

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED IN OPEN COURT
8-18-11
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA :

v. :

Case No. 3:09-cr-326(S1)-J-25MCR

CYNTHIA DARLENE STRICKLAND :

PLEA AGREEMENT

A. **Particularized Terms**

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Robert E. O'Neill, United States Attorney for the Middle District of Florida, and the defendant, CYNTHIA DARLENE STRICKLAND, and the defendant's attorney, Robert S. Willis, mutually agree as follows:

1. **Count Pleading To**

The defendant shall enter a plea of guilty to Count Six of the superseding Indictment. Count Six charges the defendant with bank fraud, in violation of 18 U.S.C. §§ 1344 and 2.

2. **Maximum Penalties**

Count Six carries a maximum sentence of not more than 30 years imprisonment, a fine of not more than \$1,000,000, or both imprisonment and fine, a term of supervised release of not more than 5 years, and a mandatory special assessment of \$100, which is due on the date of sentencing. A violation of the terms and conditions of supervised release carries a maximum sentence of not more than 3 years imprisonment as well as the possibility of an additional term of supervised

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release. The defendant also is subject to an order of restitution and an order of forfeiture, as set forth below.

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Count Six are:

- (1) the Defendant carried out, attempted to carry out, or aided and abetted a scheme to defraud a financial institution by using false or fraudulent pretenses, representations, or promises about a material fact;
- (2) the false or fraudulent pretenses, representations, or promises were material;
- (3) the Defendant intended to defraud the financial institution; and
- (4) the financial institution was federally insured.

4. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts One, Two, Three, Four, Five, Seven, Eight, and Nine will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A). However, the defendant understands that the conduct related to the charges set forth in these counts might be considered relevant conduct by the Probation Office and the Court in determining the defendant's sentence under the Sentencing Guidelines and under 18 U.S.C. § 3553.

5. No Further Charges Arising Out of Underlying Conduct

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge the defendant with committing any other federal criminal offenses known to the United States Attorney's

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Office at the time of the execution of this agreement that arise out of the conduct forming the basis of the charge in this case.

6. Acceptance of Responsibility - Three Levels

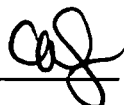
At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG § 3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant complies with the provisions of USSG § 3E1.1(b), the United States agrees to file a motion pursuant to USSG § 3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

7. Mandatory Restitution

Pursuant to 18 U.S.C. § 3663A(a), the defendant agrees to make full restitution to the victims of the offense, jointly and severally with other convicted co-conspirators. The defendant also agrees to make restitution, jointly and severally with other convicted co-conspirators, for victim losses arising out of all of the transactions that are the basis of all counts of the Indictment. That is, restitution is not

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limited to losses arising out of the count to which the defendant is pleading guilty, Count Six. As of the date of this agreement, the government has received claims for the following losses for which the defendant may be held accountable, and the defendant agrees to make restitution to the following parties in the following amounts:

| <u>Name of Payee</u> | <u>Amount of Restitution</u> |
|--|------------------------------|
| Capital One Bank (as successor to Greenpoint Mortgage Funding) | \$ 115,033.00 |
| Anette M. Casper | \$ 171,584.00 |
| Alberto Merchan | \$ 171,584.00 |
| Donald and Constance David | \$ 26,155.62 |
| Jose Cordero | \$ 23,000.00 |
| Carlos Cordero | \$ 24,000.00 |
| TOTAL | <u>\$ 531,356.62</u> |

However, between the date of this agreement and the date of the defendant's sentencing hearing, the government or the Probation Office may receive additional loss claims and the government reserves the right to request that the Court include the amounts of any such additional claims in the order of restitution, with the defendant reserving the right to object to such additional claims. The defendant also understands that the loss for purposes of determining the applicable Sentencing Guidelines range under USSG § 2B1.1 is calculated differently than the loss for purposes of restitution. The loss figure in this paragraph reflects only those losses for which victims have made claims. The loss calculated under USSG § 2B1.1 may be higher than the loss reflected in this paragraph.

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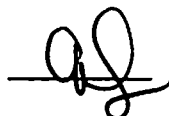
8. Agreement Not to Engage in Any Business or Occupation Related to Real Estate Transactions

The defendant agrees that, during the pendency of this case and during any term of imprisonment or term of supervised release or probation, and as a condition of supervised release or probation, the defendant will not engage, directly or indirectly, formally or informally, in any business, trade, or occupation related to deriving income through the buying, selling, or leasing of real property, or giving advice about the buying, selling, or leasing of real property, including acting as a buyer, a seller, a real estate agent, a leasing agent, a title agent, a mortgage broker, a lender, an appraiser, an investor, or in any other capacity. This agreement is not intended to prohibit the defendant from participating in the buying, selling, or leasing of real estate on which the defendant or immediate family members of the defendant reside or will reside.

9. Surrender of Licenses Related to Real Estate Business or Occupation

The defendant agrees that, during the pendency of this case and during any term of imprisonment or term of supervised release or probation, and as a condition of supervised release or probation, the defendant will surrender and will not apply for or seek to reinstate any and all licenses or other certificates that would authorize the defendant to engage in any business, trade, or occupation that relates to the buying, selling, or leasing of real property, or giving advice about the buying, selling, or leasing of real property, including but not limited to the following licenses or certificates: Real Estate Broker, Real Estate Sales Associate, Mortgage Broker, Mortgage Lender, Title Agent, Certified Residential Appraiser, Certified General Appraiser, General Appraiser (Instructor), and similar licenses and certificates. The defendant agrees to surrender

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any such licenses and certificates that the defendant currently holds no later than twenty days after the entry of a plea of guilty in this case.

10. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) (through 28 U.S.C. § 2461(c)) and 18 U.S.C. § 982(a)(2)(A), whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees. The assets to be forfeited specifically include a money judgment in the amount of \$178,625.00, representing the proceeds obtained by the defendant as a result of the offenses alleged in the Indictment. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have that the forfeiture constitutes an excessive fine.

The defendant agrees to forfeit proceeds arising out of all of the transactions that are the basis of all counts of the Indictment. That is, forfeiture is not limited to the proceeds of the transaction that is the basis of the count to which the defendant is pleading guilty, Count Six. The defendant admits and agrees that there is a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the court make a determination that the government has established the amount of the proceeds is \$178,625.00 and, at the time of sentencing, enter a Personal Money Judgment in that amount or, if the parties reach agreement as to a lesser amount before sentencing, in

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such lesser amount. Pursuant to Rule 32.2(b)(3), the defendant agrees that the Personal Money Judgment shall be final as to the defendant at the time it is entered, notwithstanding the requirement that it be made a part of the sentence and be included in the judgment.

The defendant agrees that the United States shall, at its option, be entitled to forfeiture of any property (substitute assets) of the defendant up to the value of \$178,625.00 in order to satisfy the money judgment. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

The defendant agrees to take whatever steps are necessary to pass clear title to the United States of any assets sought to satisfy the money judgment. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Defendant further agrees to take all steps necessary to locate property which could be used to satisfy the money judgment and to pass title to the United States before the defendant's sentencing. To that end, defendant agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above wherever located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States.

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Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture. The defendant agrees that forfeiture and any payment of restitution shall not serve as an offset or credit against one or the other.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987) or § 3579, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

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3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office or any victim named in an order of restitution, or any other source, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

4. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by

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the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

5. Defendant's Waiver of Right to Appeal and Right to Collaterally Challenge the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government

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exercises its right to appeal the sentence imposed, as authorized by Title 18, United States Code, Section 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by Title 18, United States Code, Section 3742(a).

6. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

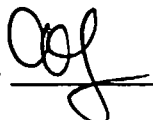
7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty

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or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth in the attached "Factual Basis," which is incorporated herein by reference, are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

10. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no

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other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

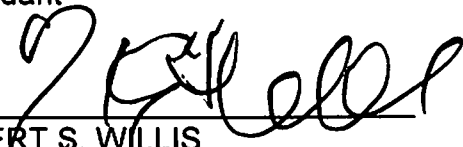
11. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 18th day of August, 2011.



CYNTHIA DARLENE STRICKLAND
Defendant



ROBERT S. WILLIS
Attorney for Defendant

ROBERT E. O'NEILL
United States Attorney

By: 

ARNOLD B. CORSMEIER
Assistant United States Attorney



JULIE HACKENBERRY SAVELL
Assistant United States Attorney
Chief, Jacksonville Division

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

Case No. 3:09-cr-326(S1)-J-25MCR

CYNTHIA DARLENE STRICKLAND

PERSONALIZATION OF ELEMENTS

1. Do you admit that on or about October 29, 2004, in Jacksonville, in the Middle District of Florida, you carried out, attempted to carry out, or aided and abetted a scheme to defraud a financial institution, that is, Lehman Brothers Bank, by using false or fraudulent pretenses, representations, or promises about a material fact?
2. Do you admit that the false or fraudulent pretenses, representations, or promises were material?
3. Do you admit that you intended to defraud the financial institution?
4. Do you admit that the financial institution was federally insured?

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

Case No. 3:09-cr-326(S1)-J-25MCR

CYNTHIA DARLENE STRICKLAND

FACTUAL BASIS

The defendant, CYNTHIA DARLENE STRICKLAND, was a licensed title agent and the owner of Premier Title Group, Inc., which was a real estate title company in Jacksonville, Florida, that also functioned as a closing agent for real estate transactions. On October 29, 2004, STRICKLAND conducted a closing of a transaction involving the purchase and sale of residential real estate located at 1626 Norton Hill Drive, Jacksonville, Florida. A closing is the event at which the legal transfer of real estate from seller to buyer takes place and at which funds are transferred between the various parties, such as from lender to buyer and from buyer to seller, and fees are paid to mortgage brokers, real estate agents, appraisers, title agents, and others involved in the transaction.

The events leading to the closing began with the sellers of the property and Juan Carlos Gonzalez entering into a Purchase and Sale Agreement for Gonzalez to buy the property for \$570,000. A Purchase and Sale Agreement is a written contract that sets forth the terms of the real estate transaction, including identifying the property to be sold, the seller, the buyer, the purchase price, and other conditions of the sale. Barry Westergom was Gonzalez's buyer's agent in negotiating the agreement with the

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sellers. After the agreement was reached, Westergom, who was a licensed real estate appraiser, conducted an appraisal and valued the property at \$725,000. Gonzalez then created, or caused the creation of, a second Purchase and Sale Agreement stating that the buyer of the property was a named third party, stating that the sellers were the original sellers, and stating that the purchase price was \$725,000.

Gonzalez also completed, or caused the completion of, a Uniform Residential Loan Application, known as a Form 1003, in the name of the third-party buyer, which stated that the purchase price of the property was \$725,000. A Form 1003 is a standard residential mortgage loan application that is universally used by lenders. The Form 1003 sets forth financial details of the transaction and the borrower's financial information, including employment, income, assets, and liabilities. Gonzalez provided documents related to the transaction, including the second Purchase and Sale Agreement and the Form 1003 to a mortgage broker to obtain a loan for the third-party buyer. The mortgage broker submitted the documents to Lehman Brothers Bank, which was a federally insured financial institution, seeking a first mortgage loan in the amount of \$580,000 and a second mortgage loan in the amount of \$108,750.

Gonzalez engaged STRICKLAND to act as the title agent and the closing agent for the transaction. As part of her responsibilities as closing agent, STRICKLAND prepared a HUD-1 Settlement Statement. A HUD-1 is a form that is universally used at the closings of residential real estate transactions in the United States. A HUD-1 identifies and allocates the various expenses, payments, and disbursements associated

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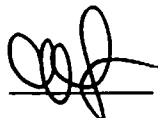


with the transaction. Mortgage lenders review the information set forth on the HUD-1 and must approve it before they will disburse any loan funds.

On the HUD-1, STRICKLAND stated that the purchase price of the property was \$725,000 and stated that the borrower (the third-party buyer) would pay \$70,694.24 at the closing. STRICKLAND also stated on the HUD-1 that a payment of \$155,000 would be made to JCI and Associates, an entity owned and controlled by Gonzalez, describing the payment as an "Assignment Fee" that was to be paid by the seller. She further stated that a broker's commission of \$17,100 would be paid to an entity called "Property Associates" and that an appraisal fee of \$450 would be paid to an entity called "Jax Appraisal". As the closing agent, STRICKLAND was required to sign the HUD-1 immediately below a statement affirming, among other things, that it set forth a "true and accurate account of this transaction." STRICKLAND submitted the HUD-1 to Lehman Brothers Bank for its review and approval as part of the process of the bank extending the mortgage loans.

While she was carrying out her duties as closing agent, STRICKLAND knew that some of the information submitted to the bank to support approval of the mortgage loans was false. She also knew that the HUD-1 she prepared was not an accurate account of the transaction. Specifically, she knew that two Purchase and Sale Agreements existed, one for the lower price negotiated with the sellers and one for the higher price based on the appraisal by Westergom. She also knew that only the second agreement reflecting the higher price was submitted to the bank and that the bank was not aware of the first agreement. Despite this knowledge, STRICKLAND did not inform the bank of these facts.

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STRICKLAND also knew that Westergom was the principal behind both Property Associates and Jax Appraisal and that he acted as both a real estate broker and an appraiser in the transaction. She further knew that his being both a real estate broker and an appraiser in the same transaction was a conflict of interest. Despite this knowledge, STRICKLAND did not disclose these facts to the bank. She did not disclose to the lender, either on the HUD-1 or anywhere else, that Westergom was both a broker and the appraiser in the transaction.

The closing of the transaction on October 29, 2004, took place at the offices of STRICKLAND's business, Premier Title Group, Inc. ("PTGI"). During the closing, STRICKLAND informed the bank that all closing conditions had been met and, as a result, the bank disbursed the loan funds in the amount of \$581,239.51 for the first mortgage loan and in the amount of \$104,170.47 for the second mortgage loan. The funds were sent by wire transfer into PTGI's escrow account. From these funds, STRICKLAND issued checks to, among others, JCI and Associates for \$155,000, Property Associates for \$17,100, Jax Appraisal for \$450, and PTGI for the total amount of \$4,852.30.

STRICKLAND's representation to the bank that all closing conditions had been met was not true because the borrower had not made the \$70,694.24 "Cash From Borrower" payment reflected on the HUD-1 STRICKLAND prepared. Instead, after the bank disbursed the loan funds and STRICKLAND provided Gonzalez with the check for \$155,000, Gonzalez took the check to a bank where he had an account and, from the check funds, obtained an "Official Check", also called a "cashier's check", in the amount of \$70,694.24, with the borrower's name shown as the remitter of the check.

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Gonzalez then provided this check to STRICKLAND, who knew that the funds for the check did not come from the borrower but instead came from the funds she provided to Gonzalez. The representation to the bank that the borrower was paying substantial funds in the transaction was material to the lending decision. Furthermore, the facts that the borrower was not paying any money in the transaction and that Gonzalez, who was an interested party in the transaction, made the buyer's payment out of the loan funds disbursed at the closing would have been material to the lending decision, if they had been disclosed to the bank.

In approving the first and second mortgage loans, Lehman Brothers Bank relied upon the information set forth in the documents submitted in support of the loans, including the HUD-1. The facts that STRICKLAND did not disclose to the bank and the misrepresentations set forth on the HUD-1 were important facts that a reasonable person would use to decide whether to approve the loans and they had the natural tendency to influence that decision. By these omissions and misrepresentations, STRICKLAND acted with the specific intent to deceive the bank.

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A handwritten signature in black ink, appearing to be 'WJ', written over a horizontal line.