

COPY

JAN 15 2009

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAMES H. HATTEN, Clerk  
By:  Deputy Clerk

UNITED STATES OF AMERICA	)	Criminal No.: 1:09-CR-014
	)	
v.	)	Filed:
	)	
RONALD K. JOHNSTON,	)	Violations:
	)	18 U.S.C. § 1349 (Count I)
Defendant.	)	26 U.S.C. § 7206(1)(Counts II-III)
	)	
_____	)	

CRIMINAL INFORMATION

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

COUNT ONE  
(18 U.S.C. § 1349 - Conspiracy)

1. Beginning at least as early as October 2002 and continuing thereafter at least through June 24, 2008, the exact dates being unknown to the United States, in the Northern District of Georgia and elsewhere, the defendant, RONALD K. JOHNSTON (hereinafter referred to as "DEFENDANT JOHNSTON"), ANTHONY M. TESVICH (hereinafter referred to as "TESVICH"), JAMES P. ROBINSON (hereinafter referred to as "ROBINSON"), and other co-conspirators did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree, in violation of Title 18,

United States Code, Section 1349, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 1343 and 1346, by having devised and intending to devise a scheme and artifice to:

- (a) defraud The Home Depot, Inc. and its wholly-owned subsidiary, Home Depot U.S.A., Inc. (The Home Depot, Inc. and its wholly-owned subsidiary, Home Depot U.S.A., Inc., are hereinafter referred to as "Home Depot");
- (b) obtain money and property by means of false and fraudulent pretenses, representations, and promises; and
- (c) deprive Home Depot of the honest services of DEFENDANT JOHNSTON, TESVICH, and ROBINSON,

and executed the aforesaid scheme and artifice by and through the use of certain writings, signs, sounds, and signals transmitted in interstate and foreign wire communications.

#### BACKGROUND

2. At all times relevant to this Criminal Information, Home Depot was a publicly-traded corporation with its business centered on the operation of Home Depot retail stores located throughout the United States, Puerto Rico, Canada, and Mexico. Those Home Depot retail stores sold a wide

variety of building materials, home improvement products, and lawn and garden items. Home Depot had its corporate headquarters located at 2455 Paces Ferry Road, N.W., Atlanta, Georgia, within the Northern District of Georgia. Sometime in 2001, Home Depot centralized its purchasing functions to an Atlanta Store Support Center, also headquartered at 2455 Paces Ferry Road, N.W., Atlanta, Georgia.

3. TESVICH was employed by Home Depot from 1986 until September, 2005. He received various promotions from Home Depot, finally obtaining the position of Global Product Development Merchant (“GPDM”) for Home Depot Department 23 (Flooring), which he held until he left Home Depot. As GPDM, TESVICH owed a fiduciary duty to Home Depot.

TESVICH had a duty to act honestly and faithfully in all business dealings with Home Depot. As GPDM, he was based in Home Depot’s Atlanta Store Support Center. In his position as GPDM, among other things, TESVICH was responsible for locating foreign suppliers which could supply lower cost, high quality Department 23 items for resale in Home Depot retail stores. As part of his duties as GPDM, TESVICH traveled to numerous countries to locate potential foreign suppliers and develop relationships with those foreign suppliers. As GPDM, TESVICH developed business relationships with

foreign suppliers on behalf of Home Depot. These foreign suppliers sold Home Depot millions of dollars worth of items for resale in Home Depot's various retail stores.

4. ROBINSON was employed by Home Depot from November, 1999 until July, 2007. He received various promotions from Home Depot, finally obtaining the position of Divisional Merchandising Manager ("DMM") for Home Depot Department 23 (Flooring), which he held until he left Home Depot. As DMM, and in his other positions with Home Depot, ROBINSON owed a fiduciary duty to Home Depot. ROBINSON had a duty to act honestly and faithfully in all business dealings with Home Depot. As DMM, he was based in Home Depot's Atlanta Store Support Center. In his position as DMM, and otherwise during his employment with Home Depot, he was responsible for overseeing the location of foreign suppliers which could supply lower cost, high quality Department 23 items for resale in Home Depot retail stores. These foreign suppliers sold Home Depot millions of dollars worth of items for resale in Home Depot's various retail stores.

5. DEFENDANT JOHNSTON was employed by Home Depot from September, 1991 until July, 2007. He received various promotions from Home Depot, finally obtaining the position of Merchant for Home Depot

Department 23 (Flooring), which he held until he left Home Depot. As Merchant, and in his other positions with Home Depot, DEFENDANT JOHNSTON owed a fiduciary duty to Home Depot. DEFENDANT JOHNSTON had a duty to act honestly and faithfully in all business dealings with Home Depot. As Merchant, he was based in Home Depot's Atlanta Store Support Center. In his position as Merchant, and otherwise during his employment with Home Depot, he was responsible for overseeing the location of foreign suppliers which could supply lower cost, high quality Department 23 items for resale in Home Depot retail stores. These foreign suppliers sold Home Depot millions of dollars worth of items for resale in Home Depot's various retail stores.

6. During the period that TESVICH developed business relationships with those foreign suppliers on behalf of Home Depot as its GPDM and those foreign suppliers sold Home Depot millions of dollars worth of items for resale in Home Depot's various retail stores, other Home Depot employees, DEFENDANT JOHNSTON, and ROBINSON approved and supported Home Depot's purchases of millions of dollars of items from those foreign suppliers.

7. During the time that TESVICH was a GPDM for Home Depot and from that time through July, 2007 when DEFENDANT JOHNSTON left Home Depot's employ, Home Depot maintained corporate policies prohibiting its employees from engaging in activities in which their personal interests would interfere with company business and prohibited its employees from receiving improper personal benefits as a result of their positions with the company such as bribes and kickbacks from suppliers. These policies were enacted to ensure that Home Depot employees acted honestly and faithfully in all of their dealings with Home Depot, including a duty to make full and fair disclosure to Home Depot of any personal interest, profit, or kickback the employee expected to derive from any transaction in which he participated in the course of the employment.

#### **THE MANNER AND MEANS**

8. Home Depot was defrauded by a kickback scheme arranged by TESVICH, DEFENDANT JOHNSTON, ROBINSON, and other co-conspirators. Home Depot had a right to rely on TESVICH, DEFENDANT JOHNSTON, and ROBINSON to conduct their work on Home Depot's behalf in an honest fashion so as to benefit Home Depot, including their work in securing high quality items from suppliers at the best prices and on the most

advantageous other terms of sale, for resale in Home Depot retail stores.

Home Depot employees were prohibited from taking bribes and kickbacks from suppliers or potential suppliers in return for favorable treatment.

9. TESVICH, DEFENDANT JOHNSTON, and ROBINSON, and other co-conspirators arranged for Home Depot to purchase items for resale, on less than the most advantageous terms of sale, from Home Depot foreign suppliers. In return, and while he was a Home Depot employee and after he left Home Depot's employ, TESVICH received millions of dollars from Home Depot foreign suppliers and passed on through kickbacks hundreds of thousands of dollars and other items of value to DEFENDANT JOHNSTON and ROBINSON for their role in approving and supporting Home Depot's purchases from Home Depot foreign suppliers. TESVICH, DEFENDANT JOHNSTON, and ROBINSON took affirmative acts to conceal from Home Depot their receipt of the aforesaid money and things of value and provided false statements to Home Depot denying their receipt of same.

10. For the purposes of forming and effectuating the aforesaid conspiracy, TESVICH, DEFENDANT JOHNSTON, ROBINSON, and other co-conspirators did those things they conspired to do, including, among other things:

- (a) While an employee of Home Depot and after he left Home Depot's employ, TESVICH set up and controlled various corporations (hereinafter "front companies"), which he established to give Home Depot the impression it was dealing with local branches or representatives of Home Depot foreign suppliers on a daily basis and at the same time intentionally hiding his connection with those front companies and Home Depot foreign suppliers from Home Depot;
- (b) While an employee of Home Depot and after he left Home Depot's employ, TESVICH received millions of dollars from Home Depot foreign suppliers which he used to establish front companies and to otherwise provide money for his personal use to purchase cars, property, investments, entertainment, and to otherwise further his own personal business interests;
- (c) While he was an employee of Home Depot and after he left Home Depot's employ, TESVICH secretly supplied DEFENDANT JOHNSTON and ROBINSON hundreds of

thousands of dollars and things of value in a concealed and surreptitious manner so as not to arouse suspicion as to their receipt of same by Home Depot.

TESVICH, DEFENDANT JOHNSTON, and ROBINSON foresaw or reasonably should have foreseen that Home Depot might suffer an economic harm as a result of his and their breach of their fiduciary duty to Home Depot.

#### OVERT ACTS

11. In addition to the interstate and foreign telephone calls, interstate and foreign facsimiles, and interstate and foreign wire transfers made and caused to be transmitted in furtherance of the conspiracy by TESVICH, DEFENDANT JOHNSTON, ROBINSON, and other co-conspirators, the following acts were done in furtherance of the conspiracy:

- (a) Substantial cash payments, which were referred to as “french fries” and “milkshakes,” were provided to ROBINSON AND DEFENDANT JOHNSTON;
- (b) A luxury SUV was provided to ROBINSON; and
- (c) Payments were made to a home improvement company for work on DEFENDANT JOHNSTON’S residence.

ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION  
1349.

COUNTS TWO THROUGH THREE

(26 U.S.C. § 7206(1) - making and subscribing false tax return)

12. The allegations set forth in paragraphs 1-11 of this Criminal Information are hereby repeated, re-alleged and incorporated herein as if fully set forth in these Counts.

13. For each count of the following Counts Two through Three of this Criminal Information, during the calendar years as set forth below, DEFENDANT JOHNSTON, residing and working in the Northern District of Georgia, Atlanta Division:

- (a) had and received taxable income in the approximate sums set forth below and upon said taxable income there were taxes due and owing to the United States of America in the approximate amounts set forth below;
- (b) did willfully make and subscribe, on or about the date listed below, a joint United States Individual Tax Return which was verified by a written declaration that it was made under the penalties of perjury and which DEFENDANT

JOHNSTON did not believe to be true and correct as to every material matter;

- (c) filed said income tax return with the United States Internal Revenue Service, which was prepared and signed in the Northern District of Georgia, Atlanta Division, and which stated that it was true, correct, and complete when DEFENDANT JOHNSTON well knew and believed that he had not reported the taxable income noted below, which was in addition to the amounts stated on his return.

COUNT	YEAR	APPROXIMATE TAXABLE INCOME NOT REPORTED	APPROXIMATE TAX DUE AND APPROXIMATE DATE RETURN PREPARED AND SUBSCRIBED
2	2005	\$60,108	\$22,621 April 15, 2006
3	2006	\$125,893	\$43,295 April 12, 2007

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

### FORFEITURE PROVISION

Upon conviction of Count One of this Information, DEFENDANT JOHNSTON shall, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), forfeit to the United States any and all property constituting, or derived from, proceeds obtained directly or indirectly, as a result of the violation(s).

The property to be forfeited includes, but is not limited to, the following:

- (a) \$219,376.93 as substitute res for the assorted gym equipment and for 3161 Hamlet Way, N.E., Marietta, Georgia; and
- (b) a monetary forfeiture judgment in the amount of \$134,623.07.

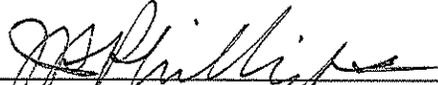
If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendant up to the value of the forfeitable property described above.

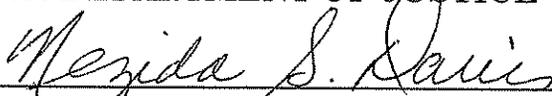
Dated this 15<sup>th</sup> day of JANUARY, 2009.

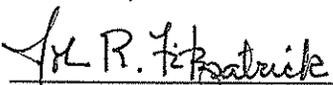
DAVID E. NAHMIA  
UNITED STATES ATTORNEY

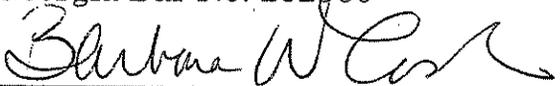
  
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