

Cheryl J. Scarboro
Reid A. Muoio (RM 2274)
Jeffrey Leasure
Attorneys for Plaintiff
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-6030
(tel) 202/551-4403 (Scarboro)

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

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)
SECURITIES AND EXCHANGE COMMISSION,)
)
 Plaintiff,)
 v.))
) **COMPLAINT**
ANGEL ALVAREZ-PEREZ and))
ANNIE ASTOR-CARBONELL,))
)
 Defendants.))
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Plaintiff Securities and Exchange Commission (the
"SEC") alleges as follows:

NATURE OF THE ACTION

1. The SEC brings this civil financial fraud action against Angel Alvarez-Perez ("Alvarez") and Annie Astor-Carbonell ("Astor"), former officers and directors of First BanCorp, a NYSE-listed Puerto Rican bank holding company ("First BanCorp" or "company"). Alvarez and Astor concealed the true nature of over \$4 billion worth of mortgage-related transactions from the company's independent auditor and the investing public between 2000 and 2005. First BanCorp, which purportedly purchased the

mortgages, profited from these transactions by earning over \$100 million in net interest income with minimal risk. The contra-party to the transactions, Doral Financial Corporation, which purportedly sold the mortgages to First BanCorp, improperly recognized income on these transactions during the relevant period. Alvarez and Astor also created and backdated certain documents and affirmatively misrepresented the terms of certain mortgage-related transactions to the company's independent auditor to avoid a restatement in November 2004.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. Alvarez and Astor have, directly or indirectly, made use of the means or instrumentalities of interstate commerce and/or of the mails in connection with the transactions described in this Complaint.

DEFENDANTS

3. Angel Alvarez-Perez ("Alvarez"), age 60, was Chairman of the Board of Directors and Chief Executive Officer of First BanCorp during the relevant period. In September 2005, Alvarez resigned as Chief Executive Officer, and effective December 31, 2005, he retired as a member of the board. Alvarez lives in Puerto Rico.

4. Annie Astor-Carbonell ("Astor"), age 50, was a Member of the Board of Directors, Senior Executive Vice President and Chief Financial Officer of First BanCorp during the relevant period. In September 2005, Astor resigned from her management role and as a member of the board. She retired from First BanCorp effective October 31, 2005. Astor is a Certified Public Accountant licensed in Puerto Rico. Astor lives in Puerto Rico.

SUBSTANTIVE ALLEGATIONS

5. Between November 1999 and March 2005, First BanCorp entered into over \$4 billion of mortgage-related transactions with Doral Financial, whereby First BanCorp purported to purchase mortgages from Doral Financial. Most of the mortgage loans were "non-conforming" residential mortgages. The balance was commercial mortgages. For most of the mortgages, the prices paid by First BanCorp were the principal amounts of the mortgage loans.

6. The written agreements for the mortgage-related transactions with Doral Financial included recourse provisions. The written recourse provisions provided that Doral Financial would either repurchase or substitute mortgages that became 120 days or more delinquent within the first 24-month period after the purchase, with a limit on the repurchase obligation related to commercial mortgage loans of no more than 10% of the principal amount.

7. Doral Financial retained the servicing on all of the mortgage loans at issue and agreed to remit to First BanCorp scheduled principal payments and, with respect to most of the transactions, interest calculated at a variable rate between 120 and 152 basis points over three-month LIBOR.

8. The mortgage-related transactions with Doral Financial generated enormous profits to First BanCorp in the form of net interest income with minimal risk. There was essentially no interest rate risk because First BanCorp financed the transactions at a variable rate of close to LIBOR. This meant that First BanCorp effectively locked in a spread of between 120-and-152 basis points.

9. There was minimal credit risk because senior management of Doral Financial agreed orally and in emails to extend the recourse provisions beyond the 24-month period included in the written agreements to recourse for the duration of the mortgage loans. Neither the existence nor the terms of the full recourse arrangement with Doral Financial were appropriately documented in First BanCorp and Doral Financial's accounting records.

10. Senior management of Doral Financial concealed the oral agreement for full recourse from its independent auditor, among others, so that it could improperly recognize gain on sale from the mortgage-related transactions with First BanCorp. Senior management of

First BanCorp, including Alvarez and Astor, also concealed the oral agreement for full recourse from its independent auditor so that First BanCorp could continue doing business with Doral Financial on favorable terms.

11. During the relevant period, Alvarez and Astor signed management representation letters to the company's independent auditor that did not include the oral agreement for full recourse. While reference to the full recourse agreement was made to First BanCorp's board, it was not included in the final version of board minutes. Doral Financial could not have concealed the full recourse arrangement without the assistance of First BanCorp because the same accounting firm audited both companies and there was significant overlap on the two engagement teams.

12. On October 28, 2003, Alvarez informed First BanCorp's Board of Directors of the oral agreement with Doral Financial for full recourse. Alvarez had previously disclosed to the Board of Directors the terms of the oral agreement with Doral Financial. In the October 28, 2003 meeting, Alvarez discussed with the members of the Board of Directors the fact that Doral Financial had not disclosed the full recourse arrangement to its independent auditor and addressed the potential earnings recognition issue. On October 28, 2004, Alvarez and Astor informed the Board of Directors that Doral Financial had recognized \$500 million in profits from the mortgage-related transactions and that,

if anyone questioned the accounting treatment of those transactions, Doral Financial might have to restate its financial statements by that amount.

13. The mortgage-related transactions were not true sales under generally accepted accounting principles because of the full recourse agreement. Doral Financial improperly recognized income on the mortgage-related transactions with First BanCorp.

14. First BanCorp originally reflected the mortgage-related transactions with Doral Financial as purchases in bulk of mortgage loans. In December 2005, First BanCorp concluded that those transactions did not qualify as true sales for accounting purposes. The restated financial statements reflected the transactions as commercial loans secured by mortgages. The impact of the revised classification was to reduce real estate loans and to increase commercial loans secured by mortgages by the same amounts. There was no adjustment to net income related to the mortgage-related transactions. First BanCorp effectively unwound the mortgage-related transactions with Doral Financial in 2006.

15. During the second half of 2004, First BanCorp senior management, including Alvarez and Astor, was informed that the company needed to account for a derivative created by the uncapped variable interest rate feature associated with the mortgage-related transactions

with Doral Financial and another Puerto Rican financial institution, R&G Financial Corp ("R&G"), and that doing so could require a restatement of First BanCorp's historical financial statements.

16. In an initial effort to avoid a restatement, Alvarez and Astor created and backdated purported hedging documents intended to make it appear to the company's independent auditor that they were created at the inception of the mortgage-related transactions. Alvarez and Astor intended for this deception to avoid a restatement by satisfying certain requirements for hedge accounting under Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS 133").

17. Despite those efforts, First BanCorp's independent auditor did not agree that hedge accounting could be used to account for the uncapped variable interest rate features. In a further effort to avoid accounting for a derivative and restating the company's financials, Alvarez and Astor asserted falsely to the company's independent auditor that the parties to the mortgage-related transactions had agreed orally at the time of the original negotiation of the mortgage-related transactions that the variable interest rates provided for in the agreements were capped at the weighted average coupon ("WAC") of the related mortgage loans.

18. At the request of First BanCorp's independent auditor, this assertion was confirmed in writing by Alvarez and Astor. Based on the foregoing and the receipt of a legal opinion issued by outside counsel that oral agreements were enforceable under Puerto Rico law, First BanCorp took the position that the variable interest rate feature did not create a derivative, and the company's independent auditor concurred, as a result of which there was no restatement.

FIRST CLAIM FOR RELIEF

(Aiding and Abetting Violations of Section 10(b) and Rule 10b-5 of the Exchange Act)

19. Plaintiff SEC hereby incorporates ¶¶ 1 through 18 with the same force and effect as if set out here.

20. In the manner described in ¶¶ 1 through 19, Doral Financial, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon persons, in violation of Section 10(b) of the Exchange Act [15 U.S.C § 78j(b)] and

Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder, and Alvarez And Astor aided and abetted those violations pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)].

SECOND CLAIM FOR RELIEF

(Aiding and Abetting Violations of the Section 13(a) and Rules 12b-20, 13a-1 and 13a-13 of the Exchange Act)

21. Plaintiff SEC hereby incorporates ¶¶ 1 through 20 with the same force and effect as if set out here.

22. In the manner described in ¶¶ 1 through 21, Doral Financial violated Sections 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 promulgated there under [17 C.F.R. §§ 240.12b-20, 240.13a-1], by filing reports with the SEC that inaccurately reflected the company's financial performance and provided other untrue and inaccurate information to the public, and Alvarez and Astor aided and abetted those violations pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)].

THIRD CLAIM FOR RELIEF

(Aiding and Abetting Violations of Section 13(b)(2)(A) and Violating Rule 13b2-1 of the Exchange Act)

23. Plaintiff SEC hereby incorporates ¶¶ 1 through 22 with the same force and effect as if set out here.

24. In the manner described in ¶¶ 1 through 23, Doral Financial failed to make and keep accurate books and

records in violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(b)(2)(A)], and Alvarez and Astor aided and abetted that violation pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)], and Alvarez and Astor, directly or indirectly, falsified or caused the falsification of, the books, records or accounts of Doral Financial in violation of Rule 13b2-1 of the Exchange Act [17 C.F.R. § 240.13b2-1].

FOURTH CLAIM FOR RELIEF

(Violations of Rule 13b2-2 of the Exchange Act)

25. Plaintiff SEC hereby incorporates ¶¶ 1 through 24 with the same force and effect as if set out here.

26. In the manner described in ¶¶ 1 through 25, Alvarez and Astor, directly or indirectly, (a) made or caused to be made materially false, misleading or incomplete statements to an accountant in connection with an audit or examination of the financial statements of First BanCorp and (b) took action to mislead an independent public accountant engaged in an audit or review of the financial statements of First BanCorp, in violation of Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2].

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that this Court enter a judgment:

(i) permanently enjoining Alvarez and Astor, and their agents, servants, employees, attorneys, and those in active concert or participation with them who receive actual notice by personal service or otherwise, from violating Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rules 10b-5, 13b2-1 and 13b2-2 promulgated thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2], and from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)] and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1 and 240.13a-13] pursuant to Section 20(e) of the Exchange Act [15 U.S.C. §78t(e)]

(ii) ordering Alvarez and Astor pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

(iv) barring Alvarez and Astor from serving as an officer or director of a publicly traded company pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

Dated: September 16, 2008

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Reid A. Muoio (RM 2274)
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Attorneys for Plaintiff

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