

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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JAMES BONINI
CLERK

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

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UNITED STATES OF AMERICA

No.

INDICTMENT

vs.

Count One
18 U.S.C. § 371

JUDGE MARBLEY

MARTIN J. MCNAMEE

Count Two through Six
26 U.S.C. § 7206(1)

Count Seven
18 U.S.C. § 1341

Count Eight through Ten
18 U.S.C. § 1957

THE GRAND JURY CHARGES THAT:

COUNT ONE

(Conspiracy to Impede and Impair the IRS)

A. From on or about October, 1994, through on or about April 2003, in the Southern District of Ohio, the defendant,

MARTIN J. MCNAMEE

did knowingly combine, conspire, confederate, and agree with others, both known and unknown to the Grand Jury, to defraud the United States by impeding, impairing,

obstructing, and defeating the lawful functions of the Internal Revenue Service ("IRS") in the ascertainment, computation, assessment and collection of his and his coconspirators' individual income taxes and the income taxes of R.M. Gil, Inc. and Cafe Iguana, Inc., corporations that he owned and operated.

THE OBJECTIVE OF THE CONSPIRACY

B. The objective of the conspiracy was to impede and impair the IRS from ascertaining:

- (1) the defendant's and his coconspirators' true and correct individual income tax liabilities for tax years 1995 through 2000, inclusive; and
- (2) the true and correct income tax liabilities for the same tax years of R.M. Gil, Inc. dba the Out-R-Inn, a corporation that the defendant owned and operated during tax years 1995 through 2003; and
- (3) the true and correct income tax liabilities for the tax years 1998 through 2001 of Cafe Igauna, Inc., dba "Shooters", a corporation that the defendant owned and operated during the tax years 1998 through 2001;

by skimming cash proceeds from the corporations' gross receipts, and by filing both false individual income tax returns that did not report all of their taxable income, and false corporate income tax returns that did not report all of the gross receipts of R.M. Gil, Inc., and by failing to file corporate income tax returns for R.M. Gil, Inc. and Cafe Igauna, Inc.

BACKGROUND

C. The defendant operated numerous businesses that generated large amounts of gross receipts, to wit:

1. From in or about 1995 through at least the end of the conspiracy, defendant MARTIN J. MCNAMEE owned and operated a corporate entity called R.M.Gil Inc., which ran a bar called the Out-R-Inn on Frambes Avenue in Columbus, Ohio near The Ohio State University.

2. From in or about 1995 until in or about 1999, defendant MARTIN J. MCNAMEE owned and operated a corporate entity called TTT Inc., which ran a bar called Pockets at 4510 Kenny Road in Columbus, Ohio;

3. From in or about 1995 until in or about 1997, defendant MARTIN J. MCNAMEE owned and operated a corporate entity called 4510 Kenny Road, Inc, which owned the building at the same address in Columbus, Ohio in which the bar called Pockets was operated;

4. From in or about 1997 through at least the end of the conspiracy, defendant MARTIN J. MCNAMEE, and others, owned and operated a corporate entity called Hamilton Properties, which owned, among other property, the building at 4510 Kenny Road, Inc. in Columbus, Ohio in which the bar called Pockets was operated; and

5. From in or about 1998 through at least in or about 2001, defendant MARTIN J. MCNAMEE, owned and operated a corporate entity called Cafe Iguana, Inc., which ran a bar called "Shooters" on Bethel Road in Columbus, Ohio.

D. The defendant married on November 14, 1998.

MANNER AND MEANS OF THE CONSPIRACY

E. Among the means by which the defendant and his coconspirators would and did carry out the conspiracy were the following:

1. It was a part of the conspiracy that the defendant and his coconspirators would regularly “skim” cash proceeds from the gross receipts of the bars known as the Out-R-Inn and Shooters that they did not intend to report to the Internal Revenue Service in the following manner:
 - a. The defendant and his coconspirators would skim cash proceeds from the gross receipts of the Out-R-Inn every day in which the gross cash sales exceeded \$2000;
 - b. The defendant and his coconspirators would create false daily sales reports for the Out-R-Inn which under-reported the daily cash gross receipts, and deliver the reports to the controller of the corporation, R. M. Gil, Inc.;
 - c. The defendant and his coconspirators would conceal and/or destroy cash register receipts which disclosed the true daily cash sales of the Out-R-Inn;
 - d. The defendant and his coconspirators would skim the cash proceeds from the sales generated from the door “cover” charges and the beertubs at Shooters and the Out-R-Inn;

2. It was a further part of the conspiracy that the defendant would conceal his taxable income and the taxable income of R. M. Gil, Inc. and Cafe Iguana, Inc. by creating, or causing to be created, and maintaining, or causing to be maintained, false and incomplete corporate books and records for R. M. Gil, Inc. and Cafe Igauna, Inc.

3. It was a part of the conspiracy that the defendant would fail to report to the IRS the amounts of cash skimmed from the Out-R-Inn and Shooters as gross receipts by either (i) filing and causing to be filed with the IRS false corporate income tax returns for R. M. Gil, Inc. that did not report all of the gross receipts generated by the Out-R-Inn, or (ii) by failing to file corporate income tax returns for both R. M. Gil, Inc. and Cafe Igauna, Inc.

4. It was a further part of the conspiracy that the defendant and his coconspirators would file false individual income tax returns with the IRS that did not report all of their taxable income, to wit, the skimmed cash income.

5. It was a further part of the conspiracy that the defendant, during much of the conspiracy, failed to maintain and use a personal bank account, and instead used a bank account in the name of his then girlfriend-later wife at Fifth Third bank, account #62183527, and also used the corporate bank accounts in the names of 4510 Kenny, Inc., Cafe Igauna, Inc., R. M. Gil, Inc. and TTT, Inc. to deposit the skimmed cash and for personal expenses and purposes.

6. It was a further part of the conspiracy that the defendant would

deposit much of his portion of the skimmed cash proceeds back into the bank accounts of his various corporations, and inform his bookkeepers or cause his bookkeepers to be informed that the cash deposits were personal loans he was making to the corporations, causing an increase in the account called "McNamee - Notes Payable," or the like.

7. It was a further part of the conspiracy that the defendant would use the corporations' accounts and assets for personal purposes and expenses, such as offshore wagering, the repayment of personal loans, and the purchase of personally owned real estate, and instead of having the bookkeepers report the expense as income to the defendant, the defendant would have the expense recorded as a reduction of the previously increased "Notes Payable" account.

8. It was a further part of the conspiracy that the defendant would deposit or cause to be deposited some of his portion of the skimmed proceeds into his personal bank account and the bank account of his then girlfriend-later wife, and then use the proceeds for

- (a) personal purposes, such as for their wedding, or for
- (b) corporate purposes, such as to pay rent due by one of his corporations, but which he would cause to be recorded in the books and records of the corporation as a personal loan from the defendant.

9. It was a further part of the conspiracy that the defendant would file false amended individual income tax returns with the IRS that did not report all of his taxable income.

OVERT ACTS

F. In furtherance of the conspiracy and in order to accomplish its objectives within the Southern District of Ohio and elsewhere, the defendant committed and caused to be committed overt acts, including the following:

1. In or about October 1994, defendant MARTIN J. MCNAMEE instructed one of his coconspirators to skim cash from the gross cash sales of the Out-R-Inn in the amount of 10% of gross cash sales when the gross cash sales exceeded \$2000 per day and to falsify the daily sales reports to be sent to the controller of the corporation;

2. In or about July 1995, defendant MARTIN J. MCNAMEE instructed one of his coconspirators to skim cash from the gross cash sales of the Out-R-Inn in the amount of 10% of gross cash sales when the gross cash sales exceeded \$2000 per day and to falsify the daily sales reports to be sent to the controller of the corporation;

3. In or about March 1996, defendant MARTIN J. MCNAMEE instructed one of his coconspirators to skim cash from the gross cash sales of the Out-R-Inn in the amount of 10% of gross cash sales when the gross cash sales exceeded \$2000 per day and to falsify the daily sales reports to be sent to the controller of the corporation;

4. In or about June, 1999, defendant MARTIN J. MCNAMEE instructed one of his coconspirators to skim cash from the gross cash sales of the Out-R-Inn in the amount of 10% of gross cash sales when the gross cash sales exceeded \$2000 per day and to falsify the daily sales reports to be sent to the controller of the corporation;

5. On or about several big weekends at the Out-R-Inn in each year of the

conspiracy charged herein, such as home Ohio State football game weekends, defendant MARTIN J. MCNAMEE instructed one of his coconspirators to skim either a sum certain or a percentage which exceeded 10% of the gross cash sales of the Out-R-Inn.

6. On or about the dates set forth below, defendant MARTIN J. MCNAMEE signed and filed income tax returns, Forms 1040, with the IRS for tax years 1995 through 2000, inclusive, which reported the following taxable income:

<u>Par. #</u>	<u>Date</u>	<u>Taxpayers</u>	<u>Tax Year</u>	<u>Reported Taxable Income</u>
7.	04/15/1996	Martin J. McNamee	1995	\$109,566
8.	05/30/1998	Martin J. McNamee	1996	\$89,551.79
9.	10/19/2000	Martin J. McNamee	1997	\$8,859
10.	10/19/2000	Martin J. and Kelly McNamee	1998	\$1,513
11.	04/15/2003	Martin J. McNamee	1999	\$20,698
12.	04/15/2003	Martin J. and Kelly McNamee	2000	\$0

13. On or about April 15, 1999, defendant MARTIN J. MCNAMEE signed and filed or caused to be signed and filed an amended individual income tax return and a second amended individual income tax return, Forms 1040X, with the IRS for tax year 1995, which ultimately reported a taxable income figure of \$11,862 instead of the \$109,566 reported on the original 1995 return, and which resulted in a combined refund to the defendant of \$29,866.

14. On or about April 15, 2000, defendant MARTIN J. MCNAMEE signed and filed, or caused to be signed and filed, an amended individual income tax return, Form 1040X, with the IRS for tax year 1996, which reported a taxable income figure of \$30,691 instead of the \$89,551.79 reported on the original 1996 return, and which resulted in a refund

to the defendant of \$18,429.

15. On or about April 16, 1996, defendant MARTIN J. MCNAMEE signed and filed, or caused to be signed and filed, a corporate income tax return, Form 1120, for R. M. Gil, Inc. for the tax year 1995, which substantially under-reported the gross receipts of the corporation, and reported a taxable income figure of \$10,845.

16. On or about September 15, 1997, defendant MARTIN J. MCNAMEE signed and filed, or caused to be signed and filed, a corporate income tax return, Form 1120, for R. M. Gil, Inc. for the tax year 1996, which substantially under-reported the gross receipts of the corporation, and reported a taxable income figure of \$6,824.

17. On or about March 16, 1998, defendant MARTIN J. MCNAMEE signed and filed, or caused to be signed and filed, a corporate income tax return, Form 1120, for R. M. Gil, Inc. for tax year 1997, which substantially under-reported the gross receipts of the corporation, and reported a taxable income figure of \$1,393.

18. In or around November 1998, MARTIN J. MCNAMEE and one of his coconspirators used a substantial amount of cash skimmed from his corporations to pay for expenses related to his wedding.

(In violation of Title 18, United States Code, Sections 371)

COUNT TWO

(26 U.S.C. § 7206(1) - Subscribing a False Tax Return)

On or about October 15, 2000, in the Southern District of Ohio, defendant **MARTIN J. MCNAMEE**, then a resident of Powell, Ohio, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for calendar year 1997, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which return he did not believe to be true and correct as to every material matter in that the return reported total income of \$26,781 on Line 22, whereas, as he then and there well knew and believed, the return omitted a substantial amount of his total income, and his total income for 1997 was substantially greater than the amount reported on Line 22.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT THREE

(26 U.S.C. § 7206(1) - Subscribing a False Tax Return)

On or about October 15, 2000, in the Southern District of Ohio, defendant **MARTIN J. MCNAMEE**, then a resident of Powell, Ohio, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for calendar year 1998, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which return he did not believe to be true and correct as to every material matter in that the return reported total income of \$29,195 on Line 22, whereas, as he then and there well knew and believed, the return did not report a substantial amount of his total income, and his total income for 1998 was substantially greater than the amount reported on Line 22.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT FOUR

(26 U.S.C. § 7206(1) - Subscribing a False Tax Return)

On or about April 15, 2003, in the Southern District of Ohio, defendant **MARTIN J. MCNAMEE**, then a resident of Powell, Ohio, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for calendar year 1999, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which return he did not believe to be true and correct as to every material matter in that the return reported total income of \$40,288 on Line 22, whereas, as he then and there well knew and believed, the return did not report a substantial amount of his total income, and his total income for 1999 was substantially greater than the amount reported on Line 22.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT FIVE

(26 U.S.C. § 7206(1) - Subscribing a False Tax Return)

On or about April 15, 2003, in the Southern District of Ohio, defendant **MARTIN J. MCNAMEE**, then a resident of Powell, Ohio, did willfully make and subscribe a U.S. Individual Income Tax Return, Form 1040, for calendar year 2000, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which return he did not believe to be true and correct as to every material matter in that the return reported total income of \$39,374 on Line 22, whereas, as he then and there well knew and believed, the return did not report a substantial amount of his total income, and his total income for 2000 was substantially greater than the amount reported on Line 22.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT SIX

(26 U.S.C. § 7206(1) - Subscribing a False Tax Return)

On or about April 15, 2000, in the Southern District of Ohio, defendant **MARTIN J. MCNAMEE**, then a resident of Powell, Ohio, did willfully make and subscribe an amended U.S. Individual Income Tax Return, Form 1040X, for calendar year 1996, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which return he did not believe to be true and correct as to every material matter in that the return reported taxable income of \$30,691 on Line 5, whereas, as he then and there well knew and believed, the return did not report a substantial amount of his taxable income, and his taxable income for 1996 was substantially greater than the amount reported on Line 5.

All in violation of Title 26, United States Code, Section 7206(1).

COUNT SEVEN

(Scheme and Artifice to Defraud Using the Mails)

51. From on or about July 5, 2001, through on or about September 19, 2001 in the Southern District of Ohio, within the United States, the Defendant,

MARTIN J. MCNAMEE,

having devised and intending to devise a scheme and artifice to defraud others, and for obtaining money and property from others by means of false and fraudulent pretenses, representations, and promises, specifically, a scheme to defraud Farmers Insurance Group and others by intentionally flooding his personal residence at 415 Fox Run, Powell, Ohio 43065, and, among other things, filing a claim for damages, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place and cause to be placed, and aided and abetted the same, in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and would and did deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and did knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, specifically the following checks from Farmers Insurance Group, which were mailed by Farmers Insurance Group to defendant MCNAMEE and to Service Master Enterprises, Inc.:

	<u>Date</u>	<u>Check Number</u>	<u>Amount</u>	<u>Made Payable to</u>
a.	08/03/01	3064057503	\$58,829.22	Martin McNamee and Countrywide Home Loan
b.	08/27/01	3064058431	\$ 5,043.22	Martin McNamee
c.	08/17/01	3064058050	\$11,031.22	Service Master Enterprises, Inc.

and the following additional checks from Farmers Insurance Group, which along with the checks made payable to MCNAMEE above, were deposited by MCNAMEE in the account of his wife at Fifth Third Bank, and which were then sent by Fifth Third Bank via Airnet, a private interstate carrier, to Citibank in New Castle, Delaware:

d.	8/17/01	3064058049	\$32,585.04	Martin McNamee
e.	9/18/01	3064059307	\$14,707.30	Martin McNamee

In violation of 18 U.S.C. §1341 & §2

COUNT EIGHT

(18 U.S.C. § 1957 - Laundering of Monetary Instruments)

On or about August 3, 2001, in the Southern District of Ohio, defendant **MARTIN J. MCNAMEE** did knowingly engage, and did aid, abet, counsel, command, induce, procure and cause the engaging, in a monetary transaction by, through or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, such transaction involving the payment of \$58,829.22 by Farmers Insurance for damage caused by a flood to the real estate located at 415 Fox Run, Powell, Ohio, 43065 such property having been derived from a specified unlawful activity, that is, mail fraud in violation of Title 18, United States Code, Section 1341.

All in violation of Title 18, United States Codes, Sections 1957 and 2.

COUNT NINE

(18 U.S.C. § 1957 - Laundering of Monetary Instruments)

On or about August 21, 2001, in the Southern District of Ohio, defendant MARTIN J. MCNAMEE did knowingly engage, and did aid, abet, counsel, command, induce, procure and cause the engaging, in a monetary transaction by, through or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, such transaction involving the payment of \$32,585.04 by Farmers Insurance for damage caused by a flood to the real estate located at 415 Fox Run, Powell, Ohio, 43065 such property having been derived from a specified unlawful activity, that is, mail fraud in violation of Title 18, United States Code, Section 1341.

All in violation of Title 18, United States Codes, Sections 1957 and 2.

COUNT TEN

(18 U.S.C. § 1957 - Laundering of Monetary Instruments)

On or about September 19, 2001, in the Southern District of Ohio, defendant **MARTIN J. MCNAMEE** did knowingly engage, and did aid, abet, counsel, command, induce, procure and cause the engaging, in a monetary transaction by, through or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, such transaction involving the payment of \$14,707.30 by Farmers Insurance for damage caused by a flood to the real estate located at 415 Fox Run, Powell, Ohio, 43065 such property having been derived from a specified unlawful activity, that is, mail fraud in violation of Title 18, United States Code, Section 1341.

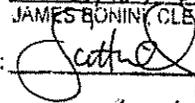
All in violation of Title 18, United States Codes, Sections 1957 and 2.

A TRUE BILL


GRAND JURY FOREPERSON

GREGORY G. LOCKHART
UNITED STATES ATTORNEY


GARY L. SPARTIS
Deputy Criminal Chief

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN MY OFFICE	
ON	8/12/05
JAMES BONINI, CLERK	
BY:	 Deputy Clerk
DATE:	8/12/05