

JUDGE McKENNA

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

10 CRIM 120

UNITED STATES OF AMERICA

Plaintiff,

v.

DAVID PORATH and
ANDRZEJ GOSEK

Defendants.

00-CR-0000

Filed:

Violations:
15 U.S.C. § 1
18 U.S.C. §§ 371 and 2
26 U.S.C. §7206(1)

JUDGE KOENIG

INDICTMENT

The Grand Jury charges:

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

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1. DAVID PORATH is hereby indicted and made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Defendant DAVID PORATH (hereinafter "PORATH") resided in New York, New York, and was the sole owner and employee of a company (hereinafter "PORATH's company") engaged in the business of providing re-insulation services to

New York Presbyterian Hospital (hereinafter "NYPH").

3. "CC-1" was a co-conspirator who was an officer of two corporations that also provided re-insulation services to NYPH. These corporations were located at the same address in Long Island City, New York.

II. BACKGROUND

4. NYPH had facilities at 525 East 68th Street, New York, New York, and 627 West 165th Street, New York, New York. NYPH maintained a competitive bidding policy that required three bids to be obtained for all purchases where: (a) the value of a single item was over \$5,000; (b) the value of a single purchase was over \$10,000; (c) the annual value of a product, product line, or service was over \$50,000; or (d) otherwise where competitive bidding was advantageous. Specific exclusions to this policy were those circumstances where: (a) an item was purchased through an available group purchasing agreement or contract/pricing agreement; (b) an item was deemed to be a sole source purchase if there was adequate justification; (c) there was no known alternate source; (d) the purchases were so complex that compliant bids were not expected; or (e) the Chief Resource Officer or Director determined that a negotiated purchase would be used.

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

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

III. INTERSTATE TRADE AND COMMERCE

7. Beginning at least as early as 2000 and continuing through at least March 2005, the exact dates being unknown to the Grand Jury, pursuant to contracts that are the subject of this Count, NYPH awarded numerous contracts for re-insulation services to PORATH's company many of which were subcontracted to CC-1's companies. CC-1 purchased substantial quantities of materials and equipment that were transported across state lines for use in performing some of these subcontracts.

8. During the period covered by this Count, PORATH's company and CC-1's companies performed re-insulation services pursuant to contracts that are the subject of this Count, and the supplies that were used in performing these re-insulation services for NYPH were produced in states other than New York and shipped across state lines in a continuous and uninterrupted flow of interstate commerce.

IV. DESCRIPTION OF THE OFFENSE

9. Beginning at least as early as 2000 and continuing through at least March 2005, the exact dates being unknown to the Grand Jury, defendant PORATH and

CC-1 engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

10. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among defendant PORATH and CC-1 , the substantial term of which was to rig bids for re-insulation services provided to NYPH.

V. MEANS AND METHODS OF THE CONSPIRACY

11. For the purpose of forming and effectuating the aforesaid combination and conspiracy, defendant PORATH and CC-1 did those things which they combined and conspired to do, including, among other things:

a) defendant PORATH and CC-1 would and did agree that PORATH would use CC-1's companies' blank letterhead in order to prepare and submit to NYPH high, non-competitive complementary bids. The fictitious and intentionally high bids created the illusion of a competitive bidding process at NYPH and assured that the work would be, and was, awarded to PORATH's company as the "low" bidder;

b) defendant PORATH, with CC-1's knowledge and consent, would and did submit intentionally high, non-competitive complementary bids on CC-1's companies' letterhead to NYPH; and

c) in return, defendant PORATH and his company would and did subcontract a substantial portion of the re-insulation services to CC-1's companies.

VI. JURISDICTION AND VENUE

12. 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
TAX FRAUD CONSPIRACY
(18 U.S.C. § 371 and 2)

The Grand Jury further charges:

13. PORATH and ANDRZEJ GOSEK are hereby indicted and made defendants on the charge stated below in Count Two.

VII. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

14. Paragraphs 2, 5 and 6 of Count One of this Indictment are repeated, re-alleged, and incorporated in Count Two as if fully set forth in this Count.

15. Defendant ANDRZEJ GOSEK (hereinafter "GOSEK") was a co-conspirator who was the owner of a company that was located in Langhorne, Pennsylvania which provided asbestos abatement services.

16. "CC-2" and "CC-3" were co-conspirators who owned a travel agency and construction companies located in Brooklyn, New York.

VIII. DESCRIPTION OF THE OFFENSE

17. Beginning at least as early as October 2000 and continuing through at least February 2005, the exact dates being unknown to the Grand Jury, in the Southern District of New York and elsewhere, defendants PORATH and GOSEK, 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 of America and an agency thereof, namely the Internal Revenue Service (“IRS”) of the United States Department of Treasury, and to commit offenses against the United States of America, to wit, to violate Title 26, United States Code, Section 7206(1), in violation of Title 18, United States Code, Section 371.

18. It was a part and object of the conspiracy that defendant PORATH, defendant GOSEK, CC-2 and CC-3, would and did defraud the United States of America and the IRS by impeding, impairing, obstructing and defeating the lawful government functions of the IRS in the ascertainment, computation, assessment and collection of federal income taxes due and owing from defendant PORATH by various means, including, among other things:

(a) defendant PORATH drew and issued checks with falsely referenced invoice numbers payable to the businesses of CC-2 and CC-3;

(b) defendant PORATH delivered the checks to defendant GOSEK;

(c) defendant GOSEK delivered the checks to CC-2 and CC-3;

(d) CC-2 and CC-3 then gave defendant GOSEK false and fraudulent certificates of liability insurance issued to PORATH's company and cash less approximately 5% of the amount of the checks, which defendant GOSEK then gave to defendant PORATH;

(e) certificates of liability insurance were issued to PORATH's company to purportedly demonstrate that CC-2's and CC-3's company had the requisite worker's compensation and employer's liability insurance to perform construction work for PORATH's company when, in fact, no construction work had been performed pursuant to these transactions;

(f) defendant PORATH fraudulently claimed payments made to the businesses of CC-2 and CC-3 as business expenses for PORATH's company.

19. It was a part and object of the conspiracy that defendant PORATH did make and subscribe to United States Income Tax Returns for a Subchapter S Corporation, Form 1120S and United States Individual Income Tax Returns, Forms 1040, for the tax years 2000 through 2004, each of which was verified by a written declaration by defendant PORATH that it was made under penalties of perjury, and which income tax returns he did not believe to be true and correct as to every material matter, and which were false and fraudulent as to material matters, in that the Forms 1120S and 1040, and accompanying schedules and forms falsely and fraudulently claimed payments made to the businesses of CC-2 and CC-3 by defendant PORATH as business expenses for his company giving rise to deductions to which his company was not entitled, and thereby

also substantially understating defendant PORATH's true taxable income on his United States Individual Income Tax Returns, Forms 1040, in violation of Title 26, United States Code, Section 7206(1).

IX. 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. PORATH's company received payments from NYPH for re-insulation services contracts that it was awarded.

21. In order to generate cash, defendant PORATH drew and issued checks on his company payable to the businesses of CC-2 and CC-3 with falsely referenced invoice numbers for work at NYPH. These checks totaled approximately \$229,100 in 2000; \$1,190,000 in 2001; \$760,000 in 2002; \$50,000 in 2003; and \$125,000 in 2004.

22. Defendant PORATH provided these checks to defendant GOSEK, who in turn delivered the checks to CC-2 and CC-3.

23. Upon receipt of the checks with falsely referenced invoice numbers, CC-2 and CC-3 negotiated and deposited the checks. CC-2 and CC-3 then gave the amount of the checks in cash, less approximately 5%, to defendant GOSEK to return to defendant PORATH.

24. At times, in addition to the cash, CC-2 and CC-3 included a false certificate of liability insurance issued to PORATH's company to purportedly

demonstrate that CC-2's and CC-3's company had the requisite worker's compensation and employer's liability insurance to perform construction work for defendant PORATH's company.

25. By defendant PORATH receiving false certificates of liability insurance and by defendant PORATH drawing and issuing checks on PORATH's company with falsely referenced invoice numbers payable to the businesses of CC-2 and CC-3, defendant PORATH falsely represented to the IRS that construction work was to be performed by PORATH's company and concealed the true nature of the transaction, which was to generate cash and to take false deductions for defendant PORATH. In fact, no construction work was performed pursuant to these transactions.

26. Through these means, defendant PORATH, assisted by defendant GOSEK, filed false and fraudulent United States Income Tax Returns for a Subchapter S Corporation, Forms 1120S and United States Individual Income Tax Returns, Forms 1040, by claiming these non-existent business expenses as deductions for the years 2000 through 2004.

X. OVERT ACTS

27. In furtherance of the conspiracy, and to effect the illegal objects thereof, defendant PORATH, defendant GOSEK 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, defendant PORATH caused defendant GOSEK to deliver checks from the Southern District of New York to CC-2 and

CC-3 in Brooklyn, New York.

b) On numerous occasions, defendant GOSEK delivered cash to defendant PORATH in the Southern District of New York.

c) On or about February 13, 2001, February 16, 2002, February 9, 2003, February 9, 2004 and February 17, 2005, defendant PORATH filed false and fraudulent United States Income Tax Returns for a Subchapter S Corporation, Forms 1120S and United States Individual Income Tax Returns, Forms 1040, respectively for the years 2000 through 2004.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 371 and 2.

COUNT THREE
FALSE SUBSCRIPTION
(26 U.S.C. § 7206(1))

The Grand Jury further charges:

28. PORATH is hereby indicted and made a defendant on the charge stated below in Count Three.

29. Paragraph 2 of Count One and Paragraphs 16 and 25 of Count Two of this Indictment are repeated, re-alleged, and incorporated in Count Three as if fully set forth in this Count.

30. On or about February 17, 2005, in the Southern District of New York and elsewhere, defendant PORATH unlawfully, willfully, and knowingly did make and subscribe to a U.S. Individual Income Tax Return, Form 1040, for the tax year 2004,

which was verified by a written declaration by defendant PORATH that it was made under penalties of perjury, and which income tax return he did not believe to be true and correct as to every material matter, in that Line 42 reported \$452,343 as “taxable income”, whereas, he then and there well knew and believed that Line 42 substantially

understated his true taxable income, in violation of Title 26, United States Code, Section 7206(1).

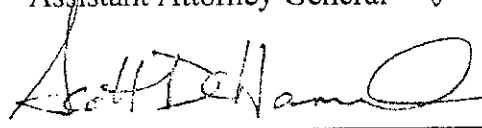
IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7206(1).


Dated:

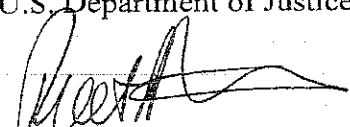
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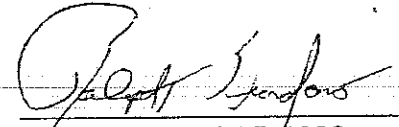
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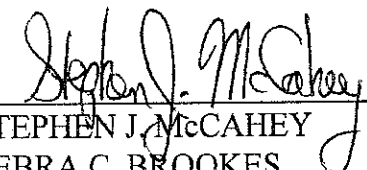

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