

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : Criminal No. 04-CR-327 GLS

v. : Filed: 6/29/04

WATERBLOCK ROOFING : Violations: 15 U.S.C. § 1
and SHEETMETAL, INC, 18 U.S.C. § 371

Defendant :

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INFORMATION

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

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

1. Waterblock Roofing and Sheetmetal, Inc. (“Waterblock”) is hereby made a defendant on the charge stated below.

I. DEFENDANT AND CO-CONSPIRATORS

During the period covered by this Count:

2. Waterblock, a corporation located in Schenectady, New York, was engaged in the roofing business in the State of New York.

3. Walter J. Vivenzio (“Vivenzio”), a resident of East Berne, New York, was president and an owner of Waterblock.

4. "CC-1" was a co-conspirator who was a maintenance manager at the Waterford, New York plant of the General Electric Company ("GE Waterford"). CC-1 had primary responsibility for selecting the companies that would be invited to bid or quote on roofing contracts for GE Waterford. In carrying out his responsibilities, CC-1 generally attempted to create the appearance that he was following a competitive bidding policy for roofing contracts, including contracts that were awarded to Waterblock.

5. "CC-2" was a co-conspirator who was a representative of a manufacturer of roofing products. CC-2 helped to select the companies that would be invited to bid or quote on roofing contracts for the Albany Medical Center ("AMC") and other purchasers of roofing products and services in the State of New York. CC-2 generally attempted to create the appearance that he was following a competitive bidding policy for roofing contracts, including contracts that were awarded to Waterblock.

6. Various persons and companies, not made defendants herein, including CC-1 and CC-2, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

7. Whenever in this information reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, engaged in the management, direction, control or transaction of its business affairs.

II. DESCRIPTION OF THE OFFENSE

8. From sometime in 1995 until approximately May 2002, the exact dates being unknown to the United States, the defendant 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).

9. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids for and allocate roofing contracts awarded by GE Waterford, AMC and other purchasers of roofing products and services in the State of New York.

10. 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) discussed the submission of prospective bids or quotations on certain roofing contracts;
- (b) agreed among themselves which company would be the low bidder on each of the contracts discussed;
- (c) arranged for co-conspirators to submit bids or quotations that were intentionally higher (“complementary” bids) in order to create the false appearance that a competitive bidding policy was being followed; and
- (d) Waterblock, through Vivenzio, paid substantial amounts of cash to CC-1

for his assistance in frustrating and subverting the competitive bidding for roofing contracts at GE Waterford, and for ensuring that no potential competitors who were not co-conspirators would be invited to bid or quote on roofing contracts at that plant.

III. TRADE AND COMMERCE

11. During the period covered by this Count, defendant and co-conspirators were engaged in the roofing business in the State of New York. They provided roofing products and services to GE Waterford, AMC and others.

12. During the period covered by this Count, defendant and co-conspirators purchased substantial quantities of roofing products from manufacturers outside the State of New York.

13. During the period covered by this Count, the activities of the defendant and co-conspirators with respect to the provision of roofing products and services were within the flow of, and substantially affected, interstate trade and commerce.

IV. JURISDICTION AND VENUE

14.. The aforesaid combination and conspiracy was carried out, in part, within the Northern 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 -- CONSPIRACY TO COMMIT MAIL FRAUD
(18 U.S.C. § 371)

The United States of America further charges:

15. Paragraphs 1 through 4 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

16. Various co-conspirators, not made defendants herein, including CC-1, participated in the offense charged herein and performed acts and made statements in furtherance thereof.

V. DESCRIPTION OF THE OFFENSE

17. From sometime in 1995 until approximately May 2002, the exact dates being unknown to the United States, in the Northern District of New York and elsewhere, the defendant and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate and agree to commit an offence against the United States of America, to wit, to violate Title 18, United States Code, Section 1341, all in violation of Title 18, United States Code, Section 371.

18. It was a part of an object of the conspiracy that the defendant and co-conspirators, having devised and intending to devise a scheme and artifice to defraud GE Waterford and to obtain money and property from GE Waterford by means of false pretenses, representations, and promises, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the

Postal Service, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail according to the directions thereon, and at the place at which they were directed to be delivered, in violation of title 18, United States Code, Section 1341.

VI. 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 other things, the following:

19. During the period from sometime in 1995 until approximately May 2002, Waterblock, through Vivenzio, paid cash kickbacks to CC-1 in order to ensure that CC-1 would allocate to Waterblock all of the contracts for roofing products and services awarded by GE Waterford. (The kickbacks totaled at least \$70,000 during this period.)

20. The kickbacks paid by Waterblock to CC-1 were derived from the amounts by which it “padded” its bids or quotations to GE Waterford for contracts for roofing products and services, the “fraudulent overcharges.”

21. CC-1's superiors at GE Waterford were not aware of and did not approve of the fraudulent overcharges. In order to make it appear that the prices at which the affected contracts awarded to Waterblock were fair and reasonable, CC-1 requested and Waterblock, through Vivenzio, obtained, from other co-conspirators, “complementary” bids.

VII. OVERT ACTS

22. 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 Northern District of New York:

- (a) On a number of occasions between sometime in 1995 and approximately May 2002, Vivenzio met with CC-1 at various locations, primarily the McDonald's parking lot near Exit 8 of Interstate 87, to pay CC-1 some portion of the kickbacks he was owed. (These payments were in cash and totaled at least \$70,000.)
- (b) Between sometime in 1995 and approximately May 2002, Waterblock and CC-1 caused the General Electric Company to pay numerous fraudulently inflated invoices to Waterblock, which payments and invoices were sent from or to the General Electric Company by and through the United States mails.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371.

Dated:

/s/
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