

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : Criminal No.: 00 CR. 602 (JGK)

v. : Filed: June 1, 2000

JOHN F. DOODY, : Violation: 15 U.S.C. § 1

Defendant. :

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INFORMATION

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

1. John F. Doody ("Doody") is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Doody resided in Ridgewood, New Jersey. Doody was an independent sales agent employed by DiCarlo Distributors, Inc. ("DiCarlo, Inc."). DiCarlo, Inc., located in Holtsville, New York, was a vendor of food, including frozen food and produce. DiCarlo, Inc. hired Doody in 1996 to assist in formulating and submitting bids to certain public agencies, including the Board of Education of the City of New York ("NYCBOE").

3. The NYCBOE was the entity responsible for operating New York City's public school system, the largest in the United States. Its annual budgets,

which approached \$10 billion, were funded by the federal, state, and city governments. It serviced a student population of nearly 1.1 million and operated more than 1,500 facilities. It served approximately 640,000 lunches and 150,000 breakfasts every school day, the majority of which were subsidized by various government programs, primarily those programs established pursuant to the National School Lunch Act of 1946 and administered by the United States Department of Agriculture.

4. The NYCBOE solicited bids from, and awarded contracts to, vendors of food on a regular basis. The primary food contracts awarded by the NYCBOE were requirements contracts that obligated the vendors to supply and deliver food at the stated prices for the contract period. Both public and non-public schools received food pursuant to these contracts. Individual schools placed orders as needed, usually once or twice a week.

5. The NYCBOE sought separate bids, and awarded separate contracts, for the supply of a number of categories of food, including frozen food, produce, and groceries. Each of these bids and contracts was divided into parts, usually geographically by borough. The company bidding the lowest price for a particular part of a contract usually received an award for that part. The term of most of these contracts varied from three to six months. Toward the expiration of the contract period, the NYCBOE again solicited bids for the supply of food.

6. The NYCBOE required bidders to certify, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or with any competitor.

7. Whenever in this Information reference is made to any act, deed, or transaction of any corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

8. Various persons and firms, including DiCarlo, Inc. and John DiCarlo, one the company's senior executives, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

II. TRADE AND COMMERCE

9. During the period covered by this Information, DiCarlo, Inc. purchased substantial quantities of food, including produce, for resale to the NYCBOE from suppliers located throughout the United States, or from wholesalers who obtained their goods from suppliers located throughout the United States.

10. From approximately mid-1997 until approximately April 1999, pursuant to contracts that are the subject of this Information, the NYCBOE purchased approximately \$28 million of produce from members of the conspiracy, including approximately \$5.3 million of produce from DiCarlo, Inc.

11. The activities of the defendant and co-conspirators with respect to the sale of food to the NYCBOE, including the sale of produce pursuant to contracts that are the subject of this Information, were within the flow of, and substantially affected, interstate trade and commerce.

III. DESCRIPTION OF THE OFFENSE

12. From approximately mid-1997 until approximately April 1999, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

13. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of produce to the NYCBOE.

14. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those

things which they combined and conspired to do, including, among other things:

(a) Prior to approximately November 1997, Doody helped DiCarlo, Inc. prepare competitive bids for contracts to supply food, including produce, frozen food, and groceries, to the NYCBOE. In 1997 certain of the co-conspirators told Doody that they would pay DiCarlo, Inc. \$100,000 or more in cash if DiCarlo, Inc. would agree not to bid competitively for contracts to supply food to the NYCBOE. Doody discussed this offer with one or more senior executives of DiCarlo, Inc., including John DiCarlo, who decided to reject the offer. Certain of the co-conspirators formulated a new proposal -- if DiCarlo, Inc. would stop bidding competitively for contracts to supply frozen food to the NYCBOE, then arrangements would be made for DiCarlo, Inc. to be the low bidder for future NYCBOE contracts to supply produce to schools in Manhattan. Doody discussed this new offer with one or more of the senior executives of DiCarlo, Inc., including John DiCarlo. DiCarlo, Inc. then agreed to this new proposal. DiCarlo, Inc. was subsequently awarded successive NYCBOE contracts to supply produce to schools in Manhattan;

(b) Prior to the submission of bids, Doody and co-conspirators participated in meetings and conversations where they discussed and agreed how to bid so as to divide upcoming contracts to supply produce to the NYCBOE. Doody,

with the knowledge and approval of one or more of the senior executives of DiCarlo, Inc., including John DiCarlo, participated in such conversations;

(c) Doody and co-conspirators designated which co-conspirators would be the low bidders, among the co-conspirators, on specified parts of contracts to supply produce to the NYCBOE;

(d) Doody and co-conspirators discussed and agreed on the prices or price levels they would bid on specified parts of contracts to supply produce to the NYCBOE, and then bid accordingly;

(e) Doody and co-conspirators refrained from bidding or submitted intentionally high, complementary bids on specified parts of contracts to supply produce to the NYCBOE;

(f) Co-conspirators paid Doody approximately \$30,000 to ensure his and DiCarlo, Inc.'s participation in the agreement; and

(g) Co-conspirators falsely certified, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or competitor.

IV. JURISDICTION AND VENUE

15. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

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