UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	Criminal No. 06 crim. 920
UNITED STATES OF AMERICA	:	Filed: 10/6/2006
v.	:	Violation: 18 U.S.C. § 371
TIMOTHY O'LEARY	:	
Defendant.	:	

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INFORMATION

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

1. Timothy O'Leary ("O'Leary") is hereby made a defendant on the charge stated below

CONSPIRACY
(18 U.S.C. § 371)

I. RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. O'Leary was a resident of Wantagh, New York. He was a vice president of Broadcom Voice & Data, Inc. ("Broadcom"), and was primarily responsible for the management of the company.

3. Broadcom was a company located in Manhattan, New York that supplied telecommunications equipment and services to Mount Sinai School of Medicine and The Mount Sinai Hospital (collectively, "Mount Sinai"), a teaching hospital located in New York, New York.

4. "CC-1" was a co-conspirator who was employed by Mount Sinai as a Information Technology Manager in Mount Sinai's Information Technology department from August 2000 until July 2003. In July 2003, CC-1 became an employee of International Business Machines, Corp. ("IBM") but maintained the same job title and performed the same job within the same department at Mount Sinai, pursuant to a contract between IBM and Mount Sinai. In April 2001, CC-1 opened a bank account under the name of a consulting company that was primarily used to conceal his receipt of illegal payments from Broadcom and another vendor to Mount Sinai.

5. "CC-2" was a co-conspirator who was employed by Mount Sinai as a Network Management Professional in Mount Sinai's Information Technology department from October 2000 until July 2003. In July 2003, CC-2 became an employee of IBM but maintained the same job title and performed the same job within the same department at Mount Sinai, pursuant to a contract between IBM and Mount Sinai. His job title changed to Technical Services Professional in October 2004. In May 2003, CC-2 opened a bank account under the name of a consulting company that was primarily used to conceal his receipt of illegal payments from Broadcom and another vendor to Mount Sinai. As a Network Management Professional, and later as a Technical Services Professional, CC-2 was supervised by CC-1 but was also separately responsible for ensuring that contracts were awarded in accordance with Mount Sinai's policies and procedures and reviewing and authorizing invoices for payment.

6. "CC-3" and “CC-4" were co-conspirators who jointly owned a company located in Great Neck, New York that supplied telecommunications equipment and services to Mount Sinai (“Vendor 2”).

7. 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.

8. 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 other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

II. BACKGROUND

9. The Mount Sinai Hospital is a 1,171-bed tertiary-care teaching hospital with a medical staff of nearly 1,800, serving the New York metropolitan area. Mount Sinai School of Medicine performs clinical and basic-science research, in addition to its medical education function. Jointly, both entities operate an Information Technology department located within the Mount Sinai Medical Center on Madison Avenue.

10. Mount Sinai’s Information Technology department served the various departments and facilities within Mount Sinai by assisting them in creating and maintaining their telecommunications infrastructures. This included selecting and contracting with third parties that were vendors of telecommunications equipment and

services in order to install equipment such as voice and data cables in Mount Sinai facilities.

11. Mount Sinai maintained a written "conflict of interest" policy prohibiting employees and contractors, including CC-1 and CC-2, from accepting gifts (other than of token value) from vendors or from entering into business arrangements with vendors.

12. Mount Sinai also had a competitive bidding policy that required the Information Technology department to obtain at least three competitive bids before entering into any single contract for goods or services in excess of $10,000, and then award those contracts to the lowest responsible bidder. The purpose of the bidding policy was to ensure that the Information Technology department obtained products and services at competitive, fair market prices.

13. As the Information Technology Manager, CC-1 was responsible for obtaining bids from vendors of telecommunications equipment and services before contracts were awarded in accordance with Mount Sinai's policies and procedures. In addition, CC-1 was responsible for supervising these vendors and reviewing and authorizing their invoices for payment. As a manager, CC-1 sometimes delegated these tasks to individuals he supervised, including CC-2.

14. Broadcom, CC-1, CC-2 and co-conspirators attempted to create the appearance that the Information Technology department was awarding contracts in compliance with Mount Sinai's competitive bidding policy when, in fact, it frequently was not. In actuality, CC-1 determined in advance which contracts to allocate to Broadcom or

Vendor 2, and then, in order to make it appear that contracts had been awarded based on competitive bids, CC-1 and CC-2 at times arranged to receive bids with intentionally high prices (i.e., cover bids) from either Broadcom or Vendor 2. CC-1 and CC-2 sometimes specified what prices should be quoted on these cover bids, and that the bids be backdated. On other occasions, CC-1 and CC-2 allocated contracts without obtaining multiple bids or irrespective of whether the vendor to which the contract was allocated was the lowest responsible bidder. At the time, CC-1 and CC-2 were receiving payments from Broadcom and Vendor 2.

15. At no time did O'Leary or his co-conspirators disclose to Mount Sinai CC-1's or CC-2's receipt of the payments that O'Leary caused Broadcom to make to these individuals. The payments were made to CC-1 and CC-2 without the knowledge or approval of Mount Sinai and were in violation of CC-1's and CC-2's duty of loyalty to Mount Sinai.

III. DESCRIPTION OF THE OFFENSE

16. From approximately January 2001 until approximately September 2003, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, O'Leary, CC-1, CC-2, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to defraud the United States or an agency thereof, namely the Internal Revenue Service, and to commit offenses against the United States of America, to wit, to violate Title 18,

United States Code, Sections 1952(a)(3)(A), 1341, and 1346, and Title 26, United States Code, Section 7206(1), in violation of Title 18, United States Code, Section 371.

17. It was a part and object of the conspiracy that O'Leary, CC-1, CC-2, 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).

18. It was further a part and an object of the conspiracy that O'Leary CC-1, CC-2, and others known and unknown, unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and artifice to defraud Mount Sinai, including a scheme to deprive Mount Sinai of its intangible right of honest services of its employees and agents, and for obtaining money and property from Mount Sinai by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice to defraud, and attempting to do so, would and did place in post offices and authorized depositories for mail matter, and would and did deposit, and cause to be deposited, matters and things to be sent and delivered by the Postal Service and by

private and commercial interstate carriers, and would and did take and receive such matters and things therefrom, and would and did cause such matters and things to be delivered by mail and by such carriers according to the directions thereon, and at the places at which they were directed to be delivered by the persons to whom they were addressed, in violation of Title 18, United States Code, Sections 1341 and 1346.

19. It was further a part and object of the conspiracy that O'Leary, CC-1, CC-2, and others known and unknown, did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree to defraud the United States of America and the Internal Revenue Service ("IRS") by impeding, impairing, defeating, and obstructing the lawful governmental functions of the IRS in the ascertainment, evaluation, assessment, and collection of federal income taxes, and to commit offenses against the United States, to wit, to make and subscribe U.S. Corporate Income Tax Returns, which income tax returns were not true and correct as to every material matter, in violation of Title 26, United States Code, Section 7206(1).

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:

20. During all or some of the period from approximately January 2001 until September 2003, O'Leary caused Broadcom to make payments totaling approximately $152,993 to CC-1 and CC-2. O'Leary caused Broadcom to make these payments in order

to ensure that CC-1 and CC-2 would allocate to Broadcom a portion of Mount Sinai's total purchases of telecommunications equipment and services, and that they would not seek alternative vendors of telecommunications equipment and services for these contracts. By making the payments, Broadcom was able to maintain non-competitive prices because it did not face open and honest competition from other vendors. Also, O'Leary and CC-1 and CC-2 fraudulently inflated Broadcom invoices and caused Mount Sinai to pay Broadcom for those fraudulently inflated invoices. As a result, Mount Sinai was deprived of its right to the honest services of CC-1 and CC-2 and paid higher prices for the telecommunications equipment and services it purchased than it would have if CC-1 and CC-2 had aggressively and honestly solicited competitive prices from other vendors, and had not approved fraudulently inflated invoices for payment.

21. The amounts of the payments to CC-1 were typically calculated as a percentage of sales made by Broadcom to Mount Sinai. The Broadcom checks to CC-1 totaled $137,993 and were made payable to CC-1's consulting company.

22. On approximately October 6, 2003, O'Leary caused Broadcom to issue a $15,000 check to CC-2's consulting company. The $15,000 payment to CC-2 was for CC-2's efforts in allocating work to Broadcom and for CC-2's role in causing Mount Sinai to pay inflated Broadcom invoices.

23. O'Leary arranged for Broadcom to receive fraudulent invoices from CC-1's consulting company purporting to charge Broadcom for legitimate consulting services in the amounts of the kickback payments. O'Leary caused Broadcom to use those fraudulent

invoices to justify deducting the amounts of the kickback payments as legitimate business expenses on its corporate income tax returns.

V. OVERT ACTS

24. In furtherance of the conspiracy and to effect the illegal objects thereof, the defendant, 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 2001 and September 2003, pursuant to the conspiracy charged, O'Leary and his co-conspirators caused Mount Sinai to issue purchase orders, and caused Broadcom to issue invoices, relating to the sale of telecommunications equipment and services to Mount Sinai. Some of these invoices and purchase orders were sent through the United States mails. Many of these invoices were sent from Broadcom to Mount Sinai's offices in Manhattan and many these purchase orders were sent from Mount Sinai's offices Manhattan to Broadcom;

(b) On numerous occasions between approximately January 2001 and September 2003, pursuant to the charged conspiracy, O'Leary and his co-conspirators caused Mount Sinai to issue checks in payment of these invoices to Broadcom. Some of these invoices and checks were sent through the United States mails; and

(c) On numerous occasions between approximately January 2001 and September 2003, pursuant to the conspiracy charged, CC-1 generated fraudulent invoices from his company

purporting to charge Broadcom for legitimate consulting services in the amounts of the kickback payments and gave those invoices to Broadcom.

Dated: 9/29/2006

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