

Four Defendants Indicted In Multi-Million Dollar Mortgage Fraud Scheme

BUFFALO, N.Y. - U.S. Attorney James P. Kennedy, Jr. announced today that a federal grand jury has returned a 62-count indictment charging Frank Giacobbe, 43, of East Amherst, NY; Patrick Ogiony, 34, of Buffalo, NY; Kevin Morgan, 42, of Pittsford, NY; and Todd Morgan, 29, of Rochester, NY, with conspiracy to commit wire fraud and bank fraud, and substantive wire fraud and bank fraud charges. The charges carry a maximum penalty of 30 years in prison and a \$1,000,000 fine.

Assistant U.S. Attorneys John D. Fabian and Aaron J. Mango, who are handling the case, stated that according to the indictment, between March 2011 and June 2017, the defendants conspired to defraud financial institutions, such as Arbor Commercial Mortgage, LLC and Berkadia Commercial Mortgage, LLC, and government sponsored enterprises, including Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal National Mortgage Association (Fannie Mae). The indictment alleges that the defendants conspired to engage in a variety of conduct to induce mortgage lenders to issue loans for residential apartment complexes (1) for greater amounts than they would have issued had they known the truth; and (2) that the lenders would not have issued at the time of issuance had they known the truth.

The defendants are accused of:

- Conspiring to provide lending institutions with false rent rolls suggesting that properties had more occupied units, at higher rental rates, and generated more income than they, in fact, did;
- Conspiring to provide false information about other income received at the complexes. On one occasion, when one defendant asked another where storage space income figures came from, another defendant replied, "Magic;"
- Conspiring to provide lenders with fraudulently altered leases; and
- Conspiring to prevent inspectors touring the properties from discovering vacant units by, among other things, turning on radios inside vacant units, placing mats and shoes outside apartment doors, and, on at least one occasion, hiring someone to stage an apartment as lived in and pretend to be a tenant of an inspected unit.

The indictment alleges fraud at seven different properties, not all of which involved all charged defendants, but which resulted in total loans issued of \$167,591,000. The properties are Morgan

Ellicott Apartments and Amherst Garden, both in Buffalo, NY; Rugby Square in Syracuse, NY; Avon Commons, in Avon, NY; Rochester Village, Southpointe, and Eden Square, all in the Pittsburgh, PA area.

“The defendants are charged with fraudulently obtaining over \$167.5 million worth of loans relating to seven residential apartment complexes located here in New York and in Pennsylvania,” noted U.S. Attorney Kennedy. “Most of those loans were in turn sold to Fannie Mae or Freddie Mac, entities which were created by Congress to perform and an important role in our country’s housing finance system. As a result of the fraudulent conduct alleged in this indictment, defendants’ conduct not only unjustly enriched them but threatened to undercut the very foundations upon which our mortgage banking and investment systems are based.”

“We must protect the tens of thousands of investors who own mortgage backed securities,” said Gary Loeffert, Special Agent-in-Charge of the Buffalo Division. “This investigation is focused on stopping people from undermining the residential and commercial financing industry. Fraud for profit aims to misuse the mortgage lending process to steal cash.”

Some of the defendants are scheduled to be arraigned on May 23, 2018, at 2:00 p.m. before U.S Magistrate Judge H. Kenneth Schroeder.

The indictment is the result of an investigation by the Federal Bureau of Investigation, under the direction of Special Agent-in-Charge Gary Loeffert, and the Federal Housing Finance Agency, Office of Inspector General, under the direction of Special Agent-in-Charge Mark P. Higgins.

The fact that a defendant has been charged with a crime is merely an accusation and the defendant is presumed innocent until and unless proven guilty.

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