Judge Marrero

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA : Criminal No. 10CRIM1178

v. : Filed:

: Violations: 15 U.S.C. § 1
18 U.S.C. § 371
JAMES L. HERTZ, : 18 U.S.C. § 1343

:

Defendant. :

USDC SDNY
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DATE FILED: 11/30/10

INFORMATION

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

COUNT ONE -- CONSPIRACY TO RESTRAIN TRADE
(15 U.S.C. § 1)

1. JAMES L. HERTZ is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Defendant HERTZ, a resident of Cranford, New Jersey, was an employee of a wholly owned subsidiary of Financial Institution C, and worked at its offices in New York, New York.

3. From approximately 1994 through approximately December 2007, defendant HERTZ worked in the municipal derivatives group of Financial Institution C's wholly owned subsidiary or its predecessors, as a vice president and a marketer of investment

agreements and other municipal finance contracts. In that capacity, HERTZ was authorized to act as an agent of Financial Institution C in marketing investment agreements and other municipal finance contracts. HERTZ'S compensation, including bonus, was based on, among other things, the amount of revenues generated by the municipal derivatives group.

4. Financial Institution C was registered with the Federal Reserve as a financial holding company headquartered in New York City and was a member of the Federal Reserve System within the meaning of Title 18, United States Code, Section 20.

5. Directly or through its subsidiaries, Financial Institution C marketed financial products and services to various municipalities throughout the United States, including investment agreements and other municipal finance contracts, as described in Paragraphs 8 through 16 of this Count. Financial Institution C also provided underwriting and investment services to various municipalities throughout the United States.

6. Financial Institution A was a corporation that directly and through its wholly owned subsidiary marketed financial products and services to various municipalities throughout the United States, including investment agreements and other municipal finance contracts, as described in Paragraphs 8-16 of this Count. Financial Institution A also provided underwriting and investment services to various municipalities throughout the United States. The principal place of business of both Financial institution A and its wholly owned subsidiary was in Manhattan. Financial Institution A was registered with

the Federal Reserve as a financial holding company and was a financial institution that was a branch or agency of a foreign bank, within the meaning of Title 18, United States Code, Section 20.

6. Whenever in this Count reference is made to any act, deed, or transaction of any corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business affairs.

7. Various other 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, including Financial Institution C and Financial Institution A.

II. BACKGROUND

8. Municipal bonds are issued by government entities, such as states, counties, and cities, or quasi-governmental entities, such as public authorities and school, utility or water districts, to raise money for operating funds or for specific projects, such as the construction of public facilities, and to refinance outstanding municipal debt. In some instances, the entity issuing the bond turns the money over to a not-for-profit entity, such as a school or hospital, or an entity that will spend the money for a specific public purpose, such as the construction of low-cost housing or waste treatment facilities. Both the entities that issue municipal bonds and the entities that receive and spend the money are, unless

otherwise stated, collectively referred to herein as "issuers," "municipal issuers," or "municipalities." In 2007 and 2008, combined, approximately $800 billion in municipal bonds were issued in the United States.

9. The money an issuer raises from a municipal bond offering ("bond proceeds") is typically spent over a period of time rather than immediately, in one lump sum. The issuer frequently invests some or all of bond proceeds in an investment product (sometimes referred to as an "investment agreement"), which is designed for its specific needs. Investment agreements vary in size from a few hundred thousand to several hundred million dollars and in duration from as short as one month to as long as forty years.

10. Major financial institutions, including banks, investment banks, insurance companies, and financial services companies (collectively "providers") sell investment agreements through their employees or agents ("marketers"). Financial Institution C and Financial Institution A were such providers.

11. Issuers usually select providers of investment agreements through bona fide competitive bidding procedures that are designed to comply with federal tax law and United States Department of the Treasury regulations relating to the tax-exempt status of municipal bonds. Compliance with these regulations is monitored by the Internal Revenue Service ("IRS"), which is entitled to receive a portion of the earnings from a municipality's investment agreement under certain circumstances. Among other things,

each provider submitting a bid typically certifies that specific Treasury regulations have been followed, including that the provider did not consult with any other potential provider about its bid and that all providers had an equal opportunity to bid, commonly referred to as the no "last looks" provision.

12. Issuers often hire third parties ("brokers") to act as their agents in conducting a bona fide competitive bidding process and complying with the relevant Treasury regulations. The broker's fee for conducting a bona fide competitive bidding process is generally paid by the winning provider, which takes account of the cost of such broker's fee when calculating its bid and generally discloses the fee to the issuer.

13. Brokers offer a variety of services, including offering suggestions about the availability and suitability of investment products, drafting bid specifications, and identifying the most competitive, qualified providers to be solicited as bidders. In some cases, the broker decides which providers will be solicited to bid without consulting with the issuer or any of the other professional representatives advising the issuer.

14. Brokers are usually responsible for distributing the bid packages (specifications and bid forms) to providers selected to receive them, usually via e-mail; keeping in touch with the potential bidders to answer questions about the bid specifications; conducting the bidding process, which typically involves receiving the providers' bids by telephone at a time identified in the bid specifications, followed by a confirming copy of the bid via facsimile. After reviewing the bids to ensure conformity

with the specifications, brokers then inform the issuer of the outcome of the bid, including the identity of the winning, qualified bidder and, if appropriate, any conditions that deviate from the specifications. Brokers are often required by the issuer to provide written certification that the bidding procedures complied with the relevant Treasury regulations.

15. Depending on the structure of the bid, providers may be asked to quote only the interest rate to be paid on funds on deposit for the duration of the agreement or they may be asked to submit a bid in the form of a dollar amount or date (sometimes referred to as the "price" or "price level" of a bid). In a typical investment agreement, providers are asked to quote only an interest rate and, generally, the agreement is awarded to the provider quoting the highest rate.

16. Many brokers that conduct bona fide competitive bidding for investment agreements subject to the Treasury regulations are also hired by municipalities and other quasi-government entities to conduct bona fide competitive bidding in connection with the award of other contracts involving public funds, even though those contracts are not subject to the Treasury regulations related to competitive bidding. These contracts (collectively, "other municipal finance contracts") include investment agreements for taxable municipal bonds; investment agreements for funds borrowed by entities in which the federal government or any municipal entity is a participant; and derivative contracts, which are contracts between a municipal issuer and a financial institution that are designed to manage or transfer some or all of the interest rate risk associated with a municipal bond

issue. They do not include underwriting contracts.

III. DESCRIPTION OF THE OFFENSE

17. From at least as early as October 2001 until at least November 2006, the exact dates being unknown to the United States, defendant HERTZ and co-conspirators, including Financial Institution C and Financial Institution A, among others, engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1).

18. The aforesaid combination and conspiracy consisted of an agreement, understanding, and concert of action among defendant HERTZ and co-conspirators, the substantial terms of which were to allocate and rig bids for investment agreements and other municipal finance contracts.

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

19. For the purpose of forming and effectuating the aforesaid combination and conspiracy, defendant HERTZ and co-conspirators, including Financial Institution C and Financial Institution A, among others, did those things which they combined and conspired to do, including, among other things:

(a) designating in advance of the submission of bids which provider among the co-conspirator providers, including Financial Institution C and Financial Institution A, among others, would be the winning bidder for certain investment agreements or other municipal finance contracts;

(b) discussing and agreeing on the prices or price levels co-conspirator providers, including Financial Institution C and Financial Institution A, among others, would bid for certain investment agreements or other municipal finance contracts;

(c) causing providers, including Financial Institution C and Financial Institution A, among others, to submit intentionally losing bids for certain investment agreements or other municipal finance contracts with the understanding that co-conspirator providers submitting the intentionally losing bids would be allocated other investment agreements or other municipal finance contracts. The intentionally losing bids made it appear both to the municipalities and, where appropriate, to the IRS that the winning co-conspirator provider had submitted a bona fide competitive bid for those agreements and contracts, when, in fact, it had not;

(d) falsely certifying and forwarding false certifications that the bidding for certain investment agreements or other municipal finance contracts was in compliance with the relevant Treasury regulations or was otherwise competitive; and

(e) paying municipalities or causing municipalities to be paid artificially determined or suppressed prices or yields for the duration of certain investment agreements or other municipal finance contracts, thereby increasing the profitability of those agreements or contracts for the winning co-conspirator provider for the duration of such contracts.

V. INTERSTATE TRADE AND COMMERCE

20. From at least as early as October 2001 until at least November 2006, pursuant to the investment agreements and other municipal finance contracts that are the subject of this Count, defendant HERTZ and co-conspirators caused substantial amounts of money to be transferred between co-conspirator providers and municipal issuers and other government or quasi-government entities throughout the United States.

21. The activities of defendant HERTZ and co-conspirators with respect to the aforementioned investment agreements and other municipal finance contracts were within the flow of, and substantially affected, interstate trade and commerce.

VI. JURISDICTION AND VENUE

22. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT TWO -- CONSPIRACY
(18 U.S.C. § 371)

The United States of America further charges:

23. JAMES L. HERTZ is hereby made a defendant on the charge stated below.

24. Paragraphs 2 through 5 and 8 through 16 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

25. During all times relevant to this Count, Broker E was located in Minnesota and marketed its services as a broker to various municipal issuers throughout the United

States.

26. Various other persons and entities, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts in furtherance thereof. They included Financial Institution C and Broker E.

VII. DESCRIPTION OF THE OFFENSE

27. From as early as 1998 until at least November 2006, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, JAMES L. HERTZ, the defendant, and co-conspirators, including Financial Institution C and Broker E, 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, to wit, to violate Title 18, United States Code, Section 1343, and to defraud the United States and an agency thereof, to wit, the Internal Revenue Service ("IRS") of the United States Department of the Treasury, all in violation of Title 18, United States Code, Section 371.

28. It was a part and an object of the conspiracy that JAMES L. HERTZ, the defendant, and co-conspirators, including Financial Institution C and Broker E, and others known and unknown, unlawfully, willfully, and knowingly would and did devise and intend to devise a scheme and artifice to defraud municipal issuers that used Broker E as their broker and to obtain money and property from municipal issuers by means of false and fraudulent pretenses, representations, and promises, namely, a scheme to deprive municipal

issuers of money by causing them to award investment agreements and other municipal finance contracts brokered by Broker E at artificially determined or suppressed rates, and to deprive municipal issuers that used Broker E as their broker of the property right to control their assets by causing them to make economic decisions based on false and misleading information, and for the purpose of executing such scheme and artifice, and attempting to do so, would and did transmit and cause to be transmitted by means of wire, radio or television communication in interstate or foreign commerce any writings, signs, signals, pictures or sounds, in violation of Title 18, United States Code, Section 1343.

29. It was further a part and an object of the conspiracy that JAMES L. HERTZ, the defendant, and co-conspirators, including Financial Institution C and Broker E, and others known and unknown, would and did defraud the United States and the IRS by impeding, impairing, obstructing, and defeating the lawful government functions of the IRS in the ascertainment, computation, assessment, and collection of revenue due and owing from municipal issuers and in exercising its responsibilities to monitor compliance with Treasury regulations related to tax-exempt municipal bonds, in violation of Title 18, United States Code, Section 371.

III. 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:

30. Through the control and manipulation of the bidding for investment agreements and other municipal finance contracts, JAMES L. HERTZ, the defendant, and co-conspirators, including Financial Institution C and Broker E, and others known and unknown, attempted to increase the number and profitability of investment agreements and other municipal finance contracts awarded to Financial Institution C by municipal issuers that used Broker E as their broker.

31. For the purposes of effectuating the aforesaid conspiracy, JAMES L. HERTZ, the defendant, and co-conspirators, including Financial Institution C and Broker E, and others known and unknown, did those things which they conspired to do, including, among other things:

(a) discussing and agreeing with Broker E which of Financial Institution C's competitors should and should not be solicited to submit bids for particular investment agreements and other municipal finance contracts;

(b) receiving information from Broker E about the prices, price levels, rates, conditions or other information related to competing providers' bids, including in some instances, the exact price, price level, or rate of competing providers' bids;

(c) adjusting Financial Institution C's bid after Broker E gave defendant HERTZ information about the prices, price levels, rates, conditions or other information related to competing providers' bids;

(d) submitting and causing to be submitted intentionally losing

bids to Broker E for certain investment agreements and other municipal finance contracts to make it appear that Financial Institution C had competed for those agreements or contracts, when in fact, it had not;

(e) misrepresenting to municipal issuers or their bond counsel that the bidding process was bona fide and in compliance with Treasury regulations or was otherwise competitive;

(f) certifying, causing to be certified, and forwarding certifications to municipal issuers or their bond counsel that the bidding process for certain investment agreements or other municipal finance contracts was bona fide and in compliance with Treasury regulations or was otherwise competitive when, in fact, it was not;

(g) causing municipal issuers to award investment agreements and other municipal finance contracts to Financial Institution C, which agreements and contracts the municipal issuers would not have awarded to Financial Institution C if they had true and accurate information regarding the bidding process;

(h) enabling Financial Institution C to perform investment agreements or other municipal finance contracts at artificially determined or suppressed rates that deprived and will continue to deprive municipal issuers of money and property; and

(i) causing municipal issuers not to file required reports with the IRS or to file inaccurate reports with the IRS, and on occasion, to fail to give the IRS or the Treasury money to which it was entitled. This conduct jeopardized the tax-exempt status of

the underlying bonds.

IX. OVERT ACTS

32. In furtherance of the conspiracy and to effect the illegal objects thereof, defendant HERTZ and co-conspirators, including Financial Institution C, among others, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On numerous occasions, at or about the time the bid specifications stated that bids were due, defendant HERTZ participated in interstate telephone calls during which he received information from Broker E about the prices, price levels, or conditions of bids from other providers. Defendant HERTZ then used that information to determine Financial Institution C's bid. On some occasions, Broker E told defendant HERTZ that he could change Financial Institution C's bid in a manner that would increase Financial Institution C's profits and still win the bid and, at times, suggested the exact amount by or to which the bid could be changed. Defendant HERTZ followed these suggestions. As a result of this bid manipulation, Financial Institution C was awarded and has performed and is scheduled to continue to perform investment agreements and other municipal finance contracts at artificially determined levels that deprived and will continue to deprive municipal issuers of money and property;

(b) On numerous occasions, at or about the time the bid specifications stated that bids were due, defendant HERTZ participated in interstate telephone calls during

which Broker E asked defendant HERTZ to submit intentionally losing bids for investment agreements or other municipal finance contracts. Broker E provided defendant HERTZ with prices, price levels or other information, which defendant HERTZ used to determine Financial Institution C's bid;

(c) On numerous occasions, defendant HERTZ and co-conspirators, including Broker E, misrepresented to municipal issuers or their bond counsel the circumstances under which investment agreements and other municipal finance contracts were bid;

(d) On numerous occasions, defendant HERTZ and co-conspirators, including Broker E, certified, caused to be certified, and forwarded certifications to municipal issuers or their bond counsel that the bidding process for certain investment agreements and other municipal finance contracts was bona fide and in compliance with the Treasury regulations or was otherwise competitive when, in fact, it was not;

(e) On numerous occasions, Financial Institution C performed investment agreements or other municipal contracts and made payments to municipal issuers via interstate wire transfer at artificially determined rates. Financial Institution C continues to perform some of these agreements and contracts;

(f) With respect to the award and performance of a municipal finance contract, specifically a derivative contract, with a state university, the award of which was to

be made to the provider bidding the lowest rate the university would pay the provider, defendant HERTZ and co-conspirators committed the following overt acts, among others:

(i) On or about October 3, 2001, during an interstate telephone conversation between New York, New York and Minnesota at about 10:30 A.M., defendant HERTZ quoted a rate of 4.029 and a co-owner of Broker E then signaled HERTZ to raise his rate to 4.039, which HERTZ did. Financial Institution C was then awarded the municipal finance contract at the rate stated by the co-owner of Broker E and accepted by HERTZ.

(ii) On or about February 1, 2006, via facsimile transmission from New York to Ohio, Financial Institution C sent the state university a statement seeking payment of $19,769.95, an amount calculated based on the rate set by HERTZ and Broker E.

(g) With respect to the award and performance of an investment agreement with a town, the award of which was to be made to the provider bidding the lowest price the town would pay for a portfolio of securities, defendant HERTZ and co-conspirators committed the following overt acts, among others:

(i) on or about September 18, 2002, during an interstate telephone conversation between New York, New York and Minnesota at about 11:51 A.M., defendant HERTZ quoted a price, of $15,355,500 and asked the representative of Broker E "How's that looking?" and whether Broker E had any other bids. The representative of Broker E

told HERTZ that a co-owner of Broker E was on the telephone with other bidders.

(ii) on or about September 18, 2002, at approximately 11:52 A.M., one minute later, a co-owner of Broker E called defendant HERTZ and signaled that he could raise his bid by $5000 and still win, which HERTZ did. Financial Institution C was then awarded the investment agreement for that town at $15,360,500, the price suggested by the co-owner of Broker E and submitted by HERTZ.

(h) With respect to the award and performance of an investment agreement with a town, the award of which was to be made to the provider bidding the earliest date at which, pursuant to the Treasury regulations, the town would be deemed to have earned the maximum allowable return on its investment and would then be obliged to transfer its money from the winning provider to the United States Department of Treasury until the money could be used for its intended purpose, defendant HERTZ and co-conspirators committed the following overt acts, among others:

(i) on or about October 26, 2004, during an interstate telephone conversation between New York, New York and Minnesota at about 1:54 P.M., a co-conspirator at Broker E gave defendant HERTZ information about a competing provider's bid and allowed HERTZ to change the bid he had already submitted by extending by one month, from May 15, 2015 until June 15, 2015, the date until which the town would receive interest and Financial Institution C would retain the use of the money invested. Financial Institution C was then awarded the investment agreement for that duration.

(ii) on or about November 9, 2004, via interstate wire transfer from St. Paul, Minnesota to New York, New York, Financial Institution C received payment for the portfolio of securities it had delivered pursuant to the investment agreement it had been awarded.

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

COUNT THREE - WIRE FRAUD
(18 U.S.C. § 1343)

The United States of America further charges:

33. JAMES L. HERTZ is hereby made a defendant on the charge stated below.

34. Paragraphs 2 through 5 and 8 through 16 of Count One and Paragraph 25 of Count Two of this Information are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.

X. DESCRIPTION OF THE OFFENSE

35. From as early as 1998 until at least November 2006, in the Southern District of New York and elsewhere, JAMES L. HERTZ, the defendant, and other persons known and unknown, unlawfully, willfully, and knowingly, devised and intended to devise a scheme and artifice to defraud municipal issuers and to obtain money and property from these municipal issuers by means of false and fraudulent pretenses, representations, and promises, namely, a scheme to deprive municipal issuers of money by causing them, with the assistance of multiple brokers and multiple providers, to award investment agreements and other municipal finance contracts to Financial Institution C, among others, at artificially

determined or suppressed rates, and to deprive municipal issuers of the property right to control their assets by causing them to make economic decisions based on false and misleading information, and for the purposes of executing such scheme and artifice, and attempting to do so, did transmit and cause to be transmitted by means of wire, radio, or television communication in interstate commerce, writings, signs, signals, pictures, or sounds including, among others, the following:

36. On or about February 1, 2006, via facsimile transmission from New York, New York to Ohio, Financial Institution C sent the state university identified in Paragraph 32(f) of Count Two of this Information a statement seeking payment of $19,769.95, which payment was artificially inflated because on October 3, 2001, a broker signaled defendant

HERTZ to submit a bid at a higher rate than he was otherwise prepared to bid, as set out in Paragraph 32(f) of Count Two, and Financial Institution C was awarded the derivative contract at that higher rate.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1343

Dated: 11/30/10

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