

MAR 24 2017

AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH, CLERKUNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA

v.

ADAM MARTIGNETTI

: Hon. Peter G. Sheridan  
:  
: Criminal No. 17- 105  
:  
: 18 U.S.C. §§ 666(a)(2), 1349,  
: 1623(a), and 2INDICTMENT

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

## COUNT 1

(Conspiracy to Commit Wire Fraud)

1. At all times relevant to Count 1 of this Indictment:
  - a. Defendant ADAM MARTIGNETTI was a salesman at Bayway Lumber, a privately-owned corporation that sold commercial and industrial products, including hardware, lumber and other equipment. Bayway Lumber's principal offices were located in Linden, New Jersey. Bayway Lumber sold commercial and industrial products to both public and private entities in New Jersey, New York, Pennsylvania and elsewhere, including: the City of Elizabeth, New Jersey ("Elizabeth"), Consolidated Edison Company of New York, Inc. ("ConEd"), the Plainfield, New Jersey Board of Education ("Plainfield BOE"), and Amtrak (collectively, the "Customer Entities").
  - b. Defendant MARTIGNETTI reported primarily to Robert Dattilo ("Dattilo"), the President and part owner of Bayway Lumber who was responsible for overseeing and managing, among other things, Bayway Lumber's sales, customer accounts and the submission of bids and quotes to many of Bayway Lumber's customers.
  - c. Bayway Lumber employed individuals in various departments, including the sales department, the door department, the hardware department, the lumber yard,

accounts receivable and accounts payable. To maintain its sales, Bayway Lumber's representatives, including defendant MARTIGNETTI, developed relationships with the employees of the Customer Entities who were responsible for purchasing items from Bayway Lumber.

2. From at least in or about 2011 to in or about 2013, in Union County, in the District of New Jersey, and elsewhere, defendant

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and others, did knowingly and intentionally combine, conspire and confederate and agree to devise a scheme and artifice to defraud, and to obtain money and property from, private and public entities, by means of materially false and fraudulent pretenses, representations and promises, facilitated and furthered through the use of interstate wire communications, contrary to Title 18, United States Code, Section 1343.

3. The principal goal of the conspiracy was to obtain money and other things of value from the Customer Entities by means of fraudulent business practices and through the use of interstate wire communications. The fraudulent business practices included providing free items to employees of Customer Entities then recouping the cost of the items (plus obtain additional proceeds for Bayway Lumber) by overbilling and fraudulently billing the Customer Entities, and charging the Customer Entities for higher quality, more expensive items, but providing the Customer Entities with lower quality, less expensive items.

The “Bank” and Overbilling and Fraudulently Billing

4. It was part of the conspiracy that:

a. Defendant MARTIGNETTI, under the supervision of Dattilo, provided free items to employees of certain Customer Entities and overbilled or fraudulently billed those Customer Entities—often with the agreement and participation of the Customer Entities’ employees who were receiving the items—to recoup the cost of the free items and to generate additional income for Bayway Lumber. Defendant MARTIGNETTI reported to Dattilo how much Bayway Lumber overbilled and fraudulently billed the Customer Entities and Dattilo kept a running tally—which many at Bayway Lumber referred to as the “Bank”—to ensure that Bayway Lumber recovered the full cost of any free items that Bayway Lumber provided to the employees of the Customer Entities, plus additional income, from the overbilling and fraudulent billing. The Customer Entities were not informed that they were being overbilled and fraudulently billed to cover the cost of gifts to employees of the Customer Entities.

b. Bayway Lumber employees, including defendant MARTIGNETTI, reported primarily to Dattilo before purchasing items for Customer Entities employees. Dattilo used various methods to keep track of the “Bank.” One method was to have Bayway Lumber employees print out “screen shots” of an internal viewer page from Bayway Lumber’s computerized point of sales system, which Dattilo maintained in a file in his office. The screen shots demonstrated the cost to Bayway Lumber of an item or items, the



price at which Bayway Lumber sold the item or items to a Customer Entity, and the gross profit that Bayway Lumber made on the item or items. Another method was for Bayway Lumber to maintain individual customer accounts for the employees of the Customer Entities who were receiving items for free to keep track of the value of these free items.

c. Defendant MARTIGNETTI, under the supervision of Dattilo, gave Amtrak employees numerous items for free and recovered the cost of those items—plus additional income for Bayway Lumber—by overbilling and fraudulently billing Amtrak. For example, between in or about 2010 and 2013, defendant MARTIGNETTI gave an Amtrak employee, Louis Moschitti, multiple items, including a door and stain kit valued at approximately \$3,370.50, a television valued at approximately \$1,175, tires valued at approximately \$720.00, a camera and accessories valued at approximately \$1,422, and a sound system and accessories valued at approximately \$1,504.64. Defendant MARTIGNETTI charged Amtrak significant markups, sometimes over 200 percent, on items purchased from Bayway Lumber to cover the cost of those items and generate extra income for Bayway Lumber. In addition, in or about June 2013, defendant MARTIGNETTI agreed to supply an Amtrak employee (“Amtrak Employee 1”) with six iPads and accessories, and to charge Amtrak for phony tool rentals that were never provided by Bayway Lumber to cover the cost of the iPads. Defendant MARTIGNETTI, using a Bayway Lumber credit card, purchased seven iPads for approximately

\$5,281.52, and provided Amtrak Employee 1 with six of them. After obtaining the iPads, defendant MARTIGNETTI fraudulently billed Amtrak in or about July and August 2013 for approximately \$7,739.91 in fake tool rentals to recoup the cost of the iPads and to generate additional proceeds for Bayway Lumber.

d. Defendant MARTIGNETTI also intentionally overbilled Elizabeth, which had contractual agreements with Bayway Lumber to provide Elizabeth with hardware supplies contained in a certain industrial supply catalogue at specified discounts. From in or about 2010 to in or about 2013, defendant MARTIGNETTI overbilled Elizabeth and spent some of the proceeds to purchase items for an Elizabeth employee, Michael Downey, valued at more than approximately \$1,200, including a barbeque, an outdoor patio set and umbrella, and a \$500 gift card to a consumer electronics store. In one such instance, in or about March 2012, defendant MARTIGNETTI and Downey agreed to inflate an invoice containing approximately twelve lawnmowers in the approximate amount of \$30 per lawnmower (for a total of \$360) to generate funds for the employee's "Bank."

e. Bayway Lumber also had contractual agreements with Plainfield BOE to provide various products at specified discounts from the manufacturer's listed prices. Instead, from at least in or about 2011 to in or about 2013, defendant MARTIGNETTI charged Plainfield BOE prices that did not apply the discounts called for by the contracts. In addition, defendant MARTIGNETTI routinely fraudulently billed Plainfield BOE for more items than

it received by adding additional items to invoices, which Plainfield BOE paid for, but did not receive. A portion of the proceeds generated by overbilling and fraudulently billing Plainfield BOE were used to purchase items for an employee of Plainfield BOE, Robert Banks, valued at approximately \$9,624.92, including a dishwasher, a laptop computer, coats, and a \$5,905.02 credit to his individual account covering the cost of items that Banks received earlier. The rest of the proceeds from the overbilling scheme were added to Bayway Lumber's income.

Fraudulent Product Substitution

5. It was further part of the conspiracy that:

a. Defendant MARTIGNETTI, under the supervision of Dattilo, participated in a product substitution fraud in which Bayway Lumber supplied certain Customer Entities with lower-quality, less expensive lumber than they ordered, but charged for the higher quality, more expensive lumber. As part of a product substitution scheme, when certain Customer Entities ordered graded plywood, a type of plywood graded by mills that had been certified by trade associations such as the APA – The Engineered Wood Association (“APA”), employees at Bayway Lumber, including defendant MARTIGNETTI, sent substitute plywood that was of a lower grade or not certified at all, while charging the Customer Entities for the more expensive, higher-grade plywood.

b. Defendant MARTIGNETTI conducted this product substitution fraud on ConEd by routinely sending, at Dattilo's instruction,



lower-grade plywood then ConEd had ordered, but charging ConEd for the higher-grade plywood it had actually ordered.

#### Interstate Wires

6. It was further part of the conspiracy that, in order to execute and attempt to execute the scheme, defendant MARTIGNETTI and others sent and caused to be sent numerous interstate wire communications which were transmitted into and out of the District of New Jersey. For example:

Date (on or about)	Wire Transmission
June 6, 2012	Defendant MARTIGNETTI sent an e-mail to Dattilo, using a server located outside of New Jersey, asking Dattilo to check if Banks had enough in the "Bank" to get a laptop.
April 8, 2013	Defendant MARTIGNETTI received an e-mail from Dattilo, via a server located outside of New Jersey, in which Dattilo forwarded a ConEd purchase order for graded plywood, "no sub class" and directed defendant MARTIGNETTI to ship substitute lumber.
July 8, 2013	Defendant MARTIGNETTI sent an e-mail to Amtrak Employee 1, using a server located outside of New Jersey, attaching a bill and receipt for approximately \$3,410 in phony tool rentals.
August 1, 2013	Defendant MARTIGNETTI sent an e-mail to Amtrak Employee 1, using a server located outside of New Jersey, attaching a bill and receipt for approximately \$4,329.91 in phony tool rentals.

In violation of Title 18, United States Code, Section 1349.

COUNTS 2 to 5  
(Corruptly Giving Valuable Items to Agents  
Of Entities Receiving Federal Funds)

1. Paragraphs 1 and 3 to 4 of Count 1 of this Indictment are incorporated and realleged by reference herein.
2. During the time periods set forth below, Amtrak, Elizabeth, and Plainfield BOE each received well in excess of \$10,000 in federal grant funds.
3. Between on or about the dates set forth below, in the District of New Jersey, and elsewhere, defendant

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did corruptly give, offer, and agree to give things of value as set forth below to agents of Amtrak, Elizabeth, and Plainfield BOE, with the intent to influence and reward such agents, in connection with a business, transaction, and series of transactions of these entities, valued at \$5,000 and more as set forth below.

Count	Dates (on or about)	Approximate Value of Items Given by Defendant MARTIGNETTI	Recipient of Items Given by Defendant MARTIGNETTI	Value of Business/ Transaction of Organization, Government, or Government Agency
2	April 4, 2012 to April 3, 2013	\$5,234.15	Moschitti	Approximately \$41,929 in purchases made by Moschitti.
3	June 1, 2013 to August 31, 2013	\$4,527	Amtrak Employee 1	Approximately \$7,739.91 in phony tool rentals billed to Amtrak Employee 1.



Count	Dates (on or about)	Approximate Value of Items Given by Defendant MARTIGNETTI	Recipient of Items Given by Defendant MARTIGNETTI	Value of Business/ Transaction of Organization, Government, or Government Agency
4	April 1, 2012 to March 31, 2013	\$5,862	Banks	Approximately \$14,966.02 in purchases made by Banks
5	December 1, 2011 to November 30, 2012	\$1,249	Downey	Approximately \$17,373.51 in purchases made by Downey

In violation of Title 18, United States Code, Section 666(a)(2) and Section 2.

COUNT 6  
(False Declarations Before Grand Jury)

1. Paragraphs 1 and 3 to 6 of Count 1 of this Indictment are incorporated and realleged by reference herein.
2. Defendant MARTIGNETTI's knowledge of whether employees at Customer Entities had accepted items of value from Bayway Lumber and whether Bayway Lumber employees had overbilled Customer Entities to cover the cost of the valuable items given to employees at Customer Entities was material to a federal grand jury investigation.
3. On or about March 5, 2013, while appearing as a witness under oath before a federal grand jury in Newark, New Jersey, defendant

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knowingly made the false material declarations set forth in bold as follows:

Q: All right. Were there ever City of Elizabeth employees who would purchase items from Bayway that were clearly items for personal use, but were charged to the City of Elizabeth account?	A: <b>No. Not that we're aware of.</b>
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March 5, 2013 Grand Jury Testimony, page 80, lines 21-25.

Q: That's okay. We can go back. Have you ever given Bayway Lumber items to customers for free?	A: Yes.
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Q: Have you ever done it for customers who are City of Elizabeth employees?	A: <b>No.</b>
Q: Have you ever seen Jeff or Robert or Dennis Dattilo give items to City of Elizabeth employees for free?	A: No.

March 5, 2013 Grand Jury Testimony, page 81, line 20 – page 82, line 3.

Q: Mr. Martignetti, did you have an opportunity--	A: Yes.
Q: -- to speak with your attorney?	A: Yes. I want to go back to those two questions again. I was able to give stuff away for free, but I was – but I never gave nothing for free to anybody unless I was instructed to. <b>And – but nobody from Elizabeth to my knowledge had anything for free.</b>
Q: So you were never instructed to give anything for free to employees of the City of Elizabeth?	A: <b>Correct. Correct.</b>
Q: Were you instructed to give items for free to other people?	A: I would say yes.

Q: To whom?	A: Other accounts. No city based—like, water. A guy wanted a case of water, you know, in that aspect. <b>Nothing big like cars or, you know, movie tickets or nothing like that,</b> but on a hot winter day [sic] in the summertime, it's 102 degrees out, I would, I would – you know, we would go to our boss and say hey listen, it's 102 degrees out. Can we give the guys – can we give the guys who come in cases of water to make them, you know, not be so tired? And they would say okay.
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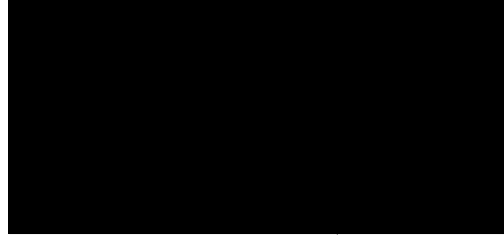
March 5, 2013 Grand Jury Testimony, page 82, line 14 – page 83, line 11.

4. The above testimony of defendant MARTIGNETTI, as he knew at the time, was false in that defendant MARTIGNETTI, as described herein, on behalf of Bayway Lumber, prior to the date of his testimony, gave multiple items of value to at least one employee of Elizabeth without charging that employee, and participated in overbilling Elizabeth to obtain the cost of those items, plus additional income for Bayway Lumber.

In violation of Title 18, United States Code, Section 1623(a).



A TRUE BILL



*William E. Fitzpatrick Jr.*  
WILLIAM E. FITZPATRICK  
Acting United States Attorney *WJ*