

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	Criminal No.: 98 CR 416
v.	:	Filed: 5/7/98
BRIAN X. McCORMACK,	:	Violations: 18 U.S.C. § 371
Defendant.	:	26 U.S.C. § 7201

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INFORMATION

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

COUNT ONE

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

1. Brian X. McCormack is hereby made a defendant on the charge stated below.

DEFENDANT AND CO-CONSPIRATORS

2. Brian X. McCormack ("McCormack") is a resident of Vernon, New Jersey. During the period covered by this Information, McCormack was employed as a purchasing agent by Warner-Lambert Co. ("Warner-Lambert") at its headquarters in Morris Plains, New Jersey. McCormack's duties and responsibilities included awarding contracts for display materials in accordance with Warner-Lambert's written purchasing policy and, in carrying out that responsibility, selecting potential suppliers of display materials to bid for

contracts to be awarded by Warner-Lambert.

3. 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. They include an executive, identified herein as "S", of a supplier of display materials located in Manhattan.

DESCRIPTION OF THE OFFENSE

4. From at least as early as 1989 and continuing through the end of 1993, the exact dates being unknown to the United States, the defendant McCormack and co-conspirators did unlawfully, willfully and knowingly conspire, combine, confederate and agree to devise a scheme and artifice to defraud and obtain money from Warner-Lambert, and to deprive Warner-Lambert of the intangible right of McCormack's honest services, by means of false and fraudulent pretenses, representations and promises, which scheme and artifice were executed by and through the use of the United States mails, in violation of 18 U.S.C. § 1341 and § 1346, all in violation of 18 U.S.C. § 371.

GOALS OF THE CONSPIRACY

5. The scheme and artifice to defraud and obtain money from Warner-Lambert resulted in the payment of substantial amounts of cash ("kickbacks") to McCormack by S without Warner-Lambert's knowledge. The prices S's company charged Warner-Lambert for the display contracts awarded to S's company by McCormack were increased as a result of the scheme. The scheme also resulted in Warner-Lambert's being deprived of the intangible right to have its employee

McCormack perform his job in an honest fashion.

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:

6. Warner-Lambert's purchasing policy generally required that the company's purchasing agents obtain at least three written quotations for the purchase of all materials and services in excess of \$50,000 per transaction and, for purchases under \$50,000, three written or verbal quotations. The policy also required the company's purchasing agents to maintain supporting documentation to demonstrate their compliance with the policy. In addition, the policy prohibited the company's purchasing agents from accepting any gifts or consideration of a value in excess of \$25 from suppliers.

7. From at least as early as 1989 through the end of 1993, defendant McCormack caused Warner-Lambert to enter into hundreds of contracts worth a total of at least \$20 million with a company of which S, a co-conspirator, was the president and owner. During this time, McCormack received as a kickback from S in cash a percentage, first 3% and later 4%, of the total value of every contract that S's company received from Warner-Lambert. In addition, during this time, McCormack failed to invite other companies to bid for the contracts he caused to be awarded to S's company and failed to maintain records

justifying why competitive bids had not been solicited for those contracts.

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:

8. On numerous occasions from 1989 through the end of 1993, McCormack met with S at S's office in Manhattan to receive substantial amounts of cash. During the last year of the conspiracy, McCormack received cash from S approximately once every month and was paid as much as \$20,000 in cash at one time.

9. From 1989 through 1993, S added the amounts he anticipated he would be paying McCormack to the prices his company quoted and billed to Warner-Lambert. On numerous occasions between 1989 and 1993, S caused quotations and invoices reflecting prices that were inflated by the amount of the kickback he intended to pay McCormack to be sent via United States Mail from his offices in Manhattan to Warner-Lambert in New Jersey. McCormack authorized invoices from S's company for payment, and Warner-Lambert then sent via United States Mail its checks, issued in payment of these invoices, from New Jersey to the offices of S's company in Manhattan.

DEFINITION

10. "Display materials" refers to the manufacture, assembly or packaging of any point-of-purchase display materials, including, but not limited to, display stands, posters, banners, counter cards or sell sheets, used for the advertising or promotion of consumer goods, primarily in retail stores.

JURISDICTION AND VENUE

11. The aforesaid 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 18, UNITED STATES CODE, SECTION 371.

COUNT TWO
INCOME TAX EVASION
(26 U.S.C. § 7201)

The United States of America further charges:

12. That on or about each of the filing dates set forth below, in the District of New Jersey, Brian X. McCormack ("McCormack"), a resident of Vernon, New Jersey and a purchasing agent at Warner-Lambert Co. from at least as early as the mid-1980s until the end of 1994, did unlawfully, willfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for each of the calendar years 1989 through 1993, by filing and causing to be filed with the Internal Revenue Service Center

false and fraudulent U.S. Individual Income Tax Returns, Forms 1040, wherein he and his wife failed to report as income a total of approximately \$650,000 in cash he had received during those years in Manhattan from S, an executive for a supplier of display materials to Warner-Lambert Co., and wherein he and his wife stated that their taxable income was for the sums set forth below, and that the amount of taxes due and owing thereon was for the sums set forth below; whereas, as he then and there well knew and believed, their true taxable income for those calendar years was substantially in excess of the specific sums reported, upon which additional taxable income there was owing to the United States of America substantial additional income tax:

<u>YEAR</u>	<u>FILING DATE</u>	<u>REPORTED TAXABLE INCOME</u>	<u>REPORTED TAXES OWED</u>
1989	5/30/90		\$30,909 \$4,639
1990	4/15/91		\$37,999 \$6,415
1991	4/15/92		\$44,037 \$7,907
1992	4/15/93		\$45,390 \$8,051
1993	4/15/94		\$50,901 \$9,462

IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7201.

_____/s/_____
 JOEL I. KLEIN
 Assistant Attorney General

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

_____/s/_____
GARY R. SPRATLING
Deputy Assistant Attorney General

_____/s/_____
REBECCA MEIKLEJOHN

_____/s/_____
JOHN T. ORR
Director of Criminal Enforcement

_____/s/_____
STEVEN TUGANDER

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_____/s/_____
MARY JO WHITE
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