

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	<b>:</b>	<b>CRIMINAL NO.: 09-</b>
<b>v.</b>	<b>:</b>	<b>DATE FILED:</b>
<b>KEVIN O'SHEA</b>	<b>:</b>	<b>VIOLATIONS:</b>
<b>ROSEMARY DiLACQUA</b>	<b>:</b>	<b>18 U.S.C. §§ 1341, 1346 (mail fraud - 2 counts)</b>
	<b>:</b>	<b>18 U.S.C. § 666 (theft from a federally funded program - 1 count)</b>
	<b>:</b>	<b>26 U.S.C. § 7206(1) (filing false federal income tax return - 1 count)</b>
	<b>:</b>	<b>18 U.S.C. § 2 (aiding and abetting)</b>
	<b>:</b>	<b>18 U.S.C. § 982 (criminal forfeiture)</b>

**INFORMATION**

**COUNT ONE**

**(Mail Fraud)**

**THE UNITED STATES ATTORNEY CHARGES THAT:**

**BACKGROUND**

1. At all times material to the information:

a. The Philadelphia Academy Charter School ("PACS") was a charter school based in the Northeast section of Philadelphia. Charter schools, like PACS, generally receive five-year charters from a local school district and receive compensation based on the number of students they serve. PACS began as an elementary school in or about 1999 and expanded to include a high school in or about 2003. PACS accepted students from throughout Philadelphia and enjoyed a strong reputation for its special education capabilities. PACS constituted an "organization" which received annual benefits in excess of \$10,000 in each of the calendar years 2002-08 under a federal program involving a grant, contract, subsidy, loan,

guarantee, and other form of federal assistance, in connection with providing educational services.

b. Defendant KEVIN O'SHEA began working at PACS in 1999 and focused primarily on facilities management. Defendant O'SHEA is a former police officer with a high school diploma and no prior experience in school administration. In or about September 2002, BG (the PACS CEO) hired defendant O'SHEA to be PACS's director of operations for approximately \$60,000 per year. As detailed below, defendant O'SHEA soon began to receive significant raises and increased responsibility at PACS. In or about September 2007, at BG's urging, the board promoted defendant O'SHEA to replace BG as the PACS CEO. By the time defendant O'SHEA left PACS in May 2008, he was earning in excess of \$200,000 in annual salary from PACS. Defendant O'SHEA was a "public employee" pursuant to the Pennsylvania Public Official and Employee Ethics Act (the "Ethics Act").

c. Rosemary DiLacqua, charged in Count Four, served as president of the PACS board of directors from in or about the spring of 2000 to in or about May 2008. DiLacqua was not paid in this capacity and worked full-time as a Philadelphia police detective. As board president, DiLacqua had responsibility for overseeing the operations of PACS, including approval of major expenditures and employee salaries. DiLacqua was a "public official" pursuant to the Ethics Act.

d. BG was a veteran Philadelphia school district employee, a founder of PACS, and one of the leading proponents of the charter school movement in Philadelphia. BG was the driving force behind PACS and served as PACS' chief academic officer until

approximately 2004, when his title was changed to “chief executive officer.” On or about May 13, 2009, BG died.

e. The Ethics Act serves two purposes: (1) to prohibit certain conduct, like conflicts of interest, which is defined to include the use by a public employee or official of the authority of his office for “the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated;” and, (2) to require disclosure of financial interests so that the public can decide for itself by whom an official or employee may be influenced. Thus, pursuant to the Ethics Act, defendant KEVIN O’SHEA and Rosemary DiLacqua were required to complete annual statements of financial interest which included disclosure of any source of income over \$1,300 in the aggregate, any loans over \$6,500, and any gift of more than \$250 in the aggregate. The Ethics Act makes it a crime to intentionally make misrepresentations in these statements. 65 Pa. C.S.A. §§ 1104(a), 1105, and 1109(b).

f. PACS had a right to the honest services of its public officials and employees in the operation of the school. Under Pennsylvania law, defendant KEVIN O’SHEA and Rosemary DiLacqua owed PACS a duty to avoid conflicts of interest and disclose gifts and other income as described above.

### **THE O’SHEA/BG FRAUDS**

2. Defendant KEVIN O’SHEA and BG abused their positions at PACS in various ways to enrich themselves including: (1) utilizing PACS funds to further their own personal business interests; (2) receiving undisclosed kickbacks from vendors seeking to provide services to PACS; (3) submitting false invoices and improper charges for reimbursement from

PACS; (4) obtaining substantial home improvements from a PACS contractor and shifting the costs to PACS; (5) collecting and keeping rent from other entities for use of PACS facilities; (6) utilizing PACS property and resources for their own benefit; and (7) skimming profits from vending machines within PACS.

### **THE SCHEME**

3. From in or about March 2002 to in or about May 2008, defendant

**KEVIN O'SHEA,**

together with BG, devised and intended to devise a scheme to defraud the Philadelphia Academy Charter School, to obtain money and property by means of false and fraudulent pretenses, representations and promises, and to deprive the Philadelphia Academy Charter School of its intangible right of his honest services.

### **MANNER AND MEANS**

It was part of the scheme that:

4. Paragraphs 1(a)-1(f) are incorporated here.

5. Defendant KEVIN O'SHEA and BG utilized a number of entities to facilitate their various frauds by splitting "consulting" fees paid by: (1) management companies for PACS, (2) contractors for PACS facilities, and (3) lawn services for PACS properties through these entities. For instance, defendant O'SHEA and BG operated a purported non-profit, Philadelphia Academy Services ("PAS"), which had an approximately \$2.1 million contract with the School District of Philadelphia to provide specialized educational services. Despite its non-profit status, defendant O'SHEA and BG ran PAS as a for-profit enterprise, using PAS for such varied interests as real estate holdings and vending machines.

6. In or about August 2007, defendant KEVIN O'SHEA and BG used approximately \$710,000 in PACS' funds to purchase a building located at 6632 Bustleton Avenue in Philadelphia for PAS' benefit. BG had arranged to quickly sell the property to Northwood Academy, another charter school he effectively controlled, for an approximately \$1 million profit to PAS. The sale to Northwood Academy did not close, however, because this investigation became public and Northwood Academy backed out of the deal. Defendant O'SHEA and BG never returned the money to PACS.

7. Defendant KEVIN O'SHEA and BG also utilized Charter School Development Associates ("CSDA"), BG's consulting company, to share proceeds from their frauds. For instance, defendant O'SHEA and BG collected kickbacks from PACS vendors that were paid to CSDA. From 2004 through 2008, defendant O'SHEA received over \$200,000 from CSDA.

8. In or about August 2007, defendant KEVIN O'SHEA created KMO, Inc., a purported consulting company that defendant O'SHEA used to receive kickbacks from various PACS vendors and contractors.

9. Defendant O'SHEA and BG utilized PACS property and employees to perform personal services for them, such as directing PACS employees to make repairs to their vacation homes and mow their lawns.

10. Defendant KEVIN O'SHEA and BG routinely submitted false invoices and improper charges for reimbursement from PACS including personal meals and entertainment, home improvements, gas, and telephone bills. From 2005 through 2008, defendant O'SHEA submitted at least \$40,000 in fraudulent personal reimbursement requests.

11. In or about May 2006, defendant KEVIN O'SHEA hired a PACS contractor to perform repairs to the home of defendant O'SHEA's sister. Defendant O'SHEA instructed the contractor to bill approximately \$4,000 for the repairs to PACS.

12. From in or about December 2006 through in or about April 2008, defendant KEVIN O'SHEA and BG collected approximately \$34,000 in rent from entities using PACS facilities.

13. In or about September 2007, defendant KEVIN O'SHEA directed a PACS contractor to submit an invoice to PACS for approximately \$46,000 worth of improvements that had been made to defendant O'SHEA's home.

14. Defendant KEVIN O'SHEA, together with BG, installed vending machines at PACS, stocked with items purchased by PACS, and kept approximately \$16,000 in profits for themselves.

15. In or about January 2008, defendant KEVIN O'SHEA and BG submitted approximately \$145,000 in construction costs to PACS for lavish office spaces within the school, including flat screen televisions, executive bathrooms and a kitchenette with granite countertops.

16. In or about April 2008, defendant KEVIN O'SHEA submitted invoices to PACS for a computer company he retained to help destroy computer evidence in an effort to obstruct this investigation.

17. As PACS's chief executive officer, defendant KEVIN O'SHEA was required to certify to PACS' outside auditors that there were no material transactions that had not been properly recorded in the accounting records underlying the financial statements and that he was not aware of any fraud or suspected fraud at PACS.

18. On or about January 8, 2008, in the Eastern District of Pennsylvania and elsewhere, defendant

**KEVIN O'SHEA,**

for the purpose of executing the scheme described above, and attempting to do so, caused to be delivered by United States mail and by a commercial interstate carrier, according to directions thereon, a letter from Philadelphia Academy Charter School to its outside auditing firm falsely certifying, among other things, that there were no material transactions that had not been properly recorded in the accounting records underlying the financial statements and that he was not aware of any fraud or suspected fraud at Philadelphia Academy Charter School.

All in violation of Title 18, United States Code, Sections 1341 and 1346.

**COUNT TWO**

**(Theft From a Federally Funded Program)**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. Paragraphs 1(a)-1(d), 2, and 5-17 of Count One are incorporated here.
2. Between approximately September 2002 and May 2008 defendant KEVIN

O'SHEA was a management official and agent of PACS.

3. Between in or about September 2002 and in or about May 2008, in

Philadelphia, in the Eastern District of Pennsylvania, defendant

**KEVIN O'SHEA,**

being an agent and employee of the Philadelphia Academy Charter School, an organization which received benefits of over \$10,000 in any one-year period under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance or other form of federal assistance, embezzled, stole, and obtained by fraud, and otherwise without authority knowingly converted to the use of any person other than the rightful owner and intentionally misapplied property valued at \$5,000 or more, that is, cash totaling at least \$500,000 which was owned by and under the care, custody and control of the Philadelphia Academy School.

In violation of Title 18, United States Code, Sections 666(a)(1)(A), (b) and 2.

**COUNT THREE**

**(Filing a False Tax Return)**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

On or about April 15, 2007, in the Eastern District of Pennsylvania, defendant

**KEVIN O'SHEA**

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2006, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, at Philadelphia, Pennsylvania, which O'SHEA did not believe to be true and correct as to every material matter, in that the return reported adjusted gross income of \$346,035, when in fact, as O'SHEA well knew, he had received additional taxable income in the form of cash payments from BG of approximately \$16,950.

In violation of Title 26, United States Code, Section 7206(1).

**COUNT FOUR**

**(Mail Fraud)**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. Paragraphs 1(a)-1(f) of Count One are incorporated here.

**THE SCHEME**

2. From in or about March 2002 to in or about May 2008, defendant

**ROSEMARY DiLACQUA**

devised and intended to devise a scheme to defraud the Philadelphia Academy Charter School, to obtain money and property by means of false and fraudulent pretenses, representations and promises, and to deprive the Philadelphia Academy Charter School of its intangible right of her honest services.

3. The object of this scheme was for defendant ROSEMARY DiLACQUA to receive undisclosed loans and other payments from Kevin O'Shea, charged in this information, and BG that she failed to report on her annual state of financial interest form or to disclose to other PACS board members while she was taking official action affecting O'Shea and BG, including approving their lucrative PACS contracts and generous salary adjustments.

**MANNER AND MEANS**

It was part of the scheme that:

4. In or about March 2002, Kevin O'Shea facilitated a \$15,000 "loan" from BG to defendant ROSEMARY DiLACQUA that was never repaid. Defendant DiLACQUA never disclosed this payment to the other board members or on her annual statement of financial interest.

5. In or about January 2003, defendant ROSEMARY DiLACQUA and BG approved a \$7,000 bonus for Kevin O'Shea for purportedly saving PACS \$70,000 in operating expenses.

6. In or about January 2005, defendant ROSEMARY DiLACQUA solicited a \$9,000 "loan" from BG for defendant DiLACQUA's sister that was never repaid. Despite her duty to do so under the Ethics Act, defendant DiLACQUA never disclosed this payment to the other board members or on her annual statement of financial interest.

7. On or about May 20, 2006, defendant ROSEMARY DiLACQUA signed a contract on behalf of PACS which provided that BG would be paid \$94,000 annually from October 1, 2006 through October 1, 2016, with a three percent increase each year of the contract, in exchange for his consulting services for up to ninety days per year (the "BG Consulting Contract"). BG requested that he be required to work no more than ninety days at the school to ensure that he could simultaneously collect his state pension. No other board member approved this contract.

8. In or about August 2007, defendant ROSEMARY DiLACQUA accepted a cash payment of approximately \$10,000 from Kevin O'Shea and BG. Defendant DiLACQUA never disclosed this payment to the other board members or on her annual statement of financial interest.

9. On or about September 20, 2007, defendant ROSEMARY DiLACQUA, at BG's insistence, approved the promotion of Kevin O'Shea to chief executive officer of PACS. O'Shea was the only CEO candidate considered during a hastily arranged "emergency" vote by the board. DiLacqua was the only board member with advance notice of this agenda item. That same day, defendant DiLACQUA and O'Shea signed an addendum that extended the BG

Consulting Contract through December 31, 2026 and increased the yearly salary adjustment to the greater of 10% per year or cost of living increase. The BG Consulting Contract continued to require BG to provide no more than ninety days of consulting to PACS each year. No other board member approved this addendum.

10. In or about October 2007, defendant ROSEMARY DiLACQUA approved a raise for Kevin O'Shea, making his annual salary approximately \$204,000. No other board member approved O'Shea's salary.

11. In or about April 2008, after news of a potential investigation became public, defendant ROSEMARY DiLACQUA and O'Shea backdated a memorandum to make it appear that defendant O'Shea's salary had been approved by the PACS board on or about October 19, 2007. In fact, no other board member had ever seen that memorandum.

12. As PACS's board president, defendant ROSEMARY DiLACQUA was required to certify to PACS' outside auditors that there were no material transactions that had not been properly recorded in the accounting records underlying the financial statements and that she was not aware of any fraud or suspected fraud at PACS.

13. On or about January 8, 2008, in the Eastern District of Pennsylvania and elsewhere, defendant

**ROSEMARY DiLACQUA,**

for the purpose of executing the scheme described above, and attempting to do so, caused to be delivered by United States mail and by a commercial interstate carrier, according to directions thereon, a letter from Philadelphia Academy Charter School to its outside auditing firm falsely certifying, among other things, that there were no material transactions that had not been properly

recorded in the accounting records underlying the financial statements and that she was not aware of any fraud or suspected fraud at Philadelphia Academy Charter School.

All in violation of Title 18, United States Code, Sections 1341 and 1346.

**NOTICE OF FORFEITURE**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. As a result of the violation of Title 18, United States Code, Sections 1341 and 1346, set forth in this indictment, defendant

**KEVIN O'SHEA**

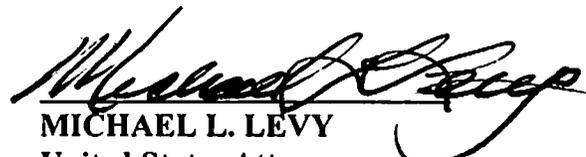
shall forfeit to the United States of America any and all property involved in such offense, and any property traceable to such property, including, but not limited to, \$500,000.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant(s) up to the value of the property subject to forfeiture.

All pursuant to Title 18, United States Code, Section 982.

  
**MICHAEL L. LEVY**  
United States Attorney