



Department of Justice

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FIVE EXECUTIVES AND THREE FOOD COMPANIES PLEAD GUILTY TO RIGGING BIDS ON NYC BOARD OF EDUCATION CONTRACTS

WASHINGTON, D.C. -- Five executives and three New York City food distribution companies pleaded guilty today to rigging bids on \$126 million dollars of frozen food contracts awarded by the New York City Board of Education (NYCBOE), the Department of Justice announced.

On May 31, 2000, nine individuals and six companies were indicted for participating in a conspiracy to rig bids for the supply and delivery of frozen food to the NYCBOE between May 1996 and April 1999. With the entry of today's guilty pleas, only two defendants remain to be tried on the charges contained in the original indictment.

In separate superseding charges filed today in U.S. District Court in Manhattan, two companies and three individuals who were indicted on May 31, 2000 entered guilty pleas to the bid-rigging conspiracy and other related charges. They are:

- Irving Libertoff Inc. of Brooklyn and its president and co-owner, Stuart Libertoff of Hewlett, NY, pleaded guilty to rigging bids on frozen food contracts awarded by the NYCBOE. Additionally, Stuart Libertoff was charged with and pleaded guilty to conspiring to defraud the IRS by paying employees in cash "off the books";
- FHR Inc. and its owner and president, Frank H. Russo, both of Brooklyn, NY, pleaded guilty to rigging bids on frozen food contracts awarded by NYCBOE. Russo was also charged with and pleaded guilty to conspiring to defraud Odyssey House Inc., a not-for-profit substance abuse organization located in Manhattan, through the use of the U.S. mail in connection with a kickback and bid-rigging scheme; and,

- William Greenspan, formerly of Edison, NJ, former director of purchasing at A. Bohrer Inc., pleaded guilty to rigging bids on frozen food contracts awarded by NYCBOE and additionally was charged with and pleaded guilty to rigging a bid in 1998 to the NYC Department of Citywide Administrative Services (DCAS), the agency that handles bidding for the supply of food to various city agencies.

Additionally, another company and two of its executives today waived their right to a trial and pleaded guilty to the bid-rigging charge in the May 31, 2000 indictment:

- West Side Foods Inc. of the Bronx; its former president and part owner, Thomas Ryan of East Meadow, NY; and a former executive and part owner, Alan Adelson of Manhattan.

"The conspirators in these and related cases succeeded in eliminating all meaningful competition for frozen food contracts awarded by the Board of Education of the City of New York," said John M. Nannes, Acting Assistant Attorney General in charge of the Department's Antitrust Division. "This case demonstrates that we will vigorously prosecute price fixing whenever and wherever we find it."

On February 27, 2001, DiCarlo Distributors Inc. and John DiCarlo waived their right to a trial and pleaded guilty to rigging bids to the NYCBOE.

On February 20, 2001, Nick Penachio Co. of the Bronx, and its president and owner, Nicholas Penachio, pleaded guilty to a six-count superseding information, charging them with participating in schemes to rig bids on frozen food, produce, dairy and other products supplied to the NYCBOE, the DCAS, the Nassau County (NY) Department of General Services, and the Newark (NJ) Public Schools. Additionally, they were charged with conspiring to defraud numerous customers through a kickback and fraud scheme using the U.S. mail; one count of conspiring to defraud the IRS by filing false and fraudulent federal tax returns for four years, 1995-1998; and one count of obstruction of justice for causing the destruction of incriminating documents that had been subpoenaed by the grand jury.

In addition to the above defendants, Arthur Bohrer of Palm Beach Gardens, Florida, has agreed to plead guilty to the May 31, 2000 indictment.

Trial against the two remaining defendants charged in the May 31, 2000 indictment, M & F Foods Inc. of East Orange, NJ, and David Salomon of Cranford, NJ, is scheduled to begin on May 14, 2001 in U.S. District Court in Manhattan.

To date, the Department's investigation of bid rigging, bribery, fraud, and tax-related offenses in the food distribution industry has resulted in the Antitrust Division's New York Field Office charging 30 individuals and 14 food companies with rigging bids for the supply and delivery of food to various public and private customers in the New York metropolitan area.

The conspirators held secret meetings where they agreed to carve up future bids to supply and deliver frozen food to the schools, the Department said. The conspirators agreed on the geographic zones that each participating company would win and lose, and also agreed on the prices or price levels they would bid. In addition, winning bidders secretly shared the profits on certain bids with the losers.

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 Department of Defense. It receives the bulk of its funding from the federal, state, and city governments. Most of the meals it serves are subsidized by the United States Department of Agriculture under the National School Lunch Act of 1946.

In addition to public schools, numerous private and parochial schools receive food under the NYCBOE's contracts through 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 maximum sentence for the individual defendants for their violations of the Sherman Act, 15 U.S.C. § 1 is three years imprisonment and a \$350,000 fine, while the maximum fine for the corporate defendants is \$10 million. Libertoff and Russo also face a maximum of five years imprisonment and fines of \$250,000 for their violations of 18 U.S.C. § 371. All of the maximum fines may be increased to twice the gain derived from the crime or twice the loss suffered by the victim of the crime, if either of those amounts is greater than the statutory maximum fine.

In addition, each of the defendants could be ordered to pay restitution to the NYCBOE and any other victim for the full amount of the victim's loss. The charges allege that, at times, certain co-conspirators raised their prices to the NYCBOE by more than 10 percent as a result of the conspiracy.

The ongoing investigation is being conducted by the Antitrust Division's New York Field Office, the Federal Bureau of Investigation, and the Internal Revenue Service Criminal Investigation.

Anyone with information concerning bid rigging, bribery, tax offenses, or fraud in the food distribution industry or concerning bid rigging on any government contract should contact the New York Field Office of the Antitrust Division at (212) 264-0679 or the New York Division of the FBI at (212) 384-3252.

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