

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : Criminal No.: 00 CR. 596 (DLC)

v. : Filed: June 1, 2000

HARRY LEVY and : Violation: 15 U.S.C. § 1
CLIFTON FRUIT & PRODUCE, INC.,

:
Defendants.

:

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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. Harry Levy ("Levy") and Clifton Fruit & Produce, Inc. ("Clifton") are hereby made defendants on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Levy resided in New York, New York. Levy was the president and a co-owner of Clifton.

3. Clifton was a New York State corporation located in the Brooklyn Terminal Market in Brooklyn, New York. Clifton was a vendor of food, primarily fresh produce.

4. 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.

5. 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.

6. 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.

7. 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.

8. Whenever in this Count 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.

9. 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

10. During the period covered by this Count, Clifton 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.

11. From approximately 1994 until approximately March 1999, pursuant to contracts that are the subject of this Count, the NYCBOE purchased approximately \$72 million of produce from members of the conspiracy, including approximately \$18.5 million of produce from Clifton.

12. 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 Count, were within the flow of, and substantially affected, interstate trade and commerce.

III. DESCRIPTION OF THE OFFENSE

13. From approximately 1994 until approximately March 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).

14. 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.

15. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants 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 divide upcoming bids 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; and

(f) 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

16. 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

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

The United States of America further charges:

17. Paragraphs 1 through 3 and Paragraphs 8 and 9 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

V. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

18. The Department of Citywide Administrative Services of the City of New York ("DCAS") was the agency that provided support to those city entities that served the public. DCAS became responsible for providing this support in

July 1996 when it replaced the Department of General Services of the City of New York. Through its Division of Municipal Supply Services, DCAS conducted competitive bidding for the supply of necessary items, including food, on behalf of several municipal entities, including the Health and Hospitals Corporation ("HHC") and the Department of Juvenile Justice ("DJJ").

19. HHC operated 24 facilities, which included 11 acute care hospitals and 13 long-term care or diagnostic centers. HHC served approximately four million patients annually. HHC purchased approximately \$15 million of food each year.

20. DJJ provided temporary custody, care, and control of juveniles accused of committing delinquent or criminal acts and detained by police arrest or court order. DJJ operated nine supervision and detention facilities, and also provided aftercare services and programs designed to prevent juvenile delinquency. DJJ recorded 1339 admissions during 1997, and provided aftercare and prevention programs that serviced 628 individuals during the same period.

21. DCAS solicited bids from, and awarded contracts to, vendors of food on a regular basis. The food contracts awarded by DCAS were requirements contracts that obligated the vendor to supply and deliver food at the stated prices for the contract period. Under these contracts, the municipal facilities placed orders as needed, usually once or twice a week.

22. DCAS sought separate bids, and awarded contracts, for the supply of a number of categories of food, including specified frozen foods. DCAS awarded separate contracts for each line item specified in its bids. The company submitting the lowest bid for a particular line item usually received the contract for that line item.

VI. TRADE AND COMMERCE

23. During the period covered by this Count, Clifton purchased substantial quantities of food, including frozen food, for resale to entities serviced by DCAS from brokers, who ordered goods on behalf of Clifton from suppliers located throughout the United States. These suppliers commonly shipped the goods ordered by the brokers directly to Clifton.

24. From approximately May 1998 until approximately March 1999, as a result of the conspiracy charged herein, DCAS awarded a contract for specified frozen foods to Clifton for which Clifton had bid approximately \$201,643.10.

25. The activities of the defendants and co-conspirators with respect to the sale of frozen food to entities serviced by DCAS, including the sale of frozen food pursuant to the contract that is the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

VII. DESCRIPTION OF THE OFFENSE

26. From approximately May 1998 until approximately March 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).

27. 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 the bids for and allocate portions of a contract awarded by DCAS for the supply of frozen food to facilities operated by HHC and DJJ.

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

(a) Prior to the submission of bids for the May 19, 1998 bid opening, they discussed and agreed which co-conspirator, among the co-conspirators, would be the low bidder to DCAS for particular items in the bid to supply frozen food to HHC and DJJ;

(b) They discussed and agreed on the prices to be contained within the bids to DCAS for the contract to supply frozen food to HHC and DJJ, and then bid accordingly; and

(c) They refrained from bidding or submitted intentionally high, complementary bids to DCAS for particular items in the contract to supply frozen food to HHC and DJJ.

VIII. JURISDICTION AND VENUE

29. 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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