

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	Criminal No.: 00 CR. 599 (JSM)
v.	:	Filed: June 1, 2000
TOBY UNGER,	:	Violation: 15 U.S.C. § 1
Defendant.	:	

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INFORMATION

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

1. Toby Unger ("Unger") is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Information:

2. Unger resided in New York, New York and in Islip, New York. Unger was a salesperson for Baiardi Chain Food Corp. ("Baiardi"), a vendor of food, primarily fresh produce, located in South Hackensack, New Jersey. Unger shared responsibility for bidding on public contracts with other senior officials at Baiardi.

3. The Board of Education of the City of New York ("NYCBOE") was the entity responsible for operating New York City's public school system, the largest in the United States. Its annual budgets, which approached \$10 billion, were funded by the federal, state, and city governments. It serviced a student population of nearly 1.1 million and operated more than 1,500 facilities. It served

approximately 640,000 lunches and 150,000 breakfasts every school day, the majority of which were subsidized by various government programs, primarily those programs established pursuant to the National School Lunch Act of 1946 and administered by the United States Department of Agriculture.

4. The NYCBOE solicited bids from, and awarded contracts to, vendors of food on a regular basis. The primary food contracts awarded by the NYCBOE were requirements contracts that obligated the vendors to supply and deliver food at the stated prices for the contract period. Both public and non-public schools received food pursuant to these contracts. Individual schools placed orders as needed, usually once or twice a week.

5. The NYCBOE sought separate bids, and awarded separate contracts, for the supply of a number of categories of food, including frozen food, produce, and groceries. Each of these bids and contracts was divided into parts, usually geographically by borough. The company bidding the lowest price for a particular part of a contract usually received an award for that part. The term of most of these contracts varied from three to six months. Toward the expiration of the contract period, the NYCBOE again solicited bids for the supply of food.

6. The NYCBOE required bidders to certify, under penalty of perjury, that, among other things, the prices in their bids had been arrived at

independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or with any competitor.

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

8. 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.

II. TRADE AND COMMERCE

9. During the period covered by this Information, Baiardi purchased substantial quantities of food, including produce, for resale to the NYCBOE from suppliers located throughout the United States, or from wholesalers who obtained their goods from suppliers located throughout the United States.

10. From approximately November 1996 until approximately April 1999, pursuant to contracts that are the subject of this Information, the NYCBOE purchased approximately \$41 million of produce from members of the

conspiracy, including approximately \$2.3 million of produce from Baiardi.

11. The activities of the defendants and co-conspirators with respect to the sale of food to the NYCBOE, including the sale of produce pursuant to contracts that are the subject of this Information, were within the flow of, and substantially affected, interstate trade and commerce.

III. DESCRIPTION OF THE OFFENSE

12. From approximately November 1996 until approximately April 1999, the exact dates being unknown to the United States, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

13. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of produce to the NYCBOE.

14. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Prior to the submission of bids, they participated in meetings and conversations where they discussed and agreed how to bid so as to divide

upcoming contracts to supply produce to the NYCBOE;

(b) They designated which co-conspirators would be the low bidders, among the co-conspirators, on specified parts of contracts to supply produce to the NYCBOE;

(c) They discussed and agreed on the prices or price levels they would bid on specified parts of contracts to supply produce to the NYCBOE, and then bid accordingly;

(d) They refrained from bidding or submitted intentionally high, complementary bids on specified parts of contracts to supply produce to the NYCBOE;

(e) They gave substantial amounts of cash to a co-conspirator, with the understanding that he would use the cash to pay other potential bidders not to bid competitively on particular contracts to supply produce to the NYCBOE;

(f) After Baiardi withdrew from the conspiracy in 1998, Unger received money from a co-conspirator in exchange for revealing the prices that Baiardi intended to bid on the November 1998 bid to supply produce to the NYCBOE; and

(g) They falsely certified, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of

restricting competition as to any matter relating to such prices, with any other bidder or competitor.

IV. JURISDICTION AND VENUE

15. 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

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