

COPY

EIGHTH JUDICIAL DISTRICT COURT  
COUNTY OF TAOS  
STATE OF NEW MEXICO

JUDICIAL DISTRICT COURT  
TAOS COUNTY, N.M.  
2012 MAR 15 PM 4:00  
BERNARD P. STROCK  
CLERK OF THE  
DISTRICT COURT

**SARAH C. BACKUS**

STATE OF NEW MEXICO,  
Plaintiff.

vs.

J. William Himes  
Defendant.

No. CR 2012-45  
NM SEC 09-023

CRIMES CHARGED

GRAND JURY INDICTMENT

THE GRAND JURY CHARGES:

COUNT 1: FRAUDULENT SALE OF SECURITY, SECURITIES FRAUD

On or between March 23, 2007 and March 30, 2007, in Taos County, State of New Mexico, the above named defendant did commit the crime of securities fraud. The defendant offered to sell and sold to Edgar Meyer and Caterina Meyer (Meyers), a security, to wit: that on or between March 23, 2007 and March 30, 2007, the defendant sold to the Meyers 57,143 shares of common stock (certificate no. 1038), of no par value in Plaza de Retiro, Inc. for \$200,000.00.

In connection with this offer to sell or sale, or offer to purchase or purchase of a security, directly or indirectly, the defendant:

- A. Employed a device, scheme or artifice to defraud; and/or
- B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
- C. Engaged in an act, promise or course of business which operates or would operate as a fraud or deceit upon a person;

The fraudulent practices, material misrepresentations, and material omissions by defendant include, but are not limited to: J. William Himes failed to disclose to the Meyers that he did not possess a securities license as a broker-dealer and/or sales representative; J. William Himes also failed to disclose to the Meyers that Plaza de Retiro, Inc. was in poor financial health due to a history of net losses and poor cash flows from operations, contrary to NMSA 1978 §58-13B-30, and 39 (1986), and NMSA 1978 §30-1-13.

**COUNT 2: SALE OR OFFER TO SELL A SECURITY BY UNLICENSED BROKER-DEALER OR SALES REPRESENTATIVE**

On or between March 23, 2007 and March 30, 2007, in Taos County, State of New Mexico, the above named defendant committed the crime of engaging in the business of effecting transactions in securities without a license as required by the New Mexico Securities Act, contrary to NMSA, §58-13B-3 (1986) and §58-13B-39 (1986), and NMSA §30-1-13.

**COUNT 3: SALE OR OFFER TO SELL AN UNREGISTERED SECURITY**

On or between March 23, 2007 and March 30, 2007, in Taos County, State of New Mexico, the above named defendant offered to sell and sold to Edgar Meyer and Caterina Meyer 57,143 shares of common stock of no par value (certificate no. 1038), in Plaza de Retiro, Inc. dated March 23, 2007, that were required to be registered under the New Mexico Securities Act of 1986, (Securities Act), contrary to §58-13B-20(1997) and §58-13B-39(1986), and NMSA §30-1-13.

**COUNT 4: FRAUD (OVER \$20,000.00)**

On or between September 5, 2006 and September 12, 2008, in Taos County, State of New Mexico, the above named defendant did intentionally misappropriate or took an encumbered property by deed, located at 67 Camino de Los Arroyos, Ranchos de Taos, New Mexico, 87557 which had a market value of over \$20,000.00 belonging to Robert Thiele and Julie Thiele or another, by means of fraudulent conduct, practices or representations, contrary to NMSA 1978, §30-16-6 (2006), and NMSA §30-1-13.

*(unencumbered)  
PM 3/15/12  
3-16-11*

**COUNT 5: FRAUDULENT SALE OF A SECURITY (SECURITIES FRAUD)**

On or between August 1, 2008 and August 15, 2008, in Taos County, State of New Mexico, the above named defendant did commit the crime of securities fraud.

The defendant offered to sell or sold to Robert Thiele and Julie Thiele, a security, to wit: an offer to invest in 1,000 shares of stock for \$100,000.00 in Plaza de Retiro, Inc.

In connection with this offer to sell or sale, or offer to purchase or purchase of a security, directly or indirectly, the defendant purposely and directly or indirectly:

- A. Employed a device, scheme or artifice to defraud; and/or
- B. Made an untrue statement of material fact or failed to state a necessary material fact, where such an omission would be misleading, and/or
- C. Engaged in an act, promise or course of business which operates or would operate as a fraud upon a person.

The fraudulent practices, material misrepresentations, and omissions by defendant include, but are not limited to: J. William Himes failed to disclose to the Thieles that he did not possess a securities license as a broker-dealer and/or sales representative; J. William Himes failed to disclose to the Thieles that Plaza de Retiro, Inc. was in poor financial health due to a history of net losses and poor cash flows from operations, contrary to NMSA 1978 §58-13B-30, and 39 (1986), and NMSA §30-1-13.

#### COUNT 6: SALE OR OFFER TO SELL AN UNREGISTERED SECURITY

On or between August 1, 2008, and August 15, 2008, in Taos County, State of New Mexico, the above named defendant offered to sell to Robert Thiele and Julie Thiele a security, to wit: an offer to invest in shares of stock in Plaza de Retiro, Inc., for \$100,000.00 that was required to be registered under the New Mexico Securities Act of 1986, contrary to §58-13B-20 (1997) and §58-13B-39 (1986), and NMSA §30-1-13.

#### COUNT 7: SALE OR OFFER TO SELL A SECURITY BY UNLICENSED BROKER-DEALER OR SALES REPRESENTATIVE

On or between August 1, 2008 and August 15, 2008, in Taos County, State of New Mexico, the above named defendant committed the crime of engaging in the business of effecting transactions in securities without a license required by the New Mexico Securities Act, contrary to NMSA, §58-13B-3 (1986) and §58-13B-39 (1986), and NMSA §30-1-13.

#### COUNT 8: FRAUDULENT SALE OF SECURITY, SECURITIES FRAUD

On or about March 3, 2008 in Taos County, State of New Mexico, the above named defendant did commit the crime of securities fraud. The defendant offered to sell and sold to Julia Young (Young), a security, to wit: 1,000 shares of preferred stock (certificate no. 0007) in Plaza de Retiro, Inc. for \$100,000.00.

In connection with this offer to sell or sale, or offer to purchase or purchase of a security, directly or indirectly, the defendant:

- A. Employed a device, scheme or artifice to defraud; and/or
- B. Made an untrue statement of material fact; or failed to state a necessary material fact where such omission would be misleading; and/or
- C. Engaged in an act, promise or course of business which operates or would operate as a fraud or deceit upon a person;

The fraudulent practices, material misrepresentations, and material omissions by defendant include, but are not limited to: J. William Himes failed to disclose to Julia Young that he did not possess a securities license as a broker dealer and/or sales representative; J. William Himes also failed to disclose to Julia Young that Plaza de Retiro, Inc. was in poor financial health due to a history of net losses and poor cash flows from operations, contrary to NMSA 1978 §58-13B-30, and 39 (1986), and NMSA 1978 §30-1-13.

#### COUNT 9: SALE OR OFFER TO SELL AN UNREGISTERED SECURITY

On or about March 3, 2008, in Taos County, State of New Mexico, the above named defendant offered to sell and sold to Julia Young a security, to wit: 1,000 shares of stock in Plaza de Retiro, Inc. dated March 3, 2008, that was required to be registered under the New Mexico Securities Act of 1986, contrary to §58-13B-20 (1997) and §58-13B-39 (1986), and NMSA §30-1-13.

**COUNT 10: SALE OR OFFER TO SELL A SECURITY BY UNLICENSED BROKER-DEALER OR SALES REPRESENTATIVE**

On or about March 3, 2008, in Taos County, State of New Mexico, the above named defendant committed the crime of engaging in the business of effecting transactions in securities without a license required by the New Mexico Securities Act, contrary to NMSA, §58-13B-3 (1986) and §58-13B-39 (1986), and NMSA §30-1-13.

**COUNT 11: CONSPIRACY TO COMMIT RACKETEERING**

On or between March 23, 2007 and August 15, 2008, in Taos County, State of New Mexico the defendant, and/or another person or persons, by words or acts, agreed together to commit racketeering; and they intended to commit racketeering, contrary to NMSA 1978, §30-28-2 and §30-42-4(D) and §30-1-13.

**COUNT 12: RACKETEERING**

On or between March 23, 2007 and August 15, 2008, in Taos County, State of New Mexico, the above named defendant committed the crime of Racketeering.

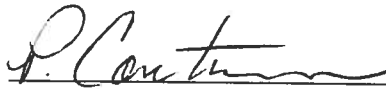
While associated with an enterprise, namely a continuing care retirement community called Plaza de Retiro, Inc., the above named defendant acted as administrator, president, manager, corporate officer, manager and/or as a financial adviser with these named entities in the purported operation of a nursing home and retirement facility offering medical care services in Taos County, State of New Mexico.

The defendant conducted the affairs of the enterprise by intentionally engaging in a pattern of racketeering activity. The pattern of racketeering activity included two or more crimes of: Securities Fraud as charged in counts 1, 5, and 8 in connection with the sale or offer to sell securities, to wit: offers and sales of shares of stock, both common and preferred in Plaza de Retiro, Inc., with investors Robert and Caterina Meyer, Robert and Julie Thiele, and Julia Young, in violation of the New Mexico Securities Act of 1986, contrary to NMSA 1978, §30-42-1 to §30-42-5 and §30-1-13.

The names of the witnesses upon whose testimony this Indictment is based are as follows:

Carolyn Miller, Anne Layne and Daniel Tanaka

I hereby certify that the foregoing Indictment is a True Bill.




\_\_\_\_\_  
Foreperson

3-15-12

\_\_\_\_\_  
Date

APPROVED:



\_\_\_\_\_  
Special Commissioned Assistant District Attorney

PENALTIES

COUNTS 4, 12 2<sup>nd</sup> Degree Felonies

COUNTS 1, 2, 3, 5, 6, 7, 8, 9, 10, 11 3<sup>RD</sup> Degree Felonies

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4th Degree Felony: Basic sentence of 18 months imprisonment and not more than \$5,000 fine.

3rd Degree Felony: Basic sentence of 3 years imprisonment and not more than \$5,000 fine.

2nd Degree Felony: Basic sentence of 9 years imprisonment and not more than \$10,000 fine.

1st Degree Felony: Basic sentence of 18 months imprisonment and not more than \$5,000 fine.

USE OF FIREARM ALTERATION TO BASIC SENTENCE (FE): Basic sentence of imprisonment increased by 1 year for first offense in which a firearm is used and 3 years for subsequent offenses in which a firearm is used.

USE OF HATE CRIME ENHANCEMENT: Basic sentence of imprisonment is increased by one (1) year, unless second offense, then the basic sentence is increased by two (2) years.

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Special Penalty: (Receiving or Transferring a Stolen Vehicle (Possession) only) Basic sentence of one year and/or \$5,000 fine.

Misdemeanor: Less than 1 year in the County Jail and/or not more than \$1,000 fine.

Petty Misdemeanor: Not more than 6 months in the County Jail and/or not more than \$500 fine.

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Penalty for Driving While Under the Influence, Felony Offense: (4th or Subsequent Offense): Basic sentence of 18 months and not more than \$5,000 fine, including a mandatory jail term of not less than 6 months.

Penalty for Driving While Under the Influence - Misdemeanor: If 1st Offense, basic sentence is maximum 90 days jail and \$500 fine, and if aggravated an additional 48 hours jail time; if 2nd Offense, basic sentence is mandatory 72 hours in jail and \$500 fine to maximum of 364 days and \$1,000 fine, and if aggravated an additional 96 hours jail time; if 3rd Offense, basic sentence is a mandatory 30 days in jail and \$750 fine to maximum of 364 days and \$1,000 fine, and if aggravated an additional mandatory 60 days jail time.

Penalty for Driving While License Suspended or Revoked: Traffic Code Misdemeanor, Special Penalty: not less than 4 days nor more than 364 days and fine up to \$1,000 (non-DWI related suspension/revocation); or not less than 7 consecutive days imprisonment and mandatory fine not less than \$300 nor more than \$1,000 (DWI revocation).

Penalty for Reckless Driving: Upon first conviction, basic sentence of 5 days to 90 days imprisonment, and/or \$25 to \$100 fine. Upon a second or subsequent conviction, basic sentence of 10 days to 6 months imprisonment, and/or \$50 to \$1,000 fine.

Penalty for Traffic Code Misdemeanor: fine of not more than \$300 or imprisonment for not more than 90 days or both.

Penalty Assessment Misdemeanor: See Schedule in Traffic Code, Section 66-8-116.

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1st Degree Felony for Child Abuse (Intentionally Caused) (Resulting in Death) (Child Under 12): Life imprisonment.

2nd Degree Felony Resulting in the Death of a Human Being: Basic sentence of 15 years but not less than 10 years nor more than 20 years imprisonment and not more than \$12,500 fine.

3rd Degree Felony Resulting in the Death of a Human Being: Basic sentence of 6 years but not less than 4 years nor more than 8 years imprisonment and not more than \$15,000 fine.

2nd Degree Felony, Sexual Offense Against A Child: Basic sentence of 15 years imprisonment and not more than \$12,500 fine.

3rd Degree Felony, Sexual Offense Against A Child: Basic sentence of 6 years imprisonment and not more than \$5,000 fine.

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OPEN CHARGE OF MURDER

Penalty for FIRST DEGREE MURDER (Willful and Deliberate) or (Depraved Mind)

CAPITAL FELONY: Life Imprisonment

SECOND DEGREE MURDER: Basic sentence of 15 years imprisonment and not more than \$12,500 fine.

VOLUNTARY MANSLAUGHTER: Basic sentence of 6 years imprisonment and not more than \$15,000 fine.

INVOLUNTARY MANSLAUGHTER: 4th Degree Felony: Basic sentence of 18 months imprisonment and not more than \$5,000 fine.

Penalty for FIRST DEGREE MURDER (Felony Murder):

CAPITAL FELONY: Life Imprisonment

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STATEMENT OF TRUE BILL

	True Bill	NO True Bill
Count 1	✓	
Count 2	✓	
Count 3	✓	
Count 4	✓	
Count 5	✓	
Count 6	✓	
Count 7	✓	
Count 8	✓	
Count 9	✓	
Count 10	✓	
Count 11	✓	
Count 12	✓	

J. Centner

Foreperson

3-15-12

Date