

CMM:AXB
F. #2020R00569

RECEIVED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ AUG 05 2021 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----- X
LONG ISLAND OFFICE

UNITED STATES OF AMERICA

- against -

RICKEY LYNCH,
Defendant.

I N D I C T M E N T

C R 21 405

C No. _____
(T. 15, U.S.C., §§ 2614(1), 2615(b)(1),
2615(b)(2)(A) and 2689; T. 18, U.S.C.,
§§ 1001(a)(2), 1028A(a)(1), 1028A(b),
1028A(c)(4), 2 and 3551 et seq.)

----- X

THE GRAND JURY CHARGES:

BROWN, J.

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:
TOMLINSON, M.J.

I. Federal Regulation of Toxic Substances

1. Congress regulated toxic chemical substances through the Toxic Substances Control Act of 1976 (the "Act"), 15 U.S.C. §§ 2601 et seq. The Act applied to all individuals and firms that were engaged in lead-based paint activities, including inspection, risk assessment and abatement. Under the Act, abatement was specifically defined as any measure or set of measures designed to permanently eliminate lead-based paint hazards and included, but was not limited to, (a) the removal of paint and dust, the permanent enclosure and encapsulation of lead-based paint, the replacement of painted surfaces and fixtures and the removal and permanent covering of soil, when lead-based paint hazards were present in such paint, dust and soil; and (b) all preparation, cleanup, disposal and post-abatement clearance testing activities associated with such measures.

2. Administration of the Act was committed to the Administrator (the "Administrator") of the Environmental Protection Agency (the "EPA"). Pursuant to that authority, and to implement the Act, the Administrator promulgated certain procedures and requirements, which were codified at Part 745 of Title 40 of the Code of Federal Regulations (the "Regulations"). The Regulations applied to all lead-based paint activities, including abatement, performed in "target housing," which was defined therein as housing constructed prior to 1978. The Regulations were meant to ensure that individuals engaged in lead-based paint activities were properly trained, that training programs were accredited and that contractors engaged in such activities were certified. Sections 2614(1) and 2689 of the Act made compliance with the Regulations mandatory under federal law. Section 2615(b) of the Act made the knowing and willful failure or refusal to comply with the Regulations a federal crime.

3. Section 745.226 of the Regulations governed the certification of individuals and firms engaged in lead-based paint abatement and established heightened certification requirements for individuals engaged in the supervision of lead-based paint abatement. After March 1, 2000, individuals and firms that engaged in lead-based paint abatement in target housing without proper certification from the EPA were in violation of the Act.

4. EPA-certified individuals and firms conducting lead-based paint abatement in target housing were required to comply with certain work practice standards codified in section 745.227(e) of the Regulations. Specifically, the Regulations required, among other things, that (a) an EPA-certified supervisor be onsite for all worksite preparation and post-abatement cleanup and either onsite or able to be present within two

hours at all other times when abatement activities are being conducted; (b) five days prior to the start of lead-based paint abatement activities, an EPA-certified firm notify the EPA of the abatement activities and, when such abatement activities were required in response to an elevated blood lead level determination or state or local abatement order, notice be received by the EPA no later than the start date of the lead-based paint abatement activities; (c) an EPA-certified supervisor or project designer develop and prepare a written occupant protection plan describing the measures and management procedures that were to be taken during the lead-based paint abatement to protect the building occupants from exposure to any lead-based paint hazards; and (d) machine sanding and grinding and abrasive blasting and sandblasting of lead-based paint be completed using a High Efficiency Particulate Air (“HEPA”) exhaust control to contain the spread of lead dust and toxic debris.

II. The Defendant and His Abatement Company

5. The defendant RICKEY LYNCH was a resident of Arverne, New York and the proprietor of Bright Lights Supreme Cleaning Incorporated (“Bright Lights”), a Long Island-based company that advertised various cleaning services and lead-based paint activities.

6. In or about September 2018, the defendant RICKEY LYNCH attended a certified lead abatement supervisor course provided by an accredited certification provider, in which LYNCH received training and instruction on topics including, but not limited to, the Act, the Regulations and the detrimental effects of lead-based paint exposure on children’s health and development. LYNCH obtained an interim lead abatement supervisor certification, which expired in or about March 2019.

7. From approximately March 2019 to February 2020, the defendant RICKY LYNCH was not certified by the EPA to supervise lead-based paint activities.

III. The Abatement at the Freeport Residence

8. Victim-1 and Victim-2 (collectively, the "Victims"), individuals whose identities are known to the Grand Jury, were spouses who resided at a private residence in Freeport, New York (the "Freeport Residence"). The Freeport Residence was constructed in 1934 and therefore constituted "target housing" for purposes of the Regulations.

9. On or about January 6, 2020, the Victims retained the defendant RICKY LYNCH and Bright Lights to conduct an abatement of lead-based paint in the Freeport Residence. As LYNCH well knew and believed, the reason for the abatement was that, on two occasions between approximately July 2019 and October 2019, the Victims' two-year-old son, who also resided in the Freeport Residence, was found to have an elevated blood lead level. As LYNCH also knew, given the risk that further lead exposure could result in death and serious bodily injury to the child, the Nassau County Department of Health had mandated that the Victims abate hazardous chemical substances at the Freeport Residence.

10. In violation of the Regulations, the defendant RICKY LYNCH failed to provide timely notice to the EPA of the lead-based paint abatement activities prior to starting work at the Freeport Residence. Also in violation of the Regulations, LYNCH failed to develop and prepare, or cause an EPA-certified supervisor or project designer to develop and prepare, a written occupant protection plan describing the measures and management procedures that would be taken during the abatement to protect the occupants of the Freeport Residence, including the Victims' son, from harmful exposure to lead-based

paint hazards. From approximately January 8, 2020 to January 10, 2020, LYNCH personally performed all material aspects of the abatement and did not arrange for an EPA-certified supervisor to be present during any lead-based paint activities. During the abatement, LYNCH conducted machine sanding and grinding of lead-based paint without utilizing a HEPA exhaust control or otherwise containing the spread of harmful lead dust throughout the Freeport Residence.

11. As a result of the defendant RICKY LYNCH's failure to comply with the Regulations, hazardous lead dust levels exceeded legally permissible limits throughout the Freeport Residence and hazardous lead dust was spread to previously unaffected areas of the Freeport Residence.

IV. The Defendant's False Statements

12. In or about January 2020, the EPA opened an investigation into the lead-based paint activities conducted by the defendant RICKY LYNCH at the Freeport Residence. From approximately February 21, 2020 to March 10, 2020, in response to inquiries by the EPA, LYNCH made a series of materially false and fraudulent representations to the EPA, which were intended to conceal his violations of the Act and obstruct the EPA's investigation of the abatement at the Freeport Residence.

13. For example, on or about February 21, 2020, approximately six weeks after the abatement at the Freeport Residence, the defendant RICKY LYNCH sent a facsimile to the EPA purporting to provide notice of lead-based paint activities at the Freeport Residence, as required by the Regulations. This notice, the truth and accuracy of which was affirmed by LYNCH, falsely identified Individual-1, an individual whose identity is known to the Grand Jury, as the EPA-certified supervisor of the lead-based paint activities

at the Freeport Residence. Thereafter, on or about March 10, 2020, LYNCH submitted to the EPA a purported subcontractor agreement, dated January 6, 2020, which allegedly bore the signature of Individual-1 and falsely stated that LYNCH had contracted with Individual-1 to supervise the lead-based paint activities at the Freeport Residence. On or about March 10, 2020, LYNCH also submitted to the EPA a purported affidavit by Individual-1, dated January 29, 2020, which also allegedly bore the signature of Individual-1 and falsely stated, in substance and in part, that Individual-1 was the EPA-certified supervisor of the lead-based paint activities at the Freeport Residence and that LYNCH had not performed any lead-based paint activities or related planning.

14. In actuality, as the defendant RICKY LYNCH well knew and believed, Individual-1 had not signed the subcontractor agreement or the affidavit attributed to him and had not authorized LYNCH to sign those documents on his behalf. In truth and in fact, Individual-1 had not been certified by the EPA to supervise lead-based paint activities and had not been subcontracted or otherwise involved in the abatement at the Freeport Residence.

COUNT ONE
(Violations of the Toxic Substances Control Act of 1976)

15. The allegations contained in paragraphs one through 14 are realleged and incorporated as if fully set forth in this paragraph.

16. In or about January 2020, within the Eastern District of New York, the defendant RICKY LYNCH, together with others, did knowingly and willfully fail and refuse to comply with the Regulations governing the proper abatement of lead-based paint in target housing, to wit: (a) an EPA-certified supervisor was not onsite for all work site

preparation and post-abatement cleanup and either onsite or able to be present within two hours at all other times when abatement activities were being conducted, in violation of 40 C.F.R. § 745.227(e)(2); (b) neither LYNCH nor an EPA-certified supervisor or project designer developed and prepared a written occupant protection plan describing the measures and management procedures that were to be taken during abatement activities at the Freeport Residence to protect the building occupants from exposure to lead-based paint hazards, in violation of 40 C.F.R. § 745.227(e)(5); and (c) machine sanding and grinding and abrasive blasting and sandblasting of lead-based paint was completed at the Freeport Residence without using a HEPA exhaust control, in violation of 40 C.F.R. § 745.227(e)(6)(ii), and knew at the time of said violations that the violations placed in imminent danger of death and serious bodily injury one or more individuals, to wit: the Victims and their minor son.

(Title 15, United States Code, Sections 2614(b)(1), 2615(b)(1), 2615(b)(2)(A), 2689; Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNT TWO
(False Statements)

17. The allegations contained in paragraphs one through 14 are realleged and incorporated as if fully set forth in this paragraph.

18. On or about and between February 21, 2020 and March 10, 2020, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RICKY LYNCH, in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit: the EPA, did knowingly and willfully make one or more materially false, fictitious and fraudulent statements and representations, to wit: (a) that Individual-1 was the EPA-certified supervisor of the lead-

based paint activities at the Freeport Residence; and (b) that LYNCH had not performed any lead-based paint activities at the Freeport Residence, when in fact, as LYNCH then and there well knew and believed, LYNCH performed all material aspects of the abatement at the Freeport Residence himself and neither Individual-1 nor any EPA-certified supervisor was present during any lead-based paint activities performed at the Freeport Residence.

(Title 18, United States Code, Sections 1001(a)(2) and 3551 et seq.)

COUNT THREE
(Aggravated Identity Theft)

19. The allegations contained in paragraphs one through 14 are realleged and incorporated as if fully set forth in this paragraph.

20. On or about and between February 21, 2020 and March 10, 2020, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RICKY LYNCH, during and in relation to the crime charged in Count Two, did knowingly and intentionally possess and use, without lawful authority, one

or more means of identification of another person, to wit: the name and signature of Individual-1, knowing that the means of identification belonged to said other person.

(Title 18, United States Code, Sections 1028A(a)(1), 1028A(b), 1028A(c)(4),
2 and 3551 et seq.)

A TRUE BILL

FOREPERSON

JACQUELYN M. KASULIS
ACTING UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

Filed in open court this _____ day,

of _____ A.D. 20 _____

For person

Bail, \$ _____