

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 03 CR
v.	)	
	)	
CARL PUTNAM,	)	Violations: Title 15, United States Code,
DONALD WELCHKO,	)	Sections 78j(b), 78ff, 78m(b)(2)(A),
JOHN FIGURELLI,	)	78m(b)(5); Title 17, Code of Federal
DARYL SPINELL,	)	Regulations, Section 240.10b-5;
RONALD BANDYK, and	)	Title 18, United States Code, Sections
RENEE LEVAULT	)	1001, 1014, 1344, 1505, and 2

**COUNT ONE**

The SPECIAL NOVEMBER 2002 GRAND JURY charges:

1. At times material to this indictment:

a. Anicom, Inc. (“Anicom”) was a national distributor of wire and cable products based in Rosemont, Illinois. Anicom’s business involved buying wire and cable products from vendors or manufacturers and selling those products to customers with a price mark up.

b. Anicom was a publicly traded company and its common stock was registered with the Securities and Exchange Commission (“SEC”) under Section 12(g) of the Exchange Act [Title 15, United States Code, Section 78l(g)]. Prior to its delisting in November 2000, Anicom’s common stock was traded on the Nasdaq National Market System, an electronic securities market system administered by the National Association of Securities Dealers.

c. To sell securities to members of the public and maintain public trading of its securities in the United States, Anicom was required to comply with provisions of the federal securities laws, including the Securities Exchange Act of 1934 and regulations promulgated thereunder, that were designed to ensure that the company's financial information was accurately recorded and disclosed to the public.

d. Under these regulations, Anicom was required to, among other things: (a) file with the SEC annual financial statements audited by an independent accountant (Forms 10-K); (b) file with the SEC quarterly updates of its financial statements that disclosed its financial condition and the results of its business operations for each three-month period (Forms 10-Q); (c) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the company's transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles ("GAAP") and other applicable criteria; and (d) make and keep books, records, and accounts that accurately and fairly reflected the company's business transactions.

e. At all relevant times, Price Waterhouse Coopers ("Price Waterhouse") served as Anicom's outside auditors.

f. Defendant CARL PUTNAM was Anicom's President, a Director, and was responsible for the Company's sales. In September 1999, he also became Chief Executive Officer ("CEO"). At all relevant times, Putnam signed Anicom's annual reports

on Form 10-K as a Director, President, and in 1999 as CEO. PUTNAM's employment agreement with Anicom provided that PUTNAM would receive a payment in the event of a change in control of Anicom, including a sale of Anicom, and the change in control payment was valued at approximately \$2,248,696 as of 1999. In addition, during 1999, PUTNAM was paid a base salary of \$345,000 and a bonus of \$40,000. As of in or around April 2000, PUTNAM owned approximately 121,669 shares of Anicom and owned options on a total of approximately 202,000 shares of Anicom.

g. Defendant DONALD WELCHKO was Anicom's Chief Financial Officer ("CFO") and responsible for its accounting and finance functions. In 1998, he became a Director and was a member of the Audit Committee. WELCHKO participated in preparing Anicom's annual, quarterly, and other periodic reports filed with the SEC. He signed Anicom's annual reports on Form 10-K as a Director and CFO, and its quarterly reports on Form 10-Q as CFO. WELCHKO's employment agreement with Anicom provided that WELCHKO would receive a payment in the event of a change in control of Anicom, including a sale of Anicom, and the change in control payment was valued at approximately \$1,673,545 as of 1999. In addition, during 1999, WELCHKO was paid a base salary of \$230,000 and a bonus of \$40,000. As of in or around April 2000, WELCHKO owned approximately 9,614 shares of Anicom and owned options on a total of approximately 131,400 shares of Anicom.

h. Defendant JOHN FIGURELLI joined Anicom as Vice President of Credit Services and an officer in August 1997. In July 1998, he was promoted to Vice President of Operations and Credit Services. In March 1999, FIGURELLI became Executive Vice President of Operations and Logistics. In or around September 1999, FIGURELLI became Chief Operating Officer (“COO”) of Anicom. In addition, during 1999, FIGURELLI was paid a base salary of \$162,500 and a bonus of \$40,000.

i. Defendant DARYL SPINELL became Anicom’s Vice President of Sales and an officer in 1995. In this position, SPINELL reported directly to PUTNAM and managed Anicom’s sales force. In January 2000, SPINELL stepped down to become the General Manager of Anicom’s Elk Grove Village, Illinois location. In addition, during 1999, SPINELL was paid a base salary of \$165,000 and a bonus of \$30,000.

j. Defendant RONALD BANDYK is, and at all times material to the indictment was, a certified public accountant. In March 1998, BANDYK became Anicom’s Vice President – Accounting and an officer. In January 1999, he was made Vice President – Controller. At all relevant times, BANDYK reported to WELCHKO, managed the accounting department, and participated in preparing Anicom’s annual, quarterly, and other periodic reports filed with the SEC. On April 6, 2000, BANDYK resigned from Anicom. In addition, during 1999, BANDYK was paid a base salary of \$108,000 and a bonus of approximately \$25,000.

k. Defendant RENEE LEVAULT managed Anicom's Drop Ship Billing Department. LEVAULT reported to FIGURELLI, and had a close working relationship with PUTNAM.

l. Anicom maintained a revolving unsecured credit facility or line of credit with a syndicate of federally insured lenders. In or around June 1998, Anicom entered into an agreement with its lenders to increase its available borrowings under its unsecured credit facility to \$100 million. In or around November 1998, Anicom entered into an agreement with its lenders to increase its available borrowings under its unsecured credit facility from \$100 million to \$120 million. In December 1999, Anicom entered into a new secured credit facility with its then current bank group, along with additional federally insured lenders. The December 1999 agreement increased Anicom's available borrowings to \$150 million. Anicom's agreements with its lenders contained certain minimum financial covenants with which Anicom was required to comply. The agreements also required Anicom to provide its lenders with, among other things, copies of all 10-Q and 10-K Reports Anicom filed with the SEC.

m. The price of Anicom's stock was determined by factors such as Anicom's reported revenue and earnings, as well as its ability to meet revenue and earnings targets and forecasts.

n. Anicom's management, like that of many public companies, provided "guidance" to the investing public regarding anticipated revenue and earnings for upcoming

reporting periods. Relying in part on the company's "guidance," many professional securities analysts then disseminated to the public their own estimates of the company's expected performance. These "earnings estimates" or "analysts' expectations" were closely followed by investors. Typically, if a company announced earnings that failed to meet or exceed analysts' expectations, the price of the company's securities declined. Quarter to quarter, industry analysts and the investing public judged Anicom according to, among other things, revenue, net income, and earnings per share.

o. On July 18, 2000, Anicom announced that: it was conducting an investigation into possible accounting irregularities; investors should not rely on its 1998 and 1999 financial statements; PUTNAM and WELCHKO had taken administrative leave; and the Board of Directors ("Board") had appointed an interim Chief Executive Officer and Chief Financial Officer. On that same day, Nasdaq halted trading in Anicom's stock, which had closed at \$4.00 per share the previous day; as of May 12, 2000, Anicom had reported that the number of shares outstanding of common stock was approximately 25,171,261. On November 16, 2000, Nasdaq delisted Anicom's stock from its national exchange. On or around November 17, 2000, when Anicom's stock resumed trading over the counter, as listed in the Pink Sheets, the per share price fell to \$0.75, reflecting a market loss of over \$80 million.

p. Anicom ultimately declared bankruptcy in or around January 2001, and at or around that time the stock traded at zero. As a result, Anicom discontinued operations,

fired virtually all of its approximately 1,200 employees, and liquidated its assets to pay creditors.

2. Beginning no later than early 1998, and continuing through and including September 2000, at Rosemont, in the Northern District of Illinois and elsewhere,

CARL PUTNAM,  
DONALD WELCHKO,  
JOHN FIGURELLI,  
DARYL SPINELL,  
RONALD BANDYK, and  
RENEE LEVAULT,

defendants herein, and others known and unknown to the Grand Jury, did unlawfully, willfully, and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, use and employ, in connection with the purchase and sale of securities, namely Anicom common stock, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing schemes to defraud; (b) making untrue statements of material facts and omitting material facts which were necessary in order to make the statements not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers and sellers of Anicom common stock, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

3. It was part of the scheme that from in or around the first quarter 1998 through at least May 2000, the defendants engaged in fraudulent practices that materially inflated Anicom's reported revenues, materially understated Anicom's reported expenses, and materially overstated Anicom's net income and earnings by millions of dollars, knowing that the materially false financial information would be recorded in Anicom's books and records, provided to Anicom's auditors, included in press releases provided to the investing public, and included in Anicom's quarterly and annual reports filed with the SEC.

4. It was further part of the scheme that defendants overstated sales, revenue, and net income by creating numerous fictitious sales and fraudulent billings, including \$10.454 million in sales to a fictitious company. The effect of including these fictitious sales in Anicom's results of operations was to falsely inflate Anicom's financial performance

5. It was further part of the scheme that defendants engaged in additional fraudulent accounting practices that had the effect of overstating Anicom's sales and revenue, and understating Anicom's expenses, for particular quarters and years. Among other things, defendants made and caused to be made various entries in Anicom's general ledger that fraudulently overstated revenues and understated Anicom's expenses. Defendants knew that the fraudulent journal entries were contrary to GAAP and did not fairly and accurately reflect Anicom's business transactions.

6. It was further part of the scheme that defendants falsely represented and caused to be falsely represented financial information contained in Anicom's Form 10-Q reports

filed with the SEC in 1998, 1999, and for the first quarter of 2000, as well as the 10-K reports filed with the SEC for years 1998 and 1999. Anicom's Form 10-K reports filed with the SEC as of December 31, 1998, and December 31, 1999, included the Report of the Company's Independent Accountants, Price Waterhouse, which stated that management represented that the financial information contained in those reports was prepared in conformity with GAAP and fairly presented Anicom's financial position in all material respects.

7. It was further part of the scheme that by causing Anicom to misrepresent Anicom's revenue and earnings, defendants intended to inflate the price of Anicom's shares in the marketplace.

#### **Sales Fraud**

8. It was further part of the scheme that defendants recognized and caused to be recognized millions of dollars in fictitious sales and improper billings that fraudulently inflated reported revenues and gross profits. Defendants knew that these fictitious orders and improper billings were fraudulently recognized as revenue, along with any associated profit, on Anicom's financial statements filed with the SEC.

9. It was further part of the scheme that defendants caused Anicom to fraudulently recognize revenue from sales in which product had not yet been shipped, or was never shipped, to the customer. Anicom employees first entered incoming customer orders into Anicom's billing system, which designated the orders as "booked." After Anicom shipped

the product, or after receiving notification from an Anicom vendor that product had been shipped directly to the customer from the vendor, Anicom billed customers for the cost of the product and a mark up in price. Pursuant to Anicom's revenue recognition policy, Anicom recognized (or "billed") revenue and the associated cost of sales when product for a "booked" order was shipped to the customer. Anicom represented its revenue recognition policy to the public in its Form 10-K reports filed with the SEC as follows: "Sales and the related cost of sales are recognized upon the shipment of products."

10. It was further part of the scheme that near the end of quarters in 1998, 1999, and in the first quarter of 2000, defendants knowingly booked and caused to be booked orders that customers had not placed with Anicom and orders that had not shipped to the customers. Many of the fictitious orders and orders that had not shipped were at least hundreds of times greater than Anicom's approximate average order of one thousand dollars.

11. It was further part of the scheme that in order to bill these fictitious orders or orders that had not shipped, and fraudulently recognize the order as revenue, defendants knowingly entered and caused to be entered false data into Anicom's billing system to show that Anicom or the vendor or manufacturer had shipped the product to the customer.

12. It was further part of the scheme that defendants fraudulently caused Anicom to recognize revenue of approximately \$5.05 million from a fictitious and unshipped sale to Spanpro, Inc. on or around September 30, 1998, knowing that Anicom had not made the sale to Spanpro and that no product had been shipped to Spanpro. This fictitious and unshipped

sale placed Spanpro as Anicom's top customer for 1998, as measured by dollar amount, and was Anicom's largest single "sale" for 1998.

13. It was further part of the scheme that defendants fraudulently caused Anicom to recognize revenue of approximately \$2.1 million from a fictitious and unshipped sale to GTT Electronics, Inc. on or around December 30, 1998, knowing that Anicom had not made the sale to GTT and that no product had been shipped to GTT. This fictitious and unshipped sale placed GTT as one of Anicom's top ten customers for 1998, as measured by dollar amount, and was one of Anicom's top ten "sales" for 1998.

14. It was further part of the scheme that, defendants fraudulently caused Anicom to recognize revenue of approximately \$2.21 million from a fictitious and unshipped sale to J.W. Few & Company on or around March 31, 1998, knowing that Anicom had not made the sales to J.W. Few and that no product had been shipped to J.W. Few pursuant to those sales. These fictitious and unshipped sales placed J.W. Few as one of Anicom's top ten customers for 1998, as measured by dollar amount.

15. It was further part of the scheme that defendants fraudulently caused Anicom to recognize revenue of approximately \$4.62 million from a fictitious and unshipped sale to Microcomputer Cable Company on or around December 31, 1999, knowing that Anicom had not made the sale to Microcomputer and that no product had been shipped to Microcomputer. This fictitious and unshipped sale to Microcomputer was one of the largest "sales" in 1999 to an Anicom customer, as measured by dollar amount.

16. It was part of the scheme that defendants failed to disclose the existence of the fraudulent sales and billings to Anicom's outside auditors, Price Waterhouse.

### **SCL Integration Fraud**

17. It was further part of the scheme that defendants caused Anicom in 1999 to, among other things, fraudulently recognize over \$10.454 million in sales to a fictitious customer called SCL Integration in order to inflate sales, as well as to minimize the effect on income of writing off earlier improper and otherwise uncollectible accounts receivable. Defendants knew that these fictitious sales to SCL Integration would be fraudulently recognized as revenue, along with an associated profit, on Anicom's financial statements filed with the SEC. The fictitious sales billed to SCL Integration placed SCL Integration as Anicom's top "customer" for 1999, as measured by dollar amount.

18. It was further part of the scheme that in the first quarter of 1999, defendants developed and caused to be developed a plan to address the millions of dollars in fictitious and otherwise uncollectible accounts receivable that were then on Anicom's books. The plan included, among other things, the following objectives: (1) to remove millions of dollars in fraudulent and otherwise uncollectible sales through the issuance of sales credits; and (2) to offset the credits, which would otherwise reduce sales and income, by recording additional fraudulent sales, which would later be written off on a monthly basis over the latter half of 1999. Defendants knew that this plan was contrary to GAAP, which called for Anicom to

















































































