

**FILED**  
CHARLOTTE, NC

JAN 9 2008

U.S. DISTRICT COURT  
WESTERN DISTRICT OF NC

# United States District Court

WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

v.

**CRIMINAL COMPLAINT**

FRANCISCO FERNANDEZ

CASE NUMBER: 3:08 MJ 7

I, the undersigned complainant, being duly sworn state the following is true and correct to the best of my knowledge and belief.

From on or about July 19, 2007, through on or about December 24, 2007, in Charlotte, North Carolina in the Western District of North Carolina, and elsewhere, the defendant, FRANCISCO FERNANDEZ, being an officer, director, agent, and employee of Bank of America, a bank whose deposits were then insured by the Federal Deposit Insurance Corporation, with intent to defraud, willfully misapplied, embezzled, abstracted, and purloined the sum of approximately \$457,384.79, which constituted moneys, funds, and credits of such institution, in violation of Title 18, United States Code, Section 656.

I further state that I am a Special Agent and that this complaint is based on the following facts:

SEE ATTACHED AFFIDAVIT



DAVID ROSSER, SPECIAL AGENT,  
U.S. SECRET SERVICE

Sworn to before me, and subscribed in my presence,

January 9, 2008

at

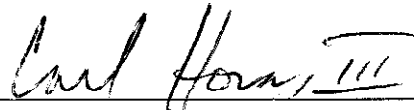
Charlotte, North Carolina

Date

City and State

CARL HORN, III  
UNITED STATES MAGISTRATE JUDGE

Name and Title of Judicial Officer



Signature of Judicial Officer

## **AFFIDAVIT**

I, David A. Rosser, being duly sworn, depose and say:

1.) I am a Special Agent with the United States Secret Service assigned to the Charlotte Field Office. I have been employed by the U.S. Secret Service since January of 1997 and have been assigned to the Charlotte Field Office since March of 2006. As a Special Agent, I have been involved with numerous criminal investigations to include credit card fraud, bank fraud, access device fraud, identity theft, wire fraud and various other crimes.

2.) On 01/07/08 Bank of America (BOA) Investigator Howard Warren contacted me, at the Charlotte Field Office, and provided information regarding a BOA employee, Frank Fernandez, who was suspected of embezzling approximately \$450,000.00 from BOA while working as a Vice-President of Portfolio Management at BOA in Charlotte, NC. Inv. Warren advised that Fernandez had given one of BOA's customers, Key Bank, Kansas City, MO, his own personal BOA checking account number (# xxxxxx6564) for Key Bank to wire payments into instead of the correct BOA account number to which these payments should have been wired. Inv. Warren further advised that their internal investigation showed that Fernandez had received the following incoming wires from Key Bank into his aforementioned personal checking account:

<b>Date</b>	<b>Amount</b>	<b>BOA Loan #</b>
7-19-07	312,500.00	883212560
9-28-07	6,500.00	883403804
10-18-07	7,759.80	883207156
11-13-07	5,000.00	883164100
11-20-07	25,000.00	003201606
12-20-07	63,228.43	883206646
12-21-07	22,563.84	883206687
12-21-07	9,832.72	883206695
12-24-07	5,000.00	883214772
<b>Total</b>	<b>\$457,384.79</b>	

Further investigation by BOA and I showed that multiple wires had been made from Fernandez's BOA account into an account at ING Bank, Wilmington, DE.

3.) BOA account records on Fernandez's account show the following outbound wires to Fernandez's ING Bank account(s):

<b>Date</b>	<b>Amount</b>
7-23-07	\$312,500.00
10-02-07	3,500.00
10-09-07	2,500.00
10-12-07	2,500.00
10-16-07	2,000.00
12-01-07	21,000.00
11-16-07	5,000.00
11-23-07	25,000.00
12-20-07	20,000.00

12-24-07	63,000.00
<b>Total</b>	<b>\$457,000.00</b>

4.) On 01/07/08, I contacted ING Bank and confirmed that Fernandez currently has both a checking and savings account at ING Bank. As of 01/08/08, the checking account had a balance of approximately \$101,000.00 and the savings account had a balance of approximately \$59,000.00.

5.) BOA records show that on 08/27/07, there was an incoming wire to Fernandez's BOA checking account (# xxxxxx6564) in the amount of \$191,298.22 from ING Bank. BOA records further show that also on this date was an outgoing wire, in this same amount, from this same account, to an account at Sun Trust Bank in the name of Radey & Layton PLC (a Charlotte, NC law firm specializing in real estate transactions).

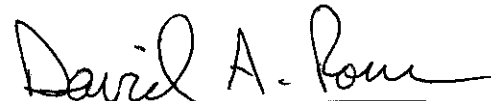
6.) I have been able to confirm that Frank Fernandez purchased a condominium located in Charlotte, NC, on 08/27/07, for \$192,000.00. I have also confirmed that the purchase price was paid for in full at closing on 08/27/07 and there was no mortgage on the property.

7.) On 01/08/08, BOA Investigator Warren contacted me and advised that he had interviewed Fernandez earlier on this date. Inv. Warren indicated that Fernandez admitted to giving Key Bank his own personal BOA account number, although he claimed it to be an accident. Fernandez told Inv. Warren that due to

a hardship of possibly losing his residence, he took advantage of the situation and let it continue. Inv. Warren advised that Fernandez was terminated on this date.

8.) Based on the information above, I believe that probable cause exists that Frank Fernandez's, being an officer, director, agent, and employee of Bank of America, a federally insured Bank, with intent to defraud, willfully misapplied, embezzled, abstracted, and purloined the sum of approximately \$457,384.79, which constituted moneys, funds, and credits of such institution; in violation 18 U.S.C. 656 (Bank Embezzlement).

9.) I swear that the information contained within this affidavit is true to the best of my knowledge.

  
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David A. Rosser,  
Special Agent

Sworn and subscribed before me this 9<sup>th</sup> day of January, 2008 in Charlotte, North Carolina.

  
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Carl Horn, III  
United States Magistrate Judge