

ORIGINAL

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

JUN 20 2011

JAMES W. HATTEN, Clerk
By:  Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA)	Criminal No.: 1:11 Cr. 294 - RWS
)	
v.)	Filed:
)	
ROBERTO JAKUBOWICZ,)	Violation:
)	18 U.S.C. § 1349
Defendant.)	
_____)	

CRIMINAL INFORMATION

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

18 U.S.C. § 1349 - CONSPIRACY

1. Beginning at least as early as September 2, 2005 and continuing thereafter at least through April 17, 2008, the exact dates being unknown to the United States, in the Northern District of Georgia and elsewhere, the defendant, ROBERTO JAKUBOWICZ (hereinafter referred to as "DEFENDANT JAKUBOWICZ") and 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-conspirator A, 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 1341, 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 Home Depot employee Co-conspirator A,

and executed the aforesaid scheme and artifice by and through causing certain items to be sent, delivered, and moved by the United States Postal Service and causing certain writings, signs, sounds, and signals to be 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 JAKUBOWICZ was President of Co-conspirator B, a major supplier of ceramic tile to Home Depot. Co-conspirator B sold millions of dollars of product to Home Depot for resale in Home Depot's various retail stores.

4. Co-conspirator A was employed by Home Depot from November, 1999 until July, 2007. He received various promotions from Home Depot, finally obtaining the position of Divisional Merchandising Manager ("DMM") for Home Depot Department 23 (Flooring), which he held until he left Home Depot. As DMM, and in his other positions with Home Depot, Co-conspirator A owed a fiduciary duty to Home Depot. Co-conspirator A had a duty to act honestly and faithfully in all business dealings with Home Depot. As DMM, he was based in Home Depot's Atlanta Store Support Center. In his position as DMM, and otherwise during his employment with Home Depot, he was responsible for overseeing the location of suppliers which could supply lower

cost, high quality Department 23 items for resale in Home Depot retail stores. These suppliers sold Home Depot millions of dollars worth of items for resale in Home Depot's various retail stores.

5. In his position as DMM, and otherwise during his employment with Home Depot, Co-conspirator A approved and supported Home Depot's purchases of millions of dollars of products from DEFENDANT JAKUBOWICZ'S company, Co-conspirator B, for resale in Home Depot's various retail stores.

6. During the time Co-conspirator A was DMM, and otherwise during his employment when he approved and supported Home Depot's purchases from DEFENDANT JAKUBOWICZ'S company, Co-Conspirator B, for resale in Home Depot's various retail stores, 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. At all times relevant to this criminal information, DEFENDANT JAKUBOWICZ well knew that 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.

THE MANNER AND MEANS

7. Home Depot was defrauded by a kickback scheme participated in by DEFENDANT JAKUBOWICZ, Home Depot employee Co-conspirator A, and other co-conspirators. Home Depot had a right to rely on Home Depot employee Co-conspirator A to conduct his work on Home Depot's behalf in an honest fashion so as to benefit Home Depot, including his 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.

8. DEFENDANT JAKUBOWICZ, Home Depot employee Co-conspirator A, and other co-conspirators arranged for Home Depot to purchase items for resale, on less than the most advantageous terms of sale, from DEFENDANT JAKUBOWICZ'S company, Co-conspirator B. In return, and while he was a Home Depot employee, Home Depot employee Co-conspirator A received money and things of value in the approximate amount of \$791,705.28 from DEFENDANT JAKUBOWICZ in return for Home Depot employee Co-conspirator A's approving and supporting Home Depot's purchases from DEFENDANT JAKUBOWICZ'S company, Co-conspirator B. DEFENDANT JAKUBOWICZ, Home Depot Co-conspirator A, and other co-conspirators took affirmative acts to conceal from Home Depot receipt of the aforesaid money and things of value by Home Depot employee Co-Conspirator A.

9. For the purposes of forming and effectuating the aforesaid conspiracy, DEFENDANT JAKUBOWICZ, Home Depot employee Co-conspirator A, and other co-conspirators did those things they conspired to do, including, among other things:

- (a) DEFENDANT JAKUBOWICZ secretly supplied Home Depot employee Co-conspirator A with hundreds of thousands of dollars and things of value (hereinafter “secret funds”) in a concealed and surreptitious manner so as not to arouse suspicion as to his receipt of same by Home Depot;
- (b) DEFENDANT JAKUBOWICZ did not cause to be filed United States Internal Revenue Service Forms 1099 indicating that he had supplied Home Depot employee Co-conspirator A with those secret funds so as not to alert the Internal Revenue Service of payment of those secret funds to Co-Conspirator A;
- (c) DEFENDANT JAKUBOWICZ paid the secret funds to Home Depot employee Co-Conspirator A so that Co-conspirator A would seek to protect the business of DEFENDANT JAKUBOWICZ’s company, Co-Conspirator B, with Home Depot; and

- (d) Home Depot employee Co-Conspirator A, during the time he was obtaining secret funds from DEFENDANT JAKUBOWICZ, approved and supported substantial increases in the amount of business DEFENDANT JAKUBOWICZ'S company, Co-conspirator B, was doing with Home Depot.

DEFENDANT JAKUBOWICZ and Home Depot employee Co-conspirator A foresaw or reasonably should have foreseen that Home Depot might suffer an economic harm as a result of his and Home Depot employee Co-conspirator A's breach of Co-Conspirator A's fiduciary duty to Home Depot.

OVERT ACTS

10. In addition to the United States Mail and 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 JAKUBOWICZ, Home Depot employee Co-conspirator A, DEFENDANT JAKUBOWICZ'S company Co-Conspirator B, and other co-conspirators, the following acts were done in furtherance of the conspiracy:

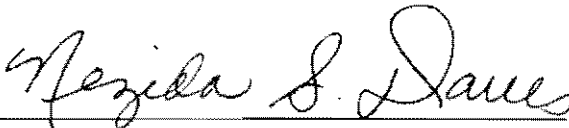
- (a) An offshore foreign bank account was set up for Home Depot employee Co-conspirator A in which monetary payments were deposited for the benefit of Co-conspirator A under the name of Ceramic Private Foundation;
- (b) Money and things of value in the approximate amount of \$791,705.28 were transferred to various entities for the benefit of Home Depot employee Co-conspirator A, including the following: Circuit City, Ceramic Private Foundation, Carmax, Longhorn Equities II, American Express, Bethpage Federal Credit Union, and Janey Montgomery Scott.

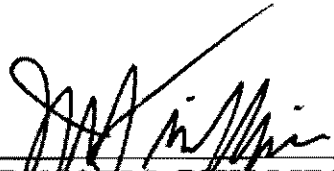
ALL IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION
1349.

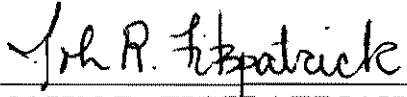
Dated this 20th day of June, 2011.

SALLY QUILLIAN YATES
UNITED STATES ATTORNEY

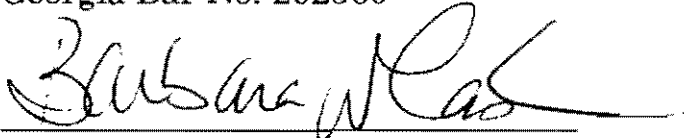
CHRISTINE A. VARNEY
ASSISTANT ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION


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

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


BARBARA W. CASH
TRIAL ATTORNEY
Georgia Bar No. 743460

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