UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	Criminal No. 04 CR 101
v.	:	Filed: 2/3/04
SANFORD ZENKER,	:	Violation: 18 U.S.C. § 371
Defendant.	:	

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INFORMATION

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

1. Sanford Zenker ("Zenker") is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Information:

2. Westbury Press, Inc. ("Westbury") was a co-conspirator that was a corporation located in Englewood, New Jersey. Westbury was a vendor of commercial printing to Home Box Office, Inc. ("HBO").

3. Zenker, a resident of Manhattan, was the president and part-owner of Westbury.

4. HBO is a pay television service company providing two 24-hour premium television services, HBO and Cinemax, to subscribers principally in the United States by way of cable, direct broadcast satellite and microwave technologies. HBO operates as a division of AOL Time Warner, Inc., one of the world's largest media and entertainment companies, whose businesses include interactive services, cable systems, filmed entertainment, television networks, music, and publishing.

5. Michele Komack, aka Michele Nicosia ("Komack"), was a co-conspirator employed by HBO in Manhattan. During some of the period covered by this Information, Komack, by marriage, was known as Michele Rios-Nicosia and for business purposes regularly used the name Michele Nicosia. At the time of Komack's termination from HBO in February 1999, she held the title of Director, Print Services in the Print Promotion Department of HBO. In September 1997, Komack was promoted from the position of Manager, Print Services to Director, Print Services.

6. 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.

II. BACKGROUND

7. HBO developed advertising and marketing campaigns and produced promotional materials to promote its pay television services. Some of the advertising and promotional materials that HBO developed appeared in printed form, such as media inserts, brochures, and marketing kits. Through its Print Services department, HBO contracted with third parties that were vendors of commercial printing in order to produce the advertising and promotional materials that appeared in print.

8. HBO had a competitive bidding policy that required the Print Services department to obtain at least three competitive bids before entering into any single contract for goods or services in excess of $10,000, and at least two competitive bids before entering into any single contract for goods or services in excess of $1,000, and then award those contracts to the lowest responsible bidder. The purpose of the bidding policy was to ensure that the Print Services department obtained products and services at competitive, fair market prices.

9. Komack was responsible for awarding contracts to, and supervising, commercial printers in accordance with HBO's policies and procedures, including adhering to HBO's competitive bidding policy and reviewing and authorizing their bills for payment.

10. Zenker and his co-conspirators attempted to create the appearance that HBO's Print Services department was awarding contracts in compliance with HBO's competitive bidding policy when, in fact, it frequently was not. In actuality, Komack determined in advance which vendors would receive contracts, and then, in order to make it appear that contracts had been awarded based on competitive bids, Komack later arranged to receive bids from Zenker and co-conspirators to justify the allocation. Komack sometimes specified what prices should be quoted on these bids, and that the bids be backdated.

III. DESCRIPTION OF THE OFFENSE

11. From approximately September 1997 until approximately March 2000, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, Zenker and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States of America, to wit, to violate Title 18, United States Code, Sections 1952(a)(3), 1341, and 1346, and Title 26, United States Code, Section 7206(1), in violation of Title 18, United States Code, Section 371.

12. It was a part and object of the conspiracy that Zenker, 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).

13. It was further a part and an object of the conspiracy that Zenker, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud HBO, and for obtaining money and property from HBO by means of false and fraudulent pretenses, representations, and promises, and to deprive HBO of its intangible right of honest services of Komack, 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 deposit and cause to be deposited matters and things to be sent or delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, or at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Sections 1341 and 1346.

14. It was further a part and an object of the conspiracy that Komack willfully would and did make and subscribe U.S. Individual Income Tax Returns, Forms 1040, on behalf of herself, or herself and her spouse, for the calendar years 1997 through 1999, which contained and were verified by Komack's written declaration that the returns were made under penalties of perjury, and which were filed with the Internal Revenue Service, and which income tax returns

she did not believe to be true were 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:

15. During all or some of the period from approximately September 1997 until approximately February 1999, Zenker and Westbury paid Komack kickbacks in cash and goods and services totaling approximately $95,079. Zenker and Westbury paid the kickbacks in order to ensure that Komack would allocate to Westbury a portion of HBO's total purchases of commercial printing, and that Komack would not seek alternative vendors of commercial printing. By paying the kickbacks, Westbury was able to maintain non-competitive prices because Westbury did not face open and honest competition from other vendors. As a result of the kickbacks, HBO was deprived of its right to the honest services of Komack and paid higher prices for the commercial printing it purchased than it would have if Komack had aggressively and honestly solicited competitive prices from other vendors. In addition, because of the corrupt relationships between Komack and Zenker and Westbury, other legitimate commercial printing vendors were foreclosed from selling to HBO.

16. Komack did not report her receipt of any portion of the value of the cash and goods and services that she received from Zenker and Westbury on her U.S. Individual Income Tax Returns. As a result, those tax returns substantially underreported the taxable income and the correct amount of tax due and owing from Komack.

17. To assist Komack in failing to report any portion of the value of the cash and

goods and services that she received from Zenker and Westbury on her U.S. Individual Income Tax Returns, Westbury made deposits into a bank account on which Komack had signature authority, and Zenker caused Westbury to fail to issue Komack IRS Forms 1099 or W-2.

18. At no time did Zenker or Westbury disclose the payment of kickbacks to Komack to her employer, HBO. All such payments were made without the knowledge or approval of HBO, and in violation of Komack's fiduciary duty to HBO.

V. OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the following overt acts were committed in the Southern District of New York, and elsewhere:

19. On numerous occasions between September 1997 and February 1999, pursuant to the conspiracy charged, Zenker caused HBO to issue purchase orders, and Zenker caused Westbury to issue invoices, relating to the sale of commercial printing to HBO. Some of these invoices and purchase orders were sent through the United States mails. Many of these invoices were sent to HBO's offices in Manhattan and many of these purchase orders were sent from HBO's offices in Manhattan.

20. On numerous occasions between September 1997 and February 1999, Zenker paid kickbacks in the form of cash and goods and services to Komack.

(a) In approximately September 1997, Zenker agreed with Komack during a meeting in her office at HBO that approximately five percent of Westbury's sales to HBO would be paid in kickbacks to Komack;

(b) From the period of September 1997 through February 1999, Zenker caused Westbury to issue monthly checks to a Westbury senior executive ("CC-1"), for the purpose of

funneling the agreed-upon kickbacks to Komack. All or part of those checks were deposited into an account (the "Account"), on which Komack had signature authority, that had been established by CC-1 in approximately August 1993 for the same purpose;

(c) From the period of September 1997 through February 1999, Westbury made numerous deposits totaling $95,079 into the Account solely for Komack's benefit;

(d) Komack wrote checks on the Account until the day before her termination on February 9, 1999 from HBO. The checks written by Komack, which were the only checks written on the Account, were for Komack's personal and family expenses, such as automobile, mortgage, and credit card payments. The Account was closed by Westbury in March 1999;

(e) In approximately late 1997, at Komack's request, Zenker paid Komack approximately $30,000 so that she could purchase her ex-husband's share of their home in Westchester, New York;

(f) On approximately April 13, 1998, Komack filed a false and fraudulent U.S. Individual Income Tax Return, Form 1040, on behalf of herself for 1997, wherein she failed to report accurately her true personal income;

(g) On approximately April 12, 1999, Komack filed a false and fraudulent U.S. Individual Income Tax Return, Form 1040, on behalf of herself and her spouse for 1998, wherein she failed to report accurately their true personal income; and

(h) On approximately March 15, 2000, Komack filed a false and fraudulent U.S.

Individual Income Tax Return, Form 1040, on behalf of herself and her spouse for 1999, wherein she failed to report accurately their true personal income.

Dated:

/s/
JAMES M. GRIFFIN
Acting Assistant Attorney General

/s/
SCOTT D. HAMMOND
Director of Criminal Enforcement

Antitrust Division
U.S. Department of Justice

/s/
DAVID N. KELLEY
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