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F. #2018R00087

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- X

UNITED STATES OF AMERICA

- against -

SHARON GARDNER and
MARIA CALIENDO,

Defendants.

- X

I N D I C T M E N T

Cr. No. CR 22 229
(T. 18, U.S.C., §§ 981(a)(1)(C), 1001(a)(2), 1349 and 3551 et seq.; T. 21 U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

SEYBERT, J.

WICKS, M.J.

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

Relevant Individuals and Entities

1. The Hempstead Union Free School District ("HUFSD") was a public school system located in Hempstead, New York, within the Eastern District of New York.

2. The defendant SHARON GARDNER, a resident of Suffolk County, New York, was employed by HUFSD as the Director of Food Service. In her capacity as a municipal officer and employee, GARDNER had the power and duty to, among other things, negotiate, prepare, authorize and approve contracts with HUFSD and approve payments thereunder. In particular, GARDNER was generally responsible for planning, directing and administering HUFSD's lunch program and performing related duties as required, including, among other things, coordinating and supervising the purchase of all foods, supplies and equipment. As such, Section 801 of the New York General Municipal Law ("NYGML")

prohibited GARDNER from having an interest, direct or indirect, in any contract with HUFSD.

3. The defendant MARIA CALIENDO, a resident of Nassau County, New York, was the founder and President of Smart Starts NY, Inc. ("Smart Starts"), a domestic business corporation formed in New York State on or about January 9, 2017. Smart Starts was formed for the stated purpose of distributing prepackaged breakfast meals for schoolchildren.

4. Co-conspirator #1, an individual whose identity is known to the Grand Jury, was a resident of Suffolk County, New York, and a close relative of the defendant SHARON GARDNER. Co-conspirator #1 was nominally a partner of Smart Starts but neither made any capital contribution to, nor performed any labor or services for, Smart Starts.

<u>The Kickback Scheme</u>

5. In or about and between January 2017 and March 2019, the defendant SHARON GARDNER solicited and received bribes and kickbacks from the defendant MARIA CALIENDO in exchange for GARDNER's assistance in steering HUFSD business to CALIENDO's company, Smart Starts (the "Kickback Scheme"). Specifically, without disclosing her involvement in the Kickback Scheme, and in violation of Section 801 of the NYGML and her fiduciary obligations to HUFSD, GARDNER used her official position to advise and persuade HUFSD officials to award Smart Starts one or more procurement contracts to provide prepackaged breakfast meals for HUFSD students.

6. Section 103 of the NYGML and related regulations promulgated by the HUFSD Board of Education ("BOE") required that qualifying procurement contracts be

awarded only after competitive bidding. Applicable HUFSD purchasing regulations identified certain exceptions to this requirement, including situations when the BOE, in its discretion, determined that there was only one possible source from which to procure goods or services required in the public interest (the "Sole Source Exception").

7. During the 2016-17 school year, the defendant SHARON GARDNER used her official position to advise and persuade HUFSD officials that the Sole Source Exception applied to Smart Starts, thereby allowing Smart Starts to avoid competitive bidding for a procurement contract. For example, on or about January 25, 2017, GARDNER prepared a memorandum to the Purchasing Agent for HUFSD stating, in substance and in part, that the Sole Source Exception applied to Smart Starts. In addition, in or about February 2017, at GARDNER's direction, the defendant MARIA CALIENDO also sent a memorandum to the Purchasing Agent for HUFSD stating, in substance and in part, that the Sole Source Exception applied to Smart Starts. Based principally on GARDNER's endorsement, the Purchasing Agent for HUFSD authorized HUFSD to issue a purchase order for Smart Starts to provide prepackaged breakfast meals for the remainder of the 2016-17 school year ("Procurement Contract #1").

8. In addition, prior to the start of the 2017-18 school year, the defendant SHARON GARDNER used her official position to exercise control over a purportedly competitive bidding scenario at HUFSD to award a successive procurement contract to Smart Smarts. For example, in or about June 2017, GARDNER crafted the relevant bid specifications for prepackaged breakfast meals and evaluated the bids received in response to HUFSD's solicitation. Despite GARDNER's prior claim that Smart Starts was the sole source of such prepackaged breakfast meals, HUFSD received at least three bids for those

items, all of which were more cost-effective than Smart Starts' bid. Nevertheless, GARDNER used her official position to reject the more cost-effective bids and recommended to the Purchasing Agent for HUFSD that Smart Starts be awarded a second procurement contract. Based principally on GARDNER's involvement in, and influence over, the bidding process, the Purchasing Agent for HUFSD authorized HUFSD to issue a second purchase order for Smart Starts to provide prepackaged breakfast meals for the 2017-18 school year ("Procurement Contract #2").

9. In total, on or about and between February 1, 2017, and June 30, 2018, HUFSD paid Smart Starts approximately $1,251,892.50 under Procurement Contract #1 and Procurement Contract #2 (together, the "Procurement Contracts"). The proceeds from the Procurement Contracts were deposited into three bank accounts owned and controlled by the defendant MARIA CALIENDO, to wit: (a) a Sterling National Bank Account ending in 5065; (b) a Sterling National Bank Account ending in 5145; and (c) a TD Bank Account ending in 5674. Thereafter, in exchange for the defendant SHARON GARDNER's assistance in steering the Procurement Contracts to Smart Starts, CALIENDO paid a portion of the contract proceeds to GARDNER in the form of fraudulent payroll deposits and other payments to Co-conspirator #1.

10. In order to conceal the defendant SHARON GARDNER's involvement in the Kickback Scheme, GARDNER and the defendant MARIA CALIENDO agreed to install Co-conspirator #1 as a nominal partner of Smart Starts. In that regard, on or about June 20, 2017, at GARDNER's direction, Co-conspirator #1 opened a TD Bank Account ending in 8337 for the sole purpose of receiving proceeds from the Procurement Contracts in the form of kickbacks from CALIENDO (the "Kickback Account"). At no time did Co-

conspirator #1 make any financial contribution to Smart Starts, nor did Co-conspirator #1 provide labor or services to Smart Starts that would have entitled Co-conspirator #1 to remuneration.

11. Thereafter, on or about and between June 20, 2017, and March 29, 2019, the defendant MARIA CALIENDO caused approximately 63 payroll deposits and three lump sum deposits, totaling approximately $121,313.60 (the "Kickback Money"), to be made into the Kickback Account. In actuality, the Kickback Money was intended for the defendant SHARON GARDNER and was deposited into an account nominally owned by Co-conspirator #1 to conceal its fraudulent nature. In truth and in fact, GARDNER exercised primary control over the Kickback Account and used the Kickback Money for, among other things, international vacations, home furnishings and a leased vehicle. In addition, GARDNER withdrew approximately $13,000 in cash from the Kickback Account at various ATMs around her home and workplace.

12. On or about February 14, 2020, the defendant MARIA CALIENDO made voluntary statements to State and Federal law enforcement officers investigating the Kickback Scheme, including a Special Agent with the United States Department of Agriculture Office of Inspector General ("USDA-OIG"). In substance and in part, CALIENDO falsely stated that the payments from Smart Starts to Co-conspirator #1 represented repayment for a start-up loan that Co-conspirator #1 had made to Smart Starts. In actuality, as CALIENDO then and there well knew and believed, Co-conspirator #1 had made no such capital contribution to Smart Starts and the payments in question were kickbacks to the defendant SHARON GARDNER.

COUNT ONE
(Conspiracy to Commit Honest Services Wire Fraud)

13. The allegations set forth in paragraphs one through 12 of this Indictment are realleged and incorporated as if fully set forth in this paragraph.

14. In or about and between January 2017 and March 2019, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants SHARON GARDNER and MARIA CALIENDO, together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud and deprive HUFSD of its intangible right to the honest services of GARDNER through bribes and kickbacks, and for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures and sounds, contrary to Title 18, United States Code, Sections 1343 and 1346.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNT TWO
(False Statements)

15. The allegations set forth in paragraphs one through 12 of this Indictment are realleged and incorporated as if fully set forth in this paragraph.

16. On or about February 14, 2020, within the Eastern District of New York and elsewhere, the defendant MARIA CALIENDO, in a matter within the jurisdiction of the executive branch of the Government of the United States, to wit: the USDA-OIG, did knowingly and willfully make one or more materially false, fictitious and fraudulent statements and representations, to wit: that the Kickback Money, in whole and in part, represented repayment to Co-conspirator #1 of a capital contribution Co-conspirator #1 made

to Smart Starts, when in fact, as CALIENDO then and there well knew and believed, Co-conspirator #1 had made no capital contribution to Smart Starts.

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

CRIMINAL FORFEITURE ALLEGATION AS TO COUNT ONE

17. The United States hereby gives notice to the defendants that, upon their conviction of the offense charged in Count One, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offense to forfeit any property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as a result of such offense.

18. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(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;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE BILL

[redacted]

FOREPERSON

[redacted]

BREON PEACE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

F.#: 2018R00087
FORM DBD-34
JUN. 85

No.

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

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Defendants.

INDICTMENT

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A tr[redacted]

____________________ *Foreperson*

Filed in open court this 17 *day,*

of May *A.D. 20* 22

____________________ *Clerk*

Bail, $ ____________

Anthony Bagnuola, Assistant U.S. Attorney (631) 715-7849