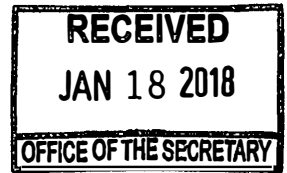


HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



Administrative Proceeding
File No. 3-18126

In the Matter of

GERARDO E. REYES,

Respondent.

**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION
AGAINST RESPONDENT GERARDO E. REYES
AND SUPPORTING MEMORANDUM OF LAW**

I. INTRODUCTION

Pursuant to Rule 250 of the Commission's Rules of Practice, the Division of Enforcement (the "Division") respectfully moves for summary disposition and the imposition of an industry bar from association and a penny stock bar against Respondent Gerardo E. Reyes ("Respondent" or "Reyes") pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act"), and an industry bar from association pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). The Division sets forth its grounds below.

II. HISTORY OF THE CASE

The Commission issued the Order Instituting Proceedings ("OIP") on August 22, 2017, pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. In summary, the OIP alleges that Reyes was a registered representative associated with a registered broker dealer and, subsequently, with a dually registered broker dealer and investment adviser who misled a customer who thought she was investing in Treasury Bonds concerning the actual

use of those funds and the fact that her money had been lost as a result of bad investments. These facts led to Reyes's guilty plea in the criminal case against him.

On December 4, 2017, a telephonic pre-hearing conference was held, and all parties were present. At the conference, as confirmed in a written order (AP Rulings Rel. No. 5366, issued Dec. 12, 2017), the Law Judge set a deadline of December 18, 2017 for Reyes to advise whether he wished to settle, seek mediation, or proceed to summary disposition. When no response was received, a deadline of January 18, 2018 was set for the Division to file its motion for summary disposition. (AP Rulings Rel. No. 5415, Dec. 21, 2017)

III. MEMORANDUM OF LAW

A. Reyes's Criminal Case

On December 20, 2016, a federal grand jury in the Southern District of Florida returned a two-count Indictment against Reyes, charging him with wire fraud, in violation of 18 U.S.C. § 1343. (DE 1, Indictment, *United States v. Reyes*, No. 0:16-cr-20963 (S.D. Fla.) (attached as Exhibit 1)). On March 29, 2017, Reyes pled guilty to both counts of the indictment. (DE 16, Factual Proffer; DE 19, Guilty Plea Transcript, attached respectively as Exhibits 2 and 3)). On June 27, 2017, the district court judge sentenced Reyes to four years probation and ordered him to pay restitution of \$129,273.00. (D.E. 28, Judgment (attached as Exhibit 4)).

B. Facts Determined Against Reyes

Reyes's factual proffer establishes the following:¹

¹ A conviction resulting from a guilty plea binds the respondent to the facts he has admitted. *See Gary L. McDuff*, AP File No. 3-15764, 2015 WL 1873119, *3 & n.18 (Apr. 23, 2015) (Commission Order); *Don Warner Reinhard*, AP File No. 3-13280, 2011 WL 121451, *7 (Jan. 14, 2011) (Commission Opinion) (respondent who pleaded guilty "cannot now dispute the accuracy of the findings set out in the Factual Basis for Plea Agreement").

In 2001, Reyes worked at the Allstate office located in Miami Lakes, Florida. While at Allstate, Reyes became M.P.'s ("the victim") financial advisor and over the years, Reyes handled the victim's personal financial investments. In or around December 2003, Reyes started his own investment company called Gerardo E. Reyes & Associates ("GER") in Miami, Florida. The victim wrote checks payable to Reyes and his company and Reyes continued to handle the victim's financial investments. In April 2005, at Reyes's request, the victim joined an investment club, which had investments in real estate holdings.

From 2003 through 2008, the victim continued to write checks payable to GER for investment purposes. Around May 2008, GER sent a letter informing the victim that her real estate investments were in danger of losing value, suggesting that she move her money to U.S. Treasury Bonds. In August 2008, GER provided the victim with a Memorandum of Record informing her she had already lost 9.3% of the value of her investment and that she should move her money before losing even more money. The Memorandum of Record noted that there was approximately \$156,524 in the victim's portfolio.

In October 2008 and September 2009, GER informed the victim that it had invested a total of approximately \$144,000 of the victim's money in two specific U.S. Treasury Bonds. However, Reyes had not invested the money in the bonds, the CUSIP numbers he provided were invalid, and in fact her money had been lost through bad investments. In November 2011, the victim requested that she receive her funds, and to conceal the fact that the money was lost, Reyes sent her paperwork indicating she would receive her funds, and in June 2012, he sent her a single payment of \$7,163.52. In a later conversation, Reyes told the victim that all was well. The victim received no further payments and Reyes stopped responding to her messages.

Reyes subsequently admitted to law enforcement that he provided the fraudulent documentation to the victim to cover up the fact that her money had been lost in bad investments. Reyes stated that he was attempting to buy time to pay the victim back, but he never did.

C. Summary Disposition is Appropriate

1. Because of Reyes’s Conviction, There are No Disputed Facts

The Law Judge should grant a motion for summary disposition if there is “no genuine issue with regard to any material fact and that the movant is entitled to summary disposition as a matter of law.” 17 C.F.R. § 201.250(b).

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate will be rare.

Daniel Paez, AP File No. 3-16824, 2016 WL 1239125, *2 (Mar. 30, 2016) (Initial Decision) (citations and quotation omitted).

2. The Undisputed Facts Entitle the Division to Summary Disposition as a Matter of Law

The facts determined in Reyes’s criminal case entitle the Division to summary disposition as a matter of law. The Division seeks relief under Section 15(b)(6)(A) of the Exchange Act, which provides in relevant part:

With respect to any person . . . at the time of the alleged misconduct, who was associated with a broker . . . the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

* * * *

- (ii) has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph

15. U.S.C. § 78o(b)(6)(A). The Division also seeks relief under Advisers Act Section 203(f), which provides for an identical associational bar (but not a penny stock bar) for a person with a qualifying conviction who at the time of the misconduct was associated with an investment adviser. *See* 15 U.S.C. § 80b-3(f).

As shown below, the requirements of Exchange Act Section 15(b)(6) and Advisers Act Section 203(f)—timely issuance of the OIP, conviction under a qualifying statute, and misconduct committed while Reyes was associated with either a broker or an investment adviser—are satisfied here.

a. The Division Timely Filed This Action

The Division must commence a proceeding under Exchange Act Section 15(b)(6)(A)(ii) and Advisers Act Section 203(f) within ten years of the criminal conviction. *See Joseph Contorinis*, AP File No. 3-15308, 2014 WL 1665995, *3 (Apr. 25, 2014) (Commission Opinion) (10-year limitations period runs from date of conviction, not underlying conduct). Here, Reyes’s conviction and the issuance of the OIP both occurred in 2017. Therefore, the matter was timely filed.

b. Reyes Was Convicted of a Qualifying Offense

Reyes’s wire fraud conviction constitutes a “felony . . . which . . . involves the violation of section . . . 1343 . . . of Title 18,” thus triggering the Commission’s ability to sanction him under both the Exchange Act and the Advisers Act. *See* Exchange Act Sections 15(b)(4)(B)(iv), 15(b)(6)(A)(ii), 15 U.S.C. §§ 78o(b)(4)(B)(iv), 78o(b)(6)(A)(ii); Advisers Act Sections 203(e)(2)(D), 203(f), 15 U.S.C. §§ 80b-3(e)(2)(D), 80b-3(f).

c. Reyes Was Associated with a Broker and an Investment Adviser at the Time of the Misconduct

Exchange Act Section 15(b)(6)(A) requires that Reyes have been a “person . . . associated with a broker” at the time of the misconduct. 15 U.S.C. § 78o(b)(6)(A). Advisers Act Section 203(f) similarly requires that Reyes have been “a person associated with an investment adviser” at the time of the misconduct. 15 U.S.C. § 80b-3(f). Here, by his failure to answer the OIP, Reyes is deemed to have admitted² its allegation that

Reyes was a registered representative, associated with Allstate Financial Services, LLC (“Allstate”) from August 1999 through April 2011 and with New England Securities (“New England”) from April 2011 through October 2012. Both Allstate and New England were broker-dealers registered with the Commission. New England was also registered as an investment adviser with the Commission. (OIP § II.A.1)

Therefore, Reyes is subject to sanction under the Exchange Act and the Advisers Act.

d. Industry and Penny Stock Bars are Appropriate Sanctions

In determining whether an administrative sanction is in the public interest, the Commission considers: (1) the egregiousness of a respondent’s actions; (2) the isolated or recurrent nature of the violations; (3) the degree of scienter involved; (4) the respondent’s assurances against future violations; (5) the respondent’s recognition of the wrongful nature of his conduct; and (6) the likelihood the respondent’s occupation will present opportunities for future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). “Absent ‘extraordinary mitigating circumstances,’ an individual who has been convicted cannot be permitted to remain in the securities industry.” *Frederick W. Wall*, AP File No. 3-11529, 2005 WL 2291407, *8 (Sept. 19, 2005) (Commission Opinion).

² *See* SEC Rules of Practice 155, 220. Reyes was ordered to file an answer by November 2, 2017. *See* AP Rulings Rel. No. 5220 (Nov. 6, 2017).

Here, these factors weigh in favor of industry and penny stock bars. First, Reyes's actions were egregious: he misrepresented to a client how her funds had been used, going so far as to send her fraudulent CUSIP numbers for bonds never purchased.

Second, this was not a one-time lapse in judgment. Based on the factual proffer, Reyes misled his customer about the use of her funds over a period of at least four years. Third, Reyes's level of scienter was extremely high, as he knew he was not investing the money in the manner he promised and was simply covering up losses. His scienter was so substantial it gave rise to a criminal conviction.

With respect to the fourth and fifth factors, notwithstanding his guilty plea, Reyes has provided no assurances that he will avoid future violations of the law. Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar[,] . . . 'the existence of a violation raises an inference that it will be repeated.'" *Tzemach David Netzer Korem*, AP File No. 3-14208, 2013 WL 3864511, at *23 n.50 (July 26, 2013) (Commission Opinion) (quoting *Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004)). Reyes can offer no evidence to rebut that inference, and based on his statements at the telephonic conferences, it is not clear that he is accepting responsibility for his conduct.

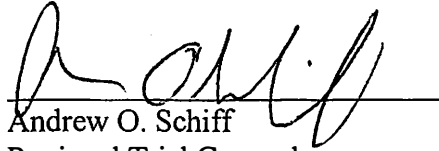
Finally, Reyes was not sentenced to imprisonment, and unless he is barred from the securities industry he will have the chance to again harm investors. Accordingly, a permanent bar is appropriate.

IV. CONCLUSION

For the reasons discussed above, the Division asks the Law Judge to sanction Reyes by issuing a penny stock bar and barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or NRSRO.

Dated: January 17, 2018

Respectfully submitted,



Andrew O. Schiff
Regional Trial Counsel
Direct Line: (305) 982-6390
schiffa@sec.gov

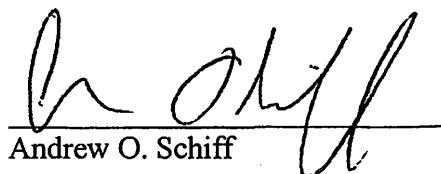
DIVISION OF ENFORCEMENT
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, FL 33131
Phone: (305) 982-6300
Fax: (305) 536-4154

CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served by U.S. Mail and as indicated below this 17th day of January, 2017, on the following persons entitled to notice.

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-2557
Service via email at alj.gov

Mr. Gerardo E. Reyes
██████████, ██████████
Miami, FL ██████████
Service via U.S Mail and email



Andrew O. Schiff

FILED by MC D.C.

Dec 20, 2016

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
16-20963-CR-COOKE/TORRES
CASE NO. _____

18 U.S.C. § 1343
18 U.S.C. § 982(a)(2)(A)

UNITED STATES OF AMERICA

vs.

GERARDO REYES,

Defendant.

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this indictment:

1. Defendant, **GERARDO REYES**, was the owner of Gerardo E. Reyes & Associates Inc. ("GER & Associates") from 2003 to 2013.
2. GER & Associates was an investment company that maintained its primary office in Miami, Florida.

COUNTS 1-2
Wire Fraud
(18 U.S.C. § 1343)

1. Paragraphs 1 and 2 of the General Allegations section of this Indictment are re-alleged and incorporated by reference.
2. From on or about August 11, 2008, through in or around January 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

GERARDO REYES,



did knowingly, and with intent to defraud, devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing the scheme, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate commerce certain writings, signs, signals, pictures and sounds.

PURPOSE OF THE SCHEME AND ARTIFICE

3. The purpose of the scheme and artifice was for the defendant to unlawfully enrich himself by falsely representing to an investor that he was putting the investor's money into United States Treasury Bonds; and, among other things, by providing the investor with false and fraudulent paperwork showing that investments in United States Treasury Bonds were making money; by providing the investor with false and fraudulent paperwork regarding approval of the investor's request for early termination of the investment and distribution of funds; and by sending an email assuring the investor that someone would make an inquiry into the missed payment and not to worry because M.P. had a personal guarantee from the defendant.

SCHEME AND ARTIFICE

The manner and means by which the defendant sought to accomplish the scheme and artifice to defraud included, among other things, the following:

4. In or around 2003, M.P. invested in real estate through **GERALDO REYES'** company, GER & Associates.

5. In or around 2008, **GERARDO REYES** convinced M.P. to allow **REYES** to shift M.P.'s real estate investments to U.S. Treasury Bonds.

6.a In or around October 2008, **GERARDO REYES** falsely and fraudulently represented to M.P. that \$65,720.38 of M.P.'s money had been invested in Treasury Note CUSIP 918828-9235. Treasury Note CUSIP 918828-9253 was not a valid bond.

7.a In or around September 2009, **GERARDO REYES** falsely and fraudulently represented to M.P. that \$77,879.62 of M.P.'s money had been invested in Treasury Note CUSIP 918731-9235. Treasury Note CUSIP 918731-9235 was not a valid bond.

8.a In or around November 2011, after M.P. requested early termination of her investments with GER & Associates in U.S. Treasury bonds, **GERARDO REYES** provided M.P. with false and fraudulent paperwork showing that **REYES** had purportedly sent M.P.'s application for termination of her investments and early distribution of funds to the Bureau of Public Debt and that the request had been approved. **GERARDO REYES** provided M.P. with a false and fraudulent disbursement schedule purportedly providing M.P. with a schedule of repayments.

9.a In or around June 5, 2012, **GERARDO REYES** sent M.P. a lulling payment of a \$7,163.52 via interstate wire transfer in an attempt to lull M.P. into a false sense of security as to the legitimacy of the fraudulent investment with **REYES**. Thereafter, **REYES** made no additional repayments to M.P. on the outstanding balance owed to M.P. in connection with her investments with **REYES**.

10.a In or around January 2013, M.P. continued to attempt to contact **GERARDO REYES** by email and phone but **REYES** would not respond to M.P.'s phone calls and emails.

11. On or about January 21, 2013, in response to M.P.'s email regarding the remaining payments of her money, **GERARDO REYES** sent an email to M.P. claiming that he would have an associate look into the matter and assuring M.P. that "you have a personal guarantee from me."

USE OF THE WIRES

12.e On or about the dates specified as to each count below, in the Southern District of Florida, the defendant, **GERARDO REYES**, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, signals, pictures, and sounds, as more specifically described below:

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
1	June 5, 2012	Wire transfer of \$7,163.52 from USAA Bank in San Antonio, Texas to M.P.'s SunTrust Bank account in Miami, Florida.
2	January 21, 2013	Email from GERARDO REYES in Miami, Florida to M.P. representing to M.P. that someone would make an inquiry into the missed payment and not to worry because M.P. had a personal guarantee from REYES .e

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

CRIMINAL FORFEITURE ALLEGATIONS

1. The allegations in Counts 1 and 2 of this Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging criminal forfeiture to the United States of America of certain property in which the defendant, **GERARDO REYES**, has an interest.

2.e Upon conviction violation of Title 18, United States Code, Section 1343, the defendant shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(2)(A), any property constituting, or derived from, proceeds the defendant obtained directly or indirectly, as the result of such violation.

All pursuant to Title 18, United States Code, Section 982(a)(2)(A), and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b).

A TRUE BILL ,



WIFREDO A. FERRER
UNITED STATES ATTORNEY



MIESHA SHONTA DARROUGH
ASSISTANT UNITED STATES ATTORNEY

FOREPERSON

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

GERARDO REYES,

Defendant.

Superseding Case Information:

Court Division: (Select One)

Miami Key West
 FTL WPB FTP

New Defendant(s) Yes No
 Number of New Defendants _____
 Total number of counts _____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No) No
 List language and/or dialect _____
4. This case will take 2-3 day for the parties to try.
5. Please check appropriate category and type of offense listed below:

	(Check only one)		(Check only one)
I	0 to 5 days <u>X</u>		Petty _____
II	6 to 10 days _____		Minor _____
III	11 to 20 days _____		Misdem. _____
IV	21 to 60 days _____		Felony <u>X</u>
V	61 days and over _____		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:
 Judge: _____ Case No. _____


(Attach copy of dispositive order)
 Has a complaint been filed in this matter? (Yes or No) No

If yes:
 Magistrate Case No. _____
 Related Miscellaneous numbers: _____
 Defendant(s) in federal custody as of _____
 Defendant(s) in state custody as of _____
 Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007?

Yes No

 MIESHA SHONTA DARROUGH
 ASSISTANT UNITED STATES ATTORNEY
 Florida Bar No. 17238

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: GERARDO REYES

Case No: _____

Counts #:1-2

Wire Fraud

Title 18, United States Code, Section 1343

*Max. Penalty: 20 Years' Imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 16-20963-CR-COOKE

UNITED STATES OF AMERICA

vs.

GERARDO REYES,

Defendant.

FACTUAL PROFFER

Defendant Gerardo Reyes (hereinafter referred to as "defendant"), his counsel, and the United States agree that, had this case proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt:

In 2001, REYES worked at the Allstate office located in Miami Lakes, Florida. While at Allstate, REYES became M.P.'s ("the victim") financial advisor and over the years, REYES handled the victim's personal financial investments. In or around December 2003, REYES started his own investment company called Gerardo E. Reyes & Associates ("GER") in Miami, Florida. The victim wrote checks payable to REYES and his company and REYES continued to handle the victim's financial investments. In April 2005, REYES asked the victim to join an investment club, which had investments in real estate holdings. The victim joined the club and made some profitable investments into real estate.

From 2003 through 2008, the victim continued to write checks payable to GER for investment purposes. Around May 2008, GER sent a letter informing the victim that the victim's real estate investments were not stable and were in danger of losing value. GER suggested that the victim move her money to U.S. Treasury Bonds. The terms would be for a 6-year note with 9% return. Additionally, in August 2008, GER provided the victim with a Memorandum of Record informing the victim she had already lost 9.3% of the value of her investment and that the victim should move her money before losing more money. The Memorandum of Record noted that there was approximately \$156,524 in the victim's portfolio.



In October 2008, GER informed the victim that it had invested approximately \$65,720.38 of the victim's money in U.S. Treasury Bond-CUSIP 918828-9235, and in September 2009, an additional \$77,879.62 in a second U.S. Treasury Bond-CUSIP 918731-9235. In or around November 2011, the victim requested early termination and distribution of the funds. However, in an effort to conceal the fact that the money was lost, Reyes provided the victim with false paperwork showing that the request for early distribution had been approved. This paperwork also listed the total amount of money the victim would receive after distribution.

In an effort to further the fraud, REYES sent a payment via wire transfer purporting to be part of the early distribution of funds to the victim's SunTrust Bank account on or about June 5, 2012 for \$7,163.52. After receiving that payment, the payments stopped. The victim attempted to contact REYES via telephone to determine why the payments stopped but REYES did not respond to the victim's calls. The victim then sent an email on or about January 20, 2013 inquiring about the repayments on the outstanding balance. REYES responded on or about January 21, 2013, and stated he was in South America but assured the victim that everything was fine, the victim had a personal guarantee from him, and he would have one of his associates look into the matter. The victim still did not receive additional payments and REYES stopped responding to her emails.

Law enforcement later learned that the CUSIP numbers and forms provided to the victim were invalid. Hence, the U.S. Treasury Bonds described in the paperwork were not purchased and there were no bonds.

On January 5, 2016, REYES was interviewed by law enforcement. Post-Miranda, REYES provided a recorded statement admitting that he created the forms provided to the victim in order to cover up the fact that the victim's money had been used to make bad investments and the victim's money was lost. He thought by providing the paperwork it would give him additional time to come up with the money to pay the victim back. However, he never came up with the money to pay the victim.

These events occurred in Miami-Dade County in the Southern District of Florida. The Parties agree that these facts, which do not include all of the facts known to the Government and to the Defendant, are sufficient to prove the guilt of the Defendant of the above-referenced Indictment.

Date: 3/29/17 BY: Miesha S. Darrough
BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY
MIESHA SHONTA DARROUGH
ASSISTANT UNITED STATES ATTORNEY

Date: 3/29/17 BY: Joaquin E. Padilla
JOAQUIN E. PADILLA, ESQ.
ATTORNEY FOR DEFENDANT

Date: 3/29/17 BY: Gerardo Reyes
GERARDO REYES- DEFENDANT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NUMBER 16-20963-CR-COOKE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GERARDO REYES,

Defendant.

Courtroom 11-2

Miami, Florida

March 29, 2017

CHANGE OF PLEA PROCEEDINGS
BEFORE THE HONORABLE MARCIA G. COOKE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

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Miesha.Darrough@usdoj.gov

FOR THE DEFENDANT:

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305-530-7000
joaquin_padilla@fd.org

REPORTED BY:

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Official United States Court Reporter
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400 North Miami Avenue - Suite 13-3
Miami, Florida 33128 305.523.5118
gphofficialreporter@gmail.com



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EXHIBITS

Exhibits	Marked for Identification		Received in Evidence	
Description	Page	Line	Page	Line

Change of Plea

3

1 (The following proceedings were held at 10:00 a.m.):

2 THE COURTROOM DEPUTY: All right. Judge, we are here
3 on your change of plea in United States of America versus
4 Gerardo Reyes, Case Number 16-20963.

5 THE COURT: For the record, appearing on behalf of the
6 United States.

7 MS. DARROUGH: Good morning. Miesha Darrough.

8 THE COURT: And appearing on behalf of Mr. Reyes.

9 MR. PADILLA: Good morning, Judge. Joaquin Padilla
10 from the Federal Defender's Office on behalf of Mr. Reyes who's
11 present in court this morning.

12 THE COURT: Spectators may be seated. Today is the
13 date and time, counsel, set for your client to withdraw his
14 previous plea of not guilty and enter a plea of guilty to the
15 Indictment. My understanding is there is no Plea Agreement in
16 this case, just the factual proffer?

17 MS. DARROUGH: Correct.

18 MR. PADILLA: That's correct, Judge.

19 THE COURT: All right. I ask the defendant to remain
20 standing and raise his right hand for the oath.

21 (The defendant was sworn in by the courtroom deputy.)

22 THE COURTROOM DEPUTY: Thank you, sir. Please state
23 your full name for the record.

24 THE DEFENDANT: Gerardo Enrique Reyes.

25 THE COURT: Sir, do you understand that you're now

Change of Plea

4

1 under oath in connection with this matter and any answer that
2 you give that is false could later be used against you in a
3 prosecution for perjury or making a false statement?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Where were you born, sir?

6 THE DEFENDANT: Honduras. Tegucigalpa, Honduras.

7 THE COURT: How old are you?

8 THE DEFENDANT: I am 54 years old.

9 THE COURT: How far did you go in school?

10 THE DEFENDANT: I have not completed my bachelor's. I
11 have two associates and several certifications.

12 THE COURT: And did you do your associates degree and
13 your certifications in the United States?

14 THE DEFENDANT: Yes, ma'am. All my education has been
15 in the U.S.

16 THE COURT: Are you a citizen of the United States?

17 THE DEFENDANT: I am.

18 THE COURT: Sir, have you ever been treated for any
19 mental illness?

20 THE DEFENDANT: I was.

21 THE COURT: Are you currently under treatment?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Are you currently taking any medication
24 prescribed for you by a doctor?

25 THE DEFENDANT: No, ma'am.

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5

1 THE COURT: Have you had any drugs other than a
2 doctor's prescription prior to coming to court today?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Any alcoholic beverages?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Have you ever been treated for alcoholism
7 or dependency on drugs?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Counsel, in your opinion, is your client
10 competent to proceed?

11 MR. PADILLA: Yes, Judge.

12 THE COURT: Sir, have you had an opportunity to review
13 the Indictment and Factual Proffer with your attorney?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And are you satisfied with the
16 representation that you've received?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Is there anything about your representation
19 that you're not satisfied with?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: So are you pleading guilty because you've
22 discussed this with your attorney and you think this is the best
23 thing for you to do?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Sir, you're agreeing to plead guilty to all

Change of Plea

6

1 the counts of the Indictment; is that correct, counsel?

2 MR. PADILLA: Yes, Judge. Two counts.

3 THE COURT: As to both counts, Counts 1 and 2, which
4 charge you with wire fraud, the maximum penalty is up to 20
5 years in prison. Do you understand that?

6 THE DEFENDANT: I do, ma'am.

7 THE COURT: There's also supervised release to follow
8 after any term of imprisonment. Do you understand that?

9 THE DEFENDANT: I understand.

10 THE COURT: And do you also understand that you must
11 pay the \$100 special assessment in this matter?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Now, sir, have you had an opportunity to
14 discuss the Sentencing Guidelines with your attorney?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And do you understand that I use those
17 guidelines to help me determine what your sentence will be in
18 this case?

19 THE DEFENDANT: I do.

20 THE COURT: And do you also understand that any
21 estimate of any sentence that has been given you is just that,
22 an estimate; I won't know what your sentence will be till I've
23 had an opportunity to review the Presentence Report that will be
24 prepared for me?

25 THE DEFENDANT: I do.

1 THE COURT: And do you also understand you will not be
2 allowed to withdraw, by that I mean take back your guilty plea
3 just because you don't like the sentence?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Now, sir, there may be circumstances when
6 you can appeal the sentence. There may also be circumstances
7 when the United States may appeal the sentence. So, for
8 example, if I were to sentence you to higher than the advisory
9 guideline range, you may be able to appeal the sentence. If I
10 sentence you to lower than the advisory guideline range, the
11 United States may be able to appeal the sentence. Do you
12 understand that?

13 THE DEFENDANT: Yes, ma'am, I do.

14 THE COURT: Sir, is anyone forcing you to plead guilty?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Other than the criminal charge that you
17 face in this Indictment, did anyone tell you something bad would
18 happen to you if you did not plead guilty?

19 THE DEFENDANT: No.

20 THE COURT: Sir, are you pleading guilty because you
21 think this is the best thing for you to do?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Once again for the record, there is no Plea
24 Agreement in this case?

25 MR. PADILLA: Correct, Judge.

Change of Plea

8

1 THE COURT: Now, sir, you understand that you're
2 pleading guilty to a felony offense?

3 THE DEFENDANT: I do, ma'am.

4 THE COURT: And do you understand that in this country
5 that deprives you of certain valuable civil rights --

6 THE DEFENDANT: I am aware.

7 THE COURT: -- your right to vote, the right to hold
8 office, the right to serve on a jury and the right to possess
9 any kind of firearm? Do you understand that, sir?

10 THE DEFENDANT: Yes, ma'am, I do.

11 THE COURT: And once again for the record, you are a
12 United States citizen, correct?

13 THE DEFENDANT: I am.

14 THE COURT: Now, sir, do you also understand that by
15 pleading guilty, you're giving up your right to a jury trial?

16 THE DEFENDANT: I understand.

17 THE COURT: And you're also giving up the following
18 rights that come with a trial: The right to be presumed
19 innocent and the Government would have to prove your guilt
20 beyond a reasonable doubt. You're giving up your right to have
21 the assistance of your attorney at trial who will be able to
22 see, hear and cross-examine the witnesses against you. You're
23 also giving up the right to the subpoena power of the Court.
24 This would require people to come to court and testify in your
25 case. Do you understand that, sir?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Sir, and you're also giving up the right
3 not to remain silent and the jury would not be able to hold that
4 against you during the deliberations. Sir, do you understand
5 that because you are pleading guilty, this means you are
6 waiving, giving up all of these rights and there will be no
7 trial?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Counsel for the United States, had this
10 matter proceeded to trial, what would the Government be prepared
11 to prove?

12 MS. DARROUGH: Yes. In 2001 Gerardo Reyes worked at
13 the Allstate office located in Miami Lakes, Florida. While at
14 Allstate, Reyes became M.P.'s, the victim in this case,
15 financial advisor, and over the years, Reyes handled the
16 victim's personal financial investments.

17 In or around December 2003, Reyes started his own
18 investment company called Gerardo E. Reyes & Associates, also
19 known as GER, in Miami, Florida. The victim wrote checks
20 payable to Reyes and his company and Reyes continued to handle
21 the victim's financial investments. In April 2005, Reyes asked
22 the victim to join an investment club which had investments in
23 real estate holdings. The victim joined the club and made some
24 profitable investments into real estate.

25 From 2003 through 2008, the victim continued to write

1 checks payable to GER for investment purposes. Around May 2008,
2 GER sent a letter informing the victim that the victim's real
3 estate investments were not stable and were in danger of losing
4 value. GER suggested that the victim move her money to U.S.
5 Treasury Bonds. The terms would be for a six-year note with a
6 nine percent return.

7 Additionally, in August of 2008, GER provided the
8 victim with a Memorandum of Record informing the victim she had
9 already lost 9.3 percent of the value of her investment and that
10 the victim should move her money before losing any more money.
11 The Memorandum of Record noted there was approximately \$156,524
12 in the victim's portfolio.

13 In October of 2008, GER informed the victim that he had
14 invested approximately \$65,720.38 of the victim's money in a
15 U.S. Treasury Bond, CUSIP Number 9188289235, and in September
16 2009 an additional \$77,879.62 was invested in a second U.S.
17 Treasury Bond, CUSIP 9187319235.

18 In or around November 2011, the victim requested early
19 termination and distribution of the funds. However, in an
20 effort to conceal the fact that the money was lost, Reyes
21 provided the victim with false paperwork showing that the
22 request for early distribution had been approved. The paperwork
23 also listed the amount of money the victim would receive after
24 distribution.

25 In an effort to further the fraud, Reyes sent a payment

1 via wire transfer purporting to be part of the early
2 distribution of funds to the victim's SunTrust Bank account on
3 or about June 5th, 2012 for \$7,163.52. After receiving that
4 payment, the payment stopped. The victim attempted to contact
5 Reyes via telephone to determine why the payment stopped, but
6 Reyes did not respond to the victim's calls. The victim then
7 sent an email on or about January 20th of 2013 inquiring about
8 the repayments on the outstanding balance. Reyes responded on
9 or about January 21st of 2013 and stated he was in South
10 America, but assured the victim that everything was fine. The
11 victim had his personal guarantee, and he would have one of his
12 associates look into the matter. The victim still did not
13 receive additional payments and Reyes stopped responding to the
14 emails.

15 Law enforcement learned later that the CUSIP numbers
16 and forms provided to the victim were invalid. The U.S.
17 Treasury Bonds described in the paperwork were never purchased
18 and there were no bonds.

19 On January 5th of 2016, Reyes was interviewed by law
20 enforcement. Post Miranda, Reyes provided a recorded statement
21 admitting that he created forms provided to the victim in order
22 to cover up the fact that the victim's money had been used to
23 make bad investments and the victim's money was lost. He
24 thought by providing the paperwork, it would give him additional
25 time to come up with the money to pay the victim back. However,

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1 he never came up with the money to pay the victim.

2 THE COURT: Sir, do you agree with the factual
3 recitation as made by the United States?

4 THE DEFENDANT: I do, ma'am.

5 THE COURT: How do you plead to the Indictment, that's
6 Counts 1 and 2, guilty or not guilty?

7 THE DEFENDANT: Guilty, ma'am.

8 THE COURT: It is the finding of the Court that in this
9 case the defendant is fully competent and capable of entering an
10 informed plea. He is aware of the nature of the charge and the
11 consequence of the plea, and the plea is knowing and voluntary,
12 supported by an independent basis in fact containing each of the
13 essential elements of the offense.

14 The plea is, therefore, accepted and he is now adjudged
15 guilty of Counts 1 and 2 contained in the Indictment. I'll
16 order a Presentence Report and set sentencing for June --

17 THE COURTROOM DEPUTY: June 21st at 10:00 in the
18 morning.

19 THE COURT: Counsel for the United States, do you
20 disagree with this defendant remaining on bond until sentencing?

21 MS. DARROUGH: No, that's fine, Your Honor.

22 THE COURT: Mr. Reyes, you will remain on bond in
23 connection with this matter. However, you should understand
24 that if you fail to abide by the terms and conditions of your
25 release, it could result in your being arrested and detained.

1 until your sentence. Do you understand that?

2 THE DEFENDANT: Yes, ma'am, I do.

3 THE COURT: Thank you all. See everyone back in June,
4 June 21st, 10:00 a.m. Thank you very much, everyone.

5 MS. DARROUGH: Thank you.

6 (The hearing was concluded at 10:13 a.m.)

7

8 C E R T I F I C A T E

9 I hereby certify that the foregoing is an accurate
10 transcription of proceedings in the above-entitled matter.

11

12 04-30-17
DATE

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UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA
v.
GERARDO REYES

JUDGMENT IN A CRIMINAL CASE

Case Number: 16-20963-CR-COOKE
USM Number: 09781-104

Counsel For Defendant: Joaquin Padilla, AFD
Counsel For The United States: Miesha Darrrough, AUSA
Court Reporter: Angie Adler

The defendant pleaded guilty to counts One and Two of the Indictment.

The defendant is adjudicated guilty of these offenses:

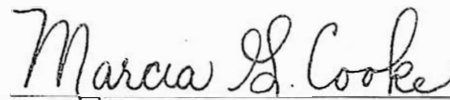
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18, U.S.C. 1343	Wire fraud.	01/2013	1 and 2

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence:

6/27/2017



MARCIA G. COOKE
United States District Judge

June 27, 2017



DEFENDANT: GERARDO REYES

CASE NUMBER: 16-20963-CR-COOKE

PROBATION

The defendant is hereby sentenced to probation for a term of 4 years.

The defendant shall not commit another federal, state or local crime.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: GERARDO REYES
CASE NUMBER: 16-20963-CR-COOKE

SPECIAL CONDITIONS OF SUPERVISION

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

Home Detention with Electronic Monitoring - The defendant shall participate in the Home Detention Electronic Monitoring Program for a period of 6 months. During this time, the defendant shall remain at his place of residence except for employment and other activities approved in advance, and provide the U.S. Probation Officer with requested documentation. The defendant shall maintain a telephone at his place of residence without 'call forwarding', 'call waiting', a modem, 'caller ID', or 'call back/call block' services for the above period. The defendant shall wear an electronic monitoring device and follow the electronic monitoring procedures as instructed by the U.S. Probation Officer. The defendant shall pay for the electronic monitoring equipment at the prevailing rate or in accordance with ability to pay.

No New Debt Restriction - The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Related Concern Restriction - The defendant shall not own, operate, act as a consultant, be employed in, or participate in any manner, in any related concern during the period of supervision.

Self-Employment Restriction - The defendant shall obtain prior written approval from the Court before entering into any self-employment.

Unpaid Restitution, Fines, or Special Assessments - If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: **GERARDO REYES**
CASE NUMBER: **16-20963-CR-COOKE**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$200.00	\$0.00	\$129,273.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$129,273.00

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: GERARDO REYES
CASE NUMBER: 16-20963-CR-COOKE

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of \$200.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

The Government shall file a preliminary order of forfeiture within 3 days.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.