



Real estate investors get eight to 14 months in foreclosure auction bid-rigging case

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IN BRIEF

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At a sentencing hearing Wednesday in San Francisco, US District Court Judge James Donato handed down prison terms for Robert Rasheed, John Berry and Refugio Diaz, of 14, 10 and eight months, respectively.

Prosecutors were seeking sentences of 41, 21, and 27 months, respectively. Prosecutors also wanted Rasheed to pay a criminal fine of between \$126,639 and \$633,196. No fines were sought for Berry or Diaz.

The defendants were asking Donato to keep them out of jail altogether.

In lieu of fines for Rasheed, Berry and Diaz, Donato ordered they serve 1,260, 974, and 579 hours of community service. The chief component of that will be telling their story to the real estate industry after the men serve their prison sentences, Donato said.

Once out of jail, they must create 30 minute presentations for all potential real estate audiences to serve as "a cautionary tale of what not to do".

Donato presided over the December trial in which a jury in San Francisco found Alvin Florida Jr., Rasheed, Berry and Diaz guilty of violating the Sherman Act by participating in a conspiracy to suppress the prices of some properties sold at public foreclosure auctions (see here).

It was the second time the men were tried. The previous month, a federal jury hung on the

single count of bid-rigging against all four, and US District Judge Phyllis Hamilton declared a mistrial.

Florida's sentencing has been delayed until the summer, when his attorney returns from maternity leave. The four men were charged on the same indictment, however, and Florida was viewed by prosecutors as the leader of the conspiracy; it is expected the government will request an even harsher sentence for him.

The government also asked that the three men pay restitution, a request that Donato denied. Prosecutors maintain that the conspiracy took money out of the pockets of lenders, and in some cases the foreclosed homeowners themselves.

At Wednesday's hearing, Donato expressed skepticism about how prosecutors calculated the restitution totals.

Manish Kumar with the Department of Justice told the court that the government matched up which properties were subject to the conspiracy with the payoffs made to enforce the bid-rigging agreements. That money should have gone to the lenders, he said.

In declining to order restitution, Donato called the process "highly speculative." In August, ten defendants who pleaded guilty to a similar but unrelated conspiracy elsewhere in California were ordered to pay millions of dollars in restitution as part of their sentences (see here).

Rasheed, Berry and Diaz are the first defendants convicted at trial for foreclosure auction bid-rigging in California to be sentenced.

John Galloway and his half-brother Nicholas Diaz pleaded guilty several months before their trial and were sentenced to one year and six-months, respectively.

In sentencing Rasheed, Donato pushed back against the steep prison time requested by prosecutors. The 41 months included an enhancement under the federal sentencing guidelines for having a leadership role in the conspiracy. Prosecutors argued for the enhancement because Rasheed supervised his son, who was never charged.

Donato declined to make that determination, dropping the maximum sentence under the guidelines to 30 months.

After revising the maximum sentence, Kumar requested 30 months, while Rasheed's attorney Steven Gruel suggested at most a year.

Thirty months doesn't comport with other comparable antitrust cases, Donato said, citing the mid-1990s lysine cartel prosecution. In that case, several US executives from Archer Daniels Midland were given three-year prison terms for their role in an international, multi-billion dollar price-fixing conspiracy.

By contrast, the commerce attributed to Rasheed was around \$12.6 million.

Donato doubted that 30 months for Rasheed is proportional in comparison. "Proportionality is not just in the neighborhood," he said.

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