

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

v.

10 CRIM 305

MARIO PERCIAVALLE,

Defendant.

Filed:

Violations:

15 U.S.C. § 1 and 18 U.S.C. § 2

18 U.S.C. § 1349

18 U.S.C. § 1341

JUDGE DANIELS

INDICTMENT

The Grand Jury charges:

COUNT ONE

SHERMAN ACT CONSPIRACY

(15 U.S.C. § 1 and 18 U.S.C. § 2)

1. MARIO PERCIAVALLE is hereby indicted and made a defendant on the charge stated below in Count One.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by the Count:

2. Defendant MARIO PERCIAVALLE (hereinafter "PERCIAVALLE"), resided in Stormville, New York. Defendant PERCIAVALLE was employed as the Associate Director of Plant Services within the Department of Engineering at Mount Sinai Medical

Center and School of Medicine, (hereinafter "Mount Sinai").

3. 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 representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

4. Various persons and companies, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included an owner of a corporation, located in Long Island City, New York, that provided maintenance and insulation services to Mount Sinai (hereinafter "CC-1").

II. BACKGROUND

During the period covered by this Count:

5. Mount Sinai was located in New York, New York, and operated both a teaching hospital and a school of medicine.

6. The Plant Services division within the Department of Engineering was responsible for maintaining infrastructure at Mount Sinai. This included selecting and contracting with third parties, including vendors who provided maintenance and insulation services to Mount Sinai.

7. Mount Sinai maintained a competitive bidding policy that required three written

bids for all purchases greater than \$10,000. Specific exclusions to this policy included those instances where (a) the work was performed on an emergency basis; (b) it was deemed to be a sole source purchase; or (c) it was deemed to be a selected source purchase. Where any of these exclusions were used, adequate written justification was required. The purpose of this bidding policy was to ensure that Mount Sinai obtained products and services at competitive, fair market prices.

8. Defendant PERCIAVALLE was responsible for obtaining bids from vendors, and awarding contracts in accordance with Mount Sinai's policies and procedures, including Mount Sinai's competitive bidding policy.

9. Mount Sinai maintained a policy prohibiting employees, including the defendant, from accepting from any vendor any gift or gifts totaling in excess of \$100.00 in any year ("gift policy").

III. INTERSTATE TRADE AND COMMERCE

10. From at least as early as June 2004 and continuing until at least September 2005, the exact dates being unknown to the Grand Jury, pursuant to contracts that are the subject of this Count, Mount Sinai purchased substantial quantities of maintenance and insulation services from CC-1. Materials were transported across state lines for use in performing some of the aforementioned maintenance and insulation services.

11. Materials that CC-1 used with respect to the maintenance and insulation services it provided to Mount Sinai, pursuant to contracts that are the subject of this Count, were

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

IV. DESCRIPTION OF THE OFFENSE

12. From at least as early as June 2004 and continuing until at least September 2005, the exact dates being unknown to the Grand Jury, in the Southern District of New York and elsewhere, defendant PERCIAVALLE 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).

13. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action amongst defendant PERCIAVALLE and his co-conspirators, the substantial terms of which were to rig bids and allocate contracts for maintenance and insulation services at Mount Sinai.

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

(a) agreeing in advance that CC-1 would be the low bidder on contracts for maintenance and insulation services;

(b) meeting to discuss and affirm their agreement; and

(c) submitting intentionally high non-competitive bids on contracts to perform maintenance and insulation services at Mount Sinai. The intentionally high bids were submitted in order to make it appear that there had been competition for

maintenance and insulation contracts when, in fact, there had not.

V. JURISDICTION AND VENUE

15. The aforesaid combination and conspiracy was carried out, in part, within the Southern District of New York within the five years preceding the filing of this Indictment.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1 AND 18 UNITED STATES CODE SECTION 2.

COUNT TWO
MAIL FRAUD CONSPIRACY
(18 U.S.C. § 1349)

The Grand Jury further charges:

16. Defendant PERCIAVALLE is hereby indicted and made a defendant on the charge stated below in Count Two:

17. Paragraphs 2 through 9 of Counts One of this Indictment are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

VI. DESCRIPTION OF THE OFFENSE

18. From at least as early as March 2003 and continuing until at least September 2005, the exact dates being unknown to the Grand Jury, in the Southern District of New York and elsewhere, defendant PERCIAVALLE and CC-1, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, to

violate Title 18, United States Code, Sections 1341, in violation of Title 18 United States Code, Section 1349.

19. It was a part and an object of the conspiracy that defendant PERCIAVALLE and CC-1, and others known and unknown, unlawfully, willfully and knowingly, would and did devise and intend to devise a scheme and artifice to defraud Mount Sinai, and to obtain money and property from Mount Sinai by means of false and fraudulent pretenses, representations, and promises, namely a scheme whereby defendant PERCIAVALLE received payments from CC-1 and fraudulently caused over \$195,000 in maintenance and insulation contracts to be awarded by Mount Sinai to CC-1, for the purpose of executing such scheme and artifice, and attempting to do so, would and did place in a post office and authorized depository for mail matter, matters and things to be sent and delivered by the Postal Service, and would and did deposit and caused to be deposited matters and things to be sent and delivered by a private and commercial interstate carrier, and would and did take and receive therefrom, such matters and things, and would and did knowingly cause to be delivered by mail and such carrier according to the directions thereon, and at the place at which it was directed to be delivered by the person to whom they were addressed such matters and things, in violation of Title 18, United States Code, Sections 1341.

VII. MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the conspiracy was sought to be accomplished

included, among others, the following:

20. Defendant PERCIAVALLE, as Associate Director of Plant Services at Mount Sinai, had the authority to award certain contracts to vendors for work to be performed within Plant Services, including CC-1, who performed maintenance and insulation services.

21. Defendant PERCIAVALLE asked for and received kickbacks from CC-1. These payments were made to defendant PERCIAVALLE in cash by CC-1. CC-1 understood that these payments enabled CC-1 and his company to continue to be awarded maintenance and insulation contracts at Mount Sinai by defendant PERCIAVALLE.

22. Defendant PERCIAVALLE received cash kickbacks totaling at least \$20,500 from CC-1.

23. On certain jobs, in order to create the appearance that defendant PERCIAVALLE was adhering to Mount Sinai's competitive bid policy, defendant PERCIAVALLE asked CC-1 to provide him with intentionally high non-competitive bids from other vendors. CC-1 agreed and submitted false, fraudulent, and intentionally high non-competitive bids on the letterhead of other vendors to defendant PERCIAVALLE. As a result, Mount Sinai's competitive bidding policy was frustrated and subverted.

24. Defendant PERCIAVALLE's receipt of the cash kickbacks from CC-1, and subversion of Mount Sinai's competitive bidding policy was done without the knowledge or approval of Mount Sinai, and was in violation of Mount Sinai's gift policy.

VIII. OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, Defendant PERCIAVALLE, his co-conspirators and others, known and unknown, committed the following overt acts, among others, in the Southern District of New York, and elsewhere:

25. Defendant PERCIAVALLE and CC-1 caused Mount Sinai to issue purchase orders to CC-1. Some of these purchase orders were sent to CC-1's offices in Long Island City, New York, through the United States mails from Mount Sinai's offices in the Southern District of New York.

26. Defendant PERCIAVALLE and CC-1 caused Mount Sinai to issue payments to CC-1. Some of these payments were sent to CC-1's offices in Long Island City, New York, through the United States mails from Mount Sinai's offices in the Southern District of New York.

27. In or about July 2004, CC-1 made a cash payment to defendant PERCIAVALLE at Mount Sinai in the amount of approximately \$2,500.

28. In or about December 2004, in response to a solicitation by Mount Sinai to perform repairs and re-insulation of pipes, fittings and valves, CC-1 submitted to defendant PERCIAVALLE false and fraudulent intentionally high non-competitive bids on the letterhead of other vendors.

29. In or about January 2005, CC-1 made a cash payment to defendant PERCIAVALLE at Mount Sinai in the amount of approximately \$2,000.

30. On or about April 8, 2005, defendant PERCIAVALLE caused Mount Sinai to issue a payment to CC-1 on an invoice for work to repair and re-insulate pipes, fittings and valves, that was awarded to CC-1's company by defendant PERCIAVALLE in return for cash kickbacks CC-1 paid defendant PERCIAVALLE.

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

COUNT THREE
MAIL FRAUD
(18 U.S.C. § 1341)

The Grand Jury further charges:

31. Defendant PERCIAVALLE is hereby indicted and made a defendant on the charge stated below in Count Three:

32. Paragraphs 2 through 9, and 20 through 24 of this Indictment are repeated, realleged, and incorporated in Count Three as if fully set forth in this Count.

IX. DESCRIPTION OF THE OFFENSE

33. On or about April 8, 2005, in the Southern District of New York and elsewhere, defendant PERCIAVALLE, his co-conspirators and others known and unknown, having devised and intending to devise a scheme and artifice to defraud Mount Sinai, and to obtain money and property from Mount Sinai by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, and attempting to do so, would and did place in post offices or authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things

to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, or at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, to wit, defendant PERCIAVALLE participated in a scheme whereby he received payments from CC-1 and fraudulently caused over \$195,000 in maintenance and insulation contracts to be awarded by Mount Sinai to CC-1.

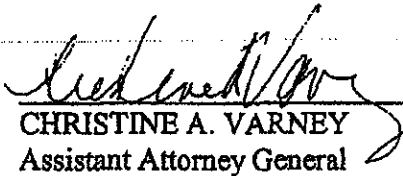
34. The use of the mails in furtherance of this scheme included the following: on approximately April 8, 2005, defendant PERCIAVALLE knowingly caused to be delivered by United States mail from Mount Sinai's offices in the Southern District of New York to CC-1, located in Long Island City, New York a check in the amount of \$49,550, for payment on work awarded to CC-1 by defendant PERCIAVALLE.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1341.

Dated:

A TRUE BILL:

FOREPERSON


CHRISTINE A. VARNEY
Assistant Attorney General

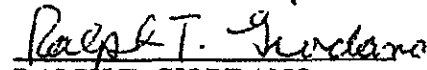

SCOTT D. HAMMOND
Deputy Assistant Attorney General

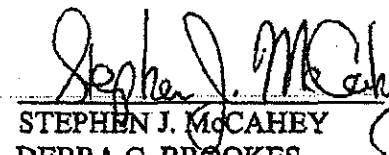

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