

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
v.)
)
)
TIMOTHY MASON and)
MARIANA GERZANYCH)

No.
Violation: Title 18, United
States Code, Section 1343

COUNT ONE

The SPECIAL JANUARY 2014 GRAND JURY charges:

1. At times material to this indictment:

a. 350Green LLC was a company, owned by defendants TIMOTHY MASON and MARIANA GERZANYCH, which represented itself as experienced in the installation and operation of plug-in electric vehicle charging stations. 350Green’s main office was located in Los Angeles, California.

b. Defendant TIMOTHY MASON was president of 350Green.

c. Defendant MARIANA GERZANYCH was chief executive officer/executive director of 350Green.

d. Actium Power was incorporated by GERZANYCH. Its articles of incorporation listed MASON and GERZANYCH as its owners.

e. 350Green maintained a bank account ending in X0841, on which MASON and GERZANYCH were signatories, at JP Morgan Chase Bank.

f. Employee A was employed as 350 Green’s bookkeeper from approximately October 2011 to approximately June 2012.

g. Manufacturer A was a company located in Georgia that manufactured DC fast chargers, which were Level 3 charging stations capable of rapidly charging electric vehicles.

350Green's Government Grants in Illinois, Pennsylvania, and California

h. The City of Chicago, the State of Pennsylvania Department of Environmental Protection, and two California entities, the Bay Area Air Quality Management District and the Association of Bay Area Governments, offered grant funds for the installation of plug-in electric vehicle charging stations. Once installed, the grantee was obligated to maintain and operate the charging stations and was entitled to revenue received from the operation of the charging stations.

i. On or about October 15, 2010, 350Green entered into a contract with the City of Chicago for the installation and operation of Level 2 and Level 3 plug-in electric vehicle charging stations in the Chicago area. The contract provided that the City would award 350Green approximately \$1.9 million in grant funds received from the United States Department of Energy pursuant to the American Recovery and Reinvestment Act of 2009, and that 350Green would provide approximately \$6.8 million of its own funds towards the completion of the project.

j. On or about February 3, 2011, 350Green entered into a contract with the Bay Area Air Quality Management District for the installation and operation of Level 2 and Level 3 plug-in electric vehicle charging stations in the San Francisco Bay area of California. Pursuant to the contract, 350Green was to supply approximately \$331,806 of its own funding, and the Air Quality Management

District was to provide approximately \$99,996 of grant funds towards completion of this project.

k. On or about June 20, 2011, 350Green entered into a contract with the Pennsylvania Department of Environmental Protection for the installation and operation of Level 2 and Level 3 plug-in electric vehicle charging stations in Pennsylvania. Pursuant to the contract, 350Green was to contribute approximately \$1.6 million of its own funds, and the state was to contribute approximately \$470,000 in grant funds towards completion of this project.

l. On or about February 2, 2012, 350Green entered into a second, separate contract with Pennsylvania for the installation and operation of Level 2 and Level 3 plug-in electric vehicle charging stations in Pennsylvania. Pursuant to the contract, 350Green was to contribute approximately \$1.6 million of its own funds, and the state was to contribute approximately \$450,000 in grant funds towards completion of this project.

m. On or about May 1, 2012, 350Green entered into a contract with the Association of Bay Area Governments for the installation and operation of Level 3 plug-in electric vehicle chargers in the San Francisco Bay area of California. Pursuant to the contract, the Association of Bay Area Governments were to contribute approximately \$270,000 in grant funds, and 350Green was to contribute approximately \$621,000 towards completion of the project.

n. Chicago, Pennsylvania, and Bay Area Governments each required 350Green to submit proof that it had paid its subcontractors and vendors before 350Green could be reimbursed from grant funds.

o. The Bay Area Air Quality Management district required 350Green to submit proof that it had incurred expenses under the grant before 350Green could seek reimbursement from grant funds.

350Green's Purchase Agreement with Manufacturer A

p. On or about July 20, 2011, 350Green entered into a purchase agreement with Manufacturer A for the purchase of 900 DC fast chargers. On behalf of 350Green, MASON and GERZANYCH, pursuant to that purchase agreement, ordered 300 DC fast chargers from Manufacturer A, for between \$25,000 and \$26,000 per unit, including the charger and kiosk.

2. Beginning no later than August 2010, and continuing until at least September 2012, at Chicago, in the Northern District of Illinois, and elsewhere,

TIMOTHY MASON and
MARIANA GERZANYCH,

defendants herein, devised, intended to devise, and participated in a scheme to defraud and to obtain money and property from the City of Chicago, State of Pennsylvania Department of Environmental Protection, the Association of Bay Area Governments, and the Bay Area Air Quality Management District by means of materially false and fraudulent pretenses, representations, and promises, and by concealment of material facts, which scheme is further described in the following paragraphs.

3. It was part of the scheme that, in order to obtain grant funds, MASON and GERZANYCH submitted and caused to be submitted claims to Chicago, Pennsylvania, Bay Area Air Quality and Bay Area Governments, which falsely represented that certain expenses were incurred or paid by 350Green. Then, when questions were raised regarding the false claims and 350Green's ability to meet its financial obligations under its contracts, MASON and GERZANYCH made and caused to be made false statements to Chicago, Pennsylvania, and Bay Area Governments regarding 350Green's financial status and reasons for 350Green's financial difficulties.

4. It was further part of the scheme that, in order to obtain grant funds from Chicago, Pennsylvania, Bay Area Air Quality, and Bay Area Governments, MASON and GERZANYCH created and caused to be created invoices purportedly issued by Actium Power for the purchase of DC fast chargers by 350Green, which falsely represented that Actium Power had supplied chargers to 350Green, and submitted and caused to be submitted those invoices to Chicago, Pennsylvania, Bay Area Air Quality, and Bay Area Governments, in support of 350Green's claims for reimbursement under the grants, when in fact:

a. 350Green had purchased the DC fast chargers from Manufacturer A, not Actium Power; and

b. Neither 350Green nor Actium Power paid Manufacturer A for the DC fast chargers.

5. It was further part of the scheme that MASON and GERZANYCH created and caused to be created checks purporting to have been issued by 350Green to Actium Power as payment for the DC fast chargers, and submitted and caused to be submitted these checks to Chicago, Pennsylvania, and Bay Area Governments, in support of 350Green's claims for reimbursement under the grants, when, in fact, Actium Power never cashed the checks and Actium Power never paid Manufacturer A for the DC fast chargers.

6. It was further part of the scheme that, in order to obtain grant funds, MASON and GERZANYCH submitted, and caused to be submitted, invoices and supporting documentation to Chicago which claimed that 350Green had paid subcontractors when, in fact, those subcontractors were never paid.

7. It was further part of the scheme that, when subcontractors and vendors complained to 350Green about late or missing payments, defendants MASON and GERZANYCH falsely told subcontractors and vendors that payment was late due to the failure of the City of Chicago to pay invoices on time.

8. It was further part of the scheme that, when subcontractors in Chicago stopped work due to non-payment, defendant GERZANYCH sent an email on or about April 26, 2012, to City of Chicago employees overseeing the grant to 350Green in which she falsely claimed that 350Green could not make the payments due to other grant programs not paying on time, and included false and misleading statements regarding 350Green's finances.

9. It was further part of the scheme that, on or about May 2, 2012, defendant MASON, in order to maintain the Chicago contract, sent an email to City of Chicago employees overseeing the grant to 350Green in which he falsely represented that 350Green had acquired \$2.2 million in additional grant funding and had applied for additional funding.

10. It was further part of the scheme that, when allegations of fraud in the Chicago grant were made public in the news media, defendant GERZANYCH posted a statement on 350Green's website, and emailed a statement to 350Green employees, as well as personnel overseeing the Bay Area Governments grant, falsely claiming that 350Green had invested \$4.6 million in private capital funds into the Chicago project, when, in fact, 350Green had not invested that sum into the Chicago project and did not have \$4.6 million in private capital funds.

11. It was further part of the scheme that defendants MASON and GERZANYCH concealed, misrepresented and hid, and caused to be concealed, misrepresented and hidden, the existence of the scheme and the purposes of the scheme.

12. On or about December 27, 2011, in Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

TIMOTHY MASON and
MARIANA GERZANYCH,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be transmitted by means of wire communications in interstate commerce certain writings, signs, and signals, namely

an electronic wire transfer of approximately \$1,013,453.69, from the City of Chicago, which originated at a BMO Harris bank account located in the State of Illinois, to 350Green's bank account at Chase Bank ending in X0841, which was received and settled at the Federal Reserve Bank of New York, the administrative reserve bank for Chase;

In violation of Title 18, United States Code, Section 1343.

COUNT TWO

1. The allegations of paragraphs 1 through 11 of Count One of this indictment are incorporated here.

2. On or about March 13, 2012, in Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

TIMOTHY MASON and
MARIANA GERZANYCH,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be transmitted by means of wire communications in interstate commerce certain writings, signs, and signals, namely an electronic wire transfer of approximately \$181,918 from the City of Chicago, which originated at a BMO Harris bank account located in the State of Illinois, to 350Green's bank account at Chase Bank ending in X0841, which was received and settled at the Federal Reserve Bank of New York, the administrative reserve bank for Chase;

In violation of Title 18, United States Code, Section 1343.

COUNT THREE

The SPECIAL JANUARY 2014 GRAND JURY further charges:

1. The allegations of paragraphs 1 through 11 of Count One of this indictment are incorporated here.

2. On or about May 2, 2012, in Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

TIMOTHY MASON and
MARIANA GERZANYCH,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be transmitted by means of wire communications in interstate commerce certain writings, signs, and signals, namely an electronic wire transfer of approximately \$46,799.62, from the City of Chicago, which originated at a BMO Harris bank account located in the State of Illinois, to 350Green's bank account at Chase Bank ending in X0841, which was received and settled at the Federal Reserve Bank of New York, the administrative reserve bank for Chase;

In violation of Title 18, United States Code, Section 1343.

COUNT FOUR

The SPECIAL JANUARY 2014 GRAND JURY further charges:

1. The allegations of paragraphs 1 through 11 of Count One of this indictment are incorporated here.

2. On or about April 24, 2012, in Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

TIMOTHY MASON and
MARIANA GERZANYCH,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be transmitted by means of wire communications in interstate commerce certain writings, signs, and signals, namely an email from Employee A in Los Angeles, California, to Individual A at the City of Chicago, enclosing a claim for reimbursement of \$113,929 in grant funds, which included copies of checks purportedly sent to subcontractors by 350Green as payment for the subcontractors' work on the City of Chicago project, when in fact those checks were never sent to the subcontractors;

In violation of Title 18, United States Code, Section 1343.

COUNT FIVE

The SPECIAL JANUARY 2014 GRAND JURY further charges:

1. The allegations of paragraphs 1 through 11 of Count One of this indictment are incorporated here.

2. On or about April 26, 2012, in Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere,

TIMOTHY MASON and
MARIANA GERZANYCH,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly cause to be transmitted by means of wire communications in interstate commerce certain writings, signs, and signals, namely an interstate electronic mail message sent by MARIANA GERZANYCH to Individuals B and C at the City of Chicago, which message included defendants' false and fraudulent statements regarding 350Green's financial status;

In violation of Title 18, United States Code, Section 1343.

FORFEITURE ALLEGATION

The SPECIAL JANUARY 2014 GRAND JURY further alleges:

1. The allegations in Counts One through Five of this indictment are incorporated here by reference for the purpose of alleging that certain property is subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. As a result of their violations of Title 18, United States Code, Section 1343, as alleged in Counts One through Five,

TIMOTHY MASON and
MARIANA GERZANYCH,

defendants herein, 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 right, title and interest in property, real and personal, which constitutes and is derived from proceeds traceable to the charged offenses.

3. The interests of the defendants subject to forfeiture pursuant to Title 18, United States Code, Section, 981(a)(1)(C) and Title 28, United States Code, Section 2461(c) include but are not limited to:

a. All money and property, real and personal, that constitutes and was derived from the proceeds obtained, directly or indirectly, from the violations in the indictment, including approximately \$1.9 million fraudulently obtained from the City of Chicago and the State of Pennsylvania, Department of Environmental Protection.

4. If any of the forfeitable property described above, as a result of any act or omission by 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

divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property, under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY