United States Attorney's Office for the Southern District of New York
Mortgage Fraud Group

The U.S. Attorney's Office for the Southern District of New York's Mortgage Fraud Group was formed to provide a comprehensive approach to address the significant threat that mortgage fraud poses to American homeowners, the housing and credit markets, and to the nation's economy. Fraud victims across New York are facing foreclosure, and whole neighborhoods suffer from fraudulently inflated home values and the abandoned homes that result. The FBI estimates $4 to $6 billion in annual losses are attributable to mortgage fraud and identifies New York as one of the top ten states in the nation with significant mortgage fraud problems.

The SDNY Mortgage Fraud Group is comprised of experienced prosecutors who each offer different areas of expertise and experience. Currently, the Group is made up of 8 Assistant United States Attorneys chosen from different units—including from the Securities and Commodities Fraud Unit, Major Crimes Unit, Organized Crime Unit, Asset Forfeiture Unit, and the Civil Division—and is led by veteran white collar prosecutor and Senior Trial Counsel Neil M. Barofsky.

The prosecutors in this Group work with all law enforcement partners to identify the various mortgage fraud and mortgage-related securities fraud schemes being perpetrated against homeowners and mortgage lenders in the New York area. Where there is evidence of wrongdoing, we will investigate and, when appropriate, bring criminal charges against the individuals responsible.

TYPES OF MORTGAGE FRAUD

Mortgage fraud ranges from the exploitation of disadvantaged homeowners at risk of losing their homes to fraud against the largest institutional lenders. One of the primary focuses of the group is on industry insiders and professionals, whose participation is essential to these schemes, and particularly on licensed professionals such as real estate attorneys, appraisers, and mortgage brokers. These insiders are responsible for preserving the integrity of the mortgage system but, instead, betray their roles to help organize and execute these frauds.

Types of mortgage fraud schemes include:

Property Flips: A home is bought at market price and then resold, usually within a short period of time, at a fraudulently inflated value. The second sale is then funded by a fraudulently obtained mortgage, which the perpetrators will not repay – instead they pocket the proceeds of the loan. Typically, such frauds involve a “straw buyer” who pays a fee to pretend to be the purchaser of the property.

Foreclosure Rescue Scams: Homeowners who have fallen behind in their payments are approached by perpetrators who promise that in return for certain fees and for deeding the property over to them, they will assist the homeowner in keeping his property, usually with a promise to deed the property back to the homeowner at a later time. The perpetrator then takes out additional mortgages on the property without the homeowners' knowledge, and the homeowners lose their fees, any equity that they built in their homes, and frequently all ownership interest in the home.

Advance Fee Scams: Potential homeowners are told that they will receive a mortgage if they pay large up front fees. After the fee is paid, the homeowner receives no mortgage and the fee money is lost.

Identity Theft Mortgage Fraud: The perpetrators use a stolen identity to acquire mortgages to purchase properties, usually at inflated values. The perpetrators then default on the mortgages, leaving the lenders with a loss and ruining the credit of the identity theft victim.

Predatory Lending Schemes: Mortgage brokers will approach either existing or would-be homeowners and convince them to obtain mortgages that the homeowners cannot afford, through a series of lies about the terms of the mortgages. The mortgage brokers frequently alter the loan applications that ultimately are submitted to the lenders.

Reverse Mortgage Fraud: Victims are told that they will receive large payments in return for deeding their property to the perpetrators of the fraud. The perpetrators obtain a mortgage on the property and make no payments either to the victim homeowner (who has lost his home) or to the lender.

CASE EXAMPLES

The Office is currently investigating and prosecuting perpetrators of the various mortgage schemes described above. The goal is to bring multi-defendant cases that not only punish the perpetrators of these frauds, but deter others, particularly the licensed professionals who are a necessary component to each one of these schemes, by letting them know that if they participate in mortgage fraud, they will be arrested, prosecuted and convicted.

Mortgage fraud cases being prosecuted by this Office include:

United States v. Maurice McDowall, et al., and United States v. Aleksander Lipkin, et al.
On June 3, 2008, Aleksander Lipkin and Maurice McDowall pleaded guilty to participating in a wide-ranging home foreclosure rescue scheme. Lipkin also pleaded guilty to participating in a separate large-scale scheme to defraud numerous subprime mortgage lenders. Of the 4 other defendants charged in the foreclosure rescue scheme, 2 have pleaded guilty and the rest await trial. Of the 26 other defendants charged in the subprime fraud scheme, 10 have pleaded guilty. 6

of the remaining defendants await trial scheduled for November 17, 2008; the remaining 9 defendants are scheduled for trial starting January 19, 2009. *[Press releases issued: January 4, 2007; July 10, 2007; December 4, 2007; June 3, 2008; October 2, 2008; and October 3, 2008]*

- Subprime lending scheme: From 2004 through January 2007, Lipkin operated what amounted to a boiler room for mortgages, conspiring with over two dozen other people, including mortgage brokers and processors, real estate appraisers, account executives at the lenders themselves, a real estate paralegal, a lawyer, straw buyers, and others to defraud numerous subprime banks and lending institutions by submitting false information and material omissions in loan applications, bank statements, and other documents to induce them to make loans that otherwise would not have been funded.

- Lipkin and other mortgage brokers recruited people to act as "straw buyers" in order to capitalize on a straw buyer's good credit. Loans were taken out in the name of the straw buyer, who in fact had no intention of living in the property or paying off the mortgage. The defendants obtained these loans by lying to the banks about nearly every aspect of the straw buyer's financial profile including, the straw buyer's employment, income, assets and intent to live in the property. As part of the scheme, the defendants submitted fraudulently inflated appraisals to the banks, and obtained 100 percent financing based on these inflated values, thereby "cashing out" on the properties. Numerous properties immediately went into foreclosure.

- The Indictment also contains over two dozen counts charging some of the defendants with committing mortgage fraud in the purchase of a block of ten rent-regulated condominium apartments at 243 West 98th Street, on the Upper West Side of Manhattan. Specifically, the Indictment alleges that certain defendants obtained millions of dollars in loan proceeds from sub-prime lenders by submitting loan documents containing false information and material omissions regarding the fact that the apartments were subject to New York's rent regulation laws, the borrower's intent to live in the apartment as a primary residence, the borrower's employment and income, and the fair market value of the apartments.

- The brokerages used to facilitate the fraud, including AGA Capital, together brokered more than one thousand home mortgages and home equity loans with a total face value of at least $200 million dollars, and earned a total of at least $4 million in commission fees on the loans. The loss figures are in the tens of millions of dollars.

- Foreclosure rescue scheme: McDowall and Lipkin conspired with others to induce homeowners – often vulnerable people who had recently lost a job or become ill –

whose homes were in foreclosure or facing foreclosure to "save" their homes by selling them to third party straw buyers who then would refinance the debt owed on the homes at more favorable terms. The distressed homeowners were promised that, at the end of a year, the title to their homes would be returned to them, with their credit repaired and their homes saved. Dozens of desperate homeowners agreed to participate in the scheme, with the understanding that they would keep their homes. In nearly every case, however, the defendants failed to make the payments, thereby defaulting on the loans and "cashing out" on the properties. As a result, the homeowners lost the titles to their homes and faced eviction, the straw buyers owed the lenders hundreds of thousands of dollars that they were unable to repay, and the lenders suffered losses from the defaulted loans.

- McDowall, who directed the daily operations of the scheme, and Lipkin, a mortgage broker who coordinated the submission of fraudulent information to lenders on behalf of straw buyers, obtained more than eighty home mortgages and/or equity loans valued at over $20 million. The defendants' profit consisted of the difference between the value of the new and old loans; they also earned at least $1.4 million in fees.

On October 1, 2008, Maurice McDowall was sentenced to ten years in prison and ordered to forfeit $2.5 million. Lipkin awaits sentencing.

<u>U.S. v. Michael Hershkowitz and Ivy Woolf-Turk</u>

On July 30, 2007, Michael Hershkowitz and Ivy Woolf-Turk, two Manhattan-based real estate executives, were arrested in connection with a $27 million fraud involving 70 victims who advanced funds for renovations of multi-family dwellings in exchange for mortgages that did not exist.

Through a development company and various related entities, Hershkowitz and Woolf-Turk owned sixteen apartment buildings in upper Manhattan for which they attempted to raise approximately $78 million for the renovation and eventual sale of the buildings. By offering above-market interest rates, the defendants raised approximately $27 million from approximately 70 individual investors, who were told that they would hold recorded, first mortgages in the subject properties. Unbeknownst to these investors, however, the defendants also obtained from financial institutions approximately $51 million in additional loans. While the defendants did record the mortgages tendered by the financial institutions, defendants did not record the mortgages associated with the individual investors. Instead, the defendants provided the individual investors with forged documents indicating that the investors' mortgages had been appropriately recorded, when in fact they were in second position to those held by the financial institutions. The scheme unraveled after the defendants failed to make required interest and principal payments to the individual investors. *[Press release issued: July 30, 2007]*

U.S. v. Tahir Khan, et al.

On August 15, 2007, 15 defendants were arrested for producing false identification documents in fictitious names and purporting to be issued by state and federal government authorities, and using those documents to commit various crimes—including mortgage fraud, credit card fraud, and bank fraud—and selling and transporting stolen vehicles. The defendants built financial credit for the fictitious identities and obtained lucrative bank loans, home mortgage loans, increased credit card limits, and other financial benefits in the names of the identities or in the names of sham businesses supposedly operated by those fraudulent identities. The defendants and their co-conspirators then defaulted on the loans and credit card debt, causing at least $20 million in losses to numerous financial institutions. One defendant, Syed Shah, remains at large. The case is pending. *[Press release issued: August 15, 2007]*

U.S. v. Gregory Cooper, et al.

On April 28, 2008, Gregory Cooper, Lawrence Burke, Riccardo White, and Zachary Cutler were arrested for their roles in conspiracies to commit mail and wire fraud by defrauding both homeowners in the New York metropolitan area and residential mortgage brokers across the country. In one predatory lending scheme, the defendants contacted homeowners and induced them to enter into mortgage agreements by making misstatements about the terms of the mortgages and by falsely representing that their company was associated with a well-known insurance company and/or a member of the Better Business Bureau. The defendants earned money as the mortgage broker from fees paid at the closing by both the borrowers and the lending institutions. The second scheme involved selling to mortgage brokers around the country packages of leads purported to be names of people who had expressed an interest in refinancing or entering into mortgages for the first time. In addition to the names, the defendants promised marketing services primarily to introduce the mortgage company who purchased the leads. The defendants profited from the scheme through the payments they received from the mortgage brokers for the leads. The estimated loss from both schemes is in excess of $1.1 million. Cutler pleaded guilty to a two-count superseding indictment on August 11, 2008. The case against Cooper, Burke, and White is pending. *[Press release issued: April 28, 2008]*

Neil M. Barofsky (Senior Trial Counsel)

The Mortgage Fraud Group is headed by Senior Trial Counsel Neil M. Barofsky, a white collar prosecutor who joined the U.S. Attorney's Office for the Southern District of New York in 2000. Neil has an extensive background in white collar prosecutions during his tenure as a member of the Securities and Commodities Fraud Unit, including the recent conviction after trial of the former President of Refco, Inc., Tone Grant, as well as the conviction of Phillip Bennett, Refco's former Chief Executive Officer. Neil is also one of the lead prosecutors for this office's investigation and indictment of the top 50 leaders of the Revolutionary Armed Forces of

Colombia (FARC), on narcotics charges, which was described by the Attorney General as the largest narcotics indictment ever returned. Neil received a J.D. *magna cum laude* from the New York University School of Law and a B.A. and B.S. *magna cum laude* from the University of Pennsylvania.