

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-CR-013

MICHAEL A. GRAL,

Defendant.

GOVERNMENT'S OFFER OF PROOF

The United States of America, by its attorneys, Steven M. Biskupic, United States Attorney for the Eastern District of Wisconsin, and Matthew L. Jacobs, Assistant United States Attorney for said district, hereby submits the following offer of proof to set forth a factual basis for the anticipated guilty plea of defendant Michael A. Gral in the above-captioned case, as required by Rule 11(b)(3) of the Federal Rules of Criminal Procedure.

Overview.

At all times relevant to this prosecution, defendant Michael A. Gral was an attorney licensed to practice in the State of Wisconsin. In 1994, Gral joined the law firm Michael, Best and Friedrich (MBF), which has its main office located in Milwaukee, Wisconsin. At the time he was hired, Gral entered into an agreement with MBF to devote his full time and attention to performing legal services and related activities for the firm.

Defendant Robert G. Brownell (“Brownell”) was employed by Bielinski Brothers Builders, Inc. (“Bielinski Brothers”) or one of its related businesses. Bielinski Brothers, which operated related businesses, including Bielinski Homes and Bielinski Development, is a residential construction business located in Waukesha, Wisconsin. The business is owned by Frank and Harry Bielinski, who are brothers. In October 1995, Brownell was hired as the Acquisitions and Development Manager at Bielinski Brothers. In 2001, Brownell became the Chief Executive Officer of Bielinski Brothers.

At all times relevant to this prosecution, Gral represented Frank Bielinski, Harry Bielinski, Bielinski Brothers and its various related entities. Approximately 80% of the legal work billed by Gral at MBF was for services purportedly provided to the Bielinskis and their businesses. As an attorney for the Bielinskis and their businesses, Gral owed a fiduciary duty to the Bielinskis and a duty to provide honest services to them.

Georgetown entities.

On November 21, 2001, Gral and Brownell formed Georgetown Holdings, LLC, which was a Wisconsin limited liability company. Brownell and Gral each owned 50% of Georgetown Holdings.

On November 21, 2001, Gral also formed Georgetown Ridgeview, LLC, which was a Wisconsin limited liability company. Gral later changed the name of Georgetown Ridgeview to Georgetown Investments, LLC. Georgetown Investments was wholly owned by Georgetown Holdings.

On September 18, 2003, Gral formed Georgetown Development, LLC, which was a Wisconsin limited liability company. Georgetown Development was wholly owned by Georgetown Holdings.

Gral was the organizer and registered agent for Georgetown Holdings, Georgetown Investments, and Georgetown Development. He also applied for and obtained an Employer Identification Number (EIN) for each business. Gral used the address of MBF as the registered office for Georgetown Holdings, Georgetown Investments, and Georgetown Development. Gral used the address of a business operated by a relative as the principal business office for these businesses.

At Gral's direction, the costs for incorporating Georgetown Holdings and Georgetown Ridgeview (later known as Georgetown Investments) were charged to Bielinski Brothers. Frank and Harry Bielinski were not informed of this and did not authorize it.

Assignment Fraud.

Over the course of his employment with Bielinski Brothers, Brownell fraudulently used his position to disrupt or otherwise sidetrack efforts by Bielinski Brothers to purchase real estate. In April 2000, Brownell formed MBB Associates with the owner of Redmond Commercial Development and a third party. Brownell used his position at Bielinski Brothers to undermine efforts by Bielinski Brothers to acquire parcels of real estate. MBB or entities associated with MBB would then acquire the rights to purchase the property.

As a result, Bielinski Brothers had to pay an assignment fee to MBB, and entities associated with MBB, to obtain the rights to purchase the property. During the period from

2001 through 2004, and as a result of Brownell's actions, Bielinski Brothers paid a total of \$1.5 million in assignment fees. In addition, Bielinski Brothers paid \$300,000 to re-purchase a piece of property that it had previously sold in connection with one of the assignments for \$1,000.

Gral learned of Brownell's involvement with MBB in 2001. Gral did not inform the Bielinskis of this discovery. Instead, Gral directed Brownell to terminate his relationship with MBB. Gral's brother, who is also a lawyer, prepared the documentation to terminate Brownell's involvement with MBB.

Investigation of Allegations by Bielinski Brothers Employee.

In January, 2002, the Bielinskis asked Gral and a second attorney at MBF to investigate allegations by an employee at Bielinski Brothers that Brownell was defrauding Bielinski Brothers. The employ claimed that Brownell was converting Bielinski Brothers' assets to his personal use and that he had a suspect relationship with Redmond Commercial Development. Gral and the second MBF lawyer later represented that their investigation had found nothing inappropriate about Brownell's behavior. The employee was terminated

Belize, LLC.

In July 2002, Brownell executed a contract to purchase a condominium located in Marco Island, Florida, for \$2,760,000. Brownell initially entered into this contract in his own name but later changed the purchaser to Belize, LLC (“Belize”).

Belize, LLC was a Florida limited liability company formed by Gral on August 8, 2002. On the initial filings with the State of Florida, Gral is listed as the authorized representative for Belize. According to the operating agreement that was later filed with the State of Florida, Belize was wholly owned by Georgetown Holdings. The documentation concerning the formation of Belize and its purchase of the Florida condominium were prepared by MBF. At Gral’s direction, the costs associated with incorporating Belize in Florida were charged to the Bielinski Brothers.

In connection with opening a new matter at MBF for Belize, Gral indicated that the members of Belize were Frank Bielinski, Harry Bielinski, Brownell and Gral. Gral also authored a memorandum to MBF indicating that an engagement letter was not required for Belize because it was an existing client, related to the Bielinskis. Gral further indicated that Bielinski had requested a new billing number be established for Belize. This memorandum was dated September 17, 2002.

In fact, the Bielinskis were unaware of the formation of Belize and were not involved in its activities, including the purchase of the Florida condominium.

At no time did Gral discuss his involvement in Belize and the purchase of the Florida condominium with either Frank or Harry Bielinski. Further, Gral did not seek or obtain from

the Bielinskis a waiver of any potential conflicts associated with his involvement with Belize, Brownell, and the purchase of the Florida condominium.

On September 24, 2002, a second lawyer at MBF noted that the firm might have a conflict with respect to Belize because MBF also represented the developer of the Florida condominium project. Gral responded that he was a member of Belize and that the contact for Belize was Brownell. Based on information from Gral, the second lawyer prepared a letter advising the developer of the potential conflict and that the members of Belize were Brownell and Gral. A copy of this letter was provided to Gral, who forwarded a copy to Brownell.

In connection with this purchase of the Florida condominium, Brownell provided down payments totaling \$828,000. Brownell made these down payments in the form of three checks. The first was dated September 5, 2002, in the amount of \$50,000, and was written on an account Bielinski Brothers' maintained at State Financial Bank in the name of Fox Chase, LLC. Brownell did not have the authority to issue this check on behalf of Bielinski Brothers and did not inform the owners of Bielinski Brothers that he was using Bielinski Brothers' funds to make a down payment on the condominium.

The second check was dated September 23, 2002, in the amount of \$502,000, and was drawn on a Bielinski Brothers' account maintained at M&I Bank. Again, Brownell did not have the authorization of Bielinski Brothers to make this payment and did not inform the owners of Bielinski Brothers that he was using Bielinski Brothers' funds to make a down payment on his purchase of the Florida condominium. The remaining portion of the down

payment was made using funds Brownell had borrowed from Robert Mann, who was then the president of Mann Brothers, Inc.

Brownell and Gral closed on the purchase of the Florida condominium on June 28, 2004. The purchase of the condominium was funded by a \$2,760,000 loan Gral and Brownell obtained from State Financial Bank in the name of Belize, LLC. At the closing of the purchase of the condominium in 2004, Brownell received approximately \$758,000, which he converted to his own use.

At some time prior to closing on the Florida condominium, Gral learned that the money provided by Brownell for the down payment came from Bielinski Brothers. Gral asked Brownell whether the Bielinskis had been repaid. Gral did not, however, contact either Frank or Harry Bielinski and did not confirm that they were aware that their funds had been used for this purpose or that they had been repaid. In fact, the Bielinskis were not aware of, had not approved the use of their funds, and had not been repaid.

Harrison Lakes

In October 2003, Brownell submitted an offer to purchase a real estate development located in Lincoln County, Wisconsin known as Harrison Lakes. The original offer to purchase was made in the name of Bielinski Homes for a total purchase price of \$1,561,000. Brownell submitted the offer in his capacity as the CEO of Bielinski Homes. Brownell, however, had never obtained the authorization of either Frank or Harry Bielinski to make this offer. This offer was ultimately accepted by the owners of Harrison Lakes and the sale closed on January 8, 2004.

Two days prior to the closing, Brownell executed an assignment transferring the right to purchase Harrison Lakes from Bielinski Homes to FHB Investments, LLC. FHB Investments was a separate business set up by Brownell and Frank and Harry Bielinski to make separate investments in real estate. Brownell executed the assignment on behalf of both Bielinski Homes, as its CEO, and FHB Investments, as one of its members. Frank and Harry Bielinski did not approve and were unaware of this transaction.

To fund the purchase of Harrison Lakes, Brownell fraudulently applied for and obtained a \$6.5 million line of credit at M&I Bank in the name of Bielinski Properties. To obtain this line of credit, Brownell and others working with him and acting as his direction, forged the signatures of Frank and Harry Bielinski, as well as Harry's wife, Suzanne, on various loan documents submitted to M&I Bank. In addition, Brownell had another Bielinski Brothers employee fraudulently notarize the forged signatures of Harry, Frank and Suzanne Bielinski on these documents. The forged documents submitted to M&I Bank included a mortgage on several duplexes in Waukesha owned by the Bielinskis and an assignment to the bank of the rents from these duplexes.

After fraudulently obtaining this line of credit, Brownell directed that in excess of \$1,560,000 be drawn on the line of credit and transferred to the account of FHB Investments maintained at State Financial Bank. Brownell then directed that a series of checks totaling \$1,560,536.26 be issued on the FHB account to pay for the purchase of Harrison Lakes. Again, all of these transactions were conducted by Brownell without the knowledge or approval of Frank and Harry Bielinski.

In July 2004, Brownell and Gral transferred the Harrison Lakes property to Georgetown Investments. The purchase price for this sale was \$1,561,000. The closing statement for this transaction is signed by Brownell on behalf of FHB Investments and Gral on behalf of Georgetown Investments.

Brownell and Gral also executed an agency agreement that purports to be dated January 6, 2004. This agency agreement, which was likely executed in July, 2004, and backdated to January to precede the initial purchase of Harrison Lakes, indicates that at the time FHB Investments initially purchased Harrison Lakes it was acting as the agent for Georgetown Investments. At a minimum, this documentation would have avoided the transfer tax associated with the July 2004 sale of Harrison Lakes by FHB Investments to Georgetown Investments by making this latter sale appear to be merely a continuation of the initial purchase in January.

On or about July 16, 2004, to facilitate the purchase of Harrison Lakes from FHB Investments, Gral caused the United States mails to be used when the conveyance document for the transfer of the Harrison Lakes project from FHB Investments to Georgetown Investments was sent by mail from Milwaukee to the office of the Lincoln County, Wisconsin Register of Deeds

The purchase of the Harrison Lakes property by Georgetown Investments was financed by a loan Gral and Brownell obtained in the name of Georgetown Investments from State Financial Bank. The loan was in the amount of \$1,538,000. Bank records indicate that the purported purchase price for Harrison Lakes was \$1,950,000 and that the loan

represented approximately 80% of this price. In fact, the purchase price was only \$1,561,000. Thus, the bank financed virtually all of the purchase price for the property. The bank received appraisals indicating that the total value of the property was approximately \$1,922,000. These appraisals were based, in part, on false and fraudulent offers to purchase lots in the Harrison Lakes property.

In connection with obtaining this loan, Brownell and Gral submitted a copy of the backdated agency agreement reflecting that FHB had acted as Georgetown Investments' agent at the time of the initial purchase in January 2004. As with most of the documentation associated with the original purchase of the Harrison Lakes property and the subsequent transfer to Georgetown Investments, this backdated agency agreement was generated by MBF. MBF billed Bielinski Brothers approximately \$4,000 for legal services in connection with the initial purchase of Harrison Lakes by FHB Investments and the later sale to Georgetown Investments.

Prior to the transfer of the Harrison Lakes property to Georgetown Investments, Gral was aware that the Bielinskis had not authorized the purchase of the property by Brownell. Gral did not notify the Bielinskis of Brownell's conduct. Further, Gral did not discuss the purchase of Harrison Lakes with the Bielinskis or otherwise seek a waiver of the potential conflict of interest associated with his involvement in the purchase from FHB Investments by Georgetown Investments.

Cedarburg Project (The Conservancy).

In October, 2003, Brownell and Gral purchased 128 acres of land in Cedarburg, Wisconsin in the name of Georgetown Development. The land was purchased for \$2.1 million. The seller of this land was represented by another attorney at MBF. The initial offer to purchase the land was made in the name of Integral Investments, LLC. Integral Investments was a business formed by Gral's brother, in which Gral had a 50% interest. Integral Investments assigned its right to purchase the property to Georgetown Development shortly before the closing.

Subsequent to purchasing the Cedarburg property, preliminary development work was performed on the land by Welch, Hanson and Associates ("Welch Hanson"). Welch Hanson is a business located in Delafield, Wisconsin that provides consulting and other services to real estate developers. These services include engineering, surveying, landscape architecture, and planning. At all times relevant to this prosecution, Norman C. Hanson ("Hanson") was a principal of and employed by Welch Hanson.

At Brownell's direction, Welch Hanson submitted invoices to Bielinski Brothers for work performed on the Cedarburg property, as well as other real estate projects being developed by Brownell and Gral. The invoices for the Cedarburg property submitted to Bielinski Brothers totaled approximately \$135,000. To conceal this arrangement, the Welch Hanson invoices submitted to Bielinski Brothers reflected generic descriptions of the projects and the nature of the work that had been performed. Using his position at Bielinski Brothers, Brownell fraudulently approved payment of these invoices.

Welch Hanson did send invoices to Gral for some of the work performed on the Cedarburg project and one other Georgetown project. These invoices accurately describe the project involved and the work performed. These invoices, however, were not paid by Gral.

In September 2002, Gral assisted Hanson in forming NCCBH Consulting Services, LLC (“NCCBH”), which was owned by Hanson and his wife. During the period from approximately October 2002 through April 2004, Hanson submitted fraudulent invoices to Bielinski Brothers in the name of NCCBH charging for services that had not, in fact, been provided by Hanson or NCCBH. These invoices totaled approximately \$168,000. Using his position at Bielinski Brothers, Brownell approved these fraudulent invoices. Based on Brownell’s approval, Bielinski Brothers paid these invoices by issuing checks that were mailed to Hanson and NCCBH.

Hanson retained a portion of the money paid by Bielinski Brothers as a fee for his services. The majority of the money Hanson obtained from Bielinski Brothers, however, was diverted back to Brownell. To obtain his share of the money and make it appear that these were legitimate business transactions, Brownell submitted invoices to NCCBH in the names of SEWMA and DSI. These invoices totaled approximately \$77,000.

At Brownell’s direction, some of the money paid to NCCBH by Bielinski Brothers was used by Hanson to fund illegal campaign contributions made by Hanson, his wife, and Welch Hanson employees. In addition, some of the money was used by Hanson to pay for a portion of the rent for an apartment for a relative of Hanson’s and to fund down payments made by two Welch Hanson employees for homes being built by Bielinski Brothers.

Fraudulent MBF Escrow Agreements

In late May and early June 2004, Brownell caused MBF to create four fraudulent escrow agreements. These escrow agreements represent that Bielinski Brothers had deposited a stated amount of money with MBF and that these funds would be available to the recipient of the escrow agreement if certain events occurred. All of the escrow agreements are executed by Brownell on behalf of various Bielinski entities.

Three of these escrow agreements (May 24, 2004 in the amount of \$274,900; May 25, 2004 in the amount of \$620,400; and May 26, 2004 in the amount of \$360,000) were provided to M&I Bank in connection with three loans Bielinski Brothers obtained to purchase property. The escrow agreements were given to the bank to provide a financial cushion in the event that appraisals for the property turned out to be inadequate to cover three loans the bank was making to the Bielinski Brothers.

Each of the escrow agreements has an escrow receipt indicating that MBF has received and deposited the indicated amount of money as earnest money for the agreement. The escrow receipts were all signed on behalf of MBF by an associate at MBF, Timothy Voeller. Voeller indicates that he drafted the escrow agreements at Gral's direction. While Brownell provided MBF with a Bielinski Brothers' check for each of the escrow agreements, he directed Voeller not to deposit the checks. There were insufficient funds in Bielinski Brothers' account to cover the checks if the law firm had, in fact, deposited them. Voeller indicates that when Brownell initially requested that one of the checks not be deposited, he (Voeller) contacted Gral, who approved Brownell's request.

Because the appraisals associated with the M&I Bank loans ultimately proved adequate to cover the loans, the three unfunded escrow agreements executed by Brownell were never drawn on and ultimately expired.

The fourth escrow agreement was provided by Brownell to Mann Brothers. This escrow agreement reflects that MBF has a total of \$1,666,288 as earnest money deposited with it. Again, while Brownell provided MBF with a Bielinski Brothers check in this amount, he directed Voeller not to deposit the check and there were insufficient funds to cover the check had the law firm attempted to negotiate it.

MBF Billing

At various times, Gral caused MBF to bill Bielinski Brothers for services and expenses associated with projects involving Gral and Brownell. These charges included legal services and other expenses associated with the formation, operation, and transactions involving Georgetown Holdings, Georgetown Investments, Georgetown Development, and Belize, LLC.

In late 2003, MBF discovered that Gral made entries in the firm's computerized time-keeping system indicating that he had worked approximately 3100 hours during the first 11 months of 2003. Further analysis reflected that Gral had made entries indicating that he had worked more than 20 hours on 15 days during this period and more than 24 hours of 2 days. In addition, MBF indicates that, of the 3,100 hours entered by Gral during this period, approximately 633 hours were not "released" or billed to the indicated clients. The clients

associated with the vast majority of these entries are entities in which Gral had an interest, including Georgetown Ridgeview, Georgetown Holdings, and Georgetown Development.

According to a representative of MBF, despite instructions to the contrary, Gral attempted to delete the records concerning these 633 “unreleased” and unbilled hours from the firm’s computer system.

Respectively submitted this 14th day of December, 2005.

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