

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : Criminal No.: 00 CR. 594 (LMM)

v. : Filed: June 1, 2000

LEONARD NASH and : Violations: 15 U.S.C. § 1
A. BOHRER, INC., : 18 U.S.C. § 371
: 18 U.S.C. § 1344

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. Leonard Nash is hereby made a defendant on the charge stated below.

2. A. Bohrer, Inc. ("Bohrer") is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

3. Leonard Nash ("Nash") resided in Franklin Lakes, New Jersey. Nash was the general manager of A. Bohrer, Inc. ("Bohrer") until 1998, when he became president and co-owner of the company.

4. Bohrer was a New Jersey corporation located in Moonachie, New

Jersey. Bohrer, which was founded in 1898, primarily was a vendor of food, but also sold some non-food items.

5. 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.

6. 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.

7. 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.

8. In addition to the contracts described in Paragraphs 6 and 7, the NYCBOE occasionally sought bids and awarded contracts for furnishing and delivering specified quantities of grocery and frozen food items to be warehoused.

9. 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.

10. 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.

11. 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

12. During the period covered by this Count, Bohrer purchased substantial quantities of food, including frozen food, for resale to the NYCBOE from brokers, who ordered their goods on behalf of Bohrer from suppliers located throughout the United States. These suppliers commonly shipped the goods ordered by the brokers directly to Bohrer.

13. From approximately May 1996 until approximately April 1999, pursuant to contracts that are the subject of this Count, the NYCBOE purchased approximately \$126 million of frozen food from members of the conspiracy, including approximately \$17.7 million of frozen food from Bohrer.

14. The activities of the defendants and co-conspirators with respect to the sale of food to the NYCBOE, including the sale of frozen food 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

15. From approximately May 1996 until approximately April 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).

16. 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 frozen food to the NYCBOE.

17. 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 bid so as to divide upcoming contracts to supply frozen food to the NYCBOE. These meetings were held at different sites in or near New York City, including the Crowne Plaza LaGuardia Hotel in Queens; the Ramada Inn or Courtyard by Marriott at LaGuardia in Queens; the offices of one of the co-conspirators at the Bronx Terminal Market; a meeting room available to the businesses operating at the Hunts Point Food Distribution Center in the Bronx; and a food trade show at the Meadowlands in East Rutherford, New Jersey;

(b) They designated which co-conspirators would be the low bidders, among the co-conspirators, on specified parts of contracts to supply frozen food to the NYCBOE;

(c) They discussed and agreed on the prices or price levels they

would bid on specified parts of contracts to supply frozen food 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 frozen food 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 food to the NYCBOE;

(f) They shared the net profits earned on contracts to furnish and deliver specified quantities of frozen food items to be warehoused by giving each other money or free merchandise;

(g) Nash and Bohrer agreed to receive and, in fact, did receive substantial amounts of free merchandise from a co-conspirator, in exchange for which Bohrer did not bid competitively on particular contracts awarded by the NYCBOE for frozen food to be warehoused; and

(h) 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

18. 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 -- CONSPIRACY (18 U.S.C. § 371)

The United States of America further charges:

19. Leonard Nash ("Nash") is hereby made a defendant on the charge stated below.

20. Paragraphs 3, 4, 10, and 11 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

V. RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

21. Summit Bank ("Summit"), formerly known as United Jersey Bank, was a financial institution, having its principal place of business in New Jersey.

22. Chase Manhattan Bank ("Chase") was a financial institution, having its headquarters in New York, New York.

23. Argosy Investment Group ("Argosy") was a venture capital firm, having its headquarters in Pennsylvania.

VI. BACKGROUND OF THE SCHEME

24. From no later than in or about 1992 until in or about 1998, Bohrer received financing on a revolving basis from Summit. Summit lent funds to Bohrer based on, among other things, the value of Bohrer's inventory. Bohrer supplied Summit with information about the value of that inventory periodically.

25. Beginning no later than in or about 1995 until in or about 1998, Nash and others at Bohrer, overstated the value of the inventory Bohrer held, in order to induce Summit to lend it more money.

26. In or about 1998, Nash sought financing to fund his acquisition of Bohrer. Summit being unwilling to extend such financing, Nash applied to Chase for that financing and to obtain operating funds for Bohrer. The financing was to be extended upon Nash's purchase of Bohrer. At or around the same time, Nash also applied to Argosy for similar financing in a smaller amount.

27. To induce Chase and Argosy to extend financing, Nash obtained financial statements, which purported to represent accurately the financial condition of Bohrer. In truth, however, these financial statements were false in that they falsely overstated the value of Bohrer's inventory. Nash presented these financial statements to Chase and Argosy.

28. On or about September 2, 1998, Chase agreed, based on the fraudulent financial statements, to extend the requested financing. Under the

terms of that agreement, Chase extended a term loan of \$4 million, and extended an additional \$10 million line of credit. The amount of the funds to be lent under this line of credit were determined based, in part, upon the value of Bohrer's current inventory, which had been fraudulently overstated in the financial statements submitted to Chase. Under the terms of the loan agreement, Bohrer was required to report periodically the value of, among other things, its inventory to Chase. The purpose of the requirement to provide periodic reports ("Periodic Reports") was, among other things, to assist Chase in the determination of the amount of credit to extend to Bohrer.

29. On or about September 2, 1998, Argosy, also relying on the false financial statements, agreed to extend the requested financing. Under that agreement, Argosy lent Bohrer \$1.5 million.

30. In or about September 1998, Nash and two other persons purchased Bohrer from Nash's great uncle and his family for approximately \$5 million. Bohrer's outstanding debt to Summit was satisfied in connection with the purchase.

31. Between in or about October 1998 and October 1999, Nash sent by overnight courier and faxed to Chase Periodic Reports. Nash sent by overnight courier copies of certain of the same Periodic Reports to Argosy. The Periodic Reports also contained false and fraudulent overstatements of inventory value.

32. In or about October 1999, Nash ceased supplying Periodic Reports to Chase and Argosy.

33. On or about December 2, 1999, Chase declared Bohrer to be in default under the terms of its lending arrangement owing to Nash's failure to supply it with Periodic Reports. As a result of the default, Chase took over the operations of Bohrer.

VII. THE CONSPIRACY

34. Between in or about 1995 until on or about December 2, 1999, in the Southern District of New York and elsewhere, Nash, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit bank fraud, in violation of Title 18, United States Code, Section 1344, and to commit mail/private/commercial interstate carrier fraud, in violation of Title 18, United States Code, Section 1341.

VIII. OBJECTS OF THE CONSPIRACY

35. It was a part and an object of the conspiracy that Nash, and others known and unknown, would and did, unlawfully, willfully, and knowingly, execute and attempt to execute a scheme and artifice to defraud financial institutions, and to obtain the moneys, funds, credits, assets, and property owned by and under the custody and control of financial institutions by means of false and

fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

36. It was a further part and an object of the conspiracy that Nash, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, would and did, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, take and receive therefrom such matters and things, and knowingly cause to be delivered, by mail or carrier according to the directions thereon, and at the place at which they were directed to be delivered by the person to whom they were addressed, such matters and things, in violation of Title 18, United States Code, Section 1341.

IX. MEANS AND METHODS OF THE CONSPIRACY

37. Among the means and methods by which Nash and his co-conspirators would and did carry out the conspiracy were the following:

(a) Nash and his co-conspirators knowingly overstated the value of the inventory that Bohrer held, when seeking financing from Summit, in order to

induce Summit to lend Bohrer additional money;

(b) Nash and his co-conspirators knowingly overstated the value of the inventory that Bohrer held, when submitting financial statements to Chase and Argosy, to induce them to lend more money; and

(c) Nash and his co-conspirators knowingly overstated the value of the inventory that Bohrer held, when submitting Periodic Reports to Chase and Argosy, both to conceal the earlier false statements of inventory value and to induce Chase to lend more money.

X. OVERT ACTS

38. In furtherance of the conspiracy, and to effect the illegal objects thereof, Nash, and his co-conspirators, committed the following overt acts, in the Southern District of New York and elsewhere:

(a) On or about December 31, 1997, Nash helped prepare and submitted an inventory report to Summit, which report overstated the value of Bohrer's inventory by approximately \$800,000;

(b) In or about the spring of 1998, Nash sent by overnight courier to Chase and Argosy a financial statement for Bohrer that falsely stated that Bohrer's inventory, as of December 31, 1997, was worth approximately \$3.6 million, when in fact it was worth only approximately \$2.8-\$2.9 million, as Nash and his co-conspirators well knew;

(c) On or about September 3, 1998, Nash met in Manhattan with representatives of Chase and Argosy, at which meeting he presented Chase and Argosy with updated financial statements, including a financial statement that falsely stated that Bohrer's inventory, as of May 28, 1999, was worth approximately \$3.8 million, when in fact it was worth only approximately \$2.8-\$2.9 million, as Nash and his co-conspirators well knew; and

(d) During 1999, Nash mailed and faxed to Chase and Argosy Periodic Reports, which, by in or about September 1999, falsely overstated the value of Bohrer's inventory by approximately \$1.5 million.

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

COUNT THREE -- BANK FRAUD
(18 U.S.C. § 1344)

The United States of America further charges:

39. Leonard Nash ("Nash") is hereby made a defendant on the charge stated below.

40. The factual allegations of Paragraphs 3, 4, 21 through 33, 37, and 38 of this Information, are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.

41. From in or about 1998 until in or about December 1999, in the Southern District of New York and elsewhere, Nash, and others known and unknown, unlawfully, willfully, and knowingly, executed and attempted to

execute a scheme and artifice to defraud a financial institution, to wit, Chase, and to obtain the moneys, funds, credits, assets, and other properties owned by and under the custody and control of said financial institution by means of false and fraudulent pretenses, representations, and promises, to wit, Nash submitted financial statements to Chase which falsely and fraudulently overstated the value of Bohrer's inventory in order to induce Chase to enter into agreements to lend Bohrer approximately \$14 million.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS 1344 and 2

_____/s/_____
JOEL I. KLEIN
Assistant Attorney General

_____/s/_____
MARY JO WHITE
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Southern District of New York

_____/s/_____
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