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**DA BROWN: REAL ESTATE INVESTOR AND ATTORNEY INDICTED IN ALLEGED
MORTGAGE FRAUD SCHEME INVOLVING QUEENS VILLAGE COUPLE**

Face Up To 15 Years In Prison

Queens District Attorney Richard A. Brown today announced that a Queens grand jury has charged a real estate investor and an attorney – who has since been disbarred – with unfairly taking advantage of a Queens Village couple in financial distress to steal more than \$65,259 in proceeds from the sale of their house.

District Attorney Brown said, “It is alleged that the homeowners were instructed to permit title to their home be put in the name of one of the defendants for one year, during which time the homeowners could use the mortgage proceeds to pay off their debts, improve their credit rating and obtain a more favorable mortgage on the home before title was returned to them. What allegedly occurred, however, was that the defendants arranged for only a portion of the homeowners’ debts to be paid off while retaining a major portion of the mortgage proceeds for themselves. The property eventually went into mortgage default.”

The District Attorney identified the two defendants as real estate investor Jose Toral, 28, of 262 Vanderbilt Boulevard in Oakdale, Long Island, and attorney Thomas Zacharia, 38, of 61 Leigh Avenue in Staten Island, who was disbarred in April 2008 as a result of an unrelated matter.

Toral and Zacharia were arraigned yesterday before Queens Supreme Court Justice Fernando M. Camacho on a seven-count indictment charging them with second- and third-degree grand larceny, second- and third-degree criminal possession of stolen property and first- and second-degree falsifying business records. Additionally, Zacharia was charged with fourth-degree criminal facilitation.

Toral was ordered held on \$5,000 bail and to return to court on March 19, 2012, and Zacharia was released on his own recognizance and ordered to return to court on April 20, 2012. If convicted, they each face up to 15 years in prison.

District Attorney Brown said that, according to the charges, James Caston, 70, and his wife, Teresa, 53, faced with mounting debt, verbally agreed in May 2007 to sell their residence located at 104-13 217th Street in Queens Village to Toral with the understanding that they could remain in their home, make monthly mortgage payments to him, and then after a year be allowed to repurchase the property. The verbal agreement also allegedly provided that the proceeds from the home’s sale – which totaled approximately \$94,000 – would be held in escrow and be used to pay the Castons’ debts.

It is additionally alleged that two different contracts of sale were executed for the sale of the Castons’ property. One allegedly listed the purchase price as \$444,140 with no down payment and a rider which provided for Toral to receive \$50,000 from the sale proceeds in exchange for the repurchase and leaseback option. However, this contract allegedly was never submitted to CitiMortgage, the lending institution, nor were the rider terms explained to the Castons by Zacharia. It is alleged that the actual contract of sale that was submitted to CitiMortgage provided for a purchase price of \$504,700 and a down payment of \$40,000 to be held in the escrow account of Toral’s attorney, the law firm of Marschhausen and Fitzpatrick.

It is further alleged that the property was transferred by deed to Toral on August 14, 2007, and that the Castons were represented at the closing by Zacharia and Toral was represented by attorneys Dirk Marschhausen and Kevin P. Fitzpatrick.

The District Attorney said that, according to the charges, although the Castons allegedly had never met with Zacharia before the closing, a letter signed by Zacharia and in the files of Precision Financial, the mortgage broker, stated that he was in receipt of a \$40,000 down payment from Toral who, in turn, represented on his mortgage application that he had \$40,000 in his savings account for the down payment. However a review of his bank records for that time period allegedly indicated that his account balance averaged approximately \$7,000. Toral also allegedly represented on his mortgage application that he was previously employed by Marschhausen and Fitzpatrick as a marketing coordinator with a monthly salary of \$8,000 – though, it is alleged, both Dirk Marschhausen and Kevin Fitzpatrick deny ever employing Toral. Additionally, Toral allegedly represented to CitiMortgage that the property would be his primary residence when, in fact, he knew that the intention was to have the Castons remain in possession of the property.

Finally, it is alleged that the HUD settlement statement indicated that approximately \$93,537 was due to the Castons upon sale of the property. On August 15, 2007, CitiMortgage's closing attorney wrote a check for \$42,931.89 that was made payable to Zacharia as attorney for the Castons and allegedly deposited into Zacharia's attorney escrow account. On August 23, 2007, Zacharia allegedly withdrew \$42,931.89 from his escrow account in the form of a bank check made payable to JT Marketing, a company owned by Toral, and which was then deposited into JT Marketing's bank account. On September 24, 2007, it is alleged that a check in the amount of \$51,128 – and again made payable to Zacharia as the attorney for the Castons – was written on the account of Accurate Title Service, Inc., with a memo on the check that it represented the release of escrow funds pertaining to James Caston. Zacharia allegedly deposited the check into his attorney escrow account. Three days later, on September 27, 2007, Zacharia allegedly withdrew \$51,128 from his account in the form of a bank check made payable to JT Marketing. In total, Toral is alleged to have received approximately \$94,059.89 from the sale of the property. As part of the agreement with the Castons, Toral allegedly arranged to have a debt management company pay a portion of the Castons' debts (\$28,800), leaving him with a balance of \$65,259.89.

Following the closing, the Castons made monthly cash payment to Toral. Beginning on March 1, 2008, Toral allegedly failed to make additional mortgage payments and, in return, the Castons stopped paying Toral. A foreclosure action was then commenced on the property.

The investigation was conducted by Detective Richard A. Lewis, of the District Attorney's Detective Bureau, under the supervision of Sergeant John W. Kenna, Lieutenant Robert J. Burke and the overall supervision of Chief Lawrence J. Festa and Deputy Chief Albert D. Velardi.

Senior Assistant District Attorney Khadijah Muhammad-Starling, of the District Attorney's Elder Fraud Unit, is prosecuting the case under the supervision of Assistant District Attorney Kristen A. Kane, Chief of the Elder Fraud Unit, and Assistant District Attorneys Gregory Pavlides, Bureau Chief of the District Attorney's Economic Crimes Bureau, and Christina Hanophy, Deputy Bureau Chief, and the overall supervision of Executive Assistant District Attorney Peter Crusco and Deputy Executive Assistant District Attorney Linda Cantoni of the Investigations Division.

It should be noted that an indictment is merely an accusation and that a defendant is presumed innocent until proven guilty.

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Note to Editors: Press release e-version posted on www.queensda.org