

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : INFORMATION

v. : 00 Cr. 442 (KPD)

ALVIN APPEL, : Filed: April 27, 2000

Defendant. :

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COUNT ONE

The United States of America, acting through its
attorneys, charges:

Conspiracy

Relevant Parties and Entities

1. At all times relevant to this Information:

a. The defendant ALVIN APPEL ("APPEL") was the president and owner of Artstaff Marketing, Ltd. ("Artstaff"), a supplier of advertising and display materials and services, including T-shirts, jackets, patio umbrellas, and packaging materials. Artstaff was incorporated in the State of New York and had its principal place of business in Manhattan.

b. In addition to being the president and owner of Artstaff, the defendant ALVIN APPEL acted as a sales representative for Artstaff. One of his major customers was Austin Nichols & Co., Inc. ("Austin Nichols"), a distiller and seller of liquor, located in Manhattan.

c. Bruce Schwartz ("Schwartz"), a co-conspirator not named as a defendant herein, was employed as a vice-president of marketing at Austin Nichols. In that capacity, Schwartz was responsible for selecting suppliers of advertising and display materials and services for Austin Nichols, and was the defendant ALVIN APPEL'S primary contact at Austin Nichols. Schwartz authorized the issuance of numerous contracts in which Austin Nichols purchased goods and services from Artstaff.

Statutory Allegations

2. From in or about January 1990 through in or about November 1996, in the Southern District of New York and elsewhere, the defendant ALVIN APPEL, and others known and unknown, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other: (1) to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 1341 and 1346, and Title 26, United States Code, Sections 7201; and (2) to defraud the United States of America and the Internal Revenue Service ("IRS"), an agency of the United States, by impeding, impairing, defeating, and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection of federal income taxes.

3. It was a part and object of the conspiracy that the defendant ALVIN APPEL and Schwartz, having devised and

intending to devise a scheme and artifice to (a) defraud Austin Nichols; (b) obtain money and property from Austin Nichols by means of false and fraudulent pretenses, representations and promises; and (c) deprive Austin Nichols of its right to the honest services of Schwartz; and, for the purpose of executing such scheme and artifice and attempting to do so, would and did (i) place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the United States Postal Service; (ii) take and receive from the mails such matters and things; and (iii) knowingly cause such matters and things to be delivered by mail according to the directions thereon, in violation of Title 18, United States Code, Sections 1341 and 1346.

4. It was a further part and object of the conspiracy that the defendant ALVIN APPEL and Schwartz would and did defraud the IRS by impeding, impairing, obstructing, and defeating the lawful Government functions of the IRS in ascertaining, evaluating, assessing, and collecting federal income taxes due from Schwartz and Artstaff by impeding and impairing scrutiny by the IRS of the existence and true nature of payments that Artstaff made to individuals and entities on behalf of Schwartz.

5. It was a further part and object of the conspiracy that Schwartz would and did attempt to evade and defeat a substantial part of the income tax due and owing to the United

States by him and his spouse, in violation of Title 26, United States Code, Section 7201.

The Means And Methods Of The Conspiracy

6. Among the means and methods by which the defendant ALVIN APPEL and Schwartz would and did carry out the conspiracy and effect its unlawful objects were the following:

a. Beginning in or about January 1990, the defendant ALVIN APPEL agreed to make payments for the benefit of Schwartz. Thereafter, on numerous occasions between January 1990 and November 1996, at Schwartz's request and direction, APPEL caused Artstaff to issue checks totaling approximately \$200,000 to third parties as payment for personal expenses incurred by Schwartz. Those personal expenses included items such as vacations; furniture; and the maintenance, repair, and improvement of Schwartz's homes. As a result of his agreement to make payments for the benefit of Schwartz, APPEL expected that Schwartz would cause Austin Nichols to award contracts for advertising and display materials and services to Artstaff, and Schwartz did so.

b. The defendant ALVIN APPEL caused Artstaff to treat the value of the payments to third parties described in Paragraph 6a, above, as legitimate business expenses in its books and records and on its tax returns. Thus, APPEL caused Artstaff to overstate its business expenses by the amount of the payments

to the third parties, thereby understating its taxable income for the fiscal years ending September 30, 1990 through September 30, 1996.

c. The defendant ALVIN APPEL concealed from the IRS the existence and true nature of Artstaff's payments to certain third parties by causing Artstaff to make false, fraudulent, and misleading entries in its books and records that concealed the fact that Schwartz was the true beneficiary of the payments to the third parties and by causing Artstaff to fail to issue to Schwartz any Forms 1099 in which the payment of monies for Schwartz's benefit would have been disclosed.

d. Schwartz and his spouse did not report the value of the payments that the defendant ALVIN APPEL caused Artstaff to make to third parties for their benefit on their United States Individual Income Tax Returns.

Overt Acts

7. In furtherance of the conspiracy, and to effect its illegal objects, the following overt acts were committed in the Southern District of New York, and elsewhere:

a. Between October 1, 1992 and September 30, 1993, the defendant ALVIN APPEL caused Artstaff to issue approximately ten checks, totaling approximately \$28,291.05, to third parties in payment of personal expenses incurred by Schwartz. All of those checks were issued in Manhattan.

b. On or about June 14, 1994, the defendant ALVIN APPEL caused Artstaff to file a U.S. Corporation Income Tax Return, Form 1120, for the fiscal year ending September 30, 1993. That tax return, which was mailed to the IRS, falsely understated Artstaff's taxable income by claiming deductions for the payments made on behalf of Schwartz during the period October 1, 1992 through September 30, 1993, which payments should not have been included as deductible business expenses.

c. On or about April 10, 1994, Schwartz and his spouse filed their U.S. Individual Income Tax Return for the calendar year 1993 in which they failed to report as income payments made by Artstaff on behalf of Schwartz during the period January 1, 1993 through December 31, 1993 in the amount of approximately \$23,879.30.

d. Between October 1, 1993 and September 30, 1994, the defendant ALVIN APPEL caused Artstaff to issue approximately eleven checks, totaling approximately \$22,334.70, to third parties in payment of personal expenses incurred by Schwartz. All of those checks were issued in Manhattan.

e. On or about December 14, 1994, the defendant ALVIN APPEL caused Artstaff to file a U.S. Corporation Income Tax Return, Form 1120, for the fiscal year ending September 30, 1994. That tax return, which was mailed to the IRS, falsely understated Artstaff's taxable income by claiming deductions for the payments made on behalf of Schwartz during the period October 1, 1993

through September 30, 1994, which payments should not have been included as deductible business expenses.

f. On or about April 4, 1995, Schwartz and his spouse filed their U.S. Individual Income Tax Return for the calendar year 1994 in which they failed to report as income payments made by Artstaff on behalf of Schwartz during the period January 1, 1994 through December 31, 1994 in the amount of approximately \$21,885.70.

g. On or about March 22, 1996, Schwartz and his spouse filed their U.S. Individual Income Tax Return for the calendar year 1995 in which they failed to report as income payments made by Artstaff on behalf of Schwartz during the period January 1, 1995 through December 31, 1995 in the amount of approximately \$36,669.00.

h. Between October 1, 1995 and September 30, 1996, the defendant ALVIN APPEL caused Artstaff to issue approximately fourteen checks, totaling approximately \$102,679.59, to third parties in payment of personal expenses incurred by Schwartz. All of those checks were issued in Manhattan.

i. On or about December 11, 1996, the defendant ALVIN APPEL caused Artstaff to file a U.S. Corporation Income Tax Return, Form 1120, for the fiscal year ending September 30, 1996. That tax return, which was mailed to the IRS, falsely understated Artstaff's taxable income by claiming deductions for the payments

made on behalf of Schwartz during the period October 1, 1995 through September 30, 1996, which payments should not have been included as deductible business expenses.

j. On or about March 8, 1997, Schwartz and his spouse filed their U.S. Individual Income Tax Return for the

calendar year 1996 in which they failed to report as income payments made by Artstaff on behalf of Schwartz during the period January 1, 1996 through December 31, 1996 in the amount of approximately \$77,179.59.

k. On numerous occasion between January 1990 and March 1997, as a result of the defendant ALVIN APPEL's agreement to pay Schwartz's personal expenses, Schwartz caused Austin Nichols to award Artstaff contracts for advertising and display materials and services. In order to complete, bill for and receive payment on those contracts, APPEL regularly sent documents to, and received documents from, Austin Nichols via United States Mail.

(Title 18, United States Code, Section 371.)

_____/s/_____
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