

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	02 Cr. (1115)
v.	:	Filed: 8/20/02
BENJAMIN WALKER, JR.,	:	Violations: 18 U.S.C. § 371
Defendant.	:	26 U.S.C. § 7206(1)

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INDICTMENT

COUNT ONE -- CONSPIRACY TO COMMIT MAIL FRAUD
(18 U.S.C. § 371)

The Grand Jury charges:

1. Benjamin Walker, Jr. ("Walker") is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Defendant Walker resided in Poughkeepsie, New York, and Tobyhanna, Pennsylvania. Defendant Walker was the president and chief executive officer of Odyssey House, Inc. ("Odyssey House").

3. Odyssey House was a not-for-profit residential substance abuse treatment organization located in Manhattan. Odyssey House received a significant portion of its funding from the State of New York Office of Alcoholism and Substance Abuse Services ("OASAS"). As a condition of that funding, OASAS required Odyssey House to solicit at least three competitive bids before it purchased any items which, in the aggregate, totaled at least \$3,000 during any 60-day period. Odyssey House solicited bids from potential vendors of most goods

and services, including food and related items.

4. Aaron Lugo was a co-conspirator who was the director of operations at Odyssey House. Lugo had primary responsibility at Odyssey House for purchasing most goods and services, including food and related items. In particular, Lugo had discretion to select which companies would be invited to submit bids to supply goods and services to Odyssey House. Defendant Walker was Lugo's ultimate supervisor at Odyssey House.

5. Frank Fauci was a co-conspirator who was the owner of Berry Best Co., Inc. d.b.a. Tristar ("Tristar"). Tristar, located in Brooklyn, New York, supplied food and related items to various not-for-profit institutions, including Odyssey House. Fauci also served as an independent sales representative for Nick Penachio Co., Inc. ("Penachio Co."), a vendor of food and related items located in the Bronx, New York that was a co-conspirator.

6. Various other 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. They included Pamela Merberg, the owner of Jitney, Ltd. ("Jitney"), a vendor of food located in Queens, New York, and Melvyn Merberg, the chief executive officer of Jitney.

II. DESCRIPTION OF THE OFFENSE

7. From at least as early as 1994 until approximately April 1998, the exact dates being unknown to the Grand Jury, in the Southern District of New York and elsewhere, defendant Walker 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 1341 and 1346, all in violation of Title 18, United States Code, Section 371.

8. It was a part and an object of the conspiracy that defendant Walker and co-conspirators, having devised and intending to devise a scheme and artifice to defraud Odyssey House, to obtain money and property from Odyssey House by means of false and fraudulent pretenses, representations, and promises, and to deprive Odyssey House of its intangible right to the honest services of certain of its employees, 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 and 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, and 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.

III. 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:

9. At least as early as 1994, defendant Walker asked Lugo, a co-conspirator identified in Paragraph 4, to help him obtain additional income for defendant Walker's personal benefit. Lugo and defendant Walker agreed that they would both obtain cash and goods and services for

their personal benefit from one or more of the vendors to Odyssey House. Thereafter, until approximately April 1998, Lugo gave defendant Walker substantial amounts of cash obtained from vendors to Odyssey House. Lugo handed the cash to defendant Walker on a regular basis, usually monthly, at Odyssey House's offices in Manhattan.

10. Lugo obtained the cash he handed to defendant Walker by two methods, both of which he had initiated for his own personal benefit some years prior to 1993. First, some of the cash was kickbacks from vendors to Odyssey House. The kickbacks were calculated according to a percentage, usually 4% or 5%, of the total value of orders a vendor actually delivered to Odyssey House. The vendors paid kickbacks in order to ensure that Lugo would cause Odyssey House to award to their companies a portion of the total value of contracts awarded by Odyssey House for the supply and delivery of food, meat, health and beauty aids, baby supplies, office supplies, printed materials, and janitorial supplies.

11. Lugo also obtained some of the cash he handed to defendant Walker from vendors to Odyssey House as the proceeds of a phony billing scheme. Lugo caused Odyssey House to issue false and fraudulent purchase orders to certain vendors, and then each of those vendors issued corresponding false and fraudulent invoices. The purchase orders and invoices were false and fraudulent in that they ordered and billed for goods and services which were not intended to be delivered, and, in fact, never were delivered. Lugo falsely certified that Odyssey House had received all of the goods and services described in those purchase orders and invoices, and thereby caused Odyssey House to pay the full amount stated in them. In actuality, each of the vendors provided little or none of the goods and services described in the false and fraudulent

purchase orders and invoices. After receiving payment from Odyssey House on the false and fraudulent invoices, each of the vendors returned between 40% and 50% of the face value of those invoices in cash to Lugo, and kept the remainder.

12. The false and fraudulent purchase orders described in Paragraph 11 were sometimes sent by Odyssey House to vendors through the mails. The false and fraudulent invoices described in Paragraph 11 were sometimes sent by vendors to Odyssey House through the mails. In addition, Odyssey House typically paid the false and fraudulent invoices by checks sent through the mails.

13. In addition to cash, at defendant Walker's request, on several occasions Lugo arranged for vendors to provide goods or services directly to defendant Walker, including the following:

a. In approximately 1996, defendant Walker and Lugo arranged for a co-conspirator, who was a vendor to Odyssey House, to perform substantial renovations and repairs on defendant Walker's Pennsylvania residence. The repairs included interior painting and the installation of popcorn ceilings and ceiling fans. The co-conspirator submitted invoices to Odyssey House for goods or services never actually provided, in amounts that equaled the value of the work he performed on defendant Walker's residence, and Lugo caused Odyssey House to pay the false and fraudulent invoices;

b. On several occasions in 1996, 1997, and 1998, Frank Fauci, a co-conspirator identified in Paragraph 5, purchased airline tickets from New York to Atlanta, Georgia, for the use of defendant Walker and, sometimes, a companion. On some of these

occasions, Fauci submitted invoices to Odyssey House for goods or services never actually provided, and Lugo caused Odyssey House to pay the false and fraudulent invoices; and

c. Fauci paid directly for repairs on defendant Walker's automobile. Fauci submitted invoices to Odyssey House for goods and services never actually provided, and defendant Walker and Lugo caused Odyssey House to pay the false and fraudulent invoices.

IV. 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:

14. On numerous occasions defendant Walker or a co-conspirator caused Odyssey House to issue and mail false and fraudulent purchase orders, and caused vendors to Odyssey House to issue and mail false and fraudulent invoices corresponding to those purchase orders.

15. On numerous occasions Odyssey House paid false and fraudulent invoices by checks sent through the mails.

16. On numerous occasions defendant Walker received substantial amounts of cash from Lugo at Odyssey House's offices in Manhattan.

17. On approximately October 30, 1996, Fauci paid \$568 to purchase an airline ticket or tickets for defendant Walker's personal use.

18. On approximately February 2, 1997, Fauci paid \$442 to purchase an airline ticket or tickets for defendant Walker's personal use.

19. On approximately March 3, 1998, Fauci paid \$326 to purchase an airline ticket or tickets for defendant Walker's personal use.

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

COUNT TWO -- CONSPIRACY
(18 U.S.C. § 371)

The Grand Jury further charges:

20. Paragraphs 1 through 6, 9 through 11, 13, and 16 through 19 of Count One of this Indictment are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

V. DESCRIPTION OF THE OFFENSE

21. From at least as early as 1994 until approximately April 1999, the exact dates being unknown to the United States, in the Southern District of New York and elsewhere, defendant Walker and co-conspirators 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, to wit, the Internal Revenue Service ("IRS") of the United States Department of the Treasury, and to commit offenses against the United States, to wit, to violate Title 26, United States Code, Section 7206(1), all in violation of Title 18, United States Code, Section 371.

22. It was a part and object of the conspiracy that defendant Walker and co-conspirators 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 income taxes due and owing from

Walker.

23. It was a further part and object of the conspiracy that defendant Walker willfully would and did make and subscribe U.S. Individual Income Tax Returns, Forms 1040, for calendar years 1994, 1995, 1996, and 1997, and a 1998 U.S. Individual Income Tax Declaration for Electronic Filing, Form 8453, which were verified by defendant Walker's written declaration that they were made under penalties of perjury and which he did not believe were true and correct as to every material matter, in violation of Title 26, United States Code, Section 7206(1).

VI. 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:

24. On approximately April 13, 1995, defendant Walker made and subscribed a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for 1994, wherein he failed to report accurately his true personal income.

25. On approximately April 10, 1996, defendant Walker made and subscribed a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for 1995, wherein he failed to report accurately his true personal income.

26. On approximately April 12, 1997, defendant Walker made and subscribed a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for 1996, wherein he failed to report accurately his true personal income.

27. On approximately April 13, 1998, defendant Walker made and subscribed a false and fraudulent U.S. Individual Income Tax Return, Form 1040, for 1997, wherein he failed to

report accurately his true personal income.

28. On approximately April 3, 1999, defendant Walker made and subscribed a false and fraudulent U.S. Individual Income Tax Declaration for Electronic Filing, Form 8453, for 1998, wherein he failed to report accurately his true personal income.

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

COUNT THREE -- FRAUD AND FALSE STATEMENTS

(26 U.S.C. § 7206(1))

The Grand Jury further charges:

29. On or about April 12, 1997, in the Southern District of New York and elsewhere, Benjamin Walker, Jr., the defendant, a resident of Poughkeepsie, New York, and Tobyhanna, Pennsylvania, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1996, which was verified by defendant Walker's written declaration that it was made under penalties of perjury and was filed with the Internal Revenue Service, and which income tax return he did not believe to be true and correct as to every material matter, in that the income tax return reported taxable income of \$79,094 and tax of \$18,935, whereas, as defendant Walker then and there well knew and believed, his income and tax for calendar year 1996 were substantially in excess of the amounts reported, because the said income tax return failed to report as income his share of the proceeds of the scheme described in Count One of this Indictment.

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

COUNT FOUR -- FRAUD AND FALSE STATEMENTS

(26 U.S.C. § 7206(1))

The Grand Jury further charges:

30. On or about April 13, 1998, in the Southern District of New York and elsewhere, Benjamin Walker, Jr., the defendant, a resident of Poughkeepsie, New York, and Tobyhanna, Pennsylvania, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for the calendar year 1997, which was verified by defendant Walker's written declaration that it was made under penalties of perjury and was filed with the Internal Revenue Service, and which income tax return he did not believe to be true and correct as to every material matter, in that the income tax return reported taxable income of \$88,295 and tax of \$23,813, whereas, as defendant Walker then and there well knew and believed, his income and tax for calendar year 1997 were substantially in excess of the amounts reported, because the said income tax return failed to report as income his share of the proceeds of the scheme described in Count One of this Indictment.

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

COUNT FIVE -- FRAUD AND FALSE STATEMENTS
(26 U.S.C. § 7206(1))

The Grand Jury further charges:

31. On or about April 3, 1999, in the Southern District of New York and elsewhere, Benjamin Walker, Jr., the defendant, a resident of Poughkeepsie, New York, and Tobyhanna, Pennsylvania, did willfully make and subscribe a U.S. Individual Income Tax Declaration for Electronic Filing, Form 8453, for the calendar year 1998, which was verified by defendant Walker's written declaration that it was made under penalties of perjury and was filed with the Internal Revenue Service, and which income tax declaration he did not believe to be true and correct as to every material matter, in that line 1 of the declaration (which corresponded to line 22 of Form 1040), reported total income of \$54,953 and tax of \$8,370, whereas, as defendant Walker

then and there well knew and believed, his income and tax for calendar year 1998 were substantially in excess of the amounts reported, because the said income tax return failed to report as income his share of the proceeds of the scheme described in Count One of this Indictment.

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

Dated: A True Bill

Foreperson

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