

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: NOV 14 2012
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UNITED STATES OF AMERICA

-v-

THOMAS NASTASI III,

Defendant.

x

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x

INDICTMENT

12 CRIM 333

COUNT ONE

(Corrupt Endeavor to Obstruct and Impede the Internal Revenue Laws)

The Grand Jury charges:

Background

1. At all times relevant to this Indictment, THOMAS NASTASI III, the defendant, resided in the State of New York.

2. At all times relevant to this Indictment, THOMAS NASTASI III, the defendant, owned, operated, and controlled a series of companies that engaged in the business of providing building maintenance and construction services in Manhattan, among other places. Those companies included Nastasi-White Inc., Nastasi-West Inc., Nastasi Maintenance LLC ("Maintenance"), and Nastasi Maintenance & Construction ("Maintenance & Construction").

3. Pursuant to the Internal Revenue Code and associated statutes and regulations, including the Federal Insurance Contributions Act ("FICA"), employers are required to withhold certain amounts from the paychecks of their employees and then remit these amounts over to the Internal Revenue Service ("IRS") on a quarterly basis, no later than the last day of the month following the end of the quarter. In addition to the amounts that employers must withhold from the

JUDGE GARDEPHE

paychecks of their employees for income taxes and FICA, employers are also required to make contributions under FICA in an amount equal to the amounts withheld from their employees (collectively, "payroll taxes"). Payroll taxes are made up, therefore, of five components: withheld income taxes, the employer's and employee's equal shares of 6.2% for Social Security and 1.45% for Medicare taxes, totaling 15.3% of an employee's total wages. Payroll taxes are reported to the IRS by the employer on a Form 941, Employer's Quarterly Federal Tax Return, due on the last day of the month following the end of a quarter.

4. A person is responsible for collecting, accounting for, and paying over payroll taxes if he or she has the authority required to exercise significant control over the employer's financial affairs, regardless of whether the individual exercised such control in fact. More than one person may be considered a "responsible person" for the purpose of collecting, accounting for, and paying over an employer's payroll taxes.

5. At all times relevant to this Indictment, THOMAS NASTASI III, the defendant, was a responsible person at Nastasi-White Inc., Nastasi-West Inc., Maintenance, and Maintenance & Construction for signing and causing to be signed, and filing and causing to be filed, Employer's Quarterly Federal Tax Returns, Form 941, with the IRS, and depositing and paying over its federal and state payroll taxes.

The Payroll Tax Scheme

6. The defendant, THOMAS NASTASI III, was the President of Nastasi-White, Inc., a carpentry and drywall contractor formed in 1964 and operated by NASTASI from at least 1995 until 2003. From 2001 through 2003, Nastasi-White, Inc., accumulated more than \$3 million in unpaid payroll tax liabilities. In 2003, White went dormant and shifted approximately half of the

employees from its payroll to the payroll of Maintenance, another company operated by NASTASI. Maintenance was formed in 1998, with NASTASI as President, after NASTASI acquired the contract to provide building maintenance services for Rockefeller Center and its twelve buildings.

7. For various quarters from the fourth quarter of 2001 through the second quarter of 2005, THOMAS NASTASI III, the defendant, caused Maintenance to deduct and collect from the total taxable wages of its employees federal income taxes and Federal Insurance Contributions Act taxes due and owing to the United States of America for the respective quarters. The majority of those payroll taxes were not paid over to the IRS as required.

8. For the fourth quarter of 2001 and the second and third quarters of 2002, NASTASI caused Nastasi-West Inc., to deduct and collect from the total taxable wages of its employees federal income taxes and Federal Insurance Contributions Act taxes due and owing to the United States of America for the respective quarters. The majority of those payroll taxes were not paid over to the IRS as required.

9. In 2005, after Maintenance accumulated over a million dollars in unpaid payroll tax liabilities from the end of 2001 through mid-2005, Maintenance & Construction was created with THOMAS NASTASI III, the defendant, as the President. Both Maintenance and Maintenance & Construction did the same type of work and operated out of the same office. Maintenance was then shut down and the majority of Maintenance's employees were shifted from the payroll of Maintenance to Maintenance & Construction. As a result of NASTASI's closing of one entity (Maintenance) and opening a new one (Maintenance & Construction), the IRS could not impose liens or seize assets until the new business entity became delinquent in its obligations.

10. For the second and fourth quarters of 2006 and the first quarter of 2007,

THOMAS NASTASI III, the defendant, caused Maintenance & Construction to deduct and collect from the total taxable wages of its employees federal income taxes and Federal Insurance Contributions Act taxes due and owing to the United States of America for the respective quarters. The majority of those payroll taxes were not paid over to the IRS as required.

11. THOMAS NASTASI III, the defendant, caused Maintenance and Maintenance & Construction to expend tens of thousands of dollars out of their bank accounts for NASTASI's personal benefit, including for yacht-related expenses and more than \$67,000 in cigar purchases, rather than use those funds to pay the corporations' delinquent payroll tax liabilities.

12. THOMAS NASTASI III, the defendant, was also the President of a company called Technologies Construction Group. In 2001 and 2002, Nastasi diverted approximately \$280,450 from Maintenance to a bank account in the name of Technologies Construction, rendering those funds unavailable to pay over to the IRS for Maintenance's payroll tax liabilities.

13. From 2002 through at least 2004, THOMAS NASTASI III, the defendant, in multiple conversations with employees of the IRS attempting to obtain delinquent personal and payroll tax returns for Maintenance and payment of delinquent personal and payroll taxes owed by NASTASI's companies, made numerous promises to file the delinquent returns and make payments towards the delinquent payroll tax liabilities, which promises he failed to keep. NASTASI also made false statements to the IRS regarding the operations of his companies.

NASTASI's Failure to File Personal Income Tax Returns

14. Citizens of the United States, such as THOMAS NASTASI III, the defendant, who have income in any one calendar year in excess of a threshold amount ("U.S. taxpayers") are obligated to file a U.S. Individual Income Tax Return, Form 1040 ("Form 1040"), for that calendar

year with the IRS. On a Form 1040, U.S. taxpayers are obligated to report their income from any source, including wages and other compensation. Generally, U.S. taxpayers are obligated to file the Form 1040 for any given calendar year on or about April 15th of the following year, the specific date being set by regulation.

15. Despite having income in excess of the threshold amount in each of the years from 2001 through 2008, and 2010, in the form of wages and other compensation, THOMAS NASTASI III, the defendant, willfully and knowingly failed to timely file his Forms 1040 and failed to timely pay the full amount of his income taxes due for the years 2001 through 2008, and 2010.

Statutory Allegations

16. From in or about 2001 through in or about 2011, in the Southern District of New York and elsewhere, THOMAS NASTASI III, the defendant, did corruptly obstruct and impede, and endeavor to obstruct and impede, as set forth above, the due administration of the Internal Revenue Laws.

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

COUNT TWO

(Failure to Pay Over Payroll Taxes - Maintenance & Construction, Second Quarter 2006)

The Grand Jury further charges:

17. The allegations set forth in paragraphs 1 through 5, and 9 through 12, are repeated and realleged as if fully set forth herein.

Statutory Allegations

18. From on or about April 1, 2006 through on or about July 31, 2006, in the Southern District of New York and elsewhere, THOMAS NASTASI III, the defendant, being the

President of Maintenance & Construction LLC, and a responsible person with respect to its payroll taxes, and thereby being required to collect, account for, and pay over to the IRS payroll taxes of the employees and the company willfully and knowingly failed to pay over payroll taxes for Maintenance & Construction to the IRS for the second quarter of 2006 in the approximate amount of \$185,591.

(Title 26, United States Code, Section 7202.)

COUNT THREE
(Failure to Pay Over Payroll Taxes -
Maintenance & Construction, Fourth Quarter 2006)

The Grand Jury further charges:

19. The allegations set forth in paragraphs 1 through 5, and 9 through 12, are repeated and realleged as if fully set forth herein.

Statutory Allegations

20. From on or about October 1, 2006 through on or about January 31, 2007, in the Southern District of New York and elsewhere, THOMAS NASTASI III, the defendant, being the President of Maintenance & Construction LLC, and a responsible person with respect to its payroll taxes, and thereby being required to collect, account for, and pay over to the IRS payroll taxes of the employees and the company willfully and knowingly failed to pay over payroll taxes for Maintenance & Construction to the IRS for the fourth quarter of 2006 in the approximate amount of \$198,083.

(Title 26, United States Code, Section 7202.)

COUNT FOUR
**(Failure to Pay Over Payroll Taxes -
Maintenance & Construction, First Quarter 2007)**

The Grand Jury further charges:

21. The allegations set forth in paragraphs 1 through 5, and 9 through 12, are repeated and realleged as if fully set forth herein.

Statutory Allegations

22. From on or about January 1, 2007 through on or about April 30, 2007, in the Southern District of New York and elsewhere, THOMAS NASTASI III, the defendant, being the President of Maintenance & Construction LLC, and a responsible person with respect to its payroll taxes, and thereby being required to collect, account for, and pay over to the IRS payroll taxes of the employees and the company willfully and knowingly failed to pay over payroll taxes for Maintenance & Construction to the IRS for the first quarter of 2007 in the approximate amount of \$79,530.

(Title 26, United States Code, Section 7202.)



PREET BHARARA
United States Attorney

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INDICTMENT

12 Cr.

26 U.S.C. § 7212(A)
26 U.S.C. § 7202

PREET BHARARA
United States Attorney.

1/14/2012 - CASE ASSIGNED TO JUDGE GARDEPHE
G.C.
FOR ALL PURPOSES.
FRANCIS, US-15.