

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : Crim. No.: 01 Cr. 159

v. : Filed: February 26, 2001

GORDON KERNER, : Violation: 18 U.S.C. § 371

Defendant. :

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INFORMATION

The United States of America, acting through its attorneys, charges:

1. Gordon Kerner is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Gordon Kerner ("Kerner") was a resident of Lloyds Neck, New York. He was the president and a co-owner of Landmark Food Corp.

3. Landmark Food Corp. ("Landmark") was a New York State corporation located in Holtsville, New York. Landmark was a vendor of food, primarily produce, frozen food, and groceries.

4. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. They included Selwyn Lempert ("Lempert"), an employee of Nick Penachio Co., Inc., one of Landmark's competitors.

II. DESCRIPTION OF THE OFFENSE

5. From approximately 1991 until approximately 1999, the exact dates being unknown to the United States, the defendant and co-conspirators did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree to defraud the United States of America and to commit offenses against the United States of America, to wit, to violate Title 26, United States Code, Section 7201, all in violation of Title 18, United States Code, Section 371.

6. It was a part and object of the conspiracy that the defendant and co-conspirators would and did defraud the Internal Revenue Service (“IRS”) by impeding, impairing, defeating, and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection of income taxes due from certain individuals, including Kerner, who were involved in a conspiracy to rig bids for contracts to supply produce to the Board of Education of the City of New York (“NYCBOE”), as charged in an Indictment, 00 Cr. 584 (JSR), filed in the Southern District of New York, and, in addition, from certain individuals, including Kerner, who were employees of Landmark.

7. It was a further part and object of the conspiracy that Kerner, and his co-conspirators, would and did attempt to evade and defeat a substantial part of the income tax due and owing to the United States by Kerner, in violation of Title 26, United States Code, Section 7201.

III. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

8. From approximately 1991 until April 1999, Kerner and co-conspirators, including Lempert, participated in a conspiracy to rig bids for contracts to supply produce to the NYCBOE, as charged in an Indictment, 00 Cr. 584 (JSR), filed in the Southern District of New York. During the course of, and in furtherance of that conspiracy, Kerner gave, or caused another representative of Landmark to give, approximately \$100,000 in cash to Lempert. Throughout the time Kerner gave cash to Lempert, he understood and believed that Lempert, in turn, intended to pay cash to potential competitors for contracts to supply produce to the NYCBOE in exchange for their agreement not to bid competitively for those contracts. Kerner further believed that potential competitors who received cash from Lempert would not report their receipt of that money as income on their federal tax returns.

9. In addition, in approximately 1998, during the course of and in furtherance of the conspiracy to rig bids for contracts to supply produce to the NYCBOE, as charged in an Indictment, 00 Cr. 584 (JSR), filed in the Southern District of New York, Kerner also received, or caused another representative of Landmark to receive, a substantial amount of cash, at least \$30,000, from another co-conspirator, with the intention that he would not report his receipt of his share of that money as income on his and his spouse's federal income tax returns.

10. In approximately November 1997, Kerner agreed with Lempert that, in exchange for approximately \$100,000, Landmark would not bid competitively for contracts to supply produce to the NYCBOE in the first half of 1998. Landmark in fact did not bid competitively for those contracts, and over the course of the next few months, Kerner received at least \$30,000 in cash directly or indirectly from Lempert. Kerner failed to report his receipt of that money as income on his and his spouse's federal income tax returns.

11. Beginning in approximately 1993, Kerner and co-conspirators caused Landmark to fail to record in its books and records, and to report as income on its federal income tax returns, all of its cash receipts. The unrecorded cash receipts included both cash received as payment for merchandise sold by Landmark as well as certain checks payable to the company, primarily checks that represented rebates from suppliers to Landmark. Kerner and co-conspirators then used Landmark's unrecorded cash receipts to pay compensation to certain employees, including Kerner, that was not included by the company in its reports to the Internal Revenue Service documenting the compensation of those employees. As a result, Kerner received, both in cash and by check, substantial income that he failed to report on his and his spouse's federal income tax returns.

IV. OVERT ACTS

12. On numerous occasions between 1991 and April 1999, Kerner met with Lempert to discuss payments of money in connection with the bid-rigging conspiracy charged in the Indictment, 00 Cr. 584 (JSR), filed in the Southern District of New York. Some of those meetings occurred in the Bronx at the offices of Lempert's employer, Nick Penachio Co., Inc.

13. On or about April 2, 1998 and March 25, 1999, Kerner and his spouse filed false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, in which they failed to report as income approximately \$45,000 that Kerner had received in connection with the bid-rigging conspiracy charged in the Indictment, 00 Cr. 584 (JSR), filed in the Southern District of New York and, in addition, substantial income derived from the activity described in ¶ 11 of this Information.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

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