

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : Crim. No. 00 Cr. 213 (JSR)

v. : Filed: 3/15/01

VINCENT DICARLO, : Violation: 15 U.S.C. § 1

Defendant. :

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INFORMATION

SHERMAN ACT CONSPIRACY

(15 U.S.C. § 1)

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

1. Vincent DiCarlo is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Information:

2. Vincent DiCarlo was a resident of East Islip, New York. He was the president and a co-owner of DiCarlo Distributors, Inc.

3. DiCarlo Distributors, Inc. ("DiCarlo, Inc.") was a New York State corporation located in Holtsville, New York. DiCarlo, Inc. was a vendor of food, primarily produce, frozen food, and groceries.

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 Information 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. They included Nicholas A. Penachio, Nick Penachio Co., Inc. ("Penachio Co."), John DiCarlo, DiCarlo, Inc., Landmark Food Corp. ("Landmark"), Gordon Kerner, Selwyn Lempert ("Lempert"), Steven Kanowitz, Kanowitz Fruit & Produce, Inc., Harry Levy, Clifton Fruit & Produce, Inc., David Axelrod, Toby Unger, Baiardi Chain Food Corp., Michael Beberman, and John Doody.

II. TRADE AND COMMERCE

10. During the period covered by this Information, DiCarlo, Inc. and co-conspirators 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 1997 until approximately April 1999, pursuant to contracts that are the subject of this Information, the NYCBOE purchased approximately \$5.3 million of produce from DiCarlo, Inc.

12. The activities of the defendant 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 Information, were within the flow of, and substantially affected, interstate trade and commerce.

III. DESCRIPTION OF THE OFFENSE

13. From approximately 1997 until approximately April 1999, the exact dates being unknown to the United States, the defendant 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 defendant 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 defendant and co-conspirators did those things which they

combined and conspired to do, including, among other things:

(a) From approximately 1991 until approximately April 1999, certain co-conspirators participated in meetings or conversations where they discussed and agreed how to bid so as to divide upcoming contracts to supply produce to the NYCBOE;

(b) Certain co-conspirators gave substantial amounts of cash to co-conspirator Lempert, an employee of Penachio Co., with the understanding that Lempert would use the cash to pay one or more potential bidders not to bid competitively on particular contracts to supply produce to the NYCBOE;

(c) Certain co-conspirators 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;

(d) The defendant Vincent DiCarlo and co-conspirators John DiCarlo and DiCarlo, Inc. joined the conspiracy in approximately 1997. Prior to that time, DiCarlo, Inc. had bid competitively on particular bids to supply food, including frozen food, produce, and groceries, to the NYCBOE. The defendant and certain co-conspirators initially discussed offering \$100,000 or more in cash to induce DiCarlo, Inc. not to bid competitively. Ultimately, Landmark, which for some years had been designated to be the low bidder among the conspirators for contracts to supply

produce to schools in Manhattan, agreed to relinquish Manhattan to DiCarlo, Inc. in exchange for \$100,000 in cash per bid cycle. DiCarlo, Inc. then agreed to take Landmark's place as the low bidder among the conspirators for future NYCBOE contracts to supply produce to schools in Manhattan, and to stop bidding competitively for contracts to supply frozen food to the NYCBOE;

(e) In approximately April 1998, the defendant paid \$18,000 of the money promised to Landmark by causing DiCarlo, Inc. to issue two checks payable to Landmark;

(f) The defendant and certain co-conspirators designated which co-conspirators would be the low bidders, among the co-conspirators, on specified parts of contracts to supply produce to the NYCBOE;

(g) The defendant and certain co-conspirators 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. As a result, some of the members of the conspiracy sometimes raised the prices in their bids by 10% or more; and

(h) The defendant and certain co-conspirators refrained from bidding or submitted intentionally high, complementary bids on specified parts of contracts to supply produce to the NYCBOE.

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

Dated:

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