

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
UNITED STATES OF AMERICA	:	<u>INFORMATION</u>
	:	
-v.-	:	09 Cr.
	:	
MIGUEL MARTINEZ,	:	
	:	
Defendant.	:	
----- X	:	

COUNT ONE

(Conspiracy To Defraud The Public Of Honest Services)

The United States Attorney charges:

Duty Of Honest Services To Citizens Of New York City

1. From 2002 to July 2009, MIGUEL MARTINEZ, the defendant, has served as a member of the New York City Council (the "Council") representing the 10th Council District, which includes the Washington Heights and Inwood neighborhoods of Manhattan. As a member of the Council, MARTINEZ's official duties have included, among other things, acting as a public advocate on behalf of constituents and others, designating non-profit organizations to receive New York City funds, and approving expenses to be paid from his Council office expense budget.

2. As a member of the Council, MIGUEL MARTINEZ, the defendant, owed a duty of honest services to the citizens of New York City. MARTINEZ's duty of honest services arose, in part, from various provisions of the New York City Charter, which,

among other things, prohibits Council members from using their position to obtain financial gain. See New York City Charter, Chapter 68, Section 2604(b)(3). The New York City Charter also prohibits Council members from engaging in any business or transaction which is in conflict with the proper discharge of their official duties. See New York City Charter, Chapter 68, Section 2604(b)(2). New York City law also requires Council members to file annual Financial Disclosure Reports listing, among other things, sources of income. See New York City Administrative Code, Section 12-110.

Council Funds Available To MARTINEZ And Relevant Entities

3. As a Council member, MIGUEL MARTINEZ, the defendant, has been allocated an annual office expense budget by the Council. In order to receive reimbursement for his Council office expenses, MARTINEZ has been required to submit invoices reflecting the expenses to the City of New York. Since 2002, MARTINEZ's annual Council office expense budget has ranged from approximately \$112,000 to approximately \$135,000.

4. During the time MIGUEL MARTINEZ, the defendant, has represented the 10th Council District, the Council has allocated millions of dollars annually in funds to certain non-profit organizations purportedly for the public benefit. Public expenditures made as a result of such allocations have been referred to as "discretionary funds." MARTINEZ and other elected

members of the Council have had broad discretion to designate the non-profit organizations eligible to receive such funds.

MARTINEZ and other Council members each have controlled a certain portion of discretionary funds for designation to non-profit organizations.

5. Washington Heights Arts Center (the "Arts Center") is a non-profit organization which was incorporated in 1998. At the time it was organized, its mission was to educate Washington Heights children in the arts. Within the Council, MIGUEL MARTINEZ, the defendant, has been the principal sponsor of funding for the Arts Center. Since 2003, the City of New York has provided at least \$163,000 to the Arts Center, thereby providing the majority of the Arts Center's funding.

6. The Upper Manhattan Council Assisting Neighbors ("UCAN") is a non-profit organization which was incorporated in 1998. Near the time of UCAN's incorporation, MIGUEL MARTINEZ, the defendant, served as UCAN's president. At the time of its incorporation, UCAN's mission was to preserve affordable housing for Upper Manhattan citizens. Since his election to the Council in 2002, MARTINEZ has been the principal sponsor of funding for UCAN by the City of New York. During that time, the City of New York has provided the majority of UCAN's funding and, largely due to MARTINEZ's sponsorship, has allocated at least \$1.7 million for UCAN.

The Means And Methods Of The Conspiracy

Overview

7. From in or about October 2002 through in or about May 2008, MIGUEL MARTINEZ, the defendant, agreed with a co-conspirator not named as a defendant herein ("CC-1") and others, known and unknown, to defraud the public of MARTINEZ's honest services as a member of the Council by using his official position for his and others' personal financial gain and by engaging in transactions that were in conflict with the proper discharge of his official duties. Specifically, MARTINEZ, in his capacity as a Council member, directed New York City and private funds to various entities which MARTINEZ and CC-1 effectively controlled so that MARTINEZ could misappropriate approximately \$106,000 of the money for his personal benefit. Although the New York City Administrative Code required Council members to file annual Financial Disclosure Reports listing, among other things, sources of income, in an effort to conceal his fraudulent activity, MARTINEZ did not disclose the approximately \$106,000 he obtained for his personal benefit from the various schemes described below.

The False Council Expense Invoice Scheme

8. From in or about October 2002 through in or about May 2008, MIGUEL MARTINEZ, the defendant, and other co-conspirators not named herein agreed to create fictitious invoices to be submitted to MARTINEZ's Council office and paid from MARTINEZ's annual office expense budget.

9. MIGUEL MARTINEZ, the defendant, personally approved payment of these invoices, which MARTINEZ knew to be false. Some of these invoices falsely claimed, for example, that CC-1 and the Greater Manhattan Group, a shell corporation, had performed a variety of services for MARTINEZ's Council office, including media outreach, organization of constituent workshops, and staff development consultations. In truth and in fact, as MARTINEZ knew, neither CC-1 nor the Greater Manhattan Group had performed any such work.

10. After receiving fictitious invoices, MIGUEL MARTINEZ, the defendant, authorized payment of the invoices from his Council office expense budget and sent them to the City of New York for payment. Based on MARTINEZ's approval, the City of New York then sent payments to the fictitious vendors, including CC-1, by U.S. mail. At MARTINEZ's instruction, the fictitious vendors then cashed and/or deposited the checks, and gave approximately \$51,000 from these payments to MARTINEZ for his personal benefit.

11. In an effort to conceal his fraudulent activity, MIGUEL MARTINEZ, the defendant, intentionally failed to disclose the approximately \$51,000 in income that he obtained from the false Council expense invoice scheme on his Financial Disclosure Reports.

The Arts Center Scheme

12. As set forth in Paragraph 5 above, since at least 2003, MIGUEL MARTINEZ, the defendant, has been the principal sponsor for the Arts Center by the City of New York. Since that time, the City of New York has provided the majority of the Arts Center's income and has provided at least \$163,000 to the Arts Center between 2003 and 2005. Funds allocated by MARTINEZ were intended to pay for services for the Washington Heights' community, including tutoring for children, art classes, and after-school programs.

13. From 2003 to 2005, CC-1 was a signatory on the Arts Center's bank account. During that time, at the direction of MIGUEL MARTINEZ, the defendant, CC-1 provided approximately \$15,000 from the Arts Center's bank account to MARTINEZ for his personal benefit.

14. In an effort to conceal his fraudulent activity, MIGUEL MARTINEZ, the defendant, intentionally failed to disclose the approximately \$15,000 in income that he obtained from the Arts Center scheme on his Financial Disclosure Reports.

The UCAN Scheme

15. During 2004 and 2005, the New York City Housing Development Corporation ("HDC") provided a developer (the "Developer") with approximately \$35 million in loans. HDC provided the loans so that the Developer could construct four low-income housing developments in the 10th Council District and in the Bronx.

16. At the time, under applicable law, if the Developer partnered with a local non-profit organization to sponsor a low-income housing development, the Developer would be eligible to receive substantial tax benefits. To that end, the Developer and MIGUEL MARTINEZ, the defendant, in his capacity as the Council member representing the 10th Council District, discussed the possibility of UCAN's association with the Developer's projects so the Developer would qualify for the tax credits. MARTINEZ then directed the Developer to meet with CC-1 to discuss the arrangement.

17. In or about the August 2004, at the direction of MIGUEL MARTINEZ, the defendant, the Developer met with CC-1 to discuss UCAN's association with the low-income housing developments. During the meeting, at the direction of MIGUEL MARTINEZ, the defendant, CC-1 instructed the Developer to make a series of payments to UCAN.

18. From in or about August 2004 to in or about December 2005, the Developer made approximately \$96,000 in payments to UCAN. Based in part on these payments, the Developer was able to obtain millions of dollars in tax credits.

19. Although each of the Developer's checks were written to UCAN-related entities, at the direction of MIGUEL MARTINEZ, the defendant, CC-1 deposited the checks into other bank accounts in New York, New York. MARTINEZ ultimately received approximately \$40,000 from these other bank accounts for his personal benefit.

20. In an effort to conceal his fraudulent activity, MIGUEL MARTINEZ, the defendant, intentionally failed to disclose the approximately \$40,000 in income that he obtained from the UCAN scheme on his Financial Disclosure Reports.

Statutory Allegation

21. From in or about October 2002 to in or about May 2008, in the Southern District of New York and elsewhere, MIGUEL MARTINEZ, the defendant, together with others known and unknown, unlawfully, wilfully and knowingly would and did combine, conspire, confederate and agree together and with each other to violate Title 18, United States Code, Sections 1341 and 1346.

22. It was a part and an object of the conspiracy that MIGUEL MARTINEZ, the defendant, and his co-conspirators, unlawfully, wilfully and knowingly, having devised and intending

to devise a scheme and artifice to defraud the public of MARTINEZ's honest services, and for obtaining money by means of false and fraudulent pretenses, representations and promises, for the purpose of executing such scheme and artifice and attempting so to do, did place in a post office and authorized depository for mail a matter and thing to be sent and delivered by the Postal Service, and took and received therefrom such matter and thing, and knowingly caused to be delivered by mail according to the direction thereon, and at the place at which it was directed to be delivered by the person to whom it was addressed, such matter and thing, to wit, MARTINEZ, in his capacity as a New York City Council member, caused checks to be sent by U.S. mail in the course of directing New York City and private funds to various entities which MARTINEZ and CC-1 controlled so that MARTINEZ could use approximately \$106,000 of the funds for his personal benefit, and concealed his fraudulent activity by failing to disclose his receipt of these funds in his Financial Disclosure Reports, in violation of Title 18, United States Code, Sections 1341 and 1346.

Overt Acts

23. In furtherance of the conspiracy and to effect the illegal object thereof, MIGUEL MARTINEZ, the defendant, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about October 12, 2004, in his capacity as a Council member, MARTINEZ approved payment of an invoice submitted by CC-1 in the amount of \$1,375, which caused a check to be mailed to CC-1 in the Bronx, New York.

b. On or about September 9, 2005, MARTINEZ deposited a check, written by CC-1 from a bank account of a UCAN-related entity in the amount of \$15,000, into another bank account in New York, New York, controlled by MARTINEZ.

c. On or about June 14, 2004, MARTINEZ received approximately \$4,000 from the Arts Center's bank account for his personal benefit.

(Title 18, United States Code, Sections 1341, 1346, and 1349.)

COUNT TWO

(Mail Fraud)

The United States Attorney further charges:

24. The allegations contained in paragraphs 1 through 20 are repeated and realleged as if fully stated herein.

25. From in or about October 2002 to in or about May 2008, in the Southern District of New York and elsewhere, MIGUEL MARTINEZ, the defendant, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money by means of false and fraudulent pretenses, representations and promises, for the purpose of executing such scheme and artifice and

attempting so to do, did place in a post office and authorized depository for mail a matter and thing to be sent and delivered by the Postal Service, and took and received therefrom such matter and thing, and knowingly caused to be delivered by mail according to the direction thereon, and at the place at which it was directed to be delivered by the person to whom it was addressed, such matter and thing, to wit, MARTINEZ, in his capacity as a New York City Council member, caused checks to be sent by U.S. mail, including one on or about February 29, 2008, in the course of directing New York City and private funds to various entities which MARTINEZ and CC-1 controlled so that MARTINEZ could use approximately \$106,000 of the funds for his personal benefit.

(Title 18, United States Code, Section 1341.)

COUNT THREE

(Money Laundering Conspiracy)

The United States Attorney further charges:

26. The allegations contained in paragraphs 1 through 20 are repeated and realleged as if fully stated herein.

27. In or about 2005, in the Southern District of New York and elsewhere, MIGUEL MARTINEZ, the defendant, and others known and unknown, unlawfully, wilfully, and knowingly combined, conspired, confederated, and agreed together and with others

known and unknown to violate of Title 18, United States Code, Section 1956.

28. It was a part and an object of the conspiracy that MIGUEL MARTINEZ, the defendant, and others known and unknown, would and did conduct and attempt to conduct financial transactions involving the proceeds of specified unlawful activity, knowing that the property involved in such financial transactions involved the proceeds of some form of unlawful activity, to wit, mail fraud offenses as charged in Counts One and Two, and knowing that such financial transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

Overt Acts

29. In furtherance of said conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about September 7, 2005, CC-1 wrote a check for \$15,000 from a bank account of a UCAN-related entity containing proceeds of the offenses charged in Counts One and Two to a bank account in the name Samajulis controlled by MIGUEL MARTINEZ, the defendant.

b. On or about October 18, 2005, MARTINEZ wrote a check for \$13,000 from a bank account in the name Samajulis that contained proceeds of the offenses charged in Counts One and Two to the Greater Manhattan Group.

(Title 18, United States Code, Section 1956(h).)

FORFEITURE ALLEGATION

30. As the result of committing the offenses charged in Counts One and Two, in violation of 18 U.S.C. Sections 1341, 1346 and 1349, MIGUEL MARTINEZ, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offense, including, but not limited to, a sum of \$106,000, representing the amount of proceeds obtained as a result of the offenses alleged in Counts One and Two.

Substitute Asset Provision

31. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third person;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981(a)(1)(C), Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461.)

Lev L. Dassin

LEV L. DASSIN
Acting United States Attorney