

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	Criminal No. 04 CR 92
UNITED STATES OF AMERICA	:	Filed: 2/3/04
v.	:	Violations: 15 U.S.C. § 1
MICHELE KOMACK,	:	18 U.S.C. § 371
aka MICHELE NICOSIA,	:	26 U.S.C. § 7206(1)
Defendant.	:	

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INFORMATION

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

1. Michele Komack, aka Michele Nicosia ("Komack"), is hereby made a defendant on the charges stated below. During some of the period covered by this Information, Komack, by marriage, was known as Michele Rios-Nicosia and for business purposes regularly used the name Michele Nicosia.

COUNT ONE -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Komack resided in Scarsdale, New York.

3. Komack was employed by Home Box Office, Inc. ("HBO") in Manhattan. At the time of her termination from HBO in February 1999, she held the title of Director, Print Services in the Print Promotion Department of HBO. In September 1997, Komack was promoted from the position of Manager, Print Services to Director, Print Services.

4. HBO is a pay television service company providing two 24-hour premium television services, HBO and Cinemax, to subscribers principally in the United States by way of cable, direct broadcast satellite and microwave technologies. HBO operates as a division of AOL Time Warner, Inc., one of the world's largest media and entertainment companies, whose businesses include interactive services, cable systems, filmed entertainment, television networks, music, and publishing.

5. "CC-1" was a co-conspirator that was a sales representative for a vendor of commercial printing to HBO located in Moonachie, New Jersey. That vendor purchased the assets of another vendor of commercial printing to HBO in October 1998.

6. "CC-2" was a co-conspirator that was a part owner of a vendor of commercial printing to HBO located in Englewood, New Jersey.

7. "CC-3" was a co-conspirator that was a sales representative for a vendor of commercial printing to HBO located in Philadelphia, Pennsylvania. 8. "CC-4" was a co-conspirator that was a sales representative for a vendor of commercial printing to HBO located in Moonachie, New Jersey.

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

II. BACKGROUND

10. HBO developed advertising and marketing campaigns and produced promotional materials to promote its pay television services. Some of the advertising and promotional materials that HBO developed appeared in printed form, such as media inserts, brochures, and marketing kits. Through its Print Services department, HBO contracted with third parties that

were vendors of commercial printing in order to produce the advertising and promotional materials that appeared in print.

11. HBO had a competitive bidding policy that required the Print Services department to obtain at least three competitive bids before entering into any single contract for goods or services in excess of \$10,000, and at least two competitive bids before entering into any single contract for goods or services in excess of \$1,000, and then award those contracts to the lowest responsible bidder. The purpose of the bidding policy was to ensure that the Print Services department obtained products and services at competitive, fair market prices.

12. Komack was responsible for awarding contracts to, and supervising, commercial printers in accordance with HBO's policies and procedures, including adhering to HBO's competitive bidding policy and reviewing and authorizing their bills for payment.

13. Komack and her co-conspirators attempted to create the appearance that the Print Services department was awarding contracts in compliance with HBO's competitive bidding policy when, in fact, it frequently was not. In actuality, Komack determined in advance which vendors would receive contracts, and then, in order to make it appear that contracts had been awarded based on competitive bids, Komack arranged to receive bids with intentionally high prices (i.e., cover bids) from one or more of the conspirator vendors. Komack sometimes specified what prices should be quoted on these cover bids, and that the bids be backdated.

III. TRADE AND COMMERCE

14. From approximately September 1997 until approximately February 1999, pursuant to contracts that are the subject of this Count, HBO purchased approximately \$18 million of commercial printing from members of the conspiracy. Materials and equipment were transported

across state lines for use in producing some of the aforementioned commercial printing.

15. During the period covered by this Count, certain of the co-conspirators supplied commercial printing to HBO, including printed materials produced pursuant to contracts that are the subject of this Count, which was thereafter shipped across state lines, in a continuous and uninterrupted flow of interstate commerce, in the form of advertising and promotional materials distributed to cable service providers, subscribers, and others located outside the State of New York.

16. The activities of the defendant and certain co-conspirators with respect to the sale of commercial printing to HBO, including the sale of commercial printing pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

IV. DESCRIPTION OF THE OFFENSE

17. From approximately September 1997 until approximately February 1999, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

18. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of commercial printing to HBO.

19. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and

conspired to do, including, among other things:

(a) Defendant designated in advance which vendor would be the low bidder, among the vendors associated with CC-1, CC-2, CC-3 and CC-4, on certain contracts to supply commercial printing to HBO;

(b) Defendant and co-conspirators discussed and agreed on the prices that would be bid on contracts to supply commercial printing to HBO;

(c) Defendant and co-conspirators submitted, or caused to be submitted, intentionally high, noncompetitive bids (i.e., cover bids) on certain contracts to supply commercial printing to HBO, with the understanding that certain of these companies would be allowed to submit bids for, and under certain circumstances allocated contracts to supply, commercial printing in connection with other HBO contracts. The intentionally high bids were submitted in order to make it appear to HBO that there had been competition for its contracts when, in fact, there had not; and

(d) Defendant received substantial cash, goods, and services from CC-1, CC-2, CC-3, and CC-4, and other owners, employees, or agents of the vendors those individuals represented, for her role in allocating contracts to those vendors.

20. As a result of the aforementioned conspiracy, HBO paid more for the commercial printing it purchased pursuant to the contracts that are the subject of this Count than it would have had the contracts instead been awarded pursuant to truly competitive bidding where free and open competition among vendors existed, and had there been no corrupt kickback relationship between Komack and CC-1, CC-2, CC-3, and CC-4, and other owners, employees, or agents of the vendors those individuals represented.

V. JURISDICTION AND VENUE

21. 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)

VI. THE RELEVANT PARTIES AND ENTITIES

The United States of America further charges:

22. Paragraphs 1 through 12 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

VII. DESCRIPTION OF THE OFFENSE

23. From approximately 1993 until approximately March 2000, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, Komack and co-conspirators 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 1952(a)(3), 1341, and 1346, and Title 26, United States Code, Section 7206(1), in violation of Title 18, United States Code, Section 371.

24. It was a part and object of the conspiracy that Komack, and others known and unknown, unlawfully, willfully, and knowingly would and did travel in interstate commerce and use the mails and facilities in interstate commerce, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of unlawful activity, specifically, commercial bribery in violation of New York State Penal Law Sections

180.00, 180.03, 180.05, and 180.08, and, thereafter, would and did perform and attempt to perform an act to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of such unlawful activity, in violation of Title 18, United States Code, Section 1952(a)(3)(A).

25. It was further a part and an object of the conspiracy that Komack, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud HBO, and for obtaining money and property from HBO by means of false and fraudulent pretenses, representations, and promises, and to deprive HBO of its intangible right of honest services of Komack, 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 or 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, or 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.

26. It was further a part and object of the conspiracy that Komack willfully would and did make and subscribe U.S. Individual Income Tax Returns, Forms 1040, on behalf of herself, or herself and her spouse, for the calendar years 1993 through 1999, which contained and were verified by Komack's written declaration that the returns were made under penalties of perjury, and which were filed with the Internal Revenue Service, and which income tax returns she did not believe to be true were true and correct as to every material matter, in violation of Title 26,

United States Code, Section 7206(1).

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:

27. During all or some of the period from approximately 1993 until approximately February 1999, CC-1, CC-2, CC-3, and CC-4, and other owners, employees, or agents of the vendors those individuals represented, (collectively “the Vendors”) separately paid Komack kickbacks in cash, goods and services totaling approximately \$439,223. Each of the Vendors paid kickbacks in order to ensure that Komack would allocate to it a portion of HBO’s total purchases of commercial printing, and that Komack would not seek alternative vendors of commercial printing. By paying the kickbacks, the Vendors were able to maintain non-competitive prices because they did not face open and honest competition from other vendors. As a result, HBO was deprived of its right to the honest services of Komack and paid higher prices for the commercial printing it purchased than it would have if Komack had aggressively and honestly solicited competitive prices from other vendors. In addition, because of the corrupt relationships between Komack and the Vendors and the bid-rigging and allocation scheme, other legitimate commercial printing vendors were foreclosed from selling to HBO.

28. Komack did not report her receipt of any portion of the value of the cash, goods and services that she received from the Vendors on her U.S. Individual Income Tax Returns. As a result, those tax returns substantially underreported the taxable income and the correct amount of tax due and owing from Komack.

29. At no time did Komack or her co-conspirators disclose her receipt of the kickbacks

to her employer, HBO. All such payments were made without the knowledge or approval of HBO, and in violation of Komack's fiduciary duty to HBO.

IX. 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:

30. On numerous occasions between 1993 and February 1999, pursuant to the conspiracy charged, Komack and her co-conspirators caused HBO to issue purchase orders, and caused the Vendors to issue invoices, relating to the sale of commercial printing to HBO. Some of these invoices and purchase orders were sent through the United States mails. Many of these invoices were sent to HBO's offices in Manhattan and many of these purchase orders were sent from its offices in Manhattan.

31. On numerous occasions between 1993 and February 1999, co-conspirators who were the Vendors paid kickbacks in the form of cash, goods, and services to Komack. Some of these payments were made in Manhattan.

(a) In approximately August 1993, the vendor represented by CC-2 established a checking account (the "Account") which was funded for the purpose of providing funds for Komack's personal benefit. Komack wrote checks totaling approximately \$238,124 on the Account from approximately August 1993 until the day before her termination on February 9, 1999 from HBO. The checks written by Komack, which were the only checks written on the Account, were for Komack's personal and family expenses, such as automobile, mortgage, and credit card payments. The Account was closed by the vendor in March 1999;

(b) In approximately 1997, at Komack's request, CC-2 gave Komack

approximately \$30,000 so that she could purchase her ex-husband's share of their home in Westchester, New York;

(c) In approximately January, February, March, and May of 1997, at Komack's request, CC-1 wrote checks totaling \$24,000 to a brokerage account in Komack's name;

(d) In approximately March 1997, and June, August, and October 1998, at Komack's request, CC-1 wrote bank checks totaling \$20,000 to The Plaza Hotel, located in Manhattan, to help pay for Komack's wedding;

(e) On numerous occasions between 1996 and 1998, CC-3 paid for vacations for Komack and her family and, in addition, permitted Komack to charge to his credit card approximately \$10,000 annually for personal items such as clothing. In total, these vacations and charges amounted to approximately \$45,000;

(f) On numerous occasions in 1996 through 1999, at various locations in Manhattan, Komack received substantial amounts of cash from CC-3 to pay for her clothing purchases and a car lease. These payments totaled approximately \$88,000;

(g) On approximately May 14, 1998, CC-4 paid \$299 for a pair of Gucci shoes that Komack had selected and, on approximately February 12, 1998, he purchased a \$1,500 Pottery Barn gift certificate for Komack;

(h) On approximately January 4, 1997, at Komack's request, CC-4 purchased a \$3,900 large screen television for Komack;

(i) On an occasion in 1998, CC-4 gave Komack \$8,000 in cash to help pay for Komack's wedding;

(j) On approximately April 15, 1994, Komack filed a false and fraudulent U.S.

Individual Income Tax Return, Form 1040, on behalf of herself and her spouse for 1993, wherein she failed to report accurately their true personal income;

(k) On approximately April 10, 1995, Komack filed a false and fraudulent U.S.

Individual Income Tax Return, Form 1040, on behalf of herself and her spouse for 1994, wherein she failed to report accurately their true personal income;

(l) On approximately April 15, 1996, Komack filed a false and fraudulent U.S.

Individual Income Tax Return, Form 1040, on behalf of herself and her spouse for 1995, wherein she failed to report accurately their true personal income;

(m) On approximately April 15, 1997, Komack filed a false and fraudulent U.S.

Individual Income Tax Return, Form 1040, on behalf of herself and her spouse for 1996, wherein she failed to report accurately their true personal income;

(n) On approximately April 13, 1998, Komack filed a false and fraudulent U.S.

Individual Income Tax Return, Form 1040, on behalf of herself for 1997, wherein she failed to report accurately her true personal income;

(o) On approximately April 12, 1999, Komack filed a false and fraudulent U.S.

Individual Income Tax Return, Form 1040, on behalf of herself and her spouse for 1998, wherein she failed to report accurately their true personal income; and

(p) On approximately March 15, 2000, Komack filed a false and fraudulent U.S.

Individual Income Tax Return, Form 1040, on behalf of herself and her spouse for 1999, wherein she failed to report accurately their true personal income.

COUNT THREE-- FRAUD AND FALSE STATEMENTS

(26 U.S.C. § 7206(1))

The United States of America further charges:

32. Paragraphs 1 through 4 of Count One and Paragraphs 27 and 28 of Count Two of this Information are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.

33. On or about the filing dates set forth below, in the Southern District of New York and elsewhere, Komack, unlawfully, knowingly and willfully, did make and subscribe U.S. Individual Income Tax Returns, Forms 1040, on behalf of herself, or herself and her spouse, for the tax years set forth below, which contained and were verified by Komack's written declaration that the returns were made under penalties of perjury, and which were filed with the Internal Revenue Service, and which income tax returns she did not believe to be true and correct as to every material matter, in that the income tax returns reported taxable income in the amounts set forth below, whereas Komack then and there well knew and believed that her, or their, income was substantially in excess of the amounts reported because the income tax returns failed to report as

income kickbacks she had received from the Vendors as set forth in Paragraph 27 of this

Information:

<u>Filing Date</u>	<u>Year</u>	<u>Reported Taxable Income</u>	<u>Taxes</u>	<u>Corrected Taxable Income</u>	<u>Corrected Taxes</u>
4/13/98	1997	\$ 46,312	\$ 8,675	\$184,893	\$52,794
4/12/99	1998	\$144,218	\$36,654	\$295,014	\$90,820
3/15/00	1999	\$114,170	\$30,675	\$119,835	\$32,431

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7206(1)

Dated:

/s/

JAMES M. GRIFFIN
Acting Assistant Attorney General

/s/

RALPH T. GIORDANO
Chief, New York Office

/s/

SCOTT D. HAMMOND
Director of Criminal Enforcement

/s/

REBECCA MEIKLEJOHN

Antitrust Division
U.S. Department of Justice

/s/

DOUGLAS M. TWEEN

/s/

DAVID N. KELLEY
United States Attorney
Southern District of New York

/s/

ELIZABETH PREWITT

Attorneys, Antitrust Division
U.S. Department of Justice
26 Federal Plaza, Room 3630
New York, New York 10278
(212) 264-0654