

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.
: :
v. : Crim. No.
: :
: 18 U.S.C. §§ 371 and 981(a)(1)(C);
JAMES C. PORTER : 26 U.S.C. § 7201; and
: 28 U.S.C. § 2461(c)

INFORMATION

The defendant having waived in open court prosecution by Indictment, the United States Attorney for the District of New Jersey charges:

COUNT 1
(Conspiracy to Commit Wire Fraud)

Defendant and other Individuals and Entities

1. At all times relevant to Count 1 of this Information:

A. Defendant JAMES C. PORTER (“defendant PORTER”) purported to provide landscaping, snow removal, clean-up, and sign posting services through two companies, New Beginnings Environmental Services (“NBES”) and Jim P. Enterprises, LLC (“JPE”), located in Essex County, New Jersey.

B. The Newark Watershed Conservation and Development Corporation (the “NWCDC”) operated as a not-for-profit organization created to manage the watershed properties owned by the City of Newark, New Jersey. The NWCDC’s main corporate offices were in Newark. The NWCDC also maintained several water treatment and pumping facilities in Northern New Jersey. The NWCDC was primarily funded by revenue received in connection with service contracts with the City of Newark.

C. The NWCDC was governed by a Board of Directors responsible for oversight of the organization. Until the NWCDC's By-Laws were amended in or about September 2012, the Board was to consist of seven to eleven members, including two Newark Municipal Council members as voting members, and the Mayor of Newark as a non-voting member. In or about September 2012, the Board adopted amended By-Laws, which provided that the Board was to be composed of only seven members, with no requirement that any of the Directors be members of the Newark municipal government. The day-to-day operations of the NWCDC were conducted by NWCDC staff, headed by an Executive Director (the "Executive Director") who reported to the Board.

D. While engaged first as a consultant and then an NWCDC employee, Donald Bernard Sr. ("Bernard") reported to the Executive Director and was responsible for finding contractors to conduct NWCDC operations. Between in or about September 2008 and in or about January 2010, Bernard was a consultant for the NWCDC. Between in or about September 2008 and in or about August 2010, Bernard received at least approximately \$331,250 in payments from the NWCDC as a consultant either directly to him, or through one of his companies, Bernard & Associates ("B&A"). From in or about January 2010 to in or about March 2013, Bernard was a salaried employee of the NWCDC and held the position of Manager of Special Projects.

E. Bernard also owned, operated, and controlled two entities: B&A and the African American Heritage Parade Committee ("AAHPC"). B&A purported to be a consulting business that specialized in public relations and event planning. The AAHPC purported to be a not-for-profit entity that solicited and collected funds to organize a yearly parade in Newark.

Bernard operated and controlled bank accounts in the names of both of these entities in New Jersey.

2. Between in or about October 2008 and in or about April 2013, the NWCDC issued payments to NBES totaling over \$290,000 and to JPE totaling over \$500,000 purportedly to provide landscaping, snow removal, site clean-up, and sign posting services.

Duty of Honest Services to the NWCDC

3. At all times relevant to Count 1 of this Information, the NWCDC had an intangible right to the honest services of its employees and hired consultants. As an employee and hired consultant, Bernard owed the NWCDC a duty under the law to refrain from seeking and receiving secret bribes and kickbacks in exchange for Bernard's action and assistance as an employee and consultant for the NWCDC in the affairs of the NWCDC

Wire Fraud Conspiracy

4. From at least as early as in or about October 2008 to in or about April 2013, in Essex County, in the District of New Jersey, and elsewhere, defendant

JAMES C. PORTER,

Bernard and others knowingly and intentionally did conspire and agree to devise a scheme to defraud the NWCDC of (A) the right to Bernard's honest services in the affairs of the NWCDC and (B) money and property, through materially false and fraudulent pretenses, representations and promises, facilitated by the use of interstate wire transmissions, contrary to Title 18, United States Code, Section 1343.

Object of the Conspiracy

5. The object of the conspiracy was for defendant PORTER to give and agree to give a stream of concealed and undisclosed bribes and kickbacks to Bernard, in exchange for Bernard's

action and assistance in the affairs of the NWCDC on behalf of defendant PORTER, NBES and JPE as specific opportunities arose, which bribes and kickbacks were financed by defendant PORTER through the receipt of payments to NBES and JPE that had been fraudulently obtained from the NWCDC, with Bernard's assistance, through materially false pretenses, representations and promises, and which was facilitated by use of interstate wire transmissions.

Manner and Means of the Conspiracy

6. It was a part of this conspiracy that:
 - A. Defendant PORTER gave and agreed to give to Bernard directly and indirectly a stream of payments from in or about October 2008 to in or about April 2013, in the total amount of over \$500,000, to include:
 - (a) From in or about January 2009 to in or about October 2012, defendant PORTER caused approximately \$378,867 in cash to be withdrawn from bank accounts in New Jersey in the names of NBES and JPE and given to Bernard;
 - (b) From in or about January 2009 to at least in or about October 2011, Bernard caused numerous ATM transactions (using an ATM card issued in Bernard's name) and other cash withdrawals to be made from a bank account in New Jersey that defendant PORTER and Bernard controlled in the name of NBES in the total amount of at least approximately \$74,681;
 - (c) Between in or about January 2009 and in or about October 2011, Bernard used the ATM card issued in his name to pay expenses for personal items, such as restaurants, car washes and theater tickets totaling approximately \$4,947; and
 - (d) From in or about January 2009 to in or about April 2012, defendant PORTER and Bernard caused Bernard to receive checks from bank accounts in New Jersey in the names of NBES and JPE made payable to Bernard directly, and through B&A and AAHPC, in the total amount of more than approximately \$41,650.

B. Defendant PORTER and others took steps to conceal this corrupt and fraudulent arrangement, including:

- i. using B&A and AAHPC to pass proceeds of the payments to Bernard;
- ii. using the NBES bank account to pass proceeds of certain of the payments on to Bernard or to pay for expenses that Bernard had incurred; and
- iii. Bernard intentionally failing to disclose to authorities at the NWCDC material information—including that Bernard was receiving these corrupt payments from defendant PORTER, NBES and JPE.

C. By giving and agreeing to give these bribes and kickbacks, defendant PORTER intended to influence and reward Bernard in exchange for the exercise of Bernard's authority and discretion at the NWCDC to provide defendant PORTER, NBES and JPE with favorable assistance in connection with their business with the NWCDC, including recommending and otherwise assuring that NWCDC business opportunities went to NBES and JPE and ensuring that the NWCDC provided defendant PORTER, NBES and JPE with significant and regular payments from the NWCDC.

D. Defendant PORTER and Bernard conspired to finance these payments to Bernard, at least in part, by submitting to NWCDC fraudulent invoices and bills that contained materially false representations and half-truths--indicating that the sought-after payments were completely for legitimate work performed when, in fact, the invoices and bills were fraudulently inflated to cover the payments that defendant PORTER gave to Bernard, or were based on work that had not been performed.

E. To further their scheme, in Essex County, in the District of New Jersey, defendant PORTER, Bernard and others transmitted and caused to be transmitted in interstate

commerce by means of wire communications certain writings, signs, signals, pictures, and sounds, including:

DATE	WIRE TRANSMISSION
December 23, 2010	E-Mail sent from Bernard to the Executive Director through an e-mail server located in Dulles, Virginia, requesting that the Executive Director cause a \$12,500 check to be provided to NBES.
December 28, 2010	E-mail sent from Bernard to the Executive Director through an e-mail server located in Dulles, Virginia, stating that Bernard had been notified that NBES received the requested payment and would be providing "emergency snow removal services" in response to a blizzard that had occurred during that weekend – thereby, creating the false impression that NBES was at an arms-length from Bernard when, in fact, Bernard: (1) was receiving consistent payments from defendant PORTER through NBES; and (2) had access to, and control over, a bank account in the name of NBES in New Jersey.

Overt Acts

7. In furtherance of the conspiracy and to effect its unlawful objects, defendant PORTER and others committed, and caused to be committed, the following overt acts in the District of New Jersey, and elsewhere:

A. On or about December 23, 2010, Bernard sent an e-mail from New Jersey to the Executive Director through an e-mail server located in Dulles, Virginia, requesting that the Executive Director cause a \$12,500 check to be provided to NBES.

B. On or about December 28, 2010, Bernard sent an e-mail from New Jersey to the Executive Director through a server located in Dulles, Virginia, stating that Bernard had been notified that NBES had received the requested payment and that NBES would be providing emergency snow services in response to a blizzard that had occurred during that weekend.

C. On or about December 28, 2010, defendant PORTER and Bernard caused a check from the NWCDC in the amount of \$12,500 to be deposited into the NBES bank account controlled by defendant PORTER and Bernard in New Jersey.

D. On or about December 29, 2010, in Essex County, defendant PORTER withdrew approximately \$5,000 in cash from the NBES bank account which he subsequently delivered to Bernard.

E. On or about December 29, 2010, Bernard caused his ATM card for the NBES bank account to be used to withdraw approximately \$700 from an ATM located in New Jersey.

F. On or about December 29, 2010, defendant PORTER and Bernard caused a cashier's check in the approximate amount of \$2,500, and made payable to the AAHPC, to be drawn on the NBES bank account in Essex County.

In violation of Title 18, United States Code, Section 371.

COUNTS 2 TO 5

(Tax Evasion)

1. Paragraphs 1, 2, and 6 of Count 1 of this Information are hereby incorporated and realleged as if fully set forth herein.

2. From in or about January 2009 to in or about December 2012, defendant PORTER received funds from the NWDCDC through NBES and JPE as follows:

Year	Approximate Amount of NWDCDC Funds Received by JPE	Approximate Amount of NWDCDC Funds Received by NBES	Total Amount of NWDCDC Funds Received By PORTER'S Businesses
2009	\$102,500	\$80,000	\$182,500
2010	\$104,000	\$112,500	\$216,500
2011	\$106,250	\$102,500	\$208,750
2012	\$160,000	-	\$160,000
Total	\$472,750	295,000	\$767,750

3. Having received the above-listed income through NBES and JPE, defendant PORTER was required by law, following the close of each calendar year and on or before the deadline for filing personal income tax returns (IRS Forms 1040), to make and file income tax returns to the Internal Revenue Service ("IRS") stating specifically the items of his gross income and any deductions and credits to which he was entitled. As the sole proprietor of JPE, the information regarding the gross income and any deductions related to JPE were required to be accurately reported on IRS Form Schedule C of defendant PORTER's individual Tax Return (IRS Form 1040). As a purported partner in NBES, any information regarding the gross income and any deductions related to NBES were required to be accurately reported on IRS Form Schedule E of defendant PORTER's individual Tax Return (IRS Form 1040).

4. Between in or about January 2009 and in or about December 2012, defendant PORTER intentionally did not accurately report the income that he received during that time

period by filing with the IRS false federal personal tax returns (IRS Forms 1040) for tax years 2009, 2010, 2011, and 2012 that: (1) substantially understated the gross income for NBES and JPE, and (2) fraudulently reported fictitious expenses related to NBES and JPE on IRS Forms Schedule C and IRS Forms Schedule E, thereby falsely offsetting the gross income received by NBES and JPE.

5. On or about the dates set forth below, in Essex County, in the District of New Jersey and elsewhere, defendant

JAMES C. PORTER

did knowingly and willfully attempt to evade and defeat a substantial tax due and owing by him to the IRS for the tax years set forth below by filing false tax returns that contained fictitious expenditures associated with NBES and JPE and substantially understated the income received from NBES and JPE in the total amounts set forth below:

COUNT	RETURN & TAX YEAR	APPROXIMATE UNREPORTED INCOME	APPROXIMATE ADDITIONAL TAX DUE AND OWING	DATE OF OFFENSE
2	IRS Form 1040 – 2009	\$102,060	\$35,450	05/27/2010
3	IRS Form 1040 – 2010	\$120,286	\$44,163	04/15/2011
4	IRS Form 1040 – 2011	\$116,500	\$42,916	07/03/2012
5	IRS Form 1040 – 2012	\$151,603	\$48,971	04/15/2013

In violation of Title 26, United States Code, Section 7201.

FORFEITURE ALLEGATION

1. The allegations contained in Count 1 of this Information are hereby realleged and incorporated by reference for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(c) and Title 28, United States Code, Section 2461(c).

2. Upon conviction of the offense of conspiracy to commit wire fraud, contrary to Title 18, United States Code, Section 1343, in violation of Title 18, United States Code, Section 371, set forth in Count 1 of this Information, defendant

JAMES C. PORTER

shall forfeit to the United States of America, 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 or personal, that constitutes or is derived from proceeds traceable to this offense. The property to be forfeited is money in the amount of \$573,333.

3. If by any act or omission of defendant PORTER, any of the property subject to forfeiture described in paragraph 2 herein:

- 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 will be entitled to forfeiture of substitute property up to the value of the property described above in paragraph 2, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

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

Paul J. Fishman/rah
PAUL J. FISHMAN
UNITED STATES ATTORNEY

CASE NUMBER: _____

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

JAMES C. PORTER

INFORMATION FOR

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26 U.S.C. § 7201; and
28 U.S.C. § 2461(c)

PAUL J. FISHMAN
U.S. ATTORNEY
NEWARK, NEW JERSEY

JACQUES S. PIERRE AND
MALA AHUJA HARKER
ASSISTANT U.S. ATTORNEYS
973-645-2716
973-645-2730
