UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	Crim. No. 3:23-CR-224-KAD
	:	
v.	:	18 U.S.C. § 371
	:	(Conspiracy to Violate the Foreign Corrupt
FREEPOINT COMMODITIES LLC	:	Practices Act)
	:	
	:	

United States District Court
District of Connecticut
FILED AT BRIDGEPORT
12/14/23
Dinah Milton Kinney, Clerk
By
Deputy Clerk

INFORMATION

The United States charges:

At all times relevant to this Information, unless otherwise stated:

The Foreign Corrupt Practices Act

1. The Foreign Corrupt Practices Act of 1977 ("FCPA"), as amended, Title 15 United States Code, Sections 78dd-1, *et seq.*, was enacted by Congress for the purpose of, among other things, making it unlawful to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value, directly or indirectly, to a foreign government official for the purpose of obtaining or retaining business for, or directing business to, any person.

The Defendant FREEPOINT and Related Individuals

2. Defendant FREEPOINT COMMODITIES LLC ("FREEPOINT") was a commodities merchant with its principal place of business in the District of Connecticut. FREEPOINT was a "domestic concern," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(B).

3. Glenn Oztemel was a United States citizen and resided in Westport, Connecticut. Glenn Oztemel was a senior oil trader at FREEPOINT and previously worked for Trading Company #1. Glenn Oztemel was a "domestic concern" and an "employee" and "agent" of

FREEPOINT, a "domestic concern," as those terms are used in the FCPA, Title 15, United States Code, Sections 78dd-2(a), 78dd-2(h)(1).

4. Gary Oztemel was a United States citizen and resided in Greenwich, Connecticut. Gary Oztemel was the owner and president of Oil Trade & Transport S.A. ("OTT"). Gary Oztemel was a "domestic concern" and an "agent" and "officer" of a "domestic concern," as those terms are used in the FCPA, Title 15, United States Code, Sections 78dd-2(a), 78dd-2(h)(1).

5. Co-Conspirator #1, whose identity is known to the United States and to the Company, was a United States citizen and resided in the District of Connecticut. Co-Conspirator #1 was an oil trader at FREEPOINT and previously worked at Trading Company #1. Co-Conspirator #1 was a "domestic concern" and an "employee" and "agent" of FREEPOINT, a "domestic concern," as those terms are used in the FCPA, Title 15, United States Code, Sections 78dd-2(a), 78dd-2(h)(1).

6. Eduardo Innecco ("Innecco") was a citizen of Brazil and Italy and resided in Brazil. Innecco was an oil and gas broker and worked in Brazil as an agent for various energy trading companies, including FREEPOINT, Trading Company #1, and OTT. Innecco owned and controlled several companies including Albatross Shipping Consultants Ltd., Morgenstern Energy Trading Ltd., and Wertech S.A., and others (collectively, the "Innecco Companies"). Innecco also served as a Vice President of OTT. Innecco was an "agent" and "officer" of a "domestic concern," as those terms are used in the FCPA, Title 15, United States Code, Sections 78dd-2(a), 78dd-2(h)(1), and a "person" as that term is used in the FCPA, Title 15, United States Code, Sections 78dd-3(a), 78dd-3(f)(1).

State-Owned Entities and Foreign Officials

7. Petróleo Brasileiro S.A. – Petrobras ("Petrobras") was a Brazilian state-owned and state-controlled oil company headquartered in Rio de Janeiro, Brazil, that operated to refine, produce, and distribute oil, oil products, gas, biofuels, and energy. Through voting rights, the Brazilian government directly controlled more than 50 percent of Petrobras's common shares, while an additional approximately 10 percent of Petrobras's shares were controlled by the Brazilian Economic and Social Development Bank. Petrobras was controlled by Brazil and performed government functions and was an "agency" and "instrumentality" of a foreign government, and Petrobras's officers and employees were "foreign officials," as those terms are used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2)(A).

8. Petrobras America Inc. ("PAI") was a wholly owned subsidiary of Petrobras with its principal place of business in Houston, Texas. PAI was controlled by the government of Brazil and performed government functions and, thus, was an "agency" and "instrumentality" of a foreign government, and PAI's officers and employees were "foreign officials," as those terms are used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2)(A).

9. Rodrigo Berkowitz was a citizen of Brazil and resided in Rio de Janeiro, Brazil and Houston, Texas. Berkowitz worked as a trader at PAI from in or about February 2010 through in or about January 2014, and from in or about July 2017 through in or about November 2018. Berkowitz worked as a trader at Petrobras in Rio de Janeiro from in or about January 2014 through in or about July 2017. Berkowitz was a "foreign official," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2)(A).

10. Petrobras Official #1, whose identity is known to the United States and to the Company, was a citizen of Brazil and resided in Rio de Janeiro, Brazil. Petrobras Official #1 had

responsibility for Petrobras's fuel oil desk during the relevant period and was based in Rio de Janeiro. Petrobras Official #1 was a "foreign official," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2)(A).

11. Petrobras Official #2, whose identity is known to the United States and to the Company, was a citizen of Brazil and resided in Rio de Janeiro, Brazil and Houston, Texas. Petrobras Official #2 worked as a trader at PAI from in or about February 2014 through in or about August 2017. Petrobras Official #2 was a "foreign official," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(2)(A).

Other Relevant Entities and Individuals

12. Trading Company #1, the identity of which is known to the United States and the Company, was a commodities trading company with its principal place of business in the District of Connecticut. Trading Company #1 was a "domestic concern," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(B).

13. OTT was a commodities trading company registered in Panama, with its principal place of business in the District of Connecticut. OTT was a "domestic concern," as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(B).

14. Uruguay Company, the identity of which is known to the United States and to the Company, was a shell company formed in Uruguay by Co-Conspirator #2 for the benefit of Berkowitz. Berkowitz used Uruguay Company to receive and conceal bribe payments from and on behalf of Trading Company #1 and FREEPOINT.

15. Co-Conspirator #2, whose identity is known to the United States and the Company, was a citizen of Brazil and resided in Rio de Janeiro, Brazil. Co-Conspirator #2 owned and

operated Uruguay Company. Berkowitz used Uruguay Company to receive and conceal bribe payments from and on behalf of FREEPOINT.

16. Albatross Shipping Consultants LTD ("Albatross") was a company based in Liberia that was owned and controlled by Innecco. Innecco used Albatross to receive, conceal, and distribute bribe payments from and on behalf of FREEPOINT for the benefit of Berkowitz, Petrobras Official #1, and others.

17. Morgenstern Energy Trading Ltd. ("Morgenstern") was a company based in the British Virgin Islands that was owned and controlled by Innecco. Innecco used Morgenstern to receive, conceal, and distribute bribe payments from and on behalf of FREEPOINT and OTT for the benefit of Berkowitz, Petrobras Official #1, and others.

18. Wertech S.A. ("Wertech") was a company based in Uruguay that was owned and controlled by Innecco. Innecco used Wertech to receive, conceal, and distribute bribe payments from and on behalf of FREEPOINT for the benefit of Berkowitz, Petrobras Official #1, and others.

The Bribery Conspiracy

19. Beginning in or about 2012 and continuing until in or about 2018, in the District of Connecticut and elsewhere, FREEPOINT, through its employees and agents, knowingly and willfully conspired and agreed with others to offer and pay approximately $3.9 million in corrupt commission payments to Innecco, knowing that all or a portion of such money would be used to pay bribes to, and for the benefit of, Brazilian foreign officials, including Berkowitz and others, to secure improper advantages in order to obtain and retain business from Petrobras in connection with the purchase and sale of oil products.

20. In furtherance of the conspiracy and to achieve the objects thereof, FREEPOINT, together with its co-conspirators known to the United States and the Company, committed and

caused to be committed overt acts in furtherance of the conspiracy, including the overt acts described below, among others.

A. Origin of the Conspiracy – Trading Company #1

21. In or about 2010, prior to Glenn Oztemel's employment with FREEPOINT, Glenn Oztemel, Gary Oztemel, and Innecco agreed to pay bribes to Berkowitz and other Petrobras officials to obtain and retain business for Glenn Oztemel's then-employer, Trading Company #1, and OTT. In sum and substance, they agreed that Trading Company #1 would pay bribes of up to 25 cents per barrel on transactions directly between Trading Company #1 and Petrobras, and OTT would pay bribes of up to $1 per barrel, on behalf of Trading Company #1, for any transactions (referred to as "back-to-back" deals) that OTT intermediated between Petrobras and Trading Company #1. In exchange for the bribes, Berkowitz and other Petrobras officials provided Glenn Oztemel, Gary Oztemel, Innecco, and others with confidential information related to Petrobras's business.

22. In emails to Glenn Oztemel and Gary Oztemel regarding the scheme, Innecco used coded language to refer to bribes and bribe amounts, including terms such as "breakfast," "breakfast servings," and "freight deviation." For example, in an email dated on or about October 6, 2011 to Gary Oztemel, copying Glenn Oztemel, Innecco stated:

> The guys you met in Rdam were recently instructed from high above to book as much bizz as possible with us . . . . Fyg Mr. X [a Brazilian intermediary] organized this scheme with the support of a very influential man, the current "capo di tutti capi" [(boss of bosses)] around the block.
>
> . . .
>
> There is only one little problem: in principle max [number] of people Archie can invite for breakfast is 25, and that [would] leave some key people (although not top people) with no breakfast. If they [*sic*] not happy these people can find many ways for not letting things happen, even legitimate ways . . . .

23. On or about November 15, 2011, Innecco sent an email to Glenn Oztemel, using the fictitious name "Spencer Kazisnaf," and an associated email address. In the email, Innecco stated, "May I remind you of requested increase for 5 additional breakfast servings after first table set up, which already occurred."

24. Between in or around 2011 and 2012, Trading Company #1 entered into at least 15 corrupt transactions with Petrobras. In addition, Glenn Oztemel, Gary Oztemel, and Innecco used OTT to facilitate at least six additional corrupt "back-to-back" transactions between Petrobras and Trading Company #1.

B. Continuation of the Bribery Scheme at FREEPOINT

25. In or about late June 2012, Glenn Oztemel, together with Co-Conspirator #1 and several other employees, left Trading Company #1 to work for FREEPOINT. After joining FREEPOINT, Glenn Oztemel caused FREEPOINT to enter into a "Service Provision Agreement" (the "SPA") with Albatross, a Liberian company controlled by Innecco, knowing that all or a portion of the money paid to Innecco under the SPA would be used to continue paying bribes to Berkowitz and other Petrobras officials in order to obtain and retain business for FREEPOINT.

26. The SPA, which was dated July 1, 2012, provided that Innecco would receive a monthly "consultancy fee" of approximately $10,000 and per-barrel "commissions" of between 5 cents and 25 cents per barrel for all transactions between FREEPOINT and third parties, including Petrobras.

27. At FREEPOINT, Glenn Oztemel and Innecco, together with others, including Gary Oztemel, would and did take steps to conceal their receipt and use of the confidential Petrobras information by, among other ways: (i) sharing confidential information via personal, alias email accounts and encrypted messaging applications; (ii) using coded language to refer to other

individuals involved in the scheme and using coded language to refer to bribes and bribe amounts; and (iii) engaging in sham negotiations to give the appearance of legitimacy to trades between Petrobras and FREEPOINT and between Petrobras and FREEPOINT.

28. Glenn Oztemel and Innecco also continued to use Gary Oztemel's company, OTT, to facilitate corrupt "back-to-back" trades with Petrobras and to pay bribes to Berkowitz and other Petrobras officials in order to obtain and retain business for FREEPOINT. Six of those transactions were outlined in a spreadsheet titled "2012 deals with PB – Gary," which Innecco sent to Gary Oztemel on or about September 13, 2012, from the fictitious "Spencer Kazisnaf" email account.

29. In the body of the email, dated on or about September 13, 2012, Innecco wrote to Gary Oztemel:

> Attached [please] find a quite complete worksheet. It will allow us, in a quick [glance], a quite thorough panorama of what we've been doing so far. This [is] good and bad. It is good because it will save a lot of time if we need to check this type of info. It is bad because anyone who sees it will also get to know what we've been doing in a quick glance. Needless to say, we must keep this worksheet out of curious eyes. That is why I've asked Mr. Spencer Kazi[s]naf to send it to you . . . .

30. On or about November 13, 2012, Innecco, using the same fictitious "Spencer Kazisnaf" email account, sent a similar spreadsheet titled "OTT 2012 deals with [Petrobras] . . ." to Glenn Oztemel's personal email address. Glenn Oztemel responded to the email the same day, stating "Spencer, u R. A bad boy!"

31. In exchange for the bribes, Berkowitz provided FREEPOINT with confidential information related to Petrobras's business and other improper benefits that helped FREEPOINT win business with Petrobras. For example, in or around August 2015, during a negotiation between FREEPOINT and Petrobras, Berkowitz provided Innecco with confidential information regarding Petrobras's pricing and negotiation strategy, as well as information regarding bids submitted by

FREEPOINT's competitors. Innecco shared that information with Glenn Oztemel and Co-Conspirator #1, who used it in their negotiations on FREEPOINT's behalf with Petrobras Official #2.

32. In one such email, on or about August 31, 2015, Innecco told Glenn Oztemel, "[Please] do not show [Petrobras Official #2] that you [have] any knowledge that you [could] never been obtained [*sic*] obtained from the [market.]" Innecco added, "On my side, the important part is that RB [(Rodrigo Berkowitz)] will be happy to help us on price guidance." In his communications with FREEPOINT traders Glenn Oztemel and Co-Conspirator #1, Innecco frequently referred to Berkowitz as "RB," "Rod," "Rio," "Houston," "our friend," and, in one instance, as "our man on the spot."

33. Innecco also advised FREEPOINT traders Glenn Oztemel and Co-Conspirator #1 to conceal the scheme by bidding for cargoes that they knew FREEPOINT would not win. For example, in an email sent to Glenn Oztemel's personal email account on or about August 1, 2017, Innecco told Glenn Oztemel, "It's very important to bid in all cargoes, even if at lower price which has no chance to win." Similarly, in a WhatsApp communication dated on or about May 18, 2018 between Innecco and Co-Conspirator #1, Innecco told Co-Conspirator #1 to give Petrobras a "[number] below 2." Innecco added, "We cannot show up only to win."

C. Funding the Bribes: Corrupt Commissions and "Profit Sharing"

34. FREEPOINT paid bribes in two ways. Most commonly, FREEPOINT paid bribes to Berkowitz and other Petrobras officials through purported consultancy fees and commissions paid to the Innecco Companies. In addition, on transactions involving OTT, FREEPOINT caused

bribes to be paid from OTT's profit on the "back-to-back" transactions between FREEPOINT, OTT, and Petrobras.

35. Altogether, between in or around 2012 and late 2018, FREEPOINT paid Innecco approximately $3.9 million in corrupt consultancy fees and commissions associated with approximately 124 transactions between FREEPOINT and Petrobras, knowing that a portion of such money would be used to pay bribes to Brazilian government officials in exchange for FREEPOINT obtaining and retaining business with Petrobras. In addition, FREEPOINT conducted an additional eight corrupt "back-to-back" transactions with Petrobras through OTT that resulted in the payment of bribes to Petrobras officials.

36. Pursuant to the first and more common method—the payment of bribes from purported fees and commissions paid to the Innecco Companies—Innecco sent invoices to FREEPOINT, including to Glenn Oztemel and Co-Conspirator #1, seeking payment to the Innecco Companies for purported consultancy fees and a per-barrel commission. Upon receiving the commissions, Innecco paid a portion of those amounts to Berkowitz and others as bribes—typically into an account held in the name of Uruguay Company for the benefit of Berkowitz. In several instances, Innecco also paid bribes to Berkowitz in cash in Brazil and, at Berkowitz's instruction, held some of Berkowitz's bribes in the Innecco Companies for payment at a later date.

37. Pursuant to the second method—transactions in which OTT purchased fuel oil cargoes from Petrobras and sold those same cargoes to FREEPOINT in "back-to-back" transactions—FREEPOINT paid OTT for the cargoes in an amount greater than what OTT paid to Petrobras. Thereafter, OTT made purported "profit sharing" payments to Innecco pursuant to sham invoices sent from the Innecco Companies to OTT. Innecco used a portion of his "profit

sharing" payments to pay bribes to Berkowitz and others, in order to obtain and retain business for FREEPOINT and OTT, into an account held in the name of Uruguay Company and in cash.

38. FREEPOINT earned approximately $30.5 million in profits from its corruptly obtained business with Petrobras.

COUNT ONE
(Conspiracy to Violate the FCPA)

39. The allegations set forth in paragraphs 1 through 38 are realleged and incorporated as if fully set forth herein.

40. In or about and between 2012 and 2018, both dates being approximate and inclusive, in the District of Connecticut and elsewhere, the defendant FREEPOINT COMMODITIES LLC, together with others, did knowingly and willfully conspire to commit one or more offenses against the United States, to wit: being a domestic concern, to make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official, to a foreign political party and official thereof, and to a person while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a foreign official, for purposes of: (i) influencing acts and decisions of such foreign official, foreign political party and official thereof in his, her or its official capacity; (ii) inducing such foreign official, foreign political party and official thereof to do and omit to do acts in violation of the lawful duty of such official and party; (iii) securing any improper advantage; and (iv) inducing such foreign official, foreign political party and official thereof to use his, her or its influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist FREEPOINT and others in

obtaining and retaining business for and with, and directing business to, FREEPOINT and others, contrary to Title 15, United States Code, Section 78dd-2.

Purpose of the Conspiracy

41. The purpose of the conspiracy was for the co-conspirators, including FREEPOINT, to offer, promise, and pay bribes to Brazilian foreign officials in order to obtain and retain business with Petrobras, for and with, and direct business to, FREEPOINT and OTT.

Manner and Means of the Conspiracy

42. The manner and means by which FREEPOINT and others sought to accomplish the objects of the conspiracy included, among other things, the following while in the District of Connecticut and elsewhere:

a. It was part of the conspiracy that FREEPOINT, acting through Glenn Oztemel, Innecco and others, together with others, including Gary Oztemel, would and did offer to pay, promise to pay, and authorize the payment of bribes, directly and indirectly, to and for the benefit of foreign officials, including Berkowitz, in order to obtain confidential information related to Petrobras's business from Berkowitz and others, and to obtain other improper commercial advantages for and on behalf of FREEPOINT and OTT.

b. It was further part of the conspiracy that FREEPOINT, acting through Glenn Oztemel, Innecco and others, together with others, including Gary Oztemel, would and did use the confidential information they obtained from Berkowitz and others to gain improper commercial advantages for and on behalf of FREEPOINT and OTT in trades with Petrobras.

c. It was further part of the conspiracy that FREEPOINT, through Glenn Oztemel, Innecco and others, together with others, including Gary Oztemel, would and did cause

FREEPOINT and OTT to make payments to the Innecco Companies for the purpose of paying bribes to foreign officials, including Berkowitz.

d. It was further part of the conspiracy that FREEPOINT, through Glenn Oztemel, Innecco and others, together with others, including Gary Oztemel, would and did conceal the bribe payments by, among other ways, causing FREEPOINT and OTT to pay purported commissions and purported profit sharing to Innecco through the Innecco Companies, and by using the Innecco Companies to pay bribes to foreign officials, including Berkowitz, in cash and into an account held in the name of Uruguay Company.

Overt Acts

43. In furtherance of the conspiracy and to achieve the objects thereof, FREEPOINT and its co-conspirators committed, and caused to be committed, in the District of Connecticut and elsewhere, at least of one of the following overt acts, among others:

a. On or about July 31, 2012, FREEPOINT paid OTT approximately $12 million in connection with a back-to-back trade among FREEPOINT, OTT, and Petrobras. Of that amount, on or about August 2, 2012, OTT paid approximately $11.7 million to Petrobras for the relevant cargo.

b. On or about August 2, 2012, OTT made a purported "profit sharing" payment of approximately $123,000 to Morgenstern.

c. On or about August 6, 2012, Innecco caused Morgenstern to wire a payment of approximately $26,536.07 from Morgenstern's bank account in Switzerland to a bank account in Uruguay in the name of Uruguay Company for the benefit of Berkowitz.

d. On or about June 21, 2016, Innecco sent an invoice to a FREEPOINT employee, copying Glenn Oztemel and Co-Conspirator #1, and attaching an invoice from

Morgenstern seeking payment in the amount of approximately $88,364. The invoice, dated on or about June 19, 2016, was directed to Glenn Oztemel for purported "consulting services" pursuant to the SPA.

e. On or about June 29, 2016, FREEPOINT wired approximately $88,364 in purported commission payments from FREEPOINT's bank account in the District of Connecticut to Morgenstern's bank account in Switzerland pursuant to the June 19, 2016, invoice from Morgenstern to FREEPOINT, referenced in paragraph 43.d above.

f. Between in or about July 8, 2016 and August 15, 2016, Innecco caused Morgenstern to make three bribe payments to Berkowitz, totaling approximately $61,687, into Uruguay Company's bank account in Uruguay.

g. On or about September 12, 2018, Innecco sent an email to a FREEPOINT employee, copying Glenn Oztemel and Co-Conspirator #1, attaching two invoices from Wertech, dated September 12, 2018, seeking payment of a consultancy fee in the amount of $8,000 and a commission in the amount of $103,570.08.

h. On or about September 20, 2018, FREEPOINT paid the invoices referenced above in paragraph 43.g from FREEPOINT's bank account in the District of Connecticut into Wertech's bank account in Uruguay.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATION

44. As a result of committing the offense alleged in Count One of this Information, FREEPOINT, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United states Code, Section 2461(c), any and all property, real and personal, which constitutes or is derived from proceeds traceable to the commission of

said offense, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offense.

45. If any of the above-descried forfeitable property, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

All pursuant to Title 18, United States Code, Section 981(a)(l)(C), and the procedures set forth in Title 21, United States Code, Section 853, as incorporated by Title 28, United States Code, Section 2461(c).

Date: December 14, 2023

UNITED STATES OF AMERICA

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