

MEMORANDUM

SUPREME COURT

KINGS COUNTY

The People of the State of New York

BY ABRAHAM GERGES, J.

Date: October 28, 2008

v.

Emmanuel Constant,

Defendant.

Ind. 8206/2006

After a jury trial, defendant stands before this court convicted of Scheme to Defraud in the First Degree, Grand Larceny in the Third Degree, two counts of Grand Larceny in the Second Degree, and two counts of Falsifying Business Records in the First Degree.

The court has considered all of the reports and letters submitted by the parties, reviewed the extensive court file, the probation report, and the *amicus curiae* brief. Having presided over this trial the court is fully familiar with the intricacies of this complex case.

Defendant was one of the participants in a wide-ranging mortgage fraud scheme that defrauded lenders of well over a million dollars. Defendant and co-defendants engaged in an elaborate fraud that included the use of "straw buyers," falsification of key portions of the loan documentation required by law, false appraisals, and inflated income figures for these notional buyers. All of this fabricated information was used to falsely inflate a property's value so a lending institution would loan an amount of money in excess of the property's worth. The defendant and his confederates would then split the "profit." Defendant was a full and active participant in this scheme. Testimony,

including his own, directly implicated him as a knowing participant in these illegal activities.

This case, while serious in and of itself, takes on an added resonance given the current global financial crisis. While defendant and his confederates can not be held accountable for the nationwide economic meltdown and the foreclosure crisis, this scheme, and others like it, have played a role in the situation. Mortgage fraud is not a victimless crime. All citizens and taxpayers are victims of this scheme. Falsely inflated real estate prices impact our communities by distorting the market and, for most Americans, their home is their most significant asset.

Defendant, a native of Haiti, has a truly heinous record of violence, murder, torture and intimidation under the brutal regime of the Duvaliers. After fleeing Haiti, defendant arrived in this country and embarked on a further life of crime. Furthermore, defendant's participation in the mortgage fraud scheme before the court is not an isolated incident; he was also involved in another similar mortgage fraud scheme in Suffolk County, New York. Defendant must be held accountable for his illegal actions; it is evident that he will continue to flout the law, if given the opportunity.

Sentencing a defendant involves a sensitive balancing of many factors including the facts of the crime, the particular circumstances of the offender and the rehabilitative and deterrent aspects of incarceration. Based on this, and defendant's prior record, the following sentence is imposed:

On count one, Scheme to Defraud in the First Degree, defendant is hereby sentenced to a term of incarceration of 1 1/3 to 4 years, this count to be concurrent to all counts;

On count two, Grand Larceny in the Third Degree (153 Hull Street), defendant is hereby sentenced to a term of incarceration of 2 1/3 to 7 years, this count to be concurrent to count 1, consecutive to all other counts.

On count three, Grand Larceny in the Second Degree (87 Monroe Street), defendant is hereby sentenced to a term of incarceration of 5 to 15 years, this count to be concurrent to counts 1 & 4, consecutive to all other counts.

On count four, Falsifying Business Records in the First Degree (87 Monroe Street), defendant is hereby sentenced to a term of incarceration of 1 1/3 to 4 years this count to be concurrent to count 1 & 3, consecutive to all other counts.

On count five, Grand Larceny in the Second Degree (118 Bainbridge Street), defendant is hereby sentenced to a term of incarceration of 5 to 15 years this count to be concurrent to counts 1 & 6, consecutive to all other counts.

On count six, Falsifying Business Records in the First Degree (118 Bainbridge Street), defendant is hereby sentenced to a term of incarceration of 1 1/3 to 4 yrs this count to be concurrent to counts 1 & 5, consecutive to all other counts.

Given the uncertainty of the political situation in Haiti and the very real chance that defendant may be able to evade justice due to the instability in the Haitian judicial system, it is this court's hope that defendant remain in New York State for the full term of incarceration, although it is apparent that the federal authorities may move to deport him shortly.

The mandatory surcharge is imposed.