

COPY

FILED IN OPEN COURT
U.S.D.C. Atlanta

MAY 29 2008

By: JAMES N. HATTEN, Clerk
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA)	Criminal No.: 1:08-CR-201
)	
v.)	Filed:
)	
ANTHONY M. TESVICH,)	Violations:
)	18 U.S.C. § 1349 (Count I)
Defendant.)	26 U.S.C. § 7201, 18 U.S.C. § 2
)	(Counts II-IV)
)	

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 October 31, 2007, the exact dates being unknown to the United States, in the Northern District of Georgia and elsewhere, the defendant, ANTHONY M. TESVICH (hereinafter referred to as "DEFENDANT TESVICH"), The Home Depot, Inc. (The Home Depot, Inc. and its wholly-owned subsidiary, Home Depot U.S.A., Inc., are hereinafter

referred to as “Home Depot”) employee Co-conspirators A and B, 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 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 TESHVICH and Home Depot employee Co-conspirators A and B,

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. DEFENDANT 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, DEFENDANT TESVICH owed a fiduciary duty to Home Depot. DEFENDANT 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, DEFENDANT 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, DEFENDANT TESVICH traveled to numerous countries to locate potential foreign suppliers and develop relationships with those foreign suppliers. As GPDM, DEFENDANT 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. During the period that DEFENDANT 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, Co-conspirators A and B, approved and supported Home Depot's purchases of millions of dollars of items from those foreign suppliers.

5. During the time that DEFENDANT TESVICH was a GPDM for Home Depot, 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

6. Home Depot was defrauded by a kickback scheme arranged by DEFENDANT TESVICH, Home Depot employee Co-conspirators A and B, and other co-conspirators. Home Depot had a right to rely on DEFENDANT TESVICH and Home Depot employee Co-conspirators A and B 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.

7. DEFENDANT TESVICH, Home Depot employee Co-conspirators A and B, 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, DEFENDANT 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 Home Depot employee Co-conspirators A and B for their role in approving and supporting Home Depot's purchases from Home Depot foreign suppliers. DEFENDANT TESVICH and Home Depot employee Co-conspirators A and B 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.

8. For the purposes of forming and effectuating the aforesaid conspiracy, DEFENDANT TESVICH, Home Depot employee Co-conspirators A and B, 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, DEFENDANT 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, DEFENDANT 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; and

(c) While he was an employee of Home Depot and after he left Home Depot's employ, DEFENDANT TESVICH supplied Home Depot employee Co-conspirators A and B 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.

DEFENDANT TESVICH and Home Depot employee Co-conspirators A and B 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

9. 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 DEFENDANT TESVICH, Home Depot employee Co-conspirators A and B, 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 Home Depot employee Co-conspirators A and B; and
- (b) A luxury SUV was provided to Home Depot Co-conspirator A.

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

COUNTS TWO THROUGH FOUR
(26 U.S.C. § 7201 - tax evasion)

10. The allegations set forth in paragraphs 1-9 of this Criminal Information are hereby repeated, re-alleged and incorporated herein as if fully set forth in these Counts.

11. For each count of the following Counts Two through Four of this Criminal Information, during the calendar years as set forth below, in the Northern District of Georgia, Atlanta Division and elsewhere, DEFENDANT TESVICH, living and working in the Northern District of Georgia, Atlanta Division, aided and abetted by others known and unknown to the United States, 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; that well knowing and believing the foregoing facts, on or about the filing dates for each tax return year listed below, DEFENDANT TESVICH did willfully attempt to evade and defeat the said income tax due and owing to the United States for each said calendar year by failing to report said income on the federal income tax returns he filed for those calendar years, as required by law to any proper officer of the Internal Revenue Service, by failing to pay to the Internal Revenue Service said income tax, and by concealing and attempting to conceal from all proper officers of the United States his true and correct income.

COUNT	YEAR	APPROXIMATE TAXABLE INCOME NOT REPORTED	APPROXIMATE TAX DUE AND APPROXIMATE DATE RETURN RECEIVED BY INTERNAL REVENUE SERVICE
2	2003	\$606,997.61	\$212,937 August 12, 2004
3	2004	\$2,331,090.34	\$821,981 October 27, 2005
4	2005	\$1,073,683.67	\$386,997 June 4, 2006

ALL IN VIOLATION OF TITLE 26, UNITED STATES CODE, SECTION 7201 AND TITLE 18, UNITED STATES CODE, SECTION 2.

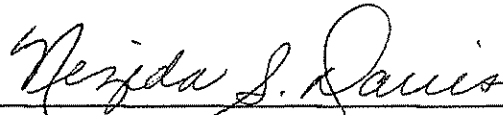
Dated this 29th day of May, 2008.



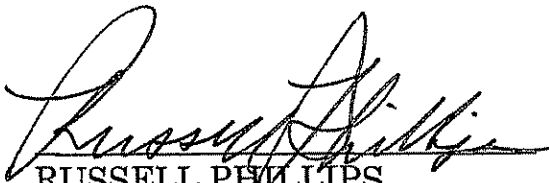
DAVID E. NAHMIAS
UNITED STATES ATTORNEY



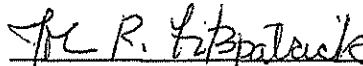
THOMAS O. BARNETT
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION
U.S. DEPARTMENT OF JUSTICE



NEZIDA S. DAVIS
CHIEF, ATLANTA FIELD OFFICE



RUSSELL PHILLIPS
ASSISTANT U.S. ATTORNEY
Georgia Bar No. 576335



JOHN R. FITZPATRICK
TRIAL ATTORNEY
Georgia Bar No. 262360



SALLY B. MOLLOY
ASSISTANT U.S. ATTORNEY
Georgia Bar No. 140816

75 Spring Street, S.W.
Suite 1176
Atlanta, Georgia 30303
(404) 331-7119
(404) 331-7110 (fax)

75 Spring Street, S.W.
Suite 600
Atlanta, Georgia 30303
(404) 581-6000
(404) 581-6181 (fax)