

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : Criminal No. 02 CR 1267
v. : Filed: 9/27/02
BERTRAM J. COHEN, : Violations: 18 U.S.C. § 371
Defendant. :

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INFORMATION

COUNT ONE -- CONSPIRACY TO COMMIT MAIL FRAUD
(18 U.S.C. § 371)

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

1. Bertram J. Cohen ("Cohen") is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Cohen was a resident of Quogue, New York. Cohen owned and was the chief executive of Darbert Offset Corp. ("Darbert"), located on West 25th Street in Manhattan. Darbert was in the business of producing and selling commercial printing, including printed advertising materials. One of its main customers was Impact Communications, Inc. ("Impact").

3. Impact, located in Manhattan, was an advertising agency that specialized in servicing customers in the pharmaceutical industry. Its main customers included Pfizer, Inc. and Merck & Co., Inc.

4. "CC-1" was a co-conspirator who was a purchasing official at Impact. CC-1 had primary responsibility for selecting suppliers of printed advertising materials to Impact.

5. Steven Briggin was a co-conspirator who was a sales representative for Darbert. Briggin was primarily responsible for Darbert's sales to Impact.

6. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

II. DEFINITION

7. The term "printed advertising materials" includes custom-designed mailings, insets, brochures, workbooks, and similar items.

III. DESCRIPTION OF THE OFFENSE

8. From approximately mid- to late 1997 until approximately June 2000, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, Cohen and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States of America, to wit, to violate Title 18, United States Code, Sections 1341 and 1346.

9. It was a part and an object of the conspiracy that Cohen and others known and unknown, having devised and intending to devise a scheme and artifice to defraud Impact, including a scheme to deprive Impact of the intangible right of the honest services of CC-1, and for obtaining money and property from Impact by means of false

and fraudulent pretenses, representations, and promises, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Sections 1341 and 1346.

IV. THE MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

10. During all or some of the period from approximately mid- to late 1997 until approximately June 2000, Cohen authorized Briggin to pay kickbacks to CC-1 in order to ensure that CC-1 would allocate to Darbert a portion of the total value of contracts for printed advertising materials awarded by Impact. The kickbacks, which were paid in cash that Cohen supplied to Briggin, totaled at least \$150,000 during that period.

11. The amount of the kickbacks authorized by Cohen was determined primarily by CC-1, based on amounts that he caused Briggin to add to the value of

contracts awarded by Impact to Darbert on a job-by-job basis. Before determining the price at which each of the contracts affected by the conspiracy would be awarded to Darbert, CC-1 first asked Briggin to give him a verbal estimate of the price for performing that contract. CC-1 then instructed Briggin to increase that price by a specific amount (the “fraudulent overcharge”), initially with the understanding that he would receive half that amount after Darbert had completed the job and received payment from Impact. Under this arrangement, Briggin in fact paid CC-1 half the fraudulent overcharge and Darbert kept the other half. Later, CC-1 and Briggin reached an understanding that CC-1 would receive 60% of the fraudulent overcharge; thereafter, Briggin in fact paid CC-1 60% of the fraudulent overcharge and Darbert retained only 40%. For each contract affected by the conspiracy, with Cohen’s knowledge and approval, Briggin caused Darbert to submit a written price quotation at the fraudulently inflated price. CC-1’s superiors at Impact were not aware of and did not approve of the fraudulent overcharges.

12. In order to make it appear that the prices at which the affected contracts awarded to Darbert were fair and reasonable, CC-1 obtained multiple “cover bids,” *i.e.*, written bids or price quotations that were intentionally higher than the prices that he and Briggin had determined for the contracts to be awarded to Darbert, from other co-conspirators. On other occasions, Briggin provided CC-1 with cover bids for jobs that CC-1 intended to award to companies other than Darbert.

V. OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the following

overt acts were committed in the Southern District of New York, and elsewhere:

13. On numerous occasions between 1997 and June 2000, usually every week, Briggin met with CC-1 at various locations, primarily O'Casey's Restaurant in midtown Manhattan, to pay CC-1 some portion of the kickbacks he was owed. These payments usually ranged from \$1000 to \$3000 cash per week and totaled at least \$150,000. Briggin obtained the cash he paid to CC-1 from Cohen.

14. From approximately mid- to late 1997 until approximately June 2000, with Cohen's knowledge and approval, Briggin and CC-1 caused Impact to pay more numerous fraudulently inflated invoices from Darbert, which payments and invoices were sent from or to Impact by and through the United States mails.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

COUNT TWO -- CONSPIRACY TO DEFRAUD THE UNITED STATES
AND TO COMMIT TAX FRAUD
(18 U.S.C. § 371)

The United States of America further charges:

15. Paragraphs 1 through 5 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

VI. DESCRIPTION OF THE OFFENSE

16. From approximately 1992 until approximately April 2000, the exact dates being unknown to the United States, the defendant and co-conspirators did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree to defraud the United States of America and the Internal Revenue Service ("IRS") by impeding,

impairing, defeating, and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection of income taxes, and to commit offenses against the United States of America, to wit, to violate Title 26, United States Code, Sections 7201 and 7206.

**VII. THE MANNER AND MEANS BY WHICH THE
CONSPIRACY WAS CARRIED OUT**

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

17. Between 1992 and 1999, Cohen caused sham companies named AAMM Printing (“AAMM”) and K&S Supply (“K&S”), which were owned and controlled by a co-conspirator named Martin Schwartz, to issue false and fraudulent invoices to Darbert. These invoices were false and fraudulent because they purported to represent the sale of goods and/or services that had never been provided and were not intended to be provided to Darbert.

18. Cohen caused Darbert to draw approximately 21 checks totaling approximately \$140,000 to AAMM and K&S in response to the false invoices and gave those checks to Schwartz. After receiving each of the checks, Schwartz gave Cohen approximately 93% of the value the check in cash.

19. Between 1995 and 1999, Cohen also caused Darbert to issue checks totaling approximately \$100,000 to various other fictitious entities which he himself caused to be cashed.

20. Cohen used the cash he obtained by the two methods identified in

Paragraphs 17-19 in at least three different ways. First, he kept some for his personal use, which he failed to report as income to the IRS on his personal tax returns and caused Darbert to fail to disclose to the IRS as income paid to himself. Second, he gave some of the cash to employees of Darbert as “off the books” compensation, which he caused Darbert to fail to disclose to the IRS. Third, he gave some of the cash to Briggin to be used to pay kickbacks to CC-1 in connection with the scheme charged in Count One of this Information.

21. Cohen caused Darbert to treat the full value of the checks issued to AAMM and K&S and the other fictitious entities as business expenses in its books and records from 1992 through 1999, despite the fact that, having converted a substantial portion of the value of the checks into cash, he kept some of that cash for his personal use or gave some to Briggin to be paid as kickbacks to CC-1. Cohen further caused Darbert fraudulently to deduct the full value of these checks on its U.S. Income Tax Returns for an S Corporation, Forms 1120S for tax years 1992 through 1999 as part of its cost of goods sold.

VIII. OVERT ACTS

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

22. Between 1992 and 1999, Cohen caused Darbert to issue approximately 21 checks to AAMM or K&S with a face value of approximately \$140,000. Cohen gave those checks to Schwartz, and received approximately \$130,000 in cash from Schwartz,

usually on Thursdays at Darbert's office on West 25th Street.

23. On or about March 17, 1997, August 20, 1998, March 15, 1999 and March 15, 2000, Cohen caused Darbert to file U.S. Income Tax Returns for an S Corporation, Forms 1120S, with the IRS that falsely represented the checks issued to AAMM, K&S, and other fictitious entities as deductible business expenses, despite the fact that Cohen received a large percentage of the value of the checks back in cash and did not use all that cash for a legitimate business purpose.

24. On or about April 15, 1997, August 20, 1998, April 15, 1999, and April 15, 2000, Cohen filed U.S. Individual Income Tax Returns, Forms 1040, with the IRS that falsely represented his true total income by failing to report as income substantial amounts of cash that Cohen had received by the methods identified in Paragraphs 17-19 and retained for his personal use.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

Dated:

/s/ _____
CHARLES A. JAMES
Assistant Attorney General

/s/ _____
RALPH T. GIORDANO
Chief, New York Office

/s/ _____
JAMES M. GRIFFIN
Deputy Assistant Attorney General

/s/ _____
REBECCA MEIKLEJOHN

/s/
SCOTT D. HAMMOND
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