

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

GRAND JURY B-08-02

UNITED STATES OF AMERICA

CRIMINAL NUMBER:

v.

Violations:

SERGIO NATERA; and  
ANNA McELANEY

18 U.S.C. § 1349 [Conspiracy to Commit  
Bank Fraud]

18 U.S.C. § 1344 [Bank Fraud]  
18 U.S.C. § 2 [Aiding and Abetting]

**INDICTMENT**

The grand jury charges:

**COUNT ONE**

**(18 U.S.C. § 1349 - Conspiracy to Commit Bank Fraud)**

**The Defendants and Other Related Parties**

1. At all times relevant to this Indictment, defendant **SERGIO NATERA** was a resident of Bridgeport, Connecticut, and was a real estate agent licensed by the State of Connecticut. As a real estate agent, **NATERA** acted on behalf of buyers and sellers of residential and commercial real estate in Connecticut.

2. At all times relevant to this Indictment, defendant **ANNA McELANEY** was a resident of Norwalk, Connecticut, and was a real estate agent licensed by the State of Connecticut. **McELANEY** worked with **NATERA**, and also acted on behalf of buyers and

sellers of residential and commercial real estate in Connecticut.

3. At all times relevant to this Indictment, BOS Asset Management, LLC (“BOS”), was a limited liability company organized under the laws of the State of Connecticut for which **NATERA** was the sole member. **NATERA** used BOS to facilitate the purchase of real property in Connecticut.

4. At all times relevant to this Indictment, a trust formed under the laws of the State of New York, which trust’s identity is known to the Grand Jury and which hereinafter is referred to as the “Trust,” was an entity which provided funding for the purchase of real property by BOS and **NATERA**, and on its own account, during the period from 2007 to 2008, as described herein.

5. At all times relevant to this Indictment, the Trust held assets, including accounts, which were managed by an investment adviser firm located in New York, New York, the identity of which is known to the Grand Jury (“Investment Adviser”). **McELANEY** was able to communicate requests for funds to the Investment Advisor directly, and the grantor of the Trust would then authorize the Investment Advisor to transfer funds from the Trust to an entity designated by **McELANEY**.

6. At all times relevant to this Indictment, Wells Fargo Bank, N.A., was a financial institution headquartered in San Francisco, California, the deposits of which are insured by the Federal Deposit Insurance Corporation, and Wells Fargo Home Mortgage was a division of Wells Fargo Bank, N.A. (jointly, “Wells Fargo”).

7. At all times relevant to this Indictment, Regions Bank was a financial institution headquartered in Alabama, the deposits of which are insured by the Federal Deposit Insurance Corporation.

### The Conspiracy

8. From in or about November 2007, and continuing through in or about December 2008, in the District of Connecticut and elsewhere, defendants **SERGIO NATERA** and **ANNA McELANEY**, and others known and unknown to the Grand Jury, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit the offense of bank fraud against the United States. The object of the conspiracy was that the defendants would and did knowingly and willfully, and with intent to defraud, devise a scheme or artifice to defraud Wells Fargo, Regions Bank and other financial institutions known and unknown to the Grand Jury, and to obtain moneys, property, credits, assets, securities or other property owned by or under the custody or control of financial institutions, by means of materially false and fraudulent pretenses, representations, and promises, which scheme and artifice in substance as set forth herein, is contrary to 18 U.S.C. § 1344.

### The Manner and Means of the Conspiracy

9. It was part of the conspiracy that defendants **NATERA** and **McELANEY**, or either of them or others acting at the direction of either of them, made material misrepresentations to financial institutions about the price buyers had offered to pay for real property on which the financial institutions held or controlled mortgages and other property rights. Because the mortgage balances were more than the amount of the proposed offers to sell the properties, the banks had to approve a proposed “short sale” price and agree to release their liens at a loss before a sale transferring clear title to a buyer could take place.

10. It was further part of the conspiracy that **NATERA** used his company, BOS, to make straw purchases of real estate which were funded primarily by the Trust. **NATERA** then caused the properties to be resold within a day or two of the initial transaction.

11. During the course of the conspiracy, **McELANEY** identified certain real estate transactions for which she was the listing real estate agent, and negotiated “short sales” with various lenders. **McELANEY** also arranged for the Trust’s funds to be available to BOS in order to make straw purchases of real estate. At **McELANEY**’s direction, the Trust itself acted as a straw buyer of various properties on at least two occasions.

12. It was further part of the conspiracy that **NATERA** and **McELANEY** executed, or caused to be executed, purchase and sale agreements between homeowners of real property and BOS at a price that was substantially lower than a price already offered by a third party purchaser (the “Preexisting Price(s)”). During the course of the conspiracy, either **McELANEY** or **NATERA** would be the listing agent for the subject properties and they worked together from the same office where they would have access to written offers to purchase the subject properties at the Preexisting Prices. **McELANEY** and **NATERA** created the straw buyer contracts at a lower price than Preexisting Prices. The purpose of the straw buyer contracts was to create a circumstance where, for a subject property, neither the mortgage holder or property owner received the benefit of the difference between the short sale price and the Preexisting Price.

13. During the course of the conspiracy, **McELANEY**, **NATERA** or others acting at the direction of **McELANEY** or **NATERA**: (a) contacted the relevant financial institution holding a mortgage or other property right relating to real estate or the mortgage servicing agent; (b) disclosed the purchase and sale agreement between the homeowner and BOS, or between the homeowner and the Trust; (c) did not disclose the higher priced purchase and sale agreement between the homeowner and the third party purchaser of which **NATERA** or **McELANEY** or both were aware; and (d) requested that the financial institution or its agent agree to release its

mortgage in exchange for a payment that was less than the outstanding balance on the mortgage.

14. It was further part of the conspiracy that once a financial institution agreed to release its mortgage for a sum based on the price in a BOS purchase and sale agreement or a Trust purchase and sale agreement, **NATERA** or **McELANEY** would arrange for two transfers of title for the property. At the first transfer of the property, or the first closing, either the Trust or BOS would purchase the real property at the lower price using funds provided directly by the Trust, through BOS or from others known and unknown to the Grand Jury. At the second closing, the property was then sold to the third party purchaser who had originally offered the higher price, although the financial institution did not know of the second sale and received none of the proceeds from the second sale.

15. It was further part of the conspiracy that **NATERA** and **McELANEY** concealed the identity of the true owner of the real property from the third party purchasers, and concealed the circumstances surrounding the sale of the property including the final sale price and the identity of the buyers from the homeowners. In addition, **NATERA** and **McELANEY** concealed the true identity of the third party purchaser, and the terms of the third party purchaser's agreement, from the financial institutions and their agents.

#### Overt Acts

16. In furtherance of the conspiracy and to effect the objects thereof, within the District of Connecticut and elsewhere, defendants **NATERA** and **McELANEY**, did commit and cause to be committed the following overt acts, among others:

a. On or about January 15, 2008, **McELANEY** in her capacity as a listing real estate agent obtained a purchase and sale agreement for residential real property in Bridgeport, Connecticut, the identity of which is known to the Grand Jury ("Property #1") at a price of

\$160,000 from an individual whose identity is known to the Grand Jury (“Purchaser #1”).

b. On or about January 2008, **McELANEY** advised the owner of Property # 1 whose identity is known to the Grand Jury (Property Owner #1) to stop paying her mortgage so that the mortgage would go into default and the bank holding the mortgage on the property, Wells Fargo, would be more likely to agree to a short sale transaction.

c. On or about May 12, 2008, **NATERA**, acting as the sole member of BOS, executed a purchase and sale agreement for Property #1 as the purchaser at a price of \$128,000.

d. In or about May 2008, **McELANEY** acting as a listing real estate agent and with a power of attorney from Property Owner # 1 agreed with Purchaser #1 to change the price of the January 15, 2008 purchase and sale agreement to be \$150,000.

e. On or about May 12, 2008, **McELANEY** acting as a listing real estate for and as a power of attorney or agent of Property Owner #1, sent correspondence to America’s Servicing Company, the servicing agent for Wells Fargo, via facsimile transmission, stating that she represented Property Owner #1.

f. On or about June 9, 2008, **NATERA** and **McELANEY** caused or directed that a deed be executed transferring title to Property #1 from Property Owner #1 to BOS for a sale price of \$128,000, free and clear of the mortgage held by Wells Fargo or its successors or agents.

g. On or about June 12, 2008, **NATERA** caused or directed title to Property #1 to be transferred from BOS to Purchaser #1 for a sale price of \$150,000.

h. On or about June 30, 2008, **McELANEY** acting as a listing real estate agent received a written offer to purchase residential real property in Monroe, Connecticut, the identity of which is known to the Grand Jury (“Property #2”) at a price of \$410,000 from individuals

whose identity is known to the Grand Jury (jointly, "Purchaser #2").

I. On or about July 28, 2008, **McELANEY** acting as a listing real estate agent and as an agent of a property owner whose identity is known to the Grand Jury (Property Owner #2) sent correspondence to Select Portfolio Servicing, Inc., the servicing agent for SMI – Credit Suisse Financial Corp. ("Credit Suisse"), via facsimile transmission, including a copy of a HUD-1 form reflecting a proposed sale of Property #2 to the Trust at a price of \$370,000.

j. On or about August 7, 2008, **McELANEY** acting as a listing real estate agent received a second written offer to purchase Property #2" for \$462,500 from Purchaser #2.

k. On or about August 30, 2008, **McELANEY** caused or directed that a deed be executed transferring title to Property #2 from Property Owner #2 to the Trust based on a sale price of \$363,000 free and clear of all mortgages.

l. On or about October 8, 2008, **McELANEY** caused or directed that title to Property #2 to be transferred from the Trust to Purchaser #2 for a sale price of \$462,500.

m. On or about August 14, 2008, **McELANEY** acting as a listing real estate agent received a written offer to purchase residential real property located in Wallingford, Connecticut, the identity of which is known to the Grand Jury ("Property #3"), from individuals whose identities are known to the Grand Jury (jointly, "Purchaser #3"), for a price of \$90,000.

n. On or about October 17, 2008, **NATERA** executed an "Affidavit of Arm's Length Transaction" with regard to the sale of Property #3.

o. On or about October 17, 2008, **NATERA** and **McELANEY** caused or directed that a deed be executed transferring title to Property #3 to the Trust based on a sale price of \$55,000 free and clear of all mortgages.

p. On or about October 30, 2008, **NATERA** and **McELANEY** caused or directed title to Property #3 to be transferred from the Trust to Purchaser #3 for a sale price of \$90,000.

q. On or about December 5, 2007, **McELANEY** acting as a listing real estate agent received a written offer to purchase residential real property located in Bridgeport, Connecticut, the identity of which is known to the Grand Jury (“Property #4”), from an individual, whose identity is known to the Grand Jury (“Purchaser #4”) for a price of \$132,500.

r. On or about April 14, 2008, **NATERA**, acting as the sole member of BOS, executed a purchase and sale agreement from the property owner or owners of Property #4, whose identity is known to the Grand Jury (“Property Owner #4”) for a price of \$102,375.

s. On or about June 9, 2008, **NATERA** and **McELANEY** caused or directed that a deed be executed transferring title to Property #4 from Property Owner #4 to BOS for a sale price of \$102,375, free and clear of all mortgages.

t. On or about June 9, 2008, **NATERA** and **McELANEY** caused or directed that title to Property #4 to be transferred from BOS to Purchaser #4 for a sale price of \$132,500.

All in violation of Title 18, United States Code, § 1349.

**COUNT TWO**  
**( 18 U.S.C. § 1344 - Bank Fraud)**  
**(18 U.S.C. § 2 – Aiding and Abetting)**

17. The allegations set forth in paragraphs 1 through 5 and paragraphs 7 through 16 of Count One of this Indictment are hereby realleged and incorporated as though set forth in full herein.

18. On or about June 9, 2008, in the District of Connecticut and elsewhere, defendants **SERGIO NATERA** and **ANNA McELANEY**, knowingly and for the purpose of executing or attempting to execute a fraudulent scheme and artifice to defraud Regions Bank, and to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of Regions Bank, by means of false or fraudulent pretenses, representations, or promises, did cause Regions Bank to release its mortgage recorded in the land records of the City of Bridgeport, Connecticut, against real property known to the Grand Jury as Property #4, for approximately \$30,125 less than full consideration.

All in violation of 18 U.S.C. § 1344 and 18 U.S.C. § 2.

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