

to documents produced by defendant Kelly, Bustos owns one universal lease which he obtained from defendant Kelly on or about July 1, 2004, in lieu of a commission from the sale of universal leases to victims.

The SEC has already filed a civil lawsuit naming as defendants many of the salesmen who collected approximately a million dollars or more in commissions from the offer and sale of universal leases. *See United States Securities and Exchange Commission v. Michael E. Kelly, et al.*, 07 C 4979 (N.D. Ill) (Bucklo, J.). The SEC is seeking to have these salesmen disgorge their commissions from the sale of universal leases for the benefit of victims. The only apparent distinguishing factor between Bustos and the defendants in the SEC case is the gross amount the defendants received in commissions for selling the fraudulent universal leases. The government submits that Bustos should voluntarily disgorge, for the benefit of the victims, the \$158,000 plus the universal lease he received from defendant Kelly.

Simply put, Bustos was not a victim of defendant Kelly's scheme to defraud. As such, he has no standing to complain about the performance of the Special Master. Moreover, Bustos's complaints are disingenuous given his retention of funds and a universal lease procured at the expense of the real victims. Nonetheless, the government will address the issues he raises in the Advisories to the Court.

1. **Redundant work.** The Special Master and retained professionals review and revise legal and transactional documents more than once prior to executing complex business transactions. Furthermore, as permitted by the Court's orders, the Special Master solicits

advice from multiple sources, including tax attorneys and financial advisors when appropriate. The United States Attorney's Office has continually scrutinized the extent of review and revision performed by the Special Master and retained professionals. When questioned, the Special Master has either justified his expenses or written off a portion of the expenses if the amount of review and revision exceeded reasonable expectations (*e.g.*, the Special Master agreed to limit his billing related to court appearances and weekly conference calls relating to cash flows). The United States Attorney's Office will continue to review the Special Master's bills and expects that the Special Master will continue to be cost-conscious in performing his duties.

2. **Grupo Kelly companies.** Bustos complains that the Special Master treats the various corporations set up by Kelly as legitimate entities. In so doing, Bustos confuses duly-formed and legally recognized corporate entities with the fraudulent manner in which Kelly operated certain of those entities. According to the Special Master, the corporations that own and operate Kelly's various businesses were properly formed under Mexican and Panamanian law and some hold assets that are available for restitution. Regardless of whether these entities were used by Kelly to perpetrate the fraud charged in the Information or to house proceeds of that fraud, the applicable foreign laws and regulations attendant to those corporations cannot be disregarded, particularly when any buyer of defendant Kelly's assets will insist on the Special Master delivering good title.

3. **Sale of The City nightclub.** The terms of the sale of The City nightclub were presented to the Court by the Special Master by motion on November 15, 2010, and discussed in open court on November 17, 2010. According to the Special Master's motion, he followed the sale procedure set forth in the Court's October 28, 2009 Order. The City was sold at a considerable loss, as expected given the drop in real estate values over the past several years, especially in Mexico. According to the Special Master, The City was marketed and then sold to the highest bidder, and Bustos presents no reason to believe that a higher price could have been obtained.

4. **Employment and Termination of Tony Campanale.** The details of the employment and termination of Tony Campanale were presented to the Court by the Special Master in a sealed motion filed on May 18, 2010, and discussed *in camera* on May 19, 2010, before the Court approved the Special Master's proposed plan of action with regards to Mr. Campanale.

5. **Full Restitution and the Defendant's Assets.** The government is not aware of any instances in which the Special Master has promised full restitution to any victim. The Special Master informed the Court as early as June 2009 that the assets owned or controlled by defendant Kelly are unlikely to be sufficient to pay full restitution to the victims. Furthermore, as the parties informed the Court in about September 2009, the defendant has agreed to put all assets that he owns or controls at the Special Master's disposal to either sell

or transfer into the Restitution Trust according to cost considerations.³ The government has demanded and expects that this includes all assets owned or controlled by Kelly family members that were purchased with money derived from the fraudulent scheme charged in the Information.

6. **The Jet.** According to the Special Master, defendant Kelly's Sabre 80 Jet Aircraft is "presently located in a hangar in Toluca, Mexico. The condition of the plane is poor and maintenance costs are accumulating; presumably, the plane has minimal value. The Special Master is currently analyzing this issue in greater detail and hopes to dispose of the plane as quickly as possible." Ninth Status Report (Dkt. 611) at 6. The government is not aware of a Falcon 200 aircraft owned by Kelly, but welcomes any information regarding additional Kelly assets.

7. **The value of the hotels.** Bustos surmises that the Special Master's estimated value of \$13,000,000 for Kelly's hotels is "unacceptable." Yet Bustos offers no explanation as to how the Special Master might sell the hotels for more money, and provides no analysis of the real estate market in Mexico from which the Court might draw conclusions contrary to the estimates provided by the Special Master.

³ The Special Master has advised the Court that as to certain assets the costs associated with transferring title from defendant Kelly to the Restitution Trust are sufficiently high in relation to the value of the asset that it would be more cost effective for defendant Kelly to sell the asset under the supervision of the Special Master. However, the proceeds of the sale of those assets are being transferred to the Restitution Trust.

8. **Puerto Cancun stability issues.** According to the Special Master, there have been no issues with the stability of land within Puerto Cancun, and no one has demanded the return of their money as a result of any such issues.

9. **Avalon Grand Panama Manager.** The Special Master advised the Court of issues surrounding the recent death of the manager of the Avalon Grand Panama in open court on March 21, 2011.

10. **Billing Issues.**

a. **Redundant Work.** *See* paragraph 1 above.

b. **Del Valle Torres.** According to the Special Master, the Del Valle Torres law firm was retained to provide tax advice to the Special Master, and the advice provided by Del Valle Torres has resulted in significant tax savings as defendant Kelly's assets have been sold to third parties. The government has reviewed all of Del Valle Torres's bills, but relies upon the Special Master to determine which conference calls and legal documents necessitate the involvement of tax counsel. It is unclear how Bustos is able to make that determination. The particular billing item cited by Bustos involves the review by tax attorneys of multiple purchase and sale agreements, which are the type of documents one would expect tax attorneys to review in advance of the sale of an asset.

c. **Stenger's staff.** Stenger & Stenger PC is tasked with coordinating the claims evaluation process. As part of that process, Stenger must analyze all of the victim claim forms that are submitted by victims and communicate with victims about the claims

process. At the government's request, Stenger assigned as much of that work as possible to its lowest cost employees, which are billed at \$75 and \$95 per hour. The government has reviewed all of Stenger's bills, and has not seen any evidence of Stenger billing for employees to do "general office work" unrelated to the Kelly matter.

d. **Frontera.** Frontera, like its predecessor FTI, was retained by the Special Master to provide business and financial advice relating to the operation and sale of defendant Kelly's businesses. While none of Messrs. Perez, Wagstaff and Erana—the three principals of Frontera—appears to have a law degree, the government has reviewed all of Frontera's and FTI's bills and there is no indication that they have been providing legal services. Instead, Perez, Wagstaff and Erana have provided a significant amount of business advice. Simply because they review agreements does not mean that Frontera employees are acting as lawyers.

Respectfully submitted,

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