

2010R01000/LFS

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Susan D. Wigenton
	:	
v.	:	Criminal No. 16-41(SDW)
	:	
BARBARA BROWN,	:	
a/k/a "Barbara Canning Brown," and	:	18 U.S.C. § 1349
PHILIP CHARLES DE GRUCHY,	:	18 U.S.C. § 1341
a/k/a "Charles De Gruchy"	:	18 U.S.C. § 2
	:	26 U.S.C. § 7206(1)

SUPERSEDING INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark,
charges:

COUNT ONE
(Conspiracy to Commit Mail Fraud)
(Defendant DE GRUCHY and Defendant BROWN)

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

The Defendants

- a. Defendant BARBARA BROWN, a/k/a "Barbara Canning Brown" ("defendant BROWN"), was a resident of Park Ridge, New Jersey. From on or about August 6, 2007, through on or about April 2, 2010, defendant BROWN was employed by Company A as the Director of Customer Management and later as Director of Corporate Marketing, Key Initiatives. As a result of these high-level positions with Company A, defendant BROWN was

responsible for an annual budget of approximately \$30 million and had considerable authority and discretion to hire contractors.

b. Defendant PHILIP CHARLES DE GRUCHY, a/k/a “Charles de Gruchy” (“defendant DE GRUCHY”), was a resident of Park Ridge, New Jersey. From in or about July 2010 through on or about November 11, 2011, defendant DE GRUCHY was employed by Company B as the Director of Global Relations Management. As part of his job at Company B, defendant DE GRUCHY was responsible for a data migration project designed to assist Company B in marketing strategy through the collection of Company B’s customer purchasing patterns.

c. Defendant BROWN and defendant DE GRUCHY, who were married in approximately 1982, resided together in a Park Ridge home they jointly owned (the “Park Ridge Address”).

Business Entities

d. Company A was a leading international toy and juvenile products retailer headquartered in Wayne, New Jersey.

e. Company B was an international manufacturer and retailer of luxury travel bags and accessories headquartered in South Plainfield, New Jersey.

f. CEM Direct Marketing Services (“CEM”) was purportedly a Canadian company engaged in marketing consulting services, which operated under the business entities CEM, LLC and thereafter CEM, Inc. CEM was controlled by defendant BROWN and defendant DE GRUCHY.

g. BI Insights, LLC ("BI Insights") was purportedly a Canadian company engaged in marketing consulting services. BI Insights was also controlled by defendant BROWN and defendant DE GRUCHY.

h. Silk Farm, Inc. ("Silk Farm") was a corporation purportedly involved in providing garden design services, which was controlled by defendant DE GRUCHY.

i. 1064400 Ontario LLC ("Ontario LLC") was purportedly a real estate holding company which owned real properties in Canada and was controlled by defendant DE GRUCHY and defendant BROWN.

The Conspiracy

2. From at least as early as in or about August 2007 through in or about September 2011, in the County of Bergen, in the District of New Jersey and elsewhere, defendants

BARBARA BROWN,
a/k/a "Barbara Canning Brown," and
PHILIP CHARLES DE GRUCHY,
a/k/a "Charles de Gruchy,"

did knowingly and intentionally conspire and agree with each other, and with others known and unknown, to devise a scheme and artifice to defraud Company A and Company B, and to obtain money and property from Company A and Company B by means of materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice, to use the mails, that is, the United States Postal Service and private and commercial interstate carriers, contrary to Title 18, United States Code, Section 1341.

Object of the Conspiracy

3. The object of the conspiracy was for defendant BROWN and defendant DE GRUCHY to enrich themselves by causing their respective employers, Company A and Company B, to pay more than \$3 million in satisfaction of fraudulent invoices for work that was unnecessary, unauthorized, worthless, or never completed, while failing to disclose that they had a financial interest in these invoice payments.

Manner and Means of the Conspiracy

Company A Scheme

4. It was part of the conspiracy that, on or about January 28, 2008, defendants BROWN and DE GRUCHY caused Company A's procurement group to establish CEM as an approved vendor for Company A with "Steve Shaw" identified as the contact person and a business address listed of 33 Hazelton Avenue, Suite 66, Toronto, Canada (the "Hazelton Avenue Address"), to falsely portray that CEM was an independent and legitimate vendor, when in fact it was controlled by defendants BROWN and DE GRUCHY. The Hazelton Avenue Address was not a physical location, but was a mailbox at a Canadian rental business. At no time did either defendant BROWN or DE GRUCHY disclose to Company A that they controlled CEM.

5. It was further part of the conspiracy that, on or about August 14, 2008, defendant BROWN advised Company A that the new address of CEM was 1 Yonge Street, Suite 1801, Toronto, Canada (the "Yonge Street Address"). The Yonge Street Address was the address of a business engaged in receiving mail,

forwarding telephone coverage during the day, and providing 24-hour voicemail service.

6. It was further part of the conspiracy that, beginning in or around mid-2008, defendant BROWN communicated with defendant DE GRUCHY at CEM through the email address steven@cemdirect.biz regarding supposed work product provided by CEM to Company A, as well as the submission of CEM invoices to Company A. Defendant DE GRUCHY did not identify himself in these communications, but at times referred to himself as "Steven" or "Steven Shaw."

7. It was further part of the conspiracy that, from on or about November 5, 2007, through on or about March 4, 2010, defendant DE GRUCHY and defendant BROWN caused approximately 170 invoices to be submitted to Company A totaling approximately \$3,268,795 for work supposedly performed by CEM. These invoices included three CEM invoices totaling \$476,000 for purportedly completing a customer segmentation analysis that was in fact previously performed at a cost of \$36,000 by another vendor at the request of defendant BROWN.

8. It was further part of the conspiracy that defendant BROWN personally approved or directed the procurement staff of Company A to approve all CEM invoices.

9. It was further part of the conspiracy that, from on or about February 20, 2008, through on or about April 14, 2010, defendant BROWN and defendant DE GRUCHY caused Company A to mail approximately 68

checks in payment of the CEM invoices through the United States Postal Service to either the Hazelton Address or the Yonge Street Address.

10. It was further part of the conspiracy that defendant BROWN and defendant DE GRUCHY caused the checks from Company A to be forwarded from the Hazelton Address and the Yonge Street Address, and thereafter deposited into a Citibank account for CEM ending in 7749 (the "CEM 7749 Account") at a branch in Park Ridge, New Jersey. Defendant DE GRUCHY was the sole authorized signatory on the CEM 7749 Account.

11. It was further part of the conspiracy that defendant DE GRUCHY and defendant BROWN used the fraudulently obtained monies from Company A for their personal benefit. For example, defendant DE GRUCHY wrote approximately \$500,000 in checks out of the CEM 7749 Account payable to himself or defendant BROWN. In addition, defendant DE GRUCHY wrote checks from the CEM 7749 Account payable to Ontario LLC and Silk Farm, two other companies that he controlled, in addition to using the CEM 7749 Account to pay personal credit card bills and to purchase home furnishings.

12. It was further part of the conspiracy that defendant DE GRUCHY used "Individual 1," a coconspirator not named as a defendant herein, to conceal the fact that he and defendant BROWN were the recipients of consulting fees paid by Company A to CEM. In particular, defendant DE GRUCHY wrote approximately \$1.4 million in checks, from CEM, Silk Farm, and Ontario LLC, to Individual 1 and to a sham interior decorating firm ostensibly belonging to Individual 1 which had been set up with defendant DE

GRUCHY's assistance. At defendant DE GRUCHY's direction, between in or about November 2008 and in or about July 2010, Individual 1 kicked back to defendant DE GRUCHY funds he received from defendant DE GRUCHY, writing more than \$1.32 million in checks from his personal and business bank accounts to either defendant DE GRUCHY or defendant BROWN.

13. It was further part of the conspiracy that defendant DE GRUCHY deposited the checks received from Individual 1 into defendant DE GRUCHY and defendant BROWN's joint personal bank accounts. These funds were then used by defendant BROWN and defendant DE GRUCHY for, among other things, approximately \$600,000 in home remodeling expenses, approximately \$150,000 in mortgage payments for the Park Ridge Address, and approximately \$300,000 in personal credit card expenses.

Company B Scheme

14. It was further part of the conspiracy that when defendant DE GRUCHY was hired to work at Company B, in approximately June 2010, he did not reveal his personal relationship with defendant BROWN nor did he disclose that they resided together and jointly owned the Park Ridge Address. Instead, defendant DE GRUCHY claimed to reside at the New York apartment of Individual 1.

15. It was further part of the conspiracy that defendant DE GRUCHY thereafter obtained approval from Company B to hire defendant BROWN to work with him as a consultant for the data migration project assigned to him

by Company B, without revealing his personal and financial relationship with defendant BROWN and his financial interest in BI Insights.

16. It was further part of the conspiracy that from in or about November 2010 until in or about November 2011, defendant BROWN submitted invoices in her own name or the name of BI Insights for supposed work relating to the data migration project, which totaled approximately \$354,410.

17. It was further part of the conspiracy that defendant DE GRUCHY personally approved the invoices submitted by defendant BROWN and BI Insights to Company B.

18. It was further part of the conspiracy that defendant BROWN and defendant DE GRUCHY caused Company B to mail checks, through the United States Postal Service, to the Hazelton Address payable either to defendant BROWN or BI Insights, for work defendant BROWN and BI Insights purportedly performed for Company B. These checks, which totaled approximately \$216,835, were deposited into a National Bank of Canada account held by defendant BROWN and defendant DE GRUCHY. Funds from the National Bank of Canada account were thereafter gradually deposited by check into defendant BROWN and defendant DE GRUCHY's joint personal bank accounts.

All in violation of Title 18, United States Code, Section 1349.

COUNTS TWO THROUGH SIX
(Mail Fraud Against Company A)
(Defendant DE GRUCHY and Defendant BROWN)

1. The allegations set forth in paragraphs 1, and 4 through 18 of Count One of this Indictment are re-alleged and incorporated herein.

2. On or about the dates enumerated below, in Bergen County, in the District of New Jersey and elsewhere, the defendants

BARBARA BROWN,
a/k/a "Barbara Canning Brown," and
PHILIP CHARLES DE GRUCHY,
a/k/a "Charles de Gruchy,"

having devised and intending to devise a scheme and artifice to defraud Company A, and to obtain money and property of Company A by means of materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing the scheme and artifice, did knowingly deposit and cause to be deposited certain matter and things, as set forth below, to be sent and delivered by the United States Postal Service and private and commercial interstate carrier, each constituting a separate Count of this Indictment, and did knowingly and willfully aid, abet, counsel, command, induce, and procure the commission of that offense as follows:

Count	Approximate Date	Description of Mailing
2	February 24, 2010	Check No. 7641352 from Company A to CEM in the amount of \$51,999 mailed through the U.S. Postal Service

Count	Approximate Date	Description of Mailing
3	March 17, 2010	Check No. 7642190 from Company A to CEM in the amount of \$51,999 mailed through the U.S. Postal Service
4	March 25, 2010	Check No. 7642520 from Company A to CEM in the amount of \$51,999 mailed through the U.S. Postal Service
5	April 7, 2010	Check No. 7643294 from Company A to CEM in the amount of \$527,999 mailed through the U.S. Postal Service
6	April 14, 2010	Check No. 7643596 from Company A to CEM in the amount of \$113,999 mailed through the U.S. Postal Service

All in violation of Title 18, United States Code, Section 1341 and Section

2.

COUNTS SEVEN THROUGH NINE
(Mail Fraud Against Company B)
(Defendant DE GRUCHY and Defendant BROWN)

1. The allegations set forth in paragraphs 1, and 4 through 18 of Count One of this Indictment are re-alleged and incorporated herein.

2. On or about the dates enumerated below, in Bergen County, in the District of New Jersey and elsewhere, the defendants

BARBARA BROWN,
a/k/a "Barbara Canning Brown," and
PHILIP CHARLES DE GRUCHY,
a/k/a "Charles de Gruchy,"

having devised and intending to devise a scheme and artifice to defraud Company B, and to obtain money and property of Company B by means of materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing the scheme and artifice, did knowingly deposit and cause to be deposited certain matter and things, as set forth below, to be sent and delivered by the United States Postal Service and private and commercial interstate carrier, each constituting a separate Count of this Indictment, and did knowingly and willfully aid, abet, counsel, command, induce, and procure the commission of that offense as follows:

Count	Approximate Date	Description of Mailing
7	July 7, 2011	Check No. 65341 from Company B to defendant BROWN in the amount of \$24,700 mailed through the U.S. Postal Service
8	July 14, 2011	Check No. 65543 from Company B to BI Insights in the amount of \$14,275 mailed through the U.S. Postal Service

9	September 22, 2011	Check 67397 from Company B to defendant BROWN in the amount of \$8,500 mailed through the U.S. Postal Service
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All in violation of Title 18, United States Code, Section 1341 and Section
2.

COUNTS TEN AND ELEVEN
(Subscribing to False Individual Tax Returns)
(Defendant DE GRUCHY)

1. The allegations set forth in paragraphs 1 and 4 through 18 of Count One of this Indictment are re-alleged and incorporated herein.

2. From in or about February 2008 to in or about November 2011, defendant DE GRUCHY caused Company A and Company B to pay more than \$3 million as payment for fraudulent invoices, as described in Count One of this Indictment.

3. On or about October 18, 2010, and October 17, 2011, defendant DE GRUCHY signed, filed, and caused to be filed with the Internal Revenue Service ("IRS"), United States Individual Joint Income Tax Returns, Forms 1040, for tax years 2009 and 2010, that were not true and correct as to every material matter. Specifically, defendant DE GRUCHY intentionally overstated expenses and understated gross receipts, including receipts from the fraudulent conduct described above, on Forms 1040, Schedule C for those tax years, thereby causing those returns to understate, on line 22 of each Form 1040, a substantial amount of the total income that was received in each of these years. In total, defendant DE GRUCHY failed to disclose and report approximately \$1,600,826 in total income for the 2009 and 2010 tax years. As such, an additional tax of approximately \$553,493, was due and owing to the United States.

4. The Forms 1040 for tax years 2009 and 2010 that were signed by defendant DE GRUCHY each contained a written declaration that the form was signed under penalties of perjury.

5. On or about the filing dates listed below, in the District of New Jersey, and elsewhere, defendant

PHILIP CHARLES DE GRUCHY,
a/k/a "Charles de Gruchy,"

did knowingly and willfully make and subscribe United States Individual Income Tax Returns, Forms 1040, which were verified by a written declaration that they were made under the penalties of perjury, which he did not believe to be true and correct as to every material matter (as described in paragraph 3, above), and which he filed and caused to be filed with the IRS, as follows:

Count	Tax Year	Form 1040 Filing Date	Additional Unreported Total Income	Tax Due and Owing
10	2009	October 18, 2010	\$956,438	\$343,834
11	2010	October 17, 2011	\$644,388	\$209,659
		TOTAL:	\$1,600,826	\$553,493

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

COUNTS TWELVE AND THIRTEEN
(Subscribing to False Corporation Tax Returns – CEM, INC.)
(Defendant DE GRUCHY)

1. The allegations set forth in paragraphs 1 and 4 through 18 of Count One of this Indictment and paragraph 2 of Counts Ten and Eleven of this Indictment are re-alleged and incorporated herein.

2. On or about November 22, 2010, and October 17, 2011, Defendant DE GRUCHY signed, filed, and caused to be filed with the IRS, United States Corporation Income Tax Returns, Forms 1120, for CEM, Inc., for tax years 2009 and 2010, that were not true and correct as to every material matter. Specifically, defendant DE GRUCHY intentionally overstated CEM, Inc.'s expenses for tax years 2009 and 2010 on the Forms 1120, by falsely claiming as business expenses, among other things, the payments made to Individual 1 and to Individual 1's company that were then kicked back to defendant DE GRUCHY, thereby causing those corporation income tax returns to understate, on line 30 of each Form 1120, a substantial amount of taxable income from each of these years. In total, defendant DE GRUCHY understated the taxable income of CEM, Inc. by a total of approximately \$649,465 for the 2009 and 2010 tax years. As such, an additional tax of approximately \$214,916, was due and owing to the United States.

3. The Forms 1120 for tax years 2009 and 2010 that were signed by defendant DE GRUCHY each contained a written declaration that the form was signed under penalties of perjury.

4. On or about the filing dates listed below, in the District of New Jersey, and elsewhere, defendant

PHILIP CHARLES DE GRUCHY,
a/k/a "Charles de Gruchy,"

did knowingly and willfully make and subscribe United States Corporation Income Tax Returns, Forms 1120, for CEM, Inc., which were verified by a written declaration that they were made under the penalties of perjury, which he did not believe to be true and correct as to every material matter (as described in paragraph 2, above), and which he filed and caused to be filed with the IRS, as follows:

Count	Tax Year	Form 1120 Filing Date	Additional Unreported Taxable Income	Tax Due and Owing
12	2009	November 22, 2010	\$216,961	\$67,865
13	2010	October 17, 2011	\$432,504	\$147,051
		TOTAL:	\$ 649,465	\$214,916

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

COUNTS FOURTEEN AND FIFTEEN
(Subscribing to False Corporation Tax Returns – SILK FARM, INC.)
(Defendant DE GRUCHY)

1. The allegations set forth in paragraphs 1 and 4 through 18 of Count One of this Indictment and paragraph 2 of Counts Ten and Eleven of this Indictment are re-alleged and incorporated herein.

2. On or about November 22, 2010, and October 17, 2011, defendant DE GRUCHY signed, filed, and caused to be filed with the IRS, United States Corporation Income Tax Returns, Forms 1120, for Silk Farm, Inc., for tax years 2009 and 2010, that were not true and correct as to every material matter. Specifically, defendant DE GRUCHY intentionally overstated Silk Farm, Inc.'s expenses for tax years 2009 and 2010 on the Forms 1120, by falsely claiming as business expenses, among other things, the payments made to Individual 1 that were then kicked back to defendant DE GRUCHY, thereby causing those corporation income tax returns to understate, on line 30 of each Form 1120, a substantial amount of taxable income from each of these years. In total, defendant DE GRUCHY understated the taxable income of Silk Farm, Inc. by a total of approximately \$377,579 for the 2009 and 2010 tax years. As such, an additional tax of approximately \$114,435, was due and owing to the United States.

3. The Forms 1120 for tax years 2009 and 2010 that were signed by defendant DE GRUCHY each contained a written declaration that the form was signed under penalties of perjury.

4. On or about the filing dates listed below, in the District of New Jersey, and elsewhere, defendant

PHILIP CHARLES DE GRUCHY,
a/k/a "Charles de Gruchy,"

did knowingly and willfully make and subscribe United States Individual Income Tax Returns, Forms 1120, for Silk Farm, Inc., which were verified by a written declaration that they were made under the penalties of perjury, which he did not believe to be true and correct as to every material matter (as described in paragraph 2, above), and which he filed and caused to be filed with the IRS, as follows:

Count	Tax Year	Form 1120 Filing Date	Additional Unreported Taxable Income	Tax Due and Owing
14	2009	November 22, 2010	\$291,153	\$96,800
15	2010	October 17, 2011	\$86,426	\$17,635
		TOTAL:	\$ 377,579	\$114,435

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

FORFEITURE ALLEGATIONS

1. The allegations contained in Counts One through Nine of this Indictment are hereby re-alleged and incorporated by reference for the purpose of noticing forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

2. The United States hereby gives notice to the defendants charged in this Indictment, that upon conviction of any of the offenses charged in Counts One through Nine herein, the government will seek forfeiture, in accordance with the Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 981(a)(1)(C), of any and all property, real or personal, that constitutes or is derived from proceeds traceable to the commission of such offense, including but not limited to the following:

- a. A sum of money equal to approximately \$3.072 million in United States currency, for which the defendants are jointly and severally liable; and
- b. A sum of money equal to approximately \$724,327.30 in United States currency representing proceeds of the fraud traceable to the real property known as 8 Etheridge Place, Park Ridge, New Jersey.

3. If by any act or omission of the defendant, 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 subdivided without difficulty,

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendants up to the value of the above-described forfeitable property.

A TRUE BILL,

FOREPERSON



PAUL J. FISHMAN
United States Attorney

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UNITED STATES OF AMERICA

v.

**BARBARA BROWN,
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SUPERSEDING INDICTMENT FOR

**18 U.S.C. § 1349, § 1341, and § 2 and
26 U.S.C. § 7206(1)**

A True Bill,

Foreperson

PAUL J. FISHMAN

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