

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA	)	Criminal No.: 96-00350-A-(1,2)
)	
v.	)	Count 1:
	)	15 U.S.C. §1
MIJA S. ROMER	)	(Bid Rigging)
(Counts 1, 3, 4, 5))	
	)	Counts 2 and 3:
and	)	18 U.S.C. §§1341 and 2
	)	(Mail Fraud)
KHEM C. BATRA,)	
(Counts 1, 2, 5)	)	Count 4:
	)	18 U.S.C. §1344
Defendants.	)	(Bank Fraud)
)	
	)	Count 5:
	)	18 U.S.C. §371
	)	(Conspiracy)

Filed: [9/12/96]

INDICTMENT

September 1996 Term - At Alexandria, Virginia

COUNT ONE

THE GRAND JURY CHARGES THAT:

A. DEFENDANTS AND CO-CONSPIRATORS

1. At all times material to this Indictment, the defendants, MIJA S. ROMER and KHEM C. BATRA, were real estate speculators doing business in the Eastern District of Virginia.

2. Various firms and individuals, not made defendants in this count, participated as co-conspirators in the offense charged and performed acts and made statements in furtherance of it.

B. DESCRIPTION OF THE OFFENSE

3. Beginning at least as early as May 27, 1993 and

continuing through at least April 1995, the exact dates being unknown to the grand jury, the defendants and others entered into and engaged in a combination and conspiracy to limit the bidding at certain public real estate auctions in the Eastern District of Virginia. The combination and conspiracy unreasonably restrained interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. §1).

4. In certain instances when real estate located in the Commonwealth of Virginia is sold, the sale is conducted by public auction. When a deed of trust, commonly called a mortgage, is foreclosed upon in the Commonwealth of Virginia, the property is sold at a public auction in order to protect the interests of the mortgage holder and the property owner.

5. When a mortgage is foreclosed, the mortgage holder appoints a Trustee, pursuant to provisions in the original mortgage documents, to conduct the sale of the property by public auction. After required notice of an auction is given, the Trustee holds the auction on the date and time specified.

6. The bidding at the public auction typically opens at the amount owed by the property owner to the mortgage holder. The Trustee who conducts the foreclosure auction seeks to obtain the highest price possible at the public auction by soliciting open and competitive bidding from potential purchasers. The Trustee stops the bidding when the highest price reached by

competitive bidding is offered. The high bidder pays a deposit to the Trustee in the form of a cashier's or certified check. The Trustee then executes a Memorandum of Sale indicating the property address, the date of the auction, the high bidder, the high bid amount, and the amount of the deposit paid. The Memorandum of Sale is needed by the high bidder in order to complete the settlement of the property transaction, which usually occurs within 15 days of the auction. Once the settlement of the property transaction is completed, the high bidder takes title to the property.

7. When a property is sold by public auction, any amount paid for the property above the amount owed to the mortgage holder(s) represents the property owner's equity in the property and is paid to the property owner.

8. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators to rig bids, the substantial terms of which were:

- a) to suppress competition by refraining from full competitive bidding at certain public real estate auctions; and
- b) to conduct second, secret auctions, open only to members of the conspiracy, to rebid the properties won at those public real estate auctions and to make payoffs to one another in return for

limiting the bidding at those public real estate auctions.

C. MEANS AND METHODS OF THE CONSPIRACY

9. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and co-conspirators did those things that they combined and conspired to do, including, among other things:

- a) agreeing to limit competition with one another at certain public real estate auctions, so that certain public auction prices would be suppressed;
- b) selecting a designated bidder to act for the conspirators at certain public real estate auctions, either at a private meeting prior to the public auction or by various signals during the public auction;
- c) permitting the designated bidder to make bids to seek to win the public real estate auction without full competition from the co-conspirators;
- d) purchasing auctioned property at prices lower than would have resulted from a fully competitive auction, thereby depriving property owners and certain mortgage holders of the full value of the auctioned property;
- e) holding second, secret and private auctions, open

only to the co-conspirators and generally conducted by written bid, in which the co-conspirators made bids to acquire each property at prices higher than the price paid by the designated bidder at the public real estate auction;

- f) awarding the property to the highest of the secret auction bids, and agreeing to divide the group's secret profit (the difference between the public real estate auction price and the secret auction price) by making payoffs among the conspirators;
- g) arranging for the secret auction winner to take title or ownership of the property; and
- h) making the payoffs that they agreed to make.

10. In the manner described in paragraph 9, and for the purpose of carrying out the charged combination and conspiracy, the defendants and co-conspirators unreasonably restricted full competitive bidding at auctions of the following properties, among others, on or about the listed dates:

<u>Property Address</u>	<u>Auction Date</u>
9100 Arlington Blvd., Fairfax	May 27, 1993
9363 Peter Roy Ct., Burke	September 14, 1993
5114 Cliffhaven Dr., Annandale	November 9, 1993
6825 Lamp Post Ln., Alexandria	November 12, 1993
3058 Sugar Ln., Vienna	December 3, 1993
5522 Ventnor Ln., Springfield	March 22, 1994
5803 Royal Ridge Dr., # Q, Springfield	March 22, 1994
7345 McWhorter Pl., Annandale	April 27, 1994
3530 Armfield Farm Dr., Chantilly	April 10, 1995

D. TRADE AND COMMERCE

11. The business activities of the defendants and co-conspirators that are the subject of this count were within the flow of, and substantially affected, interstate trade and commerce.

12. Foreclosure auctions held in the Eastern District of Virginia regularly were advertised in newspapers that were distributed in the District of Columbia and in Maryland.

13. Potential purchasers at public real estate auctions in the Eastern District of Virginia traveled across state lines to attend such auctions.

14. In a substantial number of instances when the defendants or co-conspirators purchased a property at a public real estate auction, persons, money, and documents moved across state lines in order to settle the transaction.

E. JURISDICTION AND VENUE

15. The combination and conspiracy charged in this count was formed in and carried out, in part, within the Eastern District of Virginia, within the five years preceding the return of this Indictment.

(In violation of Title 15, United States Code, Section 1.)

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

1. KHEM C. BATRA is hereby indicted and made a defendant in this count.

2. During at least September and October 1993, the exact dates being unknown to the grand jury, the defendant, KHEM C. BATRA, and others, within the Eastern District of Virginia, as part of an ongoing arrangement, did knowingly devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises from the mortgage holders and owners of a property that was being sold at a public real estate auction in the Eastern District of Virginia. That scheme and artifice to defraud consisted of suppressing competition at the public auction of a property at 9363 Peter Roy Court, Burke, VA, by agreeing not to bid against one another at the public auction, by acquiring the property at a lower price than would have resulted from a fully competitive auction, and by holding a second, secret auction and dividing the profits of the scheme (the difference between the public auction price and the secret auction price) among themselves.

3. On or about October 14, 1993, in the Eastern District of Virginia, the defendant, KHEM C. BATRA, in connection with the auction of a property at 9363 Peter Roy Court, Burke, VA, for the purpose of executing the scheme and artifice described above and attempting so to do, knowingly caused to be delivered by mail according to the direction thereon, by the United States Postal Service, an envelope addressed to Leo Gulley, 10907 Blue Roan Road, Oakton, VA 22124, containing a payoff check.

(In violation of Title 18, United States Code, Sections 1341 and 2.)

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. MIJA S. ROMER is hereby indicted and made a defendant in this count.

2. During at least December 1993, the exact dates being unknown to the grand jury, the defendant, MIJA S. ROMER, and others, within the Eastern District of Virginia, as part of an ongoing arrangement, did knowingly devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises from the owners of a property that was being sold at a public real estate auction in the Eastern District of Virginia. That scheme and artifice to defraud consisted of suppressing competition at the public auction of a property at 3058 Sugar Lane, Vienna, VA, by agreeing not to bid against one another at the public auction, by acquiring the property at a lower price than would have resulted from a fully competitive auction, and by holding a second, secret auction and dividing the profits of the scheme (the difference between the public auction price and the secret auction price) among themselves.

3. On or about December 21, 1993, in the Eastern District of Virginia, the defendant, MIJA S. ROMER, in connection with the auction of a property at 3058 Sugar Lane, Vienna, VA, for the purpose of executing the scheme and artifice described above and

attempting so to do, knowingly caused to be delivered by mail according to the direction thereon, by the United States Postal Service an envelope addressed to Leo Gulley, 10907 Blue Roan Road, Oakton, VA 22124, containing a payoff check.

(In violation of Title 18, United States Code, Sections 1341 and 2.)

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

1. MIJA S. ROMER is hereby indicted and made a defendant in this count.

2. In or about October 1993, in the Eastern District of Virginia and elsewhere, MIJA S. ROMER, the defendant, knowingly executed and attempted to execute a scheme or artifice to defraud a financial institution and to obtain money and credits owned by and under the custody and control of a financial institution by means of false and fraudulent pretenses, representations and promises.

3. Specifically, MIJA S. ROMER, in or about October 1993, applied for a loan in the amount of \$80,000 from Burke and Herbert Bank and Trust Co., a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation. As part of the loan application process, ROMER submitted a document that purported to be a copy of her 1992 United States Individual Income Tax Return, Form 1040.

4. That document was not a copy of her tax return filed with the Internal Revenue Service because ROMER had not yet filed

an income tax return for 1992 at the time of her October 1993 loan application and because ROMER's 1992 income tax return, filed in April 1995, was materially different.

5. On the 1992 United States Individual Income Tax Return, Form 1040, that ROMER submitted to Burke and Herbert Bank and Trust Co., ROMER reported no wages (line 7), dividend income (line 9) of \$4,030, business income (line 12) from Romer and Associates of \$74,220, and adjusted gross income (line 31) of \$81,666.

6. On the 1992 United States Individual Income Tax Return, Form 1040, that ROMER filed with the IRS in April 1995, ROMER reported wages (line 7) of \$8,821, dividend income (line 9) of \$1,468, a business loss (line 12) from East West Realty, Inc., of \$571, and adjusted gross income (line 31) of negative \$4,896. (In violation of Title 18, United States Code, Section 1344.)

COUNT FIVE

THE GRAND JURY FURTHER CHARGES THAT:

1. MIJA S. ROMER and KHEM C. BATRA are hereby indicted and made defendants in this count.

2. From on or about March 22, 1994, through at least August 14, 1995, the exact dates being unknown to the grand jury, in the Eastern District of Virginia, the defendants, MIJA S. ROMER and KHEM C. BATRA, and others, unlawfully, knowingly and willfully conspired and agreed to defraud the United States Department of the Treasury, Internal Revenue Service, by

impeding, impairing, obstructing and defeating the lawful functions of the IRS in the ascertainment, computation, assessment and collection of taxes; specifically, by agreeing to make illegal payoffs in cash rather than by check to avoid reporting that cash as income on their tax returns.

A. MEANS AND METHODS OF THE CONSPIRACY

3. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and co-conspirators did those things that they combined and conspired to do, including, among other things:

- a) discussing and agreeing that secret, second auction payoffs be made in cash rather than by check;
- b) making second auction payoffs in cash;
- c) discussing and agreeing that cash payoffs would not be reported on their income tax returns; and
- d) discussing and agreeing that cash payoffs made by the winner of the secret auction would not be included in the secret auction winner's stated cash basis in the property.

B. OVERT ACTS

4. In furtherance of the conspiracy and to effect the objects thereof, the defendants and co-conspirators performed at least one of the following overt acts in the Eastern District of Virginia:

- a) On or about March 22, 1994, ROMER made cash payoffs to BATRA and other co-conspirators in connection with rigging the bid at the auction of the property at 5803 Royal Ridge Drive, Unit Q.
- b) On or about May 27, 1994, ROMER and BATRA received cash payoffs from a co-conspirator in connection with rigging the bid at the auction of the property at 7345 McWhorter Place, #111.
- c) On or about August 14, 1995, BATRA caused to be prepared a false document, United States Individual Income Tax Return Form 1040, for BATRA for 1994.
- d) On or around August 14, 1995, BATRA caused a copy of that false United States Individual Income Tax Return Form 1040 for 1994 to be submitted to the IRS.

(In violation of Title 18, United States Code, Section 371.)

A TRUE BILL

_____/s/_____
FOREPERSON

_____/s/_____
HELEN F. FAHEY
United States Attorney

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

_____/s/_____
JUSTIN W. WILLIAMS
Assistant United States Attorney
Chief, Criminal Division

_____/s/_____
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