

Lawyer Arrested for Scamming Homeowners

By Don J. DeBenedictis
Daily Journal Staff Writer

SANTA ANA — The first lawyer to be arrested for scamming desperate homeowners seeking mortgage modifications was taken into custody early Friday morning for allegedly defrauding more than 400 victims.

While thousands of homeowners have complained to California law enforcement, State Bar and other officials about being ripped off over the past year by lawyers offering shady loan modifications, Christopher L. Diener, 42, of Ladera Ranch in South Orange County, is the first to be charged with a criminal offense, according to bar and other officials.

Diener, whose right to practice law was lifted in October, was arrested at 6 a.m. at his home Friday. Also arrested was his business partner Terrence Green Sr., who is not a lawyer. They are being held on \$1.5 million bail each, according to the Orange County district attorney's office, and are scheduled to be arraigned Tuesday morning.

A third partner, Stefano J. Marrero, was still being sought Friday afternoon. All three men, who are neighbors in Ladera Ranch, have been charged with one count of conspiracy and 97 counts of grand theft by false pretenses. If convicted of all charges, they face maximum sentences of 70 years in prison, according to prosecutors. *People v. Diener*, 10CF0125, (Or-

ange Super. Ct., filed Jan. 22, 2010)

Although Diener is the first to be taken into custody, he likely will not be the last, according to State Bar investigator Thomas Layton, who began looking into complaints against Diener last spring. Layton predicted that as many as a half-dozen modification lawyers in Orange County and Long Beach may face prosecution before the year is out.

Bar investigators do not perform arrests, but they have been working closely with local law enforcement agencies.

In Orange County, the district attorney's office has set up a special unit on loan-modification scams, funded by a recent \$3 increase to the fee to record property documents. The office currently is prosecuting at least one non-lawyer.

The state attorney general's office has brought criminal charges against 11 non-lawyers and brought civil actions against more than 30 others in the loan-modification industry, including Diener.

According to officials, Diener and his partners charged homeowners needing mortgage help upfront fees of \$1,500 to \$3,000 or more. In return, they allegedly promised that they could win loan modifications for their clients that would lower interest rates, reduce principal, cancel second mortgages and eliminate late fees. Working through an assortment of companies — including Home Relief Services, US

Loan Mod Processing, HRS Communications, The Diener Law Firm, and Diener Law Group — they claimed a 90 percent success rate, and they promised a full refund if they failed.

But they didn't even try, according to State Bar documents. And when clients complained and demanded refunds, they were met with curses but no money, Layton said.

"After accepting the fees, ... [Diener] failed to perform the services, failed to communicate with the clients, and failed to refund, or account for, the fees," a declaration from State Bar investigator John Noonan said.

In one case Noonan described in his declaration, a woman hired Diener in February 2009 and agreed to pay \$1,595. Later, after asking for a refund, she discovered that the Diener operation had charged her credit card the \$1,595 three separate times in March.

While the district attorney is charging Diener and his partners with making off with \$1.5 million illegally, bar investigator Thomas Layton said bank records indicate the trio and their companies took in more than \$4 million overall.

Bar records indicate Diener graduated from the University of California, San Diego, and received his law degree from Western State University College of Law in Fullerton. He was admitted to practice in 1997 and appears to have had his office in Irvine.

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PAT BRODERICK / Daily Journal

Author and University of San Diego professor of law and finance Frank Partnoy.

USD Securities Law Center Aims to Shape Economic Dialogue

By Pat Broderick
Daily Journal Staff Writer

SAN DIEGO — Frank Partnoy, a professor of law and finance at the University of San Diego School of Law, hopes that his new Center for Corporate and Securities Law will help shape dialogue — both nationally and internationally — on the economy.

A former investment banker and corporate lawyer, Partnoy, the center's director, is the author of "Infectious Greed: How Deceit and Risk Corrupted the Financial Markets," and "F.I.A.S.C.O.: Blood in the Water on Wall Street."

"With the financial crisis, there is a real need for universities and law schools to think about how we got here, and what people should be doing about it," said Partnoy. "We want to be an important voice in that debate."

The center was scheduled to be formally launched over the weekend at a kick-off session of the 2010 Directors Forum, an event presented in partnership with USD by the Corporate Directors Forum, which promotes high standards of professionalism in corporate governance. The featured speakers included a roster of financial luminaries from the Delaware Court of Chancery, the Securities and Exchange Commission, the U.S. Treasury, and the National Association of Corporate Directors.

Supported through private donations, the center plans to host public and academic conferences, drawing national and international players, along with assisting faculty and students in research related to corporate governance, financial regulation and other business law topics.

Koji Fukumura, a partner in the San Diego of-

Cooley Godward Kronish, said he believes the new center will be a magnet for the financial movers and shakers.

"It will have a substantial benefit for Southern California in particular, but also will provide a nationwide platform," said Fukumura, a scheduled speaker at the Directors Forum.

Partnoy hopes, too, that the new center will challenge the conventional wisdom about academia.

"People think about a law school as an ivory tower," he said. "This is an opportunity to climb down and interact with leaders and learn from them, and provide a valuable perspective on corporate America."

Linda Sweeney, executive director of the Corporate Directors Forum, gives Partnoy high points for his efforts.

"He is one of the leading experts on derivatives regulations and ratings agencies," Sweeney said. "He's extremely well known throughout the world of corporate governance. He is the right man for the job, that's for sure."

Seated in a conference room at USD, Partnoy, a recognized expert in corporate law and governance, puts the current financial crisis in the context of the years following the 1929 crash, with their ebbs and flows.

"The key message is that this is not the end, but a turning point that could go either way," Partnoy said.

There is no doubt that 2010 will generate new laws related to financial institutions and the Federal Reserve's power, he said.

But Partnoy is not optimistic that any new laws involving the controversial world of derivatives and credit ratings, which he believes fueled the

current financial crisis, will amount to much in this election year.

Instead, he predicts that there will be "hundreds of millions of dollars" spent in lobbying this year by Wall Street and the credit rating agencies, possibly resulting in any reforms being "gutted."

"If we don't reform these two areas, the United States shouldn't be surprised if a new crisis happens in a few years," he warned.

As for the credit ratings agencies, Partnoy believes that they should no longer be trusted.

"It's astonishing that we continue to rely on them, when they have been so wrong so often," he said, pointing to such examples as Lehman Brothers, Enron and AIG.

Once the health-care debate is over, Partnoy predicts that financial reform will be back on the front burner — as "complicated and boring" as the issues might be.

"It's an election year, so there will be a need to pass something," he said. "The public seems to care more about officials doing something, rather than doing something right."

Darren J. Robbins, a founding partner of Coughlin Stoa Geller Rudman Robbins based in San Diego, has high hopes for Partnoy's new venture.

"The timing couldn't be better, because the world at large is looking for explanations," said Robbins, whose practice focuses on federal and state securities and class-action litigation. "Frank is helping people put this into perspective, not just in picking up the pieces, but in formulating policies to avoid these kinds of problems."

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Psychologist in Prop 8 Case: Being Gay Not a Choice

By Lisa Leff
Associated Press

SAN FRANCISCO — A social psychologist testified Friday in a trial challenging California's gay marriage ban that leading mental health associations stopped thinking of homosexuality as a mental illness decades ago.

Lawyers for two same-sex couples suing to overturn the voter-enacted ban called University of California, Davis researcher Gregory Herek as an expert witness to bolster their argument that sexual orientation

cannot be easily changed.

Herek said leading mental health groups also take a dim view of therapies aimed at making people heterosexual.

The point is central to the plaintiffs' effort to show that gays deserve the same judicial protection as racial and ethnic minorities.

The trial, now in its ninth day, is the first in a federal court to consider whether state bans on gay marriages are unconstitutional.

The plaintiffs were expected to end their case later in the day or Monday, with the defense beginning

next week.

Chief U.S. Judge Vaughn Walker said he would delay closing arguments for two weeks after the defense rests so he can review the testimony.

Herek said he recently conducted a survey asking people if they decided to be gay, lesbian or bisexual. Eighty-eight percent of the gay men who responded said they had no choice at all about their sexual orientation. The figure was 68 percent for lesbians.

"The vast majority of lesbians and gay men and bisexuals as well, when asked how much choice they felt they

have ... say they have experienced no choice or very little choice about that," Herek said.

Herek also said it's clear that gay men and lesbians are looked down upon and even regarded with disgust because of long-standing social stigmas.

"If two men were to walk down the street holding hands in many places, that would elicit a great deal of negative reaction, and that is an example of the stigma that everyone knows lesbians and gay men experience because they are gay," he said.