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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA : Criminal No.

: Filed: 11 CRIM 095

v. : Violation: 18 U.S.C. § 371

ANDREW MARTINGANO and
AMERICAN PIPE BENDING AND :
FABRICATION CO., INC.,

Defendants. :

JUDGE BATTS

INFORMATION

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

1. ANDREW MARTINGANO ("MARTINGANO") and AMERICAN PIPE BENDING AND FABRICATION CO., INC. ("AMERICAN PIPE") are hereby made defendants on the charge stated below.

CONSPIRACY
(18 U.S.C. § 371)

I. RELEVANT PARTIES AND ENTITIES

During the period covered by this Information:

2. Defendant MARTINGANO resided in Staten Island, New York and was a co-owner and President of defendant AMERICAN PIPE.

3. Defendant AMERICAN PIPE was an industrial pipe supply company located in Edison, New Jersey that provided industrial pipes, bends and sleeves as a contractor to Consolidated Edison of New York ("Con Edison").

4. James M. Woodason ("Woodason") was a co-conspirator who was a Department Manager in the Purchasing Department in Con Edison's headquarters in Manhattan, New York. Woodason was responsible for purchasing millions of dollars in goods and services, and managing inventory on behalf of Con Edison. During the relevant period, Woodason had final approval authority for purchases up to $2.5 million from any one source.

5. "CC-2" was a co-conspirator and co-owner of defendant AMERICAN PIPE.

6. CW was an independent sales broker specializing in selling industrial pipe materials such as steel pipes, bends and sleeves to customers such as Con Edison throughout the relevant period.

7. Whenever in this Information 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 representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

8. 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

9. Con Edison, which is headquartered in Manhattan, is a regulated utility that provides electric and natural gas service to areas throughout New York City and Westchester County. It is a subsidiary of Consolidated Edison, Inc., which is the nation's largest investor-owned energy company. Con Edison provides electric service to approximately 3.2 million customers and gas service to approximately 1.1 million customers in New York City and Westchester County. Con Edison received federal funding in excess of $10,000 in each year between 2003 through 2010.

10. Con Edison had a competitive bidding policy that required its purchasing departments and their employees to obtain competitive bids in the procurement of materials and supplies for Con Edison. The purpose of the bidding policy was to ensure that Con Edison obtained products and services at competitive, fair market prices.

11. Con Edison maintained a "Code of Ethics" that stated that Con Edison employees could not engage in conduct that created a conflict of interest, such as when the employee and/or a member of his/her family "receive[d] improper personal benefits as a result of [the employee's] position with Con Edison." Additionally, Con Edison had a "Standard of Business Conduct" that stated that "[n]either employees nor members of their families or households may accept or give gifts or benefits ... when they are offered on the basis of a current or potential business relationship with Con Edison." Both documents

created an ongoing obligation for Woodason to disclose any compensation from any supplier to Con Edison.

12. As a Department Manager of Purchasing at Con Edison, Woodason was responsible for purchasing millions of dollars in goods and services annually for Con Edison, all in accordance with Con Edison's policies and procedures, including adhering to Con Edison's competitive bidding policy, Code of Ethics and Standard of Business Conduct.

III. DESCRIPTION OF THE OFFENSE

13. From approximately January 2009 to approximately August 2010, within the Southern District of New York, and elsewhere, defendant MARTINGANO, defendant AMERICAN PIPE and their co-conspirators, 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 666(a)(2), 1343 and 1346, all in violation of Title 18, United States Code, Section 371.

14. It was a part and an object of the conspiracy that defendant MARTINGANO, defendant AMERICAN PIPE, and their co-conspirators, and others known and unknown, unlawfully, willfully and knowingly did combine, conspire, confederate, and agree, together and with each other, to corruptly give, offer, and agree to give a thing of value to Woodason, with the intent to influence and reward Woodason, an agent of an organization, Con Edison, that received benefitsin excess of $10,000 in any

one-year period under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, and other form of Federal assistance, with the intent to influence and reward Woodason, in connection with any business, transaction, and series of transactions of Con Edison involving anything of value of $5,000 or more, in violation of Title 18, United States Code, Section 666(a)(2); and

15. It was a part and an object of the conspiracy that defendant MARTINGANO, defendant AMERICAN PIPE, and their co-conspirators, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud Con Edison, including a scheme to deprive Con Edison of its right to the honest and faithful services of Woodason through bribery and the concealment of material information, and for obtaining money and property from Con Edison by means of false and fraudulent pretenses, representations, and promises, 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 communication in interstate commerce, writings, signs, signals and sounds, in violation of Title 18, United States Code, Sections 1343 and 1346.

IV. PURPOSE OF THE SCHEME

16. The purpose of the scheme and artifice was for defendants MARTINGANO and AMERICAN PIPE to enrich themselves by secretly obtaining favorable official action for AMERICAN PIPE through corrupt means and for Woodason to secretly use his official position to enrich himself by soliciting and accepting gifts, payments, and other

things of value from MARTINGANO and AMERICAN PIPE in exchange for official action.

V. 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. During some or all of the period between approximately January 2009 to approximately August 2010, defendant MARTINGANO, defendant AMERICAN PIPE, and their co-conspirators, and others known and unknown, agreed to give approximately $510,000 in cash bribes to Woodason in exchange for which Woodason steered Con Edison industrial pipe supply contracts to AMERICAN PIPE.

18. Woodason steered a three-year Con Edison industrial pipe supply contract to defendant AMERICAN PIPE by secretly providing defendant MARTINGANO with confidential competitor bid information through CW, which MARTINGANO used in reformulating defendant AMERICAN PIPE's bid. As a result, Con Edison did not receive competitive bid prices from AMERICAN PIPE since AMERICAN PIPE submitted its final bid based on its knowledge of the lowest bidder's prices, rather than based on its own independent competitive bid pricing which could have contained lower prices. Con Edison therefore paid higher prices for the materials it purchased than it would have if Woodason had aggressively and honestly solicited competitive prices from other vendors.

19. Woodason steered the three-year industrial pipe contract to defendant

AMERICAN PIPE on or about September 18, 2009, under two purchase orders, with a combined value of $16.3 million.

20. As part of the conspiracy and in exchange for bribe payments from defendants MARTINGANO and AMERICAN PIPE, Woodason also steered a smaller industrial pipe contract to AMERICAN PIPE in or about June 2010 that had a value of approximately $2 million. Woodason disqualified the lowest bidder under false pretenses in order to award this contract to AMERICAN PIPE.

21. In exchange for Woodason's efforts to provide favorable official action by steering these industrial pipe supply contracts to defendant AMERICAN PIPE, defendant MARTINGANO agreed to provide Woodason with a monthly cash bribe payment of approximately 2.5% of the orders shipped to and paid for by Con Edison in that month. MARTINGANO, Woodason and others agreed to pay Woodason a minimum bribe payment of approximately $10,000 each month that would increase up to $15,000 per month if annual sales were on target to meet the anticipated annual contract value.

22. Defendant MARTINGANO provided the cash bribe payments to Woodason, at first directly, and then through CW, at monthly dinner meetings between Woodason and CW. Each month, MARTINGANO calculated the cash bribe due to Woodason based on the agreed upon payout based on Con Edison orders shipped in the previous month. MARTINGANO called CW to confirm the amount due and confirm that the cash was ready to be delivered to Woodason. CW would then call Woodason to arrange a dinner meeting. The morning of the dinner meeting, MARTINGANO met CW at AMERICAN

PIPE's office in New Jersey and provided the cash payment to CW for Woodason. That evening at dinner, CW provided, and Woodason accepted, the envelope containing the cash bribe payment that was provided by MARTINGANO.

23. Woodason took steps to hide, conceal, and cover up his activity and the nature and scope of his dealings with MARTINGANO and AMERICAN PIPE, including meeting CW and MARTINGANO after business hours in the parking lot of a restaurant located in New Jersey to accept envelopes containing cash bribe payments. At no time did defendant MARTINGANO, defendant AMERICAN PIPE, or their co-conspirators disclose to Con Edison Woodason's receipt of the bribe payments from MARTINGANO and AMERICAN PIPE, or that Woodason was steering contracts to AMERICAN PIPE. All such payments were made without the knowledge or approval of Con Edison, and in violation of Woodason's duty of loyalty to Con Edison and his obligations under Con Edison's Code of Ethics and Standard of Business Conduct.

24. As a result of this scheme, Con Edison was deprived of its right to the honest and faithful services of defendant WOODASON and paid higher prices for the materials it purchased than it would have if WOODASON had aggressively and honestly solicited competitive prices from other vendors.

25. When Woodason was arrested on August 5, 2010, he had already received approximately $45,000 of the $510,000 in anticipated cash bribe payments from defendants MARTINGANO and AMERICAN PIPE.

V. OVERT ACTS

26. In furtherance of the conspiracy and to effect the illegal objects thereof, defendant MARTINGANO, defendant AMERICAN PIPE, and their co-conspirators, 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 between approximately January 2009 until approximately August 2010, defendant MARTINGANO met and engaged in telephone conversations with CW wherein they arranged to pay Woodason a cash bribe in return for Woodason's role in awarding industrial pipe contracts to AMERICAN PIPE;

(b) On or about September 18, 2009, Woodason caused Con Edison to generate two purchase orders to be issued to defendant AMERICAN PIPE, once authorization to purchase had been approved by Con Edison, with a total combined value of $16,300,000;

(c) On or about October 19, 2009, Woodason authored an internal Con Edison document titled "Request For Authorization to Purchase," wherein Woodason recommended that defendant AMERICAN PIPE be awarded the pipe supply contract with a stated value of $15.7 million;

(d) On November 5, 2009, CW called from CW's cell phone to the business phone number of defendant AMERICAN PIPE and spoke to both defendant MARTINGANO and CC-2. In that conversation, CW pointed out that AMERICAN PIPE would be receiving 7.5 percent in profit and giving 2.5 percent in cash to Woodason, to

which MARTINGANO agreed;

(e) On January 11, 2010, defendant MARTINGANO met with Woodason and CW at Benito Restaurant in New Jersey to discuss the scheme and provide Woodason a bribe payment. At that meeting, MARTINGANO gave Woodason a cash bribe payment of $7,000;

(f) On or about January 12, 2010, defendant MARTINGANO and CC-2 both signed two Con Edison purchase orders issued to defendant AMERICAN PIPE and dated September 18, 2009, with a total combined value of $16,300,000, and faxed them from AMERICAN PIPE's offices in New Jersey to Con Edison in Manhattan;

(g) On April 22, 2010, CW, on behalf of defendants MARTINGANO and AMERICAN PIPE, met with Woodason at Benito Restaurant and provided Woodason with a cash bribe payment of $10,000;

(h) On May 25, 2010, CW, on behalf of defendants MARTINGANO and AMERICAN PIPE, met with Woodason at Benito Restaurant and provided Woodason with a cash bribe payment of $8,000; and

(i) On August 4, 2010, CW, on behalf of defendants MARTINGANO and AMERICAN PIPE, met with Woodason and provided Woodason with a cash bribe payment of $20,000.

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

Dated: 02/01/2011

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