

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

STEPHEN MARTIN GUNTHER

VSB Docket No. 10-000-082936

Attorney at Law

On March 22, 2010, came Stephen Martin Gunther and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth. By tendering his Consent to Revocation at a time when disciplinary charges are pending, he admits that the charges in the attached Affidavit Declaring Consent to Revocation document are true.

The Board having considered the said Affidavit Declaring Consent to Revocation, and Bar Counsel having no objection, the Board accepts his Consent to Revocation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Stephen Martin Gunther be and the same hereby is revoked, and that the name of the said Stephen Martin Gunther be stricken from the Roll of Attorneys of this Commonwealth.

Entered this 23rd day of March, 2010

For the Virginia State Bar Disciplinary Board

*By Barbara S. Lanier
Barbara Sayers Lanier, Clerk of the Disciplinary System*

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

RECEIVED

IN THE MATTER OF
STEPHEN MARTIN GUNTHER

MAR 22 2010

VS B Docket No. 10-000-082936

VS B CLERK'S OFFICE

AFFIDAVIT DECLARING CONSENT TO REVOCATION

Stephen Martin Gunther, after being duly sworn, states as follows:

1. That Stephen Martin Gunther was licensed to practice law in the Commonwealth of Virginia on 11/16/2000.

2. That Stephen Martin Gunther submits this Affidavit Declaring Consent to Revocation pursuant to Rule of Court, Part 6, Section IV, Paragraph 13-28.

3. That Stephen Martin Gunther's consent to revocation is freely and voluntarily rendered, that Stephen Martin Gunther is not being subjected to coercion or duress, and that Stephen Martin Gunther is fully aware of the implications of consenting to the revocation of his license to practice law in the Commonwealth of Virginia.

4. Stephen Martin Gunther is aware that there is currently pending a complaint, an investigation into, or a proceeding involving, allegations of misconduct, the docket number for which is set forth above, and the specific nature of which is here set forth:

On February 23, 2010, a Criminal Information was filed against Stephen Martin Gunther in the United States District Court for the Eastern District of Virginia, Norfolk Division, charging Stephen Martin Gunther with wire fraud in violation of 18 U.S.C. §1343 (*United States*

of America v. Stephen Martin Gunther, Case No. 2:10-cr-00027) (“Criminal Information”). A copy of the Criminal Information is attached hereto as Exhibit “A.”

The Criminal Information charges Stephen Martin Gunther with devising and executing a scheme and artifice to defraud and obtain monies via wire transfer totalling approximately \$978,500.00 from multiple lending institutions by means of materially false and fraudulent pretenses, representations, and promises made by him in conjunction with obtaining financing for multiple real estate transactions in which he acted as settlement agent, including, *inter alia*:

i) preparing and submitting HUD-1 Settlement Statements that did not accurately reflect receipts and disbursements of funds;

ii) using his personal funds to pay closing costs and concealing the same from the lending institutions that financed the transactions;

iii) disbursing loan proceeds without collecting closing costs from straw purchasers and concealing the same from the lending institutions that financed the transactions; and

iv) disbursing loan proceeds to himself and third parties that were scheduled to be paid to the sellers named under HUD-1 Settlement Statements.

5. Stephen Martin Gunther acknowledges that the material facts set out in the Criminal Information are true and constitute misconduct under the Virginia Rules of Professional Conduct that reflects adversely on his honesty, trustworthiness and fitness to practice law.

6. Stephen Martin Gunther submits this Affidavit and consents to the revocation of his license to practice law in the Commonwealth of Virginia because he knows that if disciplinary proceedings based on the said alleged misconduct were brought or prosecuted to a conclusion, he could not successfully defend them.

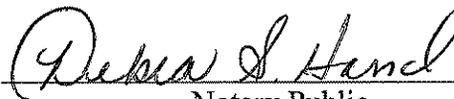
Executed on this 18 day of March, 2010.



Stephen Martin Gunther
Respondent

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Virginia Beach, to wit:

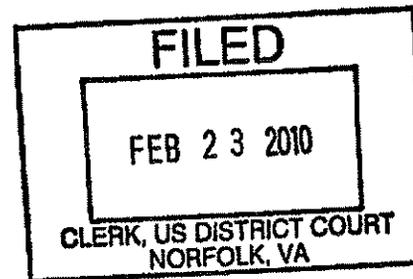
The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to before me by Stephen Martin Gunther, whose identity is personally known to me, on this 18th day of March, 2010.



Notary Public

My Commission expires: 8/31/2010.





IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

UNITED STATES OF AMERICA)	
)	CRIMINAL NO. 2:10cr 27
v.)	
)	18 U.S.C. § 1343
STEPHEN M. GUNTHER,)	Wire Fraud
)	
Defendant.)	Forfeiture

CRIMINAL INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT:

During the period from in or about June 2006 through December 2006, in the Eastern District of Virginia, STEPHEN M. GUNTHER, the defendant, did devise and intend to devise a scheme and artifice to defraud Fremont Investment & Loan, American Home Mortgage, Diversified Mortgage and Baltimore American Mortgage Corporation, and for obtaining money from said lenders by means of materially false and fraudulent pretenses, representations and promises, which scheme and artifice, and the execution thereof, were in substance as follows:

1. At all material times, STEPHEN M. GUNTHER, the defendant, was an attorney licensed in Virginia with offices located in Virginia Beach, Virginia.
2. The defendant acted as a settlement agent in connection with the closing of residential real estate loans on the following properties:

1543 Crescent Pointe Lane, Virginia Beach, Virginia

145 D View Avenue, Norfolk, Virginia

7400 Hedgewood Lane, Norfolk, Virginia

3057 Kenelm Drive, Chesapeake, Virginia

3. The object of the scheme and artifice devised and executed by the defendant was to obtain financing from Fremont Investment & Loan, American Home Mortgage, Diversified Mortgage and Baltimore American Mortgage Corporation to fund the closings on the aforesaid properties, on the basis of HUD-1 Settlement Statements prepared and submitted by the defendant which, as the defendant well knew, did not accurately reflect receipts and disbursement of funds.

4. It was a part of said scheme and artifice to defraud that in connection with the closing on the property located at 1543 Crescent Point Lane, Virginia Beach, Virginia on June 29, 2006, the defendant knowingly violated the closing instructions of the lender, Baltimore American Mortgage Corporation by concealing an agreement that the defendant would advance closing costs and be reimbursed by a third party. The defendant used \$8,475.04 of his own personal funds to pay closing costs, which according to the HUD-1 Settlement Statement should have been paid by the buyer. The defendant subsequently received reimbursement of that amount, plus \$500.00 in addition to his attorney's fee, from funds listed on the HUD-1 Settlement Statement as an item to be paid to "W.S.L. Elements," all of which was undisclosed on said statement and therefore not known to the lender.

5. It was a part of said scheme and artifice to defraud that in connection with the closing on the property located at 145 D View Avenue, Norfolk, Virginia on July 31, 2006, the defendant knowingly violated the closing instructions of the lender, American Home Mortgage by concealing an agreement that the defendant would advance closing costs and be reimbursed by a third party. The defendant used \$18,281.55 of his own personal funds to pay closing costs, which according to the HUD-1 Settlement Statement should have been paid by the buyer. The

defendant subsequently received reimbursement of that amount, plus \$930.00 in addition to his attorney's fee, from funds listed on the HUD-1 Settlement Statement as an item to be paid to "W.S.L. Elements," all of which was undisclosed on said statement and therefore not known to the lender.

6. It was a further part of said scheme and artifice to defraud that in connection with the closing on the property located at 7400 Hedgewood Lane, Norfolk, Virginia on August 24, 2006, the defendant knowingly violated the closing instructions of the lender, Diversified Mortgage, by concealing an agreement between himself and a third party whereby the loan proceeds would be disbursed without the defendant receiving closing costs from the buyer as reflected on the HUD-1 Settlement Statement. In fact, the defendant disbursed loan proceeds without first receiving \$110,332.39 in closing costs from the buyer as listed on the HUD-1 Settlement Statement. The defendant knew that the buyer listed on the HUD-1 Settlement Statement was a straw purchaser who would not pay the closing costs. After the loan proceeds were disbursed by the defendant, he was paid the buyer's closing costs from funds listed on the HUD-1 Settlement Statement as an item to be paid to "W.S.L. Elements," all of which was undisclosed on said statement and therefore not known to the lender.

7. It was a further part of said scheme and artifice to defraud that in connection with the closing on the property located at 3057 Kenelm Drive, Chesapeake, Virginia on December 21, 2006, the defendant knowingly violated the closing instructions of the lender, Fremont Investment & Loan, by concealing an agreement between himself and a third party whereby the loan proceeds would be disbursed without the defendant receiving closing costs from the buyer as reflected on the HUD-1 Settlement Statement. In fact, the defendant disbursed loan proceeds

without first receiving \$21,046.90 in closing costs from the buyer as listed on the HUD-1 Settlement Statement. The defendant knew that the buyer listed on the HUD-1 Settlement Statement was a straw purchaser who would not pay the closing costs. After the loan proceeds were disbursed by the defendant, he was paid the buyer's closing costs from funds listed on the HUD-1 Settlement Statement as proceeds to be paid to the seller, all of which was undisclosed on said statement and therefore not known to the lender. Furthermore, instead of disbursing \$124,626.52 to the seller as reflected on the HUD-1 Settlement Statement, the defendant disbursed \$124,545.52 to a third-party, which was also concealed from the lender.

8. In reliance on the HUD-1 Settlement Statements which the defendant knew did not accurately reflect receipts and disbursements of funds, the above-referenced lenders made loans totaling approximately \$978,500.00. The notes on said loans were subsequently purchased by other companies who sustained losses when the loans on three of the four properties went into default and two were sold at foreclosure, with one pending sale. As a result, the following losses were sustained:

Saxson Mortgage Services – \$35,000.00 (approximate, pending sale)

Ocwen Loan Servicing – \$38,855.56

America's Servicing Company – \$58,000.00

Residential Credit Solutions – \$78,202.71

9. On or about December 22, 2006, in the Eastern District of Virginia, for the purpose of executing the aforesaid scheme and artifice, STEPHEN M. GUNTHER did cause to be transmitted by means of wire communication in interstate commerce, certain signs, signals, pictures and sounds, that is, a wire transfer of loan closing funds in the amount of \$189,369.35

from Fremont Investment & Loan in Anaheim, California to Bank of Hampton Roads in Norfolk, Virginia.

(In violation of Title 18, United States Code, Section 1343.)

FORFEITURE

The defendant, STEPHEN M. GUNTHER, if convicted of the offense set forth in this criminal information, shall, as part of the sentencing of the defendant pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to said violation.

Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), the defendant shall forfeit substitute property, up to the value of the property subject to forfeiture as described above, if, as a result of any act or omission of the defendant, any such property subject to forfeiture cannot be located upon the exercise of due diligence; has been transferred, sold to or deposited with a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty.

(In accordance with 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) and 18 U.S.C. §982(a)(2)(A).)

Neil H. MacBride
United States Attorney

By:



Alan M. Salsbury
Assistant United States Attorney
Virginia State Bar No. 15682
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Norfolk, Virginia 23510
Tel. - 757-441-6350
Fax - 757-441-6689
Email - alan.salsbury@usdoj.gov

Criminal Case Cover Sheet

U.S. District Court

Place of Offense: EDVA Under Seal: Yes ___ No Judge Assigned: _____
 City Virginia Beach, VA Superseding Information _____ Criminal Number: 2:10cr 27
 County/Parish _____ Same Defendant _____ New Defendant Stephen M. Gunther
 Magistrate Judge Case Number _____ Arraignment Date: _____
 Search Warrant Case Number _____
 R 20/R 40 from District of _____

Defendant Information:

Juvenile -- Yes ___ No FBI # _____
 Defendant Name: Stephen M. Gunther Alias Name(s) _____
 Address: _____ Hertford, NC _____
 Employment: _____

Def
 Birth date: _____ 1970 SS# _____ 6749 Sex M Race White Nationality U.S. Place of Birth _____
 Height 5'11" Weight 160 Hair Brown Eyes Blue Scars/Tattoos _____
 Interpreter: No ___ Yes List language and/or dialect: _____

Location Status:

Arrest Date _____
 ___ Already in Federal Custody as of _____ in _____
 ___ Already in State Custody ___ On Pretrial Release ___ Not in Custody
 ___ Arrest Warrant Requested ___ Fugitive ___ Summons Requested
 ___ Arrest Warrant Pending ___ Detention Sought ___ Bond _____

Defense Counsel Information:

Name: James O. Broccoletti, Esq. Court Appointed
 6663 Stoney Point South,
 Address: Norfolk, VA 23502 Retained
 Telephone: 757-466-0750 Public Defender

U.S. Attorney Information:

AUSA Alan M. Salsbury Telephone No: 757-441-6331 Bar # 15682

Complainant Agency, Address & Phone Number or Person & Title:

Federal Bureau of Investigation, 150 Corporate Boulevard, Norfolk, VA 23502, SA Colin Woods

U.S.C. Citations:

	<u>Code/Section</u>	<u>Description of Offense Charged</u>	<u>Count</u>	<u>Capital/Felony/Misd/Petty</u>
Set 1	<u>18 U.S.C. § 1343</u>	<u>Wire Fraud</u>	<u>1</u>	<u>Felony</u>
Set 2	_____	_____	_____	_____
Set 3	_____	_____	_____	_____