garage Parking Unit B-214. Appraised Value: \$550,000.00.

c.) Real Property located at 2445 West Gulf Drive, Unit D-3, Sanibel, Florida, Permanent Parcel Number 35-46-22-T2-0100D-0030; Appraised Value: \$550,000.00.

48. As alleged in paragraph 4, above, Teresa Damiani voluntarily turned over the defendant \$39,062.79 to the United States on March 2, 2010. The defendant \$39,062.79 constitutes proceeds re Garage Parking Unit B-214 (described in paragraph 47(b), above).

49. As alleged in paragraph 5, above, Teresa Damiani voluntarily turned over the defendant \$1,057,000.00 to the United States on May 17, 2010. The defendant \$1,057,000.00 constitutes proceeds re Condominium Unit No. A-1 [described above in paragraph 47(b)] and Condominium Unit No. D-3 [described above in paragraph 47(c)].

50. In the Agreement, Teresa Damiani agreed not to contest the forfeiture of the defendant properties.

WHEREFORE, plaintiff, the United States of America, requests that this Court enter judgment forfeiting and condemning the defendant properties, and providing that the defendant properties be delivered into the custody of the United States Marshals Service for disposition according to law, and for such other relief as this Court may deem proper.

Respectfully submitted,

Eric H. Holder, Jr.
Attorney General of the United States

Barbara L. McQuade
United States Attorney
Eastern District of Michigan

By: _____
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VERIFICATION

STATE OF OHIO)
) ss
COUNTY OF CUYAHOGA)

I, James L. Morford, being first duly sworn, depose and say that I am an Assistant United States Attorney for the Northern District of Ohio, and the attorney for the plaintiff in the within entitled action. The foregoing Complaint in Forfeiture is based upon information officially provided to me and, to my knowledge and belief, is true and correct.

James L. Morford
Assistant U.S. Attorney

Sworn to and subscribed in my presence this 20th day of May, 2010.

Notary Public