

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	No. 06 CR 964
	)	
	)	Honorable Ronald A. Guzman
MICHAEL E. KELLY	)	

**GOVERNMENT’S MOTION FOR HEARING CONCERNING  
COMPETING OFFER FOR PURCHASE OF ASSET**

Now comes the United States of America, by its attorney PATRICK J, FITZGERALD, United States Attorney for the Northern District of Illinois, and respectfully moves for the entry of an order setting a hearing concerning a competing offer to purchase an asset. In support whereof, the government submits as follows:

1. Pursuant to order of this Court, the appointed Special Master was authorized to enter into negotiations for the sale of a particular asset that had been conveyed to the Restitution Trust. In sum, this asset consists of a real estate development in Cancun, Mexico known as *Puerto Cancun*. Negotiations for the sale of *Puerto Cancun* were authorized for the sole purpose of obtaining as much money as possible to make restitution to the victims of the fraud scheme charged in the criminal Information in this case.

2. Beginning in 2011, the Special Master began negotiations for a purchase and sale (“P&S”) agreement with FRBC-PC, S de R.I. de C.V., also known as *Grupo Mira* (hereafter “Mira”). In May 2012, after compliance with the Court’s procedure for the sale

of this asset, this Court approved the proposed purchase and sale agreement with Mira. Since then, there have been six amendments to the P&S agreement approved by the Court. There is now a seventh amendment pending.

3. In short, the approved P&S agreement as amended obliged the Special Master to effect the conveyance of this asset from the seller (defined in the P&S agreement as certain Mexican entities) to Mira as buyer subject to certain provisions. For its part, Mira agreed to pay the sum of US\$70 million subject to certain adjustments provided by the P&S agreement as amended. This original purchase price has been significantly reduced by these adjustments and other adjustments sought by Mira.

4. Unless the provisions excusing the completion of the transaction are invoked or the parties agree otherwise, the closing transaction is expected in late June 2012.

5. On June 8, 2012, an unsolicited offer to purchase *Puerto Cancun* for US\$65 million was submitted to the Court and the Special Master by *Artha Controladora* (“*Artha*”), a Mexico based real estate fund. Though lacking specificity and detail, *Artha* described its offer as “unconditional.”

6. Because the sole purpose of the Court-approved sales of assets including *Puerto Cancun* in this case has been to make available as much money as possible to provide restitution to the thousands of victims who were defrauded of approximately \$350 million, and given what appears would be a stark and significant difference between the net proceeds provided by Mira and *Artha*, the government submits that the Court hold a public hearing as

soon as practicable to explore the best course of action.

7. The government suggests that the subjects to be considered include:

Regarding Mira

What obligation(s) exist under the existing P&S agreement and applicable law to complete the closing of the Mira transaction.

Regarding Artha

a. What does “unconditional” in *Artha’s* bid mean? - Is it the case that there no reservations, conditions, exceptions, or reductions or adjustments whatsoever to paying \$65 million for *Puerto Cancun*;

b. If there are any reservations, conditions, exceptions, reductions or adjustments, what are they;

c. What, if any, due diligence would *Artha* require before binding itself to the payment of \$65 million; and

d. When would *Artha* be able to close the transaction.

Of course, additional questions may be prompted by colloquy on these topics.

8. The Court has advised that Monday, June 25 at 10:30 is available for such a hearing and that all interested parties - including *Artha* and *Mira* – are welcome to attend and be heard.

9. FOR THE ABOVE REASONS, the government respectfully moves for an order setting a hearing concerning the *Artha* bid on Monday, June 25 at 10:30 a.m.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned Assistant United States Attorney hereby certifies that the following document:

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was served on June 18, 2012, in accordance with Fed. R. Crim. P. 49, Fed. R. Civ. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

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