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DEPUTY ADMINISTRATOR
FOR LITIGATION

July 13, 2017

Hon. John P. Asiello
Clerk of the Court of Appeals
Court of Appeals Hall
20 Eagle Street
Albany, New York 12207

Re: Matter of Lurlyn A. Winchester

Dear Mr. Asiello:

Thank you for your letter of June 27, 2017, inviting comment by the Commission on Judicial Conduct regarding the Court's suspension of Lurlyn A. Winchester from her position as Justice of the Monroe Town Court, Orange County, and whether such suspension should continue.

Pursuant to Article 6, Section 22, subdivision f, of the New York State Constitution and Section 44, subdivision 8, of the Judiciary Law, the Court has authority to suspend a judge or justice from office when he or she is charged with a crime punishable as a felony under the laws of this state, or an offense involving moral turpitude. The Commission respectfully submits that there is cause to suspend Judge Winchester on both felony and moral turpitude grounds.

On or about June 6, 2017, Judge Winchester was charged in a Complaint filed in the United States District Court for the Southern District of New York with one count of "False Statements To a Lender" in violation of

Title 18, United States Code, Section 1014, and one count of “Obstruction” in violation of Title 18, United States Code, Section 1519. A copy of the Complaint, entitled *United States of America v Lurlyn A. Winchester, Defendant*, is enclosed. The counts charged against her, if established, subject her to penalties including incarceration of up to 30 and 20 years, respectively, and as such constitute federal felonies. The Commission believes the crime charged in count one would be punishable in New York at least as a class E felony, Residential Mortgage Fraud in the Fourth Degree, under Penal Law Section 187.10.

While the return of a felony indictment against a judge or justice in this state is rare, it has been this Court’s general practice in such cases to suspend the defendant from judicial office, with pay, while the charges are pending. *See, Matter of Barto*, 23 NY3d 1032 (2014) (judge indicted by Seneca County Grand Jury on multiple felony counts); *Matter of Apple*, 19 NY3d 1045 (2012) (judge charged by prosecutor’s information on felony DWI charge); *Matter of Anderson*, 11 NY3d 894 (2008) (judge indicted by New York County Grand Jury on felony campaign-finance charges).

The Commission also believes the crimes charged against Judge Winchester could be characterized as involving moral turpitude, inasmuch as they allege fraudulent conduct. The United States Supreme Court held in *Jordan v De George*, 341 US 223 (1951), that crimes involving fraud are among the offenses constituting moral turpitude.¹ This Court, in *Schaubman v Blum*, 49 NY2d 375 (1980), concluded that the filing of a false Medicaid invoice involved moral turpitude, notwithstanding that the amount in issue was only \$3.39, declaring that “a wrongdoer who commits an offense involving moral turpitude cannot be insulated from a severe sanction merely because ‘small sums of money may be involved.’” *Id* at 379, citing *Matter of Pell v Board of Education*, 34 NY2d 222 (1974).²

¹ The Court stated: “The phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct.” 341 US at 232.

² While the term “moral turpitude” does not appear to be defined in statute, there is an apt analogy in attorney disciplinary law, in that Judiciary Law Section 90(4)(d) defines a non-felonious “serious crime” as one involving *inter alia* false swearing, misrepresentation and fraud, leading to suspension upon conviction and possible disbarment under Judiciary Law Sections 90(4)(f) and (g).

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The Commission renders no comment on the merits of the pending criminal charges against Judge Winchester and recognizes that she, as any defendant, is entitled to the presumption of innocence with respect to those charges.

At the same time, the Commission believes that public confidence in the integrity of the judiciary, the courts and the administration of justice would be undermined were Judge Winchester to exercise the powers of judicial office in one court while contemporaneously defending against serious charges pending against her in another.

The Commission therefore recommends that, consistent with the Court's precedents, and as authorized by the Constitution and the Judiciary Law, Judge Winchester be suspended from exercising the powers of judicial office until the criminal charges against her are resolved. The Commission takes no position on whether such suspension should be with or without pay.

Very truly yours,



Robert H. Tembeckjian

Enclosure

cc: Clinton W. Calhoun, III, Esq.
Attorney for Judge Winchester

Hon. Lawrence K. Marks
Chief Administrative Judge

Hon. Michael V. Coccoma
Deputy Chief Administrative Judge

John W. McConnell, Esq.
Counsel, Office of Court Administration

Hon. Alan D. Scheinkman
Administrative Judge, 9th Judicial District

ORIGINAL

Approved: Margery B. Feinzig
Margery B. Feinzig
Assistant U.S. Attorney

Before: HONORABLE LISA MARGARET SMITH
United States Magistrate Judge
Southern District of New York

17mj 4282

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UNITED STATES OF AMERICA :

SEALED COMPLAINT

- v. - :

Violation of
18 U.S.C. §§ 1014, 1519

LURLYN A. WINCHESTER, :

COUNTY OF OFFENSE:

Defendant. :

Rockland

----- X

SOUTHERN DISTRICT OF NEW YORK, ss.:

MEREDITH MCGOVERN, being duly sworn, deposes and says that she is a Sergeant Investigator with the Orange County Sheriff's Office assigned to the Federal Bureau of Investigation White Collar Crime Task Force (the "FBI Task Force"), and charges as follows:

COUNT ONE

(False Statements To a Lender)

1. On or about January 8, 2015, in the Southern District of New York, LURLYN A. WINCHESTER, the defendant, unlawfully, willfully and knowingly, made false statements and reports, for the purpose of influencing in any way the action of a mortgage lending business, upon an application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, loan, insurance agreement and application for insurance, guarantee, and any change and extension of any of the same, by renewal, deferment of action and otherwise, and the acceptance, release and substitution of security therefor, to wit, LURLYN A. WINCHESTER submitted a mortgage application to Hudson United Mortgage LLC, in New City, New York, which was provided to Plaza Home Mortgage, Inc., in which she falsely represented (i) that the Orange County, New York property to be purchased with the loan proceeds would be her primary residence and (ii) that she would be receiving \$4,500 a month in rental income from a tenant (the "Tenant") who would be renting her existing home in Rockland County, New York, and in support of

those false statements, WINCHESTER submitted a purported lease and checks for first month's rent and security deposit.

(Title 18, United States Code, Section 1014.)

COUNT TWO
(Obstruction)

2. On or about August 1, 2016, in the Southern District of New York, LURLYN A. WINCHESTER, the defendant, knowingly altered, destroyed, mutilated, concealed, covered up, falsified, and made a false entry in a record, document, and tangible object with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States, and in relation to and contemplation of any such matter and case, to wit, after WINCHESTER was questioned by members of an FBI Task Force about statements on her mortgage application and materials she submitted to Hudson United Mortgage LLC, WINCHESTER provided members of the FBI Task Force with copies of fabricated rent payment receipts, with the intent to impede the investigation into WINCHESTER's statements in connection with her mortgage application, which investigation falls within the jurisdiction of the United States Attorney's Office for the Southern District of New York and the Federal Bureau of Investigation.

(Title 18, United States Code, Section 1519.)

The bases for my knowledge and for the foregoing charge are, in part, as follows:

3. I am a Sergeant Investigator with the Orange County Sheriff's Office assigned to the Federal Bureau of Investigation White Collar Crime Task Force. I have been a law enforcement officer since 2007 and been on the White Collar Crime Task Force since approximately 2011. I have been personally involved in the investigation of this matter. I base this affidavit on my training and experience, my conversations with other law enforcement agents and other individuals, and my examination of various reports and records.

4. Because this affidavit is being submitted for the limited purpose of demonstrating probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported

herein, they are reported in substance and in part, except where otherwise indicated.

Overview

5. Based on the various sources described herein, I have learned the following:

(a) LURLYN A. WINCHESTER, the defendant, is an attorney who, in November 2013, was elected Town of Monroe Justice, a judicial position in the Town of Monroe ("Monroe"), which is located in Orange County. Under New York law, WINCHESTER was required to reside in Monroe in order to be eligible to hold that Town Justice of Monroe position.

(b) At and around the time of her 2013 election, WINCHESTER represented that she resided in Monroe, and registered to vote at an address in Monroe, listing an address that belonged to her relative. However, at all relevant times up to and including the present, WINCHESTER's primary residence has been a home located in New City, New York, which is located in Rockland County.

(c) From in or about October 2014 through in or about April 2015, WINCHESTER sought to obtain, and ultimately did obtain, a home mortgage loan to fund the purchase of a condominium in Monroe. In applying for that loan, WINCHESTER acknowledged that she lived in New City and needed to move to Monroe to comply with the residency requirement for a Town of Monroe Justice. To secure the mortgage loan, and moreover, to secure the loan at a favorable rate, WINCHESTER made false statements and provided false documents to a mortgage broker and mortgage company - including but not limited to, false statements about making Monroe her primary residence and her intention to earn income from her New City home by renting it to a tenant.

(d) In or about August 2016, when interviewed by federal agents, and questioned about her conduct in obtaining the mortgage loan, WINCHESTER obstructed the investigation by intentionally providing to agents additional false documents, including fabricated rent payment receipts.

The Mortgage Fraud Scheme

6. Based on my review of Rockland County land records, on or about March 24, 1997, LURLYN A. WINCHESTER, the defendant, and her husband purchased a home in New City, New

York (the "New City Home"), which is in Rockland County.. They continue to own the New City Home.

7. Based on my review of public records, I have learned that:

(a) On or about October 6, 2013, LURLYN A. WINCHESTER, the defendant, an attorney whose law office is and has been located in New City, New York, was nominated to be the democratic candidate for Town of Monroe Justice.

(b) Under applicable New York State law, in order to be eligible for the position of Town of Monroe Justice, one must reside in the Town of Monroe, which is located in Orange County.

(c) In or about October 2013, WINCHESTER provided an address in Monroe ("Monroe Residence-1") as her residence, and on or about October 7, 2013, she registered to vote in Monroe, New York. Based upon my review of a deed, it is my understanding that, in October 2013, Monroe Residence-1 was owned by WINCHESTER's relative.

(d) Thereafter, on or about November 5, 2013, WINCHESTER was elected Town of Monroe Justice as of January 1, 2014.

(e) The position of Town of Monroe Justice is part-time and a justice's schedule varies. However, generally, a justice presides over Town of Monroe Court approximately two to four times a month, in the evening, and when trials are assigned to the justice's docket.

8. Based on my review of records from Hudson United Mortgage LLC ("Hudson United") and Plaza Home Mortgage, Inc., ("Plaza") and my conversations with a representative of Hudson United, I have learned the following:

(a) Hudson United is a mortgage broker that assists individuals in applying for and obtaining loans from loan issuers. Plaza is a loan issuer that provides loans based, in part, on information gathered from brokers such as Hudson United.

(b) On or about October 14, 2014, Hudson United received a letter from LURLYN A. WINCHESTER, the defendant, indicating that she had been elected Town Justice for the Town

of Monroe and that, pursuant to New York State law, she was required to live in Monroe. She informed Hudson United that she was relocating to Monroe in order to comply with this residency requirement.

(c) In or about December 2014, WINCHESTER and her husband submitted an application for a residential loan to Hudson United. The loan application indicated that the New City Home was their "present address." The application further indicated that the loan was to be used to purchase a condominium located in Monroe, New York ("Monroe Residence-2"). On both the loan application and an Affidavit of Occupancy signed by WINCHESTER and her husband, they asserted that Monroe Residence-2 would be their primary residence.

(d) Based on my knowledge and experience, as well as information obtained during the course of the investigation and in speaking with a representative of Hudson United, I understand that primary residences qualify for the lowest mortgage rates.

(e) In furtherance of the loan application, WINCHESTER also represented to Hudson United that she and her husband were going to rent out their New City Home to a tenant. Specifically, on or about February 6, 2015, Hudson United received a letter from WINCHESTER in which she represented that "in regard to our intent with the current primary residence, [New City Home], please be advised that we intend on renting the premises." She further represented that they "already have a prospective tenant who is anxiously awaiting to take occupancy of the residence."

(f) In or about March 2015, WINCHESTER learned that Plaza was going to decline to issue the loan because she and her husband did not have sufficient income. In response, the defendant again represented that she and her husband were going to rent out the New City Home and indicated they would have rental income of \$4,500 a month. Plaza requested copies of a fully executed 12-month lease and a canceled check for a security deposit.

(g) Thereafter, WINCHESTER provided Hudson United with a copy of a lease agreement for the New City Home, bearing the signature date of March 23, 2015 ("the March 2015 Lease"), and which appeared to have been signed by WINCHESTER, her husband, and Tenant. The lease provided that Tenant was to pay \$4,500 a month to lease the New City Home. WINCHESTER also

submitted a copy of two checks, made out to herself, each in the amount of \$4,500, drawn on Tenant's bank account at TD Bank ("Tenant's TD Bank Account"). One check contained a notation indicating it was for the security deposit for the New City Home and the other a notation indicating it was for one month's rent for the New City Home. WINCHESTER also provided a copy of an account transaction history relating to her own bank account at JP Morgan Chase reflecting that, on or about March 28, 2015, the two checks were deposited into her bank account.

(h) In or about April 2015, based on the information WINCHESTER submitted to Hudson United, Plaza issued a loan to the defendant and her husband in connection with the purchase of Monroe Residence-2. The defendant and her husband continue to own Monroe Residence-2 and make payments on the loan.

(i) The Affidavit of Occupancy signed by WINCHESTER and her husband requires that the mortgage applicant "shall occupy, establish, and use the Property as Applicant(s) principal residence within 60 days after closing and shall continue to occupy the Property as Applicant(s) principal residence for at least one year after the date of occupancy[.]"

(j) Finally, I have been informed by a representative of Hudson United, in substance and in part, that if Monroe Residence-2 were not going to be WINCHESTER's primary residence, the terms of the loan would have been different and there would have been additional requirements in order for she and her husband to qualify.

9. Based on the following information, there is probable cause to believe that, contrary to what LURLYN A. WINCHESTER, the defendant, and her husband asserted on their loan application and other submissions to Hudson United and Plaza, (i) WINCHESTER did not intend to and did not lease the New City Home to Tenant in 2015, but in fact that WINCHESTER fabricated a 2015 lease and caused checks to be issued and deposited to make it falsely appear that Tenant had paid rent and a security deposit; and (ii) the Monroe Residence-2 was not intended to be, and has not been, the primary residence of WINCHESTER and her husband:

(a) I have examined records relating to Tenant's TD Bank Account and, while they reflect that on or about March 26, 2015, the two \$4,500 checks issued to WINCHESTER were drawn on Tenant's TD Bank Account, they also reflect that Tenant did

not use his own money to issue those checks. Instead, he used the defendant's money. The day before, March 25, 2015, two cashier's checks were deposited into Tenant's bank account, each in the amount of \$4,500. The remitter on the two cashier's checks is WINCHESTER and both checks contain notations referring to the New City Home.

(b) I have also examined records of a JP Morgan Chase account in the name of Law Office of Lurlyn Winchester-Youngblood/IOLA. Those records reveal that, on or about March 24, 2015, the defendant withdrew \$9,000 from that account.

(c) In the course of this investigation, an FBI Special Agent ("Agent-1") and I have interviewed Tenant, who informed us in substance and in part that: (i) WINCHESTER provides legal services to him; (ii) Tenant did not sign the March 2015 Lease and was unaware of it; (iii) Tenant had no intention of renting the New City Home in 2015; (iv) previously, in or about late 2013, Tenant had signed a lease to rent the New City Home, but had never moved in and WINCHESTER had returned his payment; (v) in 2015, Tenant wrote two \$4,500 checks to WINCHESTER after WINCHESTER provided him with \$9,000 to cover those checks; however, Tenant did not write the dates on the checks, or the notations indicating the checks were for first month's rent and a security deposit.

(d) On or about April 6, 2016, a Task Force Officer ("Officer-1") and I went to the vicinity of Monroe Residence-2 and spoke with a neighbor there ("Neighbor-2"). Neighbor-2 indicated that Neighbor-2 did not know the names of the people living in Monroe Residence-2. However, Neighbor-2 stated that Neighbor-2 believed that Monroe Residence-2 was owned by a female judge from Rockland County. Neighbor-2 also stated that he/she believed that the judge's sister and her sister's boyfriend resided at Monroe Residence-2. Neighbor-2 further stated that he/she did not see the judge often and, to his/her knowledge, she did not reside at Monroe Residence-2.

(e) On or about April 24, 2017, Officer-1 and I returned to the vicinity of Monroe Residence-2 and spoke with a neighbor who lives with Neighbor-2 ("Neighbor-3"). When asked who lived at Monroe Residence-2, Neighbor-3 indicated that a judge known to Neighbor-3 as "Linda" lived at the property with another man and woman whom Neighbor-3 believed to be "Linda's" husband and sister. Neighbor-3 stated that "Linda" told Neighbor-3 that she lived in Monroe Residence-2 and at a house she owned in New City, where Linda had an established law

practice. Neighbor-3 further stated that there was rarely anyone at Monroe Residence-2 and it was very quiet, which was great for Neighbor-3 because it was as if he/she had no neighbor. Neighbor-3 further stated that Neighbor-3 had not seen "Linda" at Monroe Residence-2 since the day after a big snow storm in March. Neighbor-3 could not remember the last time Neighbor-3 saw "Linda's sister" and was unsure if the sister still resided at Monroe Residence-2.

(f) I have reviewed credit card records for a Chase Sapphire credit card in the name of the defendant. The address on the account is the New City Home and the transaction records reveal that between in or about December 2014 and in or about June 2016, the defendant made approximately 682 purchases using her Chase Sapphire card. Of those purchases, approximately 390 appear to have been made in Rockland County, where the New City Home is located, and approximately 48 appear to have been made in Orange County, where Monroe Residence-2 is located and where WINCHESTER works, part-time, in her role as Town Justice.

(g) I have also reviewed cellphone records for a cellphone in the name of the defendant. The records indicate that between on or about January 1, 2014 and February 1, 2017, there were a total of approximately 207,059 hits on cellphone towers. Of that number, approximately 112,729 were towers in Rockland County, again, where the New City Home is located, and only approximately 18,459 were towers in Orange County, where Monroe Residence-2 is located and where WINCHESTER works part-time. Based on my training and experience, as well as conversations with other law enforcement agents, I understand that, generally speaking, a cellphone connects with a tower that is closest to where the cellphone is located.

Conduct Relating to Obstruction

10. On or about July 28, 2016, an FBI Special Agent ("Agent-1") and I met with LURLYN A. WINCHESTER, the defendant, at her office in New City, New York, and she provided the following information, in substance and in part:

(a) WINCHESTER admitted that she and her spouse reside at the New City Home and that there has never been a tenant at the New City Home.

(b) She stated that Tenant was going to move into the New City Home to help WINCHESTER cover the mortgage. However, she acknowledged that Tenant never moved into the New City Home.

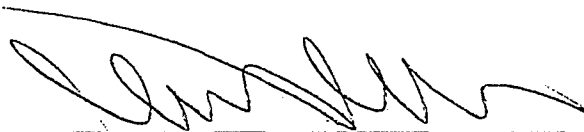
11. On or about August 1, 2016, Officer-1 and I again met with LURLYN A. WINCHESTER, the defendant, at her office, and she provided us with documents that she represented to us to be legitimate documents, and which purported to show that Tenant had advanced rent payments to WINCHESTER and was going to rent the New City Home in or about March 2015. Those documents included, among others:

(a) Copies of nine purported rent receipts indicating WINCHESTER received \$1,000 in cash from Tenant "for rent of" the [New City Home] and the word "downpayment." The receipts contain what appear to be WINCHESTER's signature and the dates, 5/15/2014, 6/30/2014, 7/1/2014, 8/28/2014; 9/15/2014, 10/27/2014, 11/25/2014, 12/18/2014 and 1/16/2015. Tenant's initials appear to be on all but the 6/30/14 receipt; and

(b) A copy of a tenth purported rent receipt indicating WINCHESTER had received \$9,000 from Tenant for rent of the [New City Home] on 2/1/2015. It further contains the notations "+security from May 2014 to January 2015" and "for 1 month rent \$4,500.00" and "1 month security \$4,500.00".

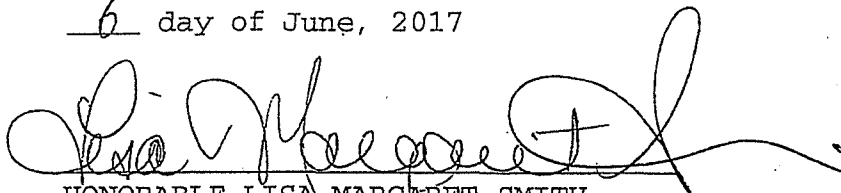
12. The receipts for \$1,000 cash payments for rent and for the total of \$9,000 for rent, described in paragraph 11, appear to have been fabricated by WINCHESTER. During our interview of Tenant, Agent-1 and I showed Tenant these receipts and he indicated that he did not know anything about the receipts and never gave WINCHESTER the \$1,000 cash payments supposedly memorialized in them.

WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of LURLYN A. WINCHESTER, the defendant, and that she be arrested and imprisoned or bailed, as the case may be.



MEREDITH MCGOVERN
Sergeant Investigator
Orange County Sheriff's Office
FBI White Collar Crime Task Force

Sworn to before me this
6 day of June, 2017



HONORABLE LISA MARGARET SMITH
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK