

Information filed 2/10/12

 ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

5 min court flow

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UNITED STATES OF AMERICA

:

INFORMATION

- v. -

:

12 Cr. 136 (CS)

NICHOLAS A. SPANO,

:

:

Defendant.

- - - - - X

Count One

(Obstructing and Impeding the Due Administration of
the Internal Revenue Laws)

The United States Attorney charges:

Relevant Individuals and Entities

1. NICHOLAS A. SPANO, the defendant, served in the New York State Assembly from 1979 through 1986. SPANO was thereafter elected to the New York State Senate, where he served from 1986 through 2006. As a State Senator, SPANO represented the 35th Senate District, which covered much of Westchester County. During his State Senate career, SPANO served on the Rules, Transportation, Finance, Education, Health, Racing, Gaming, and Wagering Committees, chaired the Senate Investigations Committee, and was the Senior Assistant Majority Leader. During the period SPANO served in elected office, he resided in Westchester County.

2. At all times relevant to this Information, the New York State Office of General Services ("OGS") was headquartered in the State Capitol in Albany, New York, and had as its mission to provide a broad range of support services that facilitate the operations of

New York State government. Among other functions, OGS provided centralized procurement services for the state government agencies it supported, including the procurement of insurance needed for state government activities.

3. At all times relevant to this Information, as a New York State Senator, NICHOLAS A. SPANO, the defendant, was responsible for, among other things, voting on and approving the operating budget of the State of New York, a portion of which included funding OGS's operation.

4. At all times relevant to this Information, an insurance brokerage company headquartered in White Plains, New York ("Insurance Company 1") provided insurance brokerage and related services to New York State through a contract with OGS.

5. ONAPS, Inc. ("ONAPS"), which later changed its name to HVM Corp. ("HVM"), was a corporation with a listed address of P.O. BOX 12480, Empire State Plaza, Albany, New York, 12220. ONAPS had no employees or offices and was used almost exclusively to receive money paid to NICHOLAS A. SPANO, the defendant, from Insurance Company 1 from at least 1996 through 2008.

6. From in or about at least 2003 through the present, 221 Ridge Ave. Corp. ("221 Ridge") was a real estate holding company wholly owned by NICHOLAS A. SPANO, the defendant, the purpose of which entity was to own a two-family rental property located at 221 Ridge Avenue, Yonkers, New York. As subchapter S corporations, HVM and 221 Ridge were required to report accurately the companies'

annual income and expenses on Internal Revenue Service ("IRS") Forms 1120S.

The Scheme To Obstruct

7. Beginning in or about at least 2000 and continuing up through 2008, NICHOLAS A. SPANO, the defendant, engaged in a course of conduct calculated to impede and impair the due administration of the Internal Revenue Laws by obstructing and frustrating the lawful function of the IRS in assessing and collecting United States income taxes. Among other ways, SPANO impeded the IRS by: (1) transferring income he received from Insurance Company 1 to 221 Ridge, which income was falsely characterized as rental payments in order to reduce SPANO'S reported income from Insurance Company 1; (2) intentionally failing to report to the IRS a \$45,000 commission payment he received on the sale of a commercial property located in White Plains, New York; and (3) intentionally failing to report to the IRS certain cash rental payments he received from tenants at 221 Ridge Avenue, Yonkers, New York.

Payments to Spano by Insurance Company 1

8. Beginning in or about 1993, Insurance Company 1 began to pay NICHOLAS A. SPANO, the defendant, a monthly fee of approximately \$1,500 to act as an outside consultant for Insurance Company 1. Insurance Company 1 paid SPANO a flat bi-weekly or monthly fee through various corporate entities, including ONAPS and HVM.

9. After SPANO was hired as a consultant for Insurance Company 1, OGS awarded Insurance Company 1 a lucrative contract to become the broker of record for New York State through OGS. Accordingly, Insurance Company 1 began receiving a two-percent commission on all insurance policies written on the New York State properties and facilities that OGS managed.

10. Insurance Company 1 made fixed monthly payments to NICHOLAS A. SPANO, the defendant, from the time he was hired in or about 1993 through 2008, at which time Insurance Company 1 ceased serving as OGS's broker of record.

11. Beginning in or about December 1996, contemporaneous with the award of the broker-of-record contract by the State of New York to Insurance Company 1, Insurance Company 1's payments to SPANO increased to \$5,000 per month.

12. In or about 1999, after the contract had been extended, Insurance Company 1's payments to SPANO increased to \$6,000 per month.

13. On or about March 7, 2002, Insurance Company 1's payments to SPANO through HVM increased from \$6,000 to \$8,333.33 per month, which equates to \$100,000 per year.

SPANO's Concealment of Payments by Insurance Company 1

14. NICHOLAS A. SPANO, the defendant, took various steps to conceal the amount of income he received from Insurance Company 1. As a New York State Senator, SPANO was required by law to submit, and did in fact submit, financial disclosure statements to

the Legislative Ethics Commission annually disclosing financial information for the previous calendar year. For example, SPANO filed financial disclosure forms for the following years that falsely reflected the amount of income SPANO received from Insurance Company 1:

Reporting Period	Amount Disclosed	Amount Received
2001	-0-	\$85,475
2002	-0-	\$85,923
2003	Between \$5,000 and \$20,000	\$109,996
2004	Between \$5,000 and \$20,000	\$91,666
2005	Between \$5,000 and \$20,000	\$108,333

15. Consistent with his pattern of failing to disclose and underreporting the income he received from Insurance Company 1 on his financial disclosure reports, NICHOLAS A. SPANO, the defendant, filed false and misleading United States income tax returns with the IRS from at least 2004 through 2008. Although HVM reported all of the "commissions" it received from Insurance Company 1, HVM otherwise claimed false and fraudulent expenses in order to make it

appear that HVM was a functioning entity that actually had an office and conducted business.

HVM Corporation's False and Fraudulent Expenses

16. Between the calendar years 2000 and 2008, NICHOLAS A. SPANO, the defendant, wrote checks from HVM to 221 Ridge for non-existent rental expenses totaling more than \$180,000. As a result, between 2000 and 2008, HVM deducted more than \$180,000 in false and fraudulent rental expenses on the HVM tax returns. Because, in truth and fact, HVM had no office, each of the HVM tax returns fraudulently underreported the company's net income.

17. For the tax years 2000 through 2008, NICHOLAS A. SPANO, the defendant, falsely advised his tax return preparer that HVM conducted business at 221 Ridge Avenue in Yonkers, New York, that HVM had an office at that location, and that HVM paid rent to 221 Ridge. Based on this false information, SPANO's tax return preparer unwittingly prepared false and misleading IRS Forms 1120S for HVM, which returns SPANO signed under penalty of perjury and caused to be filed with the IRS.

Spano's Failure to Report a \$45,000 Commission

18. In or about 2004, NICHOLAS A. SPANO, the defendant, introduced a White Plains commercial real estate owner to a real estate developer who was constructing a hotel in White Plains and who wished to purchase a building owned by the real estate owner. The real estate owner agreed to sell the building to the real estate developer for \$1,575,000.

19. The closing on the sale occurred on January 31, 2005, and the seller of the building was represented at the closing by an attorney ("Attorney 1"). At the closing, Attorney 1 received a bank check in the amount of \$75,000 for attorney's fees. Shortly after the closing, Attorney 1 wrote a check from his personal bank account to NICHOLAS A. SPANO, the defendant, in the amount of \$45,000 as compensation for SPANO's role in arranging the sale. SPANO thereafter deposited the check into his personal bank account and never disclosed the income to his tax return preparer. Consequently, SPANO's tax return preparer unwittingly prepared a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for the 2005 tax year, which return SPANO signed under penalty of perjury and caused to be filed with the IRS.

The Failure to Report Cash Rental Receipts

20. NICHOLAS A. SPANO, the defendant, received rental income from tenants who resided at 221 Ridge Avenue, Yonkers, New York. On various occasions between 2005 and 2006, SPANO received from his tenants rental payments in the form of cash, which he failed to deposit or disclose to his tax preparer. Consequently, SPANO caused the preparation of U.S. Individual Income Tax Returns for himself that falsely and fraudulently failed to report that rental income. SPANO signed those false tax returns under penalty of perjury and caused them to be filed with the IRS.

Statutory Allegation

21. From at least in or about 2000 through at least in or about 2008, in the Southern District of New York and elsewhere,

NICHOLAS A. SPANO, the defendant, corruptly obstructed and impeded, and endeavored to obstruct and impede, the due administration of the Internal Revenue Laws by various means, including: (1) filing false and fraudulent U.S. Corporation Income Tax Returns, Forms 1120S, for HVM, and (2) filing false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, for himself that omitted (a) a \$45,000 commission payment he received in 2005 in connection with the sale of a commercial property located in White Plains, New York, and (b) omitted rental income in the form of payments he received from tenants at 221 Ridge.

(Title 26, United States Code, Section 7212(a).)



PREET BHARARA

United States Attorney