
**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

Hon. James B. Clark III

v.

Mag. No. 13-3079

FRANK CHIMENTO, JR. and
JOSEPH CARSILLO

CRIMINAL COMPLAINT

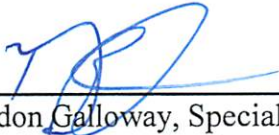
I, Brandon Galloway, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent of the Internal Revenue Service, and that this complaint is based on the following facts:

SEE ATTACHMENT B


continued on the attached pages and made a part hereof.



Brandon Galloway, Special Agent
Internal Revenue Service, Criminal Investigation

Sworn to before me, and
subscribed in my presence on
November 19, 2013 at
Newark, New Jersey

HONORABLE JAMES B. CLARK III
UNITED STATES MAGISTRATE JUDGE



Signature of Judicial Officer

ATTACHMENT A

Count One (Conspiracy to Defraud the United States)

1. From in or about July 11, 2008 through in or about December 29, 2011, in the District of New Jersey and elsewhere, defendants

**FRANK CHIMENTO, JR. and
JOSEPH CARSILLO,**

knowingly and willfully conspired and agreed with each other and with others to defraud the United States for the purpose of impeding, impairing, obstructing and defeating the lawful governmental functions of the Internal Revenue Service of the Department of the Treasury to ascertain, assess, and collect income taxes.

Overt Acts

1. In furtherance of the conspiracy and in order to effect the object thereof, defendants FRANK CHIMENTO, JR. and JOSEPH CARSILLO, and their co-conspirators including Co-conspirator 1 ("CC-1"), caused the following overt acts to be committed in the District of New Jersey and elsewhere:
- a. In or about July 2008, defendant FRANK CHIMENTO, JR. hired a company to provide certain payroll processing services but did not request that the payroll service prepare and file with the Internal Revenue Service the requisite IRS Forms 941 reporting the quarterly wages paid by the Chimento Companies.
 - b. On or about the week ending August 5, 2009, CC-1 prepared cash envelopes for certain employees of the Chimento Companies based upon the hours listed on the job cards and hourly wage rates provided by defendant JOSEPH CARSILLO.
 - c. On or about the week ending May 19, 2010, CC-1 prepared cash envelopes for certain employees of the Chimento Companies based upon the hours listed on the job cards and hourly wage rates provided by defendant JOSEPH CARSILLO.
 - d. On or about the week ending March 16, 2011, CC-1 prepared cash envelopes for certain employees of the Chimento Companies based upon the hours listed on the job cards and hourly wage rates provided by defendant JOSEPH CARSILLO.
 - e. On or about March 26, 2012, defendant FRANK CHIMENTO, JR. belatedly filed IRS Forms 941 for the third quarter of 2008 through the fourth quarter of 2011; these Forms 941 did not include, however, the approximately \$2.2 million in cash wages that the Chimento Companies paid out to employees during that period.

All in violation of Title 18, United States Code, Section 371.

Counts Two through Fifteen
(Failure to Collect, Account For and Pay over Payroll Taxes)

2. On or about the dates set forth below, in the District of New Jersey, and elsewhere,
defendant

FRANK CHIMENTO, JR.

being a person required to collect, truthfully account for, and pay over payroll taxes to the Internal Revenue Service, did knowingly and willfully fail to collect and truthfully account for and pay over payroll taxes for the tax quarters set forth below, each constituting a separate count of this Complaint.

Count	Quarter Ending	Approximate Total Withheld Tax Not Paid
2	9/30/08	\$7,127.80
3	12/31/08	\$14,915.15
4	3/31/09	\$30,175.02
5	6/30/09	\$18,785.30
6	9/30/09	\$23,576.71
7	12/31/09	\$35,557.96
8	3/31/10	\$14,236.07
9	6/30/10	\$25,565.81
10	9/30/10	\$36,345.62
11	12/31/10	\$36,115.36
12	3/30/11	\$23,454.60
13	6/30/11	\$78,006.01
14	9/30/11	\$77,711.52
15	12/31/11	\$66,251.32

In violation of Title 26, United States Code, Section 7202 and Title 18, United States Code, Section 2.

Counts Sixteen through Nineteen
(Mail Fraud)

3. From at least as early as in or around February 19, 2009 through on or about December 29, 2011, in the District of New Jersey and elsewhere, defendant

FRANK CHIMENTO, JR.,

knowingly and intentionally devised and intended to devise a scheme to defraud the State of New Jersey, New Jersey Department of Labor and Workforce Development, and to obtain money and property of the State of New Jersey representing state payroll monies due and owing, with respect to, among other things, unemployment, disability, and workforce development, by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing the scheme, and attempting to do so, knowingly caused to be delivered by private and commercial interstate carrier according to the directions thereon, employee paychecks from a payroll service in Woodcliff Lake and Fairlawn, New Jersey to the Chimento Companies' offices, in Belleville and Parsippany, New Jersey on or about the dates set forth below, each mailing constituting a separate count of this Complaint:

Count	Date	Delivered From	Delivered To	Description
16	2/19/09	Woodcliff Lake	Belleville	Employee payroll checks
17	5/20/10	Woodcliff Lake	Belleville	Employee payroll checks
18	6/23/11	Fairlawn	Parsippany	Employee payroll checks
19	12/29/11	Fairlawn	Parsippany	Employee payroll checks

In violation of Title 18, United States Code, Section 1341 and Section 2.

Counts Twenty through Twenty-Nine
(False Statements and Concealment in ERISA Documents)

4. From at least as early as August 9, 2010 through on or about March 23, 2011, in the District of New Jersey, and elsewhere, the defendant

FRANK CHIMENTO, JR.,

knowingly and willfully made, and aided, abetted, induced, procured, and caused to be made, false statements and representations in a document required by Title I of ERISA to be published and kept as part of the records of an employee welfare benefit plan and employee pension plan, namely, the affiliated benefit funds of the International Union of Bricklayers and Allied

Craftworkers Administrative District Council of New Jersey, and certified to the administrator of such plan, and concealed, covered up, and failed to disclose facts the disclosure of which was required by such title, and was necessary to verify, explain, clarify, and check for accuracy and completeness a report required by such title to be certified, on or about the dates set forth below, each document constituting a separate count of this Complaint:

Count	Date
20	8/4/10
21	8/11/10
22	8/18/10
23	8/25/10
24	9/1/10
25	9/15/10
26	9/22/10
27	9/29/10
28	10/5/10
29	3/23/11

In violation of Title 18, United States Code, Section 1027 and Section 2.

Counts Thirty through Thirty-Four
(Individual Income Tax Evasion)

5. On or about the dates set forth below, in the District of New Jersey, and elsewhere,
defendant

FRANK CHIMENTO, JR.

knowingly and willfully did attempt to evade and defeat an income tax due and owing to the United States for the tax years set forth below, each constituting a separate count of this Complaint.

Count	Approximate Date	Tax Year	Approximate Amount not Reported	Approximate Tax Due and Owing
30	October 15, 2008	2007	\$93,929	\$18,345
31	January 19, 2010	2008	\$175,052	\$48,961
32	November 11, 2010	2009	\$287,491	\$83,689
33	October 15, 2011	2010	\$509,025	\$158,867
34	April 17, 2012	2011	\$365,827	\$101,501

In violation of Title 26, United States Code, Section 7201.

Count Thirty-Five through Thirty-Seven
(Filing False Individual Income Tax Returns)

6. On or about the dates set forth below, in the District of New Jersey and elsewhere,
defendant

JOSEPH CARSILLO

knowingly and willfully did make and subscribe a United States Individual Income Tax Return, Form 1040, for the tax years set forth below, which contained and were verified by a written declaration that they were made under penalties of perjury and which he did not believe to be true and correct as to every material matter, in that the return did not include a substantial amount of taxable income, each constituting a separate count of this Complaint:

Count	Approximate Date	Tax Year	Approximate Amount Not Reported	Approximate Tax Due and Owing
35	June 16, 2010	2009	\$58,161	\$12,013
36	April 6, 2011	2010	\$66,865	\$13,022
37	March 20, 2012	2011	\$42,440	\$9,816

In violation of Title 26, United States Code, Section 7206(1).

Count Thirty-Eight
(Bankruptcy Fraud)

7. On or about April 28, 2011, in the District of New Jersey, and elsewhere, the defendant

JOSEPH CARSILLO

knowingly and fraudulently made a false oath and account in and in relation to any case under Title 11.

In violation of Title 18, United States Code, Section 152(2).

ATTACHMENT B

I, Brandon Galloway, a Special Agent with the Internal Revenue Service, Criminal Investigation, having conducted an investigation and discussed this matter with other law enforcement officers who have participated in this investigation, have knowledge of the following facts. Because this Complaint is being submitted for the limited purpose of establishing probable cause, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts which I believe are necessary to establish probable cause. Unless specifically indicated, all conversations and statements described in this affidavit are related in substance and in part.

Background

1. At all times relevant to this Complaint, unless otherwise indicated:
 - a. Chimento Construction, Chimento Construction Services, and FAC Construction were inter-related and commingled companies specializing in commercial masonry and concrete work (collectively, the "Chimento Companies"). The Chimento Companies were initially located in Belleville, New Jersey but relocated to Parsippany, New Jersey in or about the spring/summer of 2011. During the period in or about 2008 through in or about 2011, the Chimento Companies' primary construction project was Palmer Square located in Princeton, New Jersey.
 - b. Defendant FRANK CHIMENTO, JR. was a resident of West Caldwell, New Jersey and the owner of the Chimento Companies.
 - c. Defendant JOSEPH CARSILLO was a resident of East Hanover, New Jersey and the project superintendent at the Palmer Square project.
 - d. CC-1, a co-conspirator who is not named as a defendant herein, was the officer manager of the Chimento Companies.

Failure to Collect and Pay Federal Payroll Taxes

2. The investigation has established that the Chimento Companies operated a cash payroll for a significant portion of the wages paid to employees during the period 2006 through 2011. During the period of the investigation, defendant JOSEPH CARSILLO was the main individual that kept a record of employees' hours. The hours worked by employees were tracked on job cards. The job cards were either faxed or hand delivered to the Chimento Companies' office manager, CC-1, at the company offices in Belleville or Parsippany.
3. At defendant FRANK CHIMENTO, JR.'s direction, CC-1 conducted structured cash transactions at several separate financial institutions to obtain cash to fund the cash payroll and in an attempt to avoid currency transaction reports from being filed.
4. CC-1 would prepare envelopes containing cash payroll based on the hours and wage rate information provided by defendant FRANK CHIMENTO, JR. or defendant JOSEPH CARSILLO. The workers' names and cash wage amounts were written on envelopes containing

cash payroll which were then handed out to the workers on the job site by defendant JOSEPH CARSILLO. Dollar amounts would typically be written on the job cards next to the employees' name that represented the gross amount of cash wages paid to that employee.

5. As owner of the Chimento Companies, defendant FRANK CHIMENTO, JR. was responsible for collecting, accounting for and paying over to the Internal Revenue Service ("IRS") withholdings from the Chimento Companies' employees for social security, Medicare, and income taxes (collectively referred to as "payroll taxes").

6. Defendant FRANK CHIMENTO, JR. was further responsible for making and filing with the IRS Forms 941—Employer's Quarterly Federal Tax Returns reflecting the payroll taxes withheld by the Chimento Companies and for paying over to the IRS those payroll tax funds. Defendant CHIMENTO, JR. was required to file the Forms 941 with the IRS no later than the last day of the month following the end of each quarter.

7. Although required by statute, there were no federal payroll taxes withheld from the Chimento Companies' employees who were paid cash wages.

8. The investigation has shown that from the third quarter of 2009 through the fourth quarter of 2011, the Chimento Companies paid employees approximately \$2.2 million in cash wages. FRANK CHIMENTO, JR. intentionally did not report these wages or pay over the withholdings in the applicable Forms 941 as required. As a result, approximately \$378,140 in payroll taxes was not collected from employees' wages or paid over to the IRS.

9. The Chimento Companies also operated a non-cash payroll through an outside payroll service (the "Payroll Service") that was hired by defendant FRANK CHIMENTO, JR. The Chimento Companies' payroll was processed through this Payroll Service from in or around July 2008 through the present. From the third quarter of 2008 through the fourth quarter of 2011, defendant FRANK CHIMENTO, JR. intentionally failed to turn over to the IRS a total of approximately \$487,824 in payroll taxes that had been withheld from the paychecks of the employees of the Chimento Companies, as more specifically set forth in the chart below, and corresponding to Counts Two through Fifteen as set forth in Attachment A to this Complaint:

Count	Quarter Ended	Approximate Federal Income Tax Withheld	Approximate Social Security /Medicare Tax Withheld	Approximate Total Withheld Tax Not Paid
2	9/30/08	\$4,753.46	\$2,374.34	\$7,127.80
3	12/31/08	\$9,039.45	\$5,875.70	\$14,915.15
4	3/31/09	\$18,086.25	\$12,088.77	\$30,175.02
5	6/30/09	\$10,981.40	\$7,803.90	\$18,785.30
6	9/30/09	\$14,882.91	\$8,693.80	\$23,576.71

7	12/31/09	\$22,633.90	\$12,924.06	\$35,557.96
8	3/31/10	\$8,940.16	\$5,295.91	\$14,236.07
9	6/30/10	\$15,904.86	\$9,660.95	\$25,565.81
10	9/30/10	\$21,894.84	\$14,450.78	\$36,345.62
11	12/31/10	\$21,245.45	\$14,869.91	\$36,115.36
12	3/30/11	15,659.97	\$7,794.63	\$23,454.60
13	6/30/11	\$53,222.31	\$24,783.70	\$78,006.01
14	9/30/11	\$51,031.92	\$26,679.60	\$77,711.52
15	12/31/11	\$44,688.87	\$21,562.45	\$66,251.32

Mail Fraud - Failure to Pay Over New Jersey Dept. of Labor Withholdings

10. As owner of the Chimento Companies, defendant FRANK CHIMENTO, JR. was also responsible for accounting for and paying over to the New Jersey Department of Labor and Workforce Development ("NJDOL") withholdings from the Chimento Companies' employees for unemployment, disability, workforce development, health care, and family leave insurance (collectively referred to as "NJDOL withholdings").

11. Defendant FRANK CHIMENTO, JR. was further responsible for preparing and filing with the NJDOL quarterly reports (NJ-927 and WR-30) reflecting the withholdings by the Chimento Companies and for paying over to the NJDOL those withholdings.

12. From the third quarter of 2008 through the fourth quarter of 2011, defendant FRANK CHIMENTO, JR. intentionally failed to turn over to the NJDOL approximately \$140,933 in NJDOL withholdings withheld from the paychecks of employees of the Chimento Companies.

13. For the purpose of executing the scheme to defraud the NJDOL, on or about the dates set forth below, defendant FRANK CHIMENTO, JR. caused the Payroll Service to deliver by private and commercial interstate carrier, employee paychecks from the Payroll Service's offices in Woodcliff Lake and Fairlawn, New Jersey to the offices of Chimento Construction in Belleville and Parsippany, New Jersey which reflected the monies deducted from the employees' paychecks and which withholdings were required to be turned over by defendant CHIMENTO JR. to the NJDOL, each mailing constituting a separate count as set forth in Attachment A to this complaint:

Count	Approximate Date of Mailing	Delivered From	Delivered To	Description
16	2/19/09	Woodcliff Lake	Belleville	Employee payroll checks
17	5/20/10	Woodcliff Lake	Belleville	Employee payroll checks
18	6/23/11	Fairlawn	Parsippany	Employee payroll checks
19	12/29/11	Fairlawn	Parsippany	Employee payroll checks

False Statements and Concealments in ERISA Documents

13. At all times relevant to this complaint, the International Union of Bricklayers and Allied Craftworkers, Administrative District Council of New Jersey, consisting of Local Unions 2, 4, and 5 (“BAC/ADC”), located in Bordentown, New Jersey, was an “employee organization” within the meaning of the Employment Retirement Income Security Act of 1971 (“ERISA”), Title 29, United States Code, Section 1002(4) and was subject to the provisions of Title I of ERISA.

14. Since at least as early as August 2009, the Chimento Companies have been parties to a collective bargaining agreement (“CBA”) with the BAC/ADC establishing the terms and conditions of employment for employees of the Chimento Companies, including but not limited to, bricklayers, cement masons, plasterers, and brick pavers within a specified geographical area.

15. Among other things, the CBA provides that the Chimento Companies must make specified contributions to the BAC Health Fund, the BAC International Pension Fund, the BAC International Masonry Institute, the International Union Pension PPA, and the International Union Annuity Fund (collectively, the “BAC Affiliated Benefit Funds”), for each hour of covered work performed by employees of the Chimento Companies. At all times relevant to this complaint, the BAC Affiliated Benefit Funds were “employee benefit plan(s)” within the meaning of Title 29, United States Code, Section 1002(3) and subject to the provisions of Title I of ERISA.

16. Defendant FRANK CHIMENTO, JR., as the owner of the Chimento Companies, was required to complete remittance reports which identified the employees that had performed covered work under the CBA and the number of hours that they worked. The reports were to be sent to the BAC/ADC processing office in Fairfield, New Jersey. The BAC Affiliated Benefit Funds relied upon the remittance reports in completing Forms 5500 that were annually required to be submitted to the Department of the Treasury pursuant to ERISA.

17. Defendant FRANK CHIMENTO, JR. directed CC-1 to exclude certain employees from the union remittance reports who were being paid below the union rate. These employees were engaged in covered work, however, and should have been reported to the BAC/ADC. Further, at least one employee was not listed on the union remittance report because he was

being paid in cash. Defendant FRANK CHIMENTO, JR. instructed CC-1 to sign the false remittance reports on his behalf. The investigation has revealed that during the period on or about August 14, 2009 through on or about April 30, 2012, defendant FRANK CHIMENTO, JR. failed to make required contributions to the BAC Affiliated Benefit Funds in the approximate amount of \$170,580.

18. On or about the dates set forth below, defendant FRANK CHIMENTO, JR. caused false statements and representations to be made in remittance reports submitted to the BAC/ADC regarding the number of workers engaged in covered work and the number of hours that they worked, each report constituting a separate count as set forth in Attachment A to the complaint:

Count	Approximate Date
20	8/4/10
21	8/11/10
22	8/18/10
23	8/25/10
24	9/1/10
25	9/15/10
26	9/22/10
27	9/29/10
28	10/5/10
29	3/23/11

Individual Income Tax Evasion: Frank Chimento Jr. (2007 through 2011)

19. Defendant FRANK CHIMENTO, JR. failed to report to the IRS, for the tax years 2007 through 2011, cash and non-cash wages received as a result of working for the Chimento Companies, income received as a result of personal expenses paid through the Chimento Companies, and additional money that was transferred at his direction from bank accounts under the control of the Chimento Companies directly into personal bank accounts belonging to his wife, who did not perform any services for the business.

20. Approximately \$17,279, \$43,052, \$76,991, \$113,025, and \$101,227 in personal expenses of defendant FRANK CHIMENTO, JR. and his family were paid with Chimento Companies' funds in the years 2007, 2008, 2009, 2010, and 2011, respectively, for a total of approximately \$351,574. The personal expenses included vacations, clothes, the purchase of a car, and mortgage payments for CHIMENTO, JR.'s second home in Toms River, New Jersey. Defendant FRANK CHIMENTO, JR. did not report the personal expenses paid by the Chimento Companies as income on their 2008 personal tax return. Defendant CHIMENTO, JR. did not file 2007, 2009, 2010, or 2011 tax returns and therefore did not report the personal expenses paid as income in those years.

21. Approximately \$76,650, \$132,000, \$158,600, \$323,100, and \$156,000 from the Chimento Companies was transferred into the personal bank accounts of defendant CHIMENTO JR.'s wife during the years 2007, 2008, 2009, 2010, and 2011, respectively, for a total amount of approximately \$846,350. Defendant FRANK CHIMENTO, JR. did not report the \$132,000 in Chimento Companies' funds that were transferred into his wife's bank accounts, and which constituted part of his wages from the Chimento Companies, on his joint 2008 personal tax return. Defendant FRANK CHIMENTO, JR. and his wife did not file 2007, 2009, 2010, or 2011 personal tax returns and therefore did not report the amounts transferred as income in those years.

22. Analysis of the Chimento Companies' job cards shows that defendant FRANK CHIMENTO, JR. received cash wages of approximately \$51,900, \$57,900, and \$93,000, respectively, in 2009, 2010, and 2011, for a total amount of approximately \$202,800. In addition, defendant CHIMENTO, JR.'s received a non-cash payroll salary of approximately \$15,000 in 2010 and \$15,600 in 2011. Defendant CHIMENTO JR. did not file personal tax returns for 2009, 2010, and 2010 and therefore did not report these cash and non-cash wages to the IRS.

23. In total, defendant FRANK CHIMENTO, JR. failed to report approximately \$1,431,324 in taxable income to the IRS for the years 2007 through 2011, resulting in a tax loss of approximately \$411,363.

False Individual Income Tax Return: Joseph Carsillo (2009 through 2011)

24. Defendant JOSEPH CARSILLO has worked for the Chimento Companies since approximately 2007. During the years 2009, 2010, and 2011 he was paid cash wages. A review of the Chimento Companies' job cards revealed that defendant CARSILLO received cash wages of approximately \$89,361, \$88,865, and \$79,440 in 2009, 2010, and 2011, respectively, for total cash wages of approximately \$257,666. Defendant CARSILLO failed to include approximately \$167,466 of those cash wages on his personal tax returns for those years.

25. As a result of the unreported income of approximately \$167,466, defendant CARSILLO's additional tax due and owing for 2009, 2010, and 2011 is \$12,013, \$13,022, and \$9,816, respectively, for a total tax loss of approximately \$34,851.

Bankruptcy Fraud – Joseph Carsillo

26. On or about February 18, 2011, defendant JOSEPH CARSILLO and his wife signed a joint voluntary bankruptcy petition. Above their signatures, it read “I declare under penalty of perjury that the information provided in this petition is true and correct.” The petition was formally filed on or about March 24, 2011 and listed approximately \$169,356 in unsecured debt owed to creditors.

27. On the petition, defendant JOSEPH CARSILLO and his wife stated that their combined current monthly income was \$2,200. In addition, they claimed that their monthly average gross wages based on the prior six months was \$2,250, which resulted in an annualized income of \$27,000.

28. A Section 341 bankruptcy hearing was held on or about April 28, 2011. At the beginning of the hearing, defendant JOSEPH CARSILLO and his wife were placed under oath. Both defendant CARSILLO and his wife affirmed their signatures on the petition and stated that nothing had changed since they had filed the document.

29. Analysis of the Chimento Companies’ job cards demonstrated, however, that for the month of January 2011 and from February 1 through 18 of 2011, defendant JOSEPH CARSILLO’s income was \$6,000 and \$4,500 respectively, and not the \$2,200 a month indicated on the petition. Moreover, his monthly gross wages based on the prior six months was approximately \$7,448 and not the \$2,250 claimed on the petition. Defendant CARSILLO’s annualized income, therefore, should have been calculated as approximately \$89,370 rather than the annualized income of \$27,000 reflected in the petition.

30. According to the appointed bankruptcy trustee that handled the defendant JOSEPH CARSILLO’s bankruptcy petition, the false statements regarding the defendant’s available monthly income were material and may have benefitted the unsecured creditors with regards to the disposition of their outstanding claims.