UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE PATTERSON

UNITED STATES OF AMERICA	:	Criminal No.:
	:	
v.	:	Filed:
	:	
MARTIN KANEFSKY,	:	Violations: 18 U.S.C. § 371
	:	18 U.S.C. § 1343
Defendant.	:	
	:	

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/12/10

INFORMATION

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

1. MARTIN KANEFSKY ("KANEFSKY") is hereby made a defendant on the charge stated below:

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

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Defendant KANEFSKY, a resident of Great Neck, New York, was the owner and chief executive of Broker A, a company located in Great Neck, New York that marketed financial products and services, including services as a broker or advisor to various municipal issuers throughout the United States.

3. 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.

4. Various other persons and entities, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. Co-conspirators included Broker A, Provider A, which was a group of related financial services companies located in New York, New York and owned or controlled by a company headquartered in New York, New York, and Marketer A, who was a representative of Provider A from 2001 until at least 2006, and worked at Provider A's offices located in New York, New York.

II. BACKGROUND

5. 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.

6. The money an issuer raises from a municipal bond offering ("bond proceeds") is typically spent over a period of time rather than immediately, in a single lump sum. The issuer frequently invests some or all of the bond proceeds in an investment product (sometimes referred to as an "investment agreement") that 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 thirty years.

7. Major financial institutions, including banks, investment banks, insurance companies and financial services companies, (collectively "providers"), sell investment agreements through their employees or agents ("marketers").

8. Issuers usually select providers of investment agreements through bona fide competitive bidding procedures that are designed to comply with federal tax laws 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.

9. 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. Broker A was such a broker. Brokers owe a fiduciary duty to issuers that hire them and are required to act for the benefit of the issuer when conducting the competitive bidding process. The broker's fee for conducting a bona fide competitive bidding process is generally paid by the winning provider, which takes into account the cost of the broker's fee when calculating its bid price and discloses that fee to the issuer.

10. 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.

11. Brokers are usually responsible for distributing the bid packages (which contain 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 or issuer's bond counsel to provide written certification that the bidding procedure complied with the relevant Treasury regulations.

12. 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 the interest rate and generally, the agreement is awarded to the provider quoting the highest rate.

13. Many brokers that conduct bona fide competitive bidding for investment agreements subject to the Treasury regulations are also hired by municipal issuers and other quasi-governmental 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. These contracts (collectively "other municipal finance contracts") include, but are not limited to, 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. Other municipal finance contracts do not include underwriting contracts.

III. DESCRIPTION OF THE OFFENSE

14. From at least as early as October 2001 until at least November 2006, the exact dates being unknown to the United States, in the Southern District of New York, and elsewhere, MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider A, and Marketer A, 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 State Code, Section 371.

15. It was a part and an object of the conspiracy that MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider A, and Marketer A, 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 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 at artificially determined or suppressed rates, and to deprive the 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 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.

16. It was further a part and an object of the conspiracy that MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider A, and Marketer A, 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.

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:

17. Through the control and manipulation of bidding for investment agreements and other municipal finance contracts, MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider A, and Marketer A, and others known and unknown, attempted to increase the number and profitability of investment agreements

and other municipal finance contracts awarded to Provider A by the municipal issuers that used Broker A as their broker.

18. For the purposes of effectuating the aforesaid conspiracy MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider A, and Marketer A, and others known and unknown, did those things which they conspired to do, including, among other things:

(a) giving Marketer A information 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;

(b) allowing Provider A to adjust its bid after giving Marketer A information about the prices, price levels, rates, conditions or other information related to competing providers' bids;

(c) soliciting and receiving intentionally losing bids for certain investment agreements or other municipal finance contracts to make it appear that Provider A had competed for those agreements or contracts, when in fact, it had not;

(d) 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;

(e) 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 the Treasury regulations or was otherwise competitive when, in fact, it was not;

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

(g) enabling Provider A 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

(h) 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, thus jeopardizing the tax-exempt status of the underlying bonds.

V. OVERT ACTS

19. In furtherance of the conspiracy and to effect the illegal objects thereof, MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider A, and Marketer A, and others known and unknown, 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 KANEFSKY participated in telephone calls during which he gave Marketer A information about the prices, price levels, or conditions of bids from other providers. Marketer A then used that information to determine Provider A's bids. On some occasions, KANEFSKY told Marketer A that he could lower Provider A's bid and still win the contracts and, at times, suggested the exact amount by or to which the bid could be reduced. Marketer A followed these suggestions. As a result of this bid manipulation, Provider A was awarded and has performed and is scheduled to continue to perform investment agreements and other municipal finance contracts at artificially determined or suppressed 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 KANEFSKY participated in telephone calls during which KANEFSKY asked Marketer A to submit intentionally losing bids for investment agreements and other municipal finance contracts. KANEFSKY provided Marketer A with prices, price levels or other information, which Marketer A used to determine Provider A's bid;

(c) On numerous occasions, defendant KANEFSKY and co-conspirators, including Marketer A, 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 KANEFSKY and co-conspirators, including Marketer A, certified, caused to be certified and forwarded 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;

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

(f) With respect to the award and performance of an investment agreement for a state finance authority, defendant KANEFSKY and co-conspirators committed the following overt acts, among others:

(i) during a telephone conversation on or about April 7, 2005, between Marketer A and defendant KANEFSKY, Marketer A told KANEFSKY the rate that he was prepared to bid, and asked KANEFSKY if his bid was too high. In response, KANEFSKY stated that if Marketer A's bid was too high, he would "shave it a little."

(ii) during another telephone conversation on or about April 7, 2005, between defendant KANEFSKY and Marketer A, KANEFSKY told Marketer A to submit a bid that was lower than the rate Marketer A had previously stated he was

prepared to submit. Marketer A lowered his bid and was awarded the investment agreement;

(iii) beginning in approximately June 30, 2005 Provider A made interest payments via interstate wire transfer to the state financing authority at an artificially determined and suppressed rate, including a payment of approximately $38,770.39 on or about June 30, 2006.

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

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

The United States of America further charges:

20. MARTIN KANEFSKY ("KANEFSKY") is hereby made a defendant on the charge stated below.

21. Paragraphs 2, 3 and 5 through 13 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

VI. THE RELEVANT PARTIES AND ENTITIES

22. Various other persons and entities, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. Co-Conspirators included Provider B, which was a group of separate financial services entities that were owned or controlled by a company headquartered in Fairfield, Connecticut, and Marketers B-1 and B-2, who were representatives of Provider B from 1999 until 2001 and from 2000 until at least November 2006 respectively. Marketers B-1 and B-2 worked at Provider B's offices located in New York, New York.

VII. DESCRIPTION OF THE OFFENSE

23. From at least as early as August 1999 until at least November 2006, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider B and Marketers B-1 and B-2 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.

24. It was a part and an object of the conspiracy that MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider B and Marketers B-1 and B-2 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 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 at artificially determined or suppressed rates, and to deprive the 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 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.

25. It was further a part and an object of the conspiracy that MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider B and Marketers B-1 and B-2 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.

VIII. 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,

26. Through the control and manipulation of bidding for investment agreements and other municipal finance contracts, MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider B and Marketers B-1 and B-2 and others known and unknown, attempted to increase the number and profitability of investment agreements and other municipal finance contracts awarded to Provider B by the municipal issuers that used Broker A as their broker.

27. For the purposes of effectuating the aforesaid conspiracy MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider B and Marketers B-1 and B-2 and others known and unknown, did those things which they

conspired to do, including, among other things:

(a) giving Provider B's marketers information 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;

(b) allowing Provider B to adjust its bids after giving its marketers information about the prices, price levels, rates, conditions or other information related to competing providers' bids;

(c) soliciting and receiving intentionally losing bids for certain investment agreements or other municipal finance contracts to make it appear that Provider B had competed for those agreements or contracts, when in fact, it had not;

(d) 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;

(e) 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;

(f) causing municipal issuers to award investment agreements and other municipal finance contracts to Provider B, which agreements and contracts the municipal

issuers would not have awarded to Provider B if they had true and accurate information regarding the bidding process;

(g) enabling Provider B 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

(h) 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, thus jeopardizing the tax-exempt status of the underlying bonds.

IX. OVERT ACTS

28. In furtherance of the conspiracy and to effect the illegal objects thereof, MARTIN KANEFSKY, the defendant, and co-conspirators, including Broker A, Provider B and Marketers B-1 and B-2 and others known and unknown, 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 KANEFSKY participated in telephone calls during which he gave Marketers B-1 or B-2 information about the prices, price levels, or conditions of bids from other providers. Marketers B-1 and B-2 then used that information to determine Provider B's bids. On some occasions, KANEFSKY told Marketers B-1 and B-2 that they could lower Provider B's bid and still win the contracts

and, at times, suggested the exact amount by or to which the bid could be reduced. Marketers B-1 and B-2 followed these suggestions. As a result of this bid manipulation, Provider B was awarded and has performed and is scheduled to continue to perform investment agreements and other municipal finance contracts at artificially determined or suppressed 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 KANEFSKY participated in telephone calls during which KANEFSKY asked Marketers B-1 and B-2 to submit intentionally losing bids for investment agreements and other municipal finance contracts. KANEFSKY provided Marketers B-1 and B-2 with prices, price levels or other information, which Marketers B-1 and B-2 used to determine Provider B's bid;

(c) On numerous occasions, defendant KANEFSKY and co-conspirators, including Marketers B-1 and B-2, 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 KANEFSKY and co-conspirators, including Marketers B-1 and B-2, certified, caused to be certified and forwarded 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;

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

(f) With respect to the award and performance of an investment \agreement for a state housing finance agency, defendant KANEFSKY and co-conspirators committed the following overt acts, among others:

(i) On or about February 21, 2002, the day of the bid, during a telephone call defendant KANEFSKY stated that Marketer B-2 could lower the rates Provider B was prepared to be and still win the contract;

(ii) On or about February 21, 2002, Marketer B-2 submitted Provider B's bid to the state housing finance agency at artificially determined and suppressed rates in accordance with defendant KANEFSKY's suggestion and Provider B was awarded the contract; and

(iii) Beginning in approximately December 2002, Provider B made and continues to make scheduled interest payments via interstate wire to the state housing finance agency at an artificially determined or suppressed rate, including a payment of $31,029.75 on or about June 29, 2006.

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:

29. MARTIN KANEFSKY ("KANEFSKY") is hereby made a defendant on the charge stated below.

30. Paragraphs 2, 3 and 5 through 13 of Count One are repeated, realleged and incorporated in Count Three of the Information as if fully set forth in this Count.

X. DESCRIPTION OF THE OFFENSE

31. From as early as December 1999 until at least November 2006, in the Southern District of New York and elsewhere, MARTIN KANEFSKY, 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 to award investment agreements and other municipal finance contracts to multiple providers, including Provider A and Provider B and others known and unknown, 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 the following:

32. On or about June 30, 2006, via interstate wire transfer from New York, New York to Minnesota, Provider A made an interest payment of approximately $38,770.39 to a state finance authority, which payment defendant KANEFSKY caused to be artificially determined and suppressed by telling Marketer A to submit a bid at a rate that was lower than the rate Marketer A had previously stated he was prepared to submit. Marketer A lowered his bid and was awarded the investment agreement.

IN VIOLATION OF TITLE 18 UNITED STATES CODE, SECTION 1343

Dated: 8/12/10

CHRISTINE A. VARNEY
Assistant Attorney General

SCOTT D. HAMMOND
Deputy Assistant Attorney General

RALPH T. GIORDANO
Chief, New York Office

MARC SIEGEL
Director of Criminal Enforcement

REBECCA MEIKLEJOHN
STEVEN TUGANDER
KEVIN B. HART
LAURA HEISER
ANTONIA HILL
Attorneys, Antitrust Division
United States Department of Justice
26 Federal Plaza, Room 3630
New York, New York 10278
(212) 264-0654

PREET BHARARA
United States Attorney
Southern District of New York