

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	Criminal No.: CR97-330-A
	)	Filed: 8/14/97
v.	)	Count 1:
	)	15 U.S.C. §1
LAWRENCE L. ROSEN,	)	(Bid Rigging)
)	
Defendant.	)	Count 2:
	)	18 U.S.C. §1341
	)	(Mail Fraud)
)	
	)	Count 3:
	)	18 U.S.C. §371
	)	(Conspiracy)

INDICTMENT

August 1997 Term - At Alexandria, Virginia

COUNT ONE

THE GRAND JURY CHARGES THAT:

A. DEFENDANT AND CO-CONSPIRATORS

1. At all times material to this Indictment, the defendant, LAWRENCE L. ROSEN was a real estate speculator doing business in the Eastern District of Virginia.

2. Various firms and individuals, not made defendants in this count, participated as co-conspirators in the offense charged and performed acts and made statements in furtherance of it.

B. DESCRIPTION OF THE OFFENSE

3. Beginning at least as early as October 1991 and continuing through at least April 1995, the exact dates being unknown to the grand jury, the defendant and others entered into and engaged in a combination and conspiracy to limit the bidding

at certain public real estate foreclosure auctions in the Eastern District of Virginia. The combination and conspiracy unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1).

4. In certain instances when real estate located in the Commonwealth of Virginia is sold, the sale is conducted by public auction. When a deed of trust, commonly called a mortgage, is foreclosed upon in the Commonwealth of Virginia, the property is sold at a public auction in order to protect the interests of the mortgage holder and the property owner.

5. When a mortgage is foreclosed, the mortgage holder appoints a Trustee, pursuant to provisions in the original mortgage documents, to conduct the sale of the property by public auction. After required notice of an auction is given, the Trustee holds the auction on the date and time specified.

6. The bidding at the foreclosure auction typically opens at the amount owed by the property owner to the mortgage holder. The Trustee who conducts the foreclosure auction seeks to obtain the highest price possible at the public auction by soliciting open and competitive bidding from potential purchasers. The Trustee stops the bidding when the highest price reached by competitive bidding is offered. The high bidder pays a deposit to the Trustee in the form of a cashier's or certified check. The Trustee then executes a Memorandum of Sale indicating the property address, the date of the auction, the high bidder, the

high bid amount, and the amount of the deposit paid. The Memorandum of Sale is needed by the high bidder in order to complete the settlement of the property transaction, which usually occurs within 15 days of the auction. Once the settlement of the property transaction is completed, the high bidder takes title to the property.

7. When a property is sold at a foreclosure auction, any amount paid for the property above the amount owed to the mortgage holder(s) represents the property owner's equity in the property and is paid to the property owner.

8. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators to rig bids, the substantial terms of which were:

- a) to suppress competition by refraining from full competitive bidding at certain public real estate foreclosure auctions;
- b) to conduct second, secret auctions, open only to members of the conspiracy, to rebid the properties won at the public foreclosure auctions; and
- c) to make payoffs to one another in return for limiting the bidding at those public real estate foreclosure auctions.

C. MEANS AND METHODS OF THE CONSPIRACY

9. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

- a) agreeing to limit competition with one another at certain public real estate foreclosure auctions;
- b) permitting co-conspirators to make bids to seek to win the public real estate foreclosure auction without full competition from the other co-conspirators;
- c) purchasing auctioned property at prices lower than would have resulted from a fully competitive auction, thereby depriving property owners and certain mortgage holders of the full value of the auctioned property;
- d) holding second, secret and private auctions, open only to the co-conspirators and generally conducted by written bid, in which the co-conspirators made bids to acquire each property at prices higher than the price paid by the winner of the public real estate foreclosure auction;
- e) awarding the property to the highest of the secret auction bids, and agreeing to divide the group's secret profit (the difference between the public

foreclosure auction price and the secret auction price) by making payoffs among the conspirators;

- f) arranging for the secret auction winner to take title or ownership of the property; and
- g) making the payoffs that they agreed to make.

10. In the manner described in paragraph 9, and for the purpose of carrying out the charged combination and conspiracy, the defendant and co-conspirators unreasonably restricted full competitive bidding at public foreclosure auctions of the following properties, among others, on or about the listed dates:

<u>Property Address</u>	<u>Auction Date</u>
6842 Indian Run Ct., Annandale	November 8, 1991
220 N. St. Asaph St., Alexandria	November 26, 1991
5114 Cliffhaven Dr., Annandale	November 9, 1993
3058 Sugar Ln., Vienna	December 3, 1993
5803 Royal Ridge Dr., # Q, Springfield	March 22, 1994
6762 Morning Ride Cir., Alexandria	July 21, 1994

D. TRADE AND COMMERCE

11. Public real estate foreclosure auctions held in the Eastern District of Virginia that are the subject of this count within the flow of, and substantially affect, interstate trade and commerce.

12. Foreclosure auctions held in the Eastern District of Virginia regularly are advertised in newspapers that are distributed in the District of Columbia and in Maryland.

13. Potential purchasers at real estate foreclosure auctions in the Eastern District of Virginia make telephone

inquiries from outside Virginia regarding properties to be auctioned, and travel across state lines to attend such auctions.

14. In a substantial number of instances when the defendant or a co-conspirator purchased a property at a public foreclosure auction, interstate contacts by mail and wire initiated the foreclosure proceeding, and interstate transfers of money and documents were necessary to transfer ownership of the property to the defendant or his co-conspirator.

E. JURISDICTION AND VENUE

15. The combination and conspiracy charged in this count was formed in and carried out, in part, within the Eastern District of Virginia, within the five years preceding the return of this Indictment.

(In violation of Title 15, United States Code, Section 1.)

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. During at least December 1993, the exact dates being unknown to the grand jury, the defendant, LAWRENCE L. ROSEN, and others, within the Eastern District of Virginia, as part of an ongoing arrangement, did knowingly devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises from the owners of a property that was being sold at a public real estate foreclosure auction in the Eastern District of Virginia. That scheme and artifice to defraud consisted of suppressing competition at the public auction of a property at 3058 Sugar Lane, Vienna, VA, by agreeing not to bid against one another at the public auction, by acquiring the property at a lower price than would have resulted from a fully competitive auction, and by holding a second, secret auction and dividing the profits of the scheme (the difference between the public auction price and the secret auction price) among themselves.

2. On or about December 21, 1993, in the Eastern District of Virginia, the defendant, LAWRENCE L. ROSEN, in connection with the auction of a property at 3058 Sugar Lane, Vienna, VA, for the purpose of executing the scheme and artifice described above and attempting so to do, knowingly caused to be delivered by mail according to the direction thereon, by the United States Postal Service, an envelope addressed to Leo Gulley, 10907 Blue Roan Road, Oakton, VA 22124, containing a payoff check.

(In violation of Title 18, United States Code, Section 1341.)

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. From on or about March 22, 1994, through at least April 1995, the exact dates being unknown to the grand jury, in the Eastern District of Virginia, the defendant, LAWRENCE L. ROSEN, and others, unlawfully, knowingly and willfully conspired and agreed to defraud the United States Department of the Treasury, Internal Revenue Service, by impeding, impairing, obstructing and defeating the lawful functions of the IRS in the ascertainment, computation, assessment and collection of taxes; specifically, by agreeing to make illegal payoffs in cash rather than by check to avoid reporting that cash as income on their tax returns.

A. MEANS AND METHODS OF THE CONSPIRACY

2. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

- a) discussing and agreeing that secret, second auction payoffs be made in cash rather than by check;
- b) making second auction payoffs in cash;

- c) discussing and agreeing that cash payoffs would not be reported on their income tax returns; and
- d) discussing and agreeing that cash payoffs made by the winner of the secret auction would not be included in the secret auction winner's stated cash basis in the property.

B. OVERT ACTS

3. In furtherance of the conspiracy and to effect the objects thereof, the defendant and co-conspirators performed at least one of the following overt acts in the Eastern District of Virginia:

- a) On or about March 22, 1994, a co-conspirator made cash payoffs to the defendant and other co-conspirators in connection with rigging the bid at the auction of the property at 5803 Royal Ridge Drive, Unit Q, Springfield Virginia;

b) On or about May 27, 1994, co-conspirators made and received cash payoffs in connection with rigging the bid at the auction of the properties at 7345 McWhorter Place, #110 and #111.

(In violation of Title 18, United States Code, Section 371.)

A TRUE BILL

_____/s/_____
FOREPERSON

_____/s/_____
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United States Attorney

_____/s/_____
JOEL I. KLEIN
Assistant Attorney General

_____/s/_____
JUSTIN W. WILLIAMS
Assistant United States Attorney
Chief, Criminal Division

_____/s/_____
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