



# Department of Justice

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## **22 INDIVIDUALS AND 13 FOOD COMPANIES CHARGED WITH RIGGING OVER \$210 MILLION IN BIDS TO NYC BOARD OF EDUCATION**

### **NYC Board of Education Will Now Pay More Competitive Prices for Frozen Foods and Fresh Produce for Schoolchildren, as a Result of Justice Department Efforts**

WASHINGTON, D.C. -- Twenty-two individuals and 13 food companies have been charged with rigging bids on contracts for the supply and delivery of more than \$210 million of frozen food and fresh produce to the New York City Board of Education (NYCBOE), the Department of Justice today announced. Of those charged, 12 individuals and six companies agreed to plead guilty today. The others were indicted by a federal grand jury yesterday, and charges against them were unsealed today.

"These conspirators overcharged the Board by many millions of dollars," said Joel I. Klein, Assistant Attorney General in charge of the Department's Antitrust Division. "This money should have been spent on the schoolchildren of New York, not to line the pockets of greedy vendors."

The NYCBOE operates New York City's public school system, the largest in the United States. It services a student population of nearly 1.1 million, and serves approximately 640,000 lunches and 150,000 breakfasts every day. The NYCBOE purchases more food than any other single customer in the U.S., other than the U.S. Department of Defense. It receives the bulk of its funding from federal, state, and city governments. Most of the meals it serves are subsidized by the U.S. Department of Agriculture under the National School Lunch Act of 1946. In addition to public schools, numerous private and parochial schools also receive food under the NYCBOE's contracts, under programs that provide free or reduced-price meals to needy students. More than 80 percent of the students fed by the NYCBOE receive free meals. Another 10 percent receive reduced-price meals.

The two conspiracies involved almost all of the NYCBOE's suppliers of frozen food such as fish sticks, meat and french fries, and nearly all of its suppliers of fresh produce. According to the charges, the defendants and co-conspirators formed and carried out the conspiracies by agreeing to rig bids for the supply of frozen food and fresh produce to NYCBOE and designating which of the co-conspirators would be the low bidder on the contracts. They also discussed and agreed on prices to bid, refrained from bidding, or submitted intentionally high or complementary bids on the contracts. They paid potential bidders not to bid competitively, including a single payment of \$100,000 in cash to one produce supplier. They shared net profits earned on some of

the contracts by giving each other money or free merchandise, and they certified falsely that their bids had been arrived at independently.

"These cases put an end to long-standing, sophisticated conspiracies that have gouged many millions of public dollars from the Board of Education," said Klein. "In addition to the imposition of criminal penalties, including jail time and heavy fines, the Antitrust Division also will aggressively seek to have those charged pay restitution to the victims of their crimes."

In two separate indictments, filed yesterday in U.S. District Court in the Southern District of New York (Manhattan) and unsealed today, a federal grand jury charged a total of 10 individuals and seven companies with rigging bids for the supply and delivery of frozen food and of fresh produce to New York City's public, private, and parochial schools.

Charged with rigging bids for the supply and delivery of \$126 million in frozen food to the NYCBOE between May 1996 and April 1999 are:

- Nick Penachio Co. Inc., Bronx, NY, and its president and co-owner, Nicholas A. Penachio, Mount Kisco, NY;
- Irving Libertoff, Inc., Brooklyn, NY, and its president and co-owner, Stuart Libertoff, Hewlett, NY;
- West Side Foods Inc., Bronx, NY, its president and co-owner, Thomas M. Ryan, East Meadow, NY, and co-owner, Alan R. Adelson, Manhattan, NY;
- Arthur Bohrer, Palm Beach Gardens, FL, former president and co-owner, and William Greenspan, Edison, NJ, director of purchasing, both of A. Bohrer Inc., Moonachie, NJ;
- M & F Meat Products Co., East Orange, NJ, and its president, David Salomon, Cranford, NJ;
- DiCarlo Distributors Inc., Holtsville, NY, and its vice president, John DiCarlo, Shoreham, NY; and
- FHR Inc., Brooklyn, NY, and its president and owner, Frank H. Russo, Brooklyn, NY.

Charged with rigging bids for the supply and delivery of \$87 million of fresh produce to the NYCBOE between approximately 1991 and April 1999 are:

- DiCarlo Distributors Inc., Holtsville, NY, and its vice president, John DiCarlo, Shoreham, NY;
- Nick Penachio Co. Inc., Bronx, NY, and its president and co-owner, Nicholas A. Penachio, Mount Kisco, NY; and
- Landmark Food Corp., Holtsville, NY, and its president and co-owner, Gordon Kerner, Lloyds Neck, NY.

Additionally, separate charges were also filed today, in U.S. District Court in the Southern District of New York (Manhattan), against 12 individuals and six companies for participating in one or both of the bid-rigging conspiracies involving frozen food and fresh produce charged in the indictments. Those charged by a criminal information and the conspiracy or conspiracies in which each participated are:

- Selwyn Lempert, Monsey, NY, an employee of Nick Penachio Co. Inc. (frozen food and fresh produce conspiracies);
- Loeb & Mayer Inc., Arverne, NY; its president and co-owner, Barry Mayer, North Woodmere, NY; and its vice president, Arthur Goldberg, Bayside, NY (frozen food conspiracy);
- Food Service Purchasing Agency Inc. d/b/a Pennco, Bronx, NY; its president and co-owner, Alan Schneider, New City, NY; and its vice president and co-owner, Paul Schneider, Pomona, NY (frozen food conspiracy);
- A. Bohrer Inc., Moonachie, NJ, its president and co-owner, Leonard Nash, Franklin Lakes, NJ (frozen food conspiracy);
- John Doody, Ridgewood, NJ, independent sales agent for DiCarlo Distributors Inc. (fresh produce conspiracy);
- Kanowitz Fruit & Produce, Brooklyn, NY, and its president, Steven Kanowitz, Woodbury, NY (fresh produce conspiracy);
- Clifton Fruit & Produce Inc., Brooklyn, NY, and its president and co-owner Harry Levy, Manhattan, NY (fresh produce conspiracy);
- Baiardi Chain Food Corp., South Hackensack, NJ; its president and co-owner, David Axelrod, Manhattan, NY; and salesperson, Toby Unger, Manhattan, NY (fresh produce conspiracy); and
- Michael Beberman, Melville, NY, salesperson for unnamed food supplier (fresh produce conspiracy).

Some of those charged today were also charged with participating in other bid-rigging conspiracies, affecting additional victims, including the agency of the City of New York that services the municipal hospitals, jails, homeless shelters and facilities serving children; Newark Public Schools; and Nassau County, among others. Some were also charged with various fraud and tax offenses and obstruction of justice. Those charged by criminal informations today have entered plea agreements with the government and are prepared to plead guilty to the charges filed against them, according to the Department.

All defendants are charged with violating Section One of the Sherman Act, which carries a maximum fine per count of \$10 million for corporations, and a maximum penalty of three years imprisonment and a \$350,000 fine for individuals.

The maximum fine per count for a conviction of conspiracy, in violation of 18 U.S.C. § 371, is a fine of \$500,000 for corporations, and a maximum penalty of five years imprisonment and a \$250,000 fine for individuals. Defendants charged with this offense are: Loeb & Mayer Inc.; Barry Mayer; Arthur Goldberg; Selwyn Lempert; and Leonard Nash.

The maximum penalty per count for an individual convicted of income tax evasion, in violation of 26 U.S.C. § 7201, is five years in prison and a fine of \$250,000. Defendants charged with this offense are: David Axelrod; Michael Beberman; Steven Kanowitz; Selwyn Lempert; Alan Schneider; and Paul Schneider.

The maximum penalty per count for an individual convicted of bank fraud, in violation of 18 U.S.C. § 1344, is 30 years in prison and a fine of \$1 million. Leonard Nash is the only defendant charged with this offense. This offense is being prosecuted by the U.S. Attorney for the Southern District of New York.

The maximum penalty per count for an individual convicted of obstruction of justice, in violation of 18 U.S.C. § 1503, is 10 years in prison and a fine of \$250,000. Selwyn Lempert is the only defendant charged with this offense.

The maximum fine for both corporations and individuals for many of the charged offenses may be increased to twice the gain derived from the crime or twice the loss suffered by the victims of the crime, if either of those amounts is greater than the statutory maximum fine. The court will determine the appropriate sentences under the U.S. Sentencing Guidelines.

In addition, each of the defendants could, on conviction, be ordered to pay restitution to the NYCBOE and any other victim for the full amount of the victim's loss.

The charges are the result of an ongoing investigation by the New York Field Office of the Department's Antitrust Division, the Federal Bureau of Investigation and the Internal Revenue Service Criminal Investigation Division, into bid rigging, fraud, and tax offenses in the food distribution industry.

Anyone with information concerning bid rigging, bribery, tax offenses, or fraud in the food industry or concerning bid rigging on any government contract should contact the New York Field Office of the Antitrust Division at (212) 264-0677 or (212) 264-3611 or the New York Division of the FBI at (212) 384-3252.

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