

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA :
:
-v- :
:
ROCCO MIRANTI, :
a/k/a "Rocky," :
JOHNNIE MIRANTI, and :
LOUIS SMITH, :
a/k/a "Lou," :
:
Defendants. :
----- X

SEALED INDICTMENT
15 Cr. ____ ()

COUNT ONE

The Grand Jury charges:

RELEVANT ENTITIES AND PERSONS

1. The International Union of Allied Novelty and Production Workers (the "Allied Novelty and Production Workers") is a national labor union that represents workers in many industries, including general manufacturing. The Allied Novelty and Production Workers is an employee organization, as defined by Title I of the Employee Retirement Income Security Act of 1974 ("ERISA") and by Sections 1002 and 1003 of Title 29, United States Code. In New York City, the Allied Novelty and Production Workers is divided into multiple locals within the five boroughs.

2. Local 223 of the Allied Novelty and Production Workers ("LOCAL 223") is one of the constituent locals of the Allied

Novelty and Production Workers in New York City. LOCAL 223 is also known as the Toy and Novelty Workers Local 223. LOCAL 223 represents factory workers and currently has approximately 2,500 members. The headquarters of LOCAL 223 is located on East 26th Street in Manhattan.

3. ROCCO MIRANTI, a/k/a "Rocky," the defendant, is a member and officer of LOCAL 223. From approximately 1997 up to and including in or about June 2015, ROCCO MIRANTI was the business manager of LOCAL 223, to wit, the officer in charge of LOCAL 223.

4. JOHNNIE MIRANTI, the defendant, is a member and officer of LOCAL 223. From at least in or about 2000 up to and including in or about 2008, JOHNNIE MIRANTI was the business agent of LOCAL 223. From in or about 2008 up to and including in or about June 2015, JOHNNIE MIRANTI was the recording secretary-treasurer of LOCAL 223.

5. Members of LOCAL 223 are covered by the Sick Benefit Fund of the Amalgamated Industrial Toy and Novelty Workers of America, Local 223 (the "LOCAL 223 Sick Benefit Fund"), which is an employee welfare benefit plan, as that term is defined by Sections 1002 and 1003 of Title 20, United States Code, and which is subject to ERISA. The LOCAL 223 Sick Benefit Fund provides health benefits to participating union members and

their families and is a health care benefit program as that term is defined in Section 24(b) of Title 18, United States Code.

6. The LOCAL 223 Sick Benefit Fund is managed by a Board of Trustees (collectively, the "LOCAL 223 Board"). The LOCAL 223 Board has discretion over the assets held by the LOCAL 223 Sick Benefit Fund and is responsible for the LOCAL 223 Sick Benefit Fund's overall operation and administration. Each trustee has a fiduciary duty under ERISA to manage the LOCAL 223 Sick Benefit Fund's assets solely for the benefit of the participants and their beneficiaries, and to refrain from engaging in transactions prohibited by ERISA, including receiving consideration for his or her own personal account from any party dealing with the LOCAL 223 Sick Benefit Fund in connection with a transaction involving the assets of the LOCAL 223 Sick Benefit Fund.

7. From at least in or about 2004 up to and including in or about 2015, ROCCO MIRANTI, a/k/a "Rocky," and JOHNNIE MIRANTI, the defendants, were trustees of the LOCAL 223 Sick Benefit Fund.

8. The International Brotherhood of Teamsters (the "IBT") is a national labor union that represents workers in many industries, including freight drivers and warehouse workers. The IBT is an employee organization, as defined by Title I of ERISA and by Sections 1002 and 1003 of Title 29, United States

Code. In New York City, the IBT has approximately 50,000 members and is divided into multiple locals.

9. Local 810 of the IBT ("LOCAL 810") is one of the constituent locals of the IBT in New York City. LOCAL 810 has approximately 2,500 members. Until in or about 2009, the headquarters of LOCAL 810 was located on East 15th Street in Manhattan; the headquarters was then relocated to the Long Island City neighborhood of Queens.

10. LOUIS SMITH, a/k/a "Lou," the defendant, is a member and officer of LOCAL 810. From at least in or about 2000 up to and including in or about 2013, SMITH was the president of LOCAL 810, to wit, the officer in charge of LOCAL 810. From in or about 2013 up to and including in or about December 2014, SMITH was a trustee of LOCAL 810, to wit, a member of the Executive Board of LOCAL 810.

11. Members of LOCAL 810 are covered by the United Wire, Metal and Machine Health and Welfare Fund (the "LOCAL 810 Health and Welfare Fund"), which is an employee welfare benefit plan, as that term is defined by Sections 1002 and 1003 of Title 20, United States Code, subject to ERISA. The LOCAL 810 Health and Welfare Fund provides health benefits to participating union members and their families and is a health care benefit program as that term is defined in Section 24(b) of Title 18, United States Code.

12. The LOCAL 810 Health and Welfare Fund is managed by a Board of Trustees (collectively, the "LOCAL 810 Board"). The LOCAL 810 Board has discretion over the assets held by the LOCAL 810 Health and Welfare Fund and is responsible for the LOCAL 810 Health and Welfare Fund's overall operation and administration. Each trustee has a fiduciary duty under ERISA to manage the LOCAL 810 Health and Welfare Fund's assets solely for the benefit of the participants and their beneficiaries, and to refrain from engaging in transactions prohibited by ERISA, including receiving consideration for his or her own personal account from any party dealing with the LOCAL 810 Health and Welfare Fund in connection with a transaction involving the assets of the LOCAL 810 Health and Welfare Fund.

13. From at least in or about 1992 up to and including in or about 2014, LOUIS SMITH, a/k/a "Lou," the defendant, was a trustee of the LOCAL 810 Health and Welfare Fund.

14. BUSINESS-1 is a third-party administrator; it processes claims for self-insured union medical, hospital, and prescription plans. BUSINESS-1 is responsible for, among other things, processing health insurance claims for union members participating in the LOCAL 223 Sick Benefit Fund and the LOCAL 810 Health and Welfare Fund. At all times relevant to this Indictment, for LOCAL 223, BUSINESS-1 processed claims for medical, hospital, and prescription plans. At all times

relevant to this Indictment, for LOCAL 810, BUSINESS-1 processed claims for medical and hospital plans. BUSINESS-1 charged, and currently charges, a monthly fee per member to administer the LOCAL 223 Sick Benefit Fund and the LOCAL 810 Health and Welfare Fund.

15. A cooperating witness (the "CW") has worked at BUSINESS-1 since in or about 1985. The CW has been the president of BUSINESS-1 since in or about 2006.

THE KICKBACK SCHEME

16. From at least in or about 1997 up to and including the present, BUSINESS-1 has been the third party administrator for the LOCAL 223 Sick Benefit Fund.

17. From at least in or about 2003 up to and including the present, ROCCO MIRANTI, a/k/a "Rocky," the defendant, has required the CW to make monthly kickback payments in exchange for LOCAL 223 continuing to do business with BUSINESS-1. At first, ROCCO MIRANTI required the CW to pay kickbacks totaling approximately five percent of the fees paid by LOCAL 223 to BUSINESS-1.

18. In or about 2005, ROCCO MIRANTI, a/k/a "Rocky," the defendant, arranged for BUSINESS-1 to become the third party administrator for the LOCAL 810 Health and Welfare Fund. From at least in or about 2005 up to and including the present, ROCCO MIRANTI and LOUIS SMITH, a/k/a "Lou," the defendants, have

required the CW to make kickback payments to SMITH in exchange for LOCAL 810 continuing to do business with BUSINESS-1. At first, ROCCO MIRANTI and SMITH required that the CW pay SMITH kickbacks totaling approximately five percent of the fees paid by LOCAL 810 to BUSINESS-1.

19. In or about 2006, ROCCO MIRANTI, a/k/a "Rocky," and LOUIS SMITH, a/k/a "Lou," the defendants, increased the kickback payments they required from the CW to approximately ten percent of the fees paid by LOCAL 223 and LOCAL 810, respectively, to BUSINESS-1.

20. The kickback payments for the LOCAL 223 account have ranged from approximately \$5,500 to \$10,000 per month, and, in total, have exceeded \$500,000.

21. The kickback payments for the LOCAL 810 account have ranged from approximately \$4,000 to \$8,000 per month, and, in total, have exceeded \$500,000.

22. From in or about 2005 up to and including in or about 2012, at the direction of LOUIS SMITH, a/k/a "Lou," the defendant, the CW gave SMITH's monthly kickback payments to ROCCO MIRANTI, a/k/a "Rocky," the defendant, who accepted the payments on SMITH's behalf.

23. In or about 2013, at the direction of ROCCO MIRANTI, a/k/a "Rocky," the defendant, the CW began paying the kickback

payments for the LOCAL 223 account to JOHNNIE MIRANTI, the defendant.

24. At about the same time, in or about 2013, at the direction of LOUIS SMITH, a/k/a "Lou," the defendant, the CW began paying the kickback payments for the LOCAL 810 account directly to SMITH.

STATUTORY ALLEGATIONS

COUNT ONE

(Conspiracy to Solicit and Receive Kickbacks to Influence the Operation of an Employee Benefit Plan)

25. From at least in or about 2003, through and including in or about June 2015, in the Southern District of New York and elsewhere, ROCCO MIRANTI, a/k/a "Rocky," JOHNNIE MIRANTI, and LOUIS SMITH, a/k/a "Lou," the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States.

26. It was a part and an object of the conspiracy that ROCCO MIRANTI, a/k/a "Rocky," JOHNNIE MIRANTI, and LOUIS SMITH, a/k/a "Lou," the defendants, being trustees, officers, agents, custodians, and employees of employer welfare benefit plans, and being officers, agents, and employees of employee organizations whose members are covered by an employee welfare benefit plan, would and did knowingly receive, agree to receive, and solicit

fees, kickbacks, commissions, gifts, loans, money, and things of value because of, and with intent to be influenced with respect to, actions, decisions, and other duties relating to questions and matters concerning such plans, in violation of Title 18, United States Code, Section 1954.

Overt Acts

27. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about December 2014, ROCCO MIRANTI, a/k/a "Rocky," and JOHNNIE MIRANTI, the defendants, in Manhattan, accepted \$10,000 in cash from the CW, \$8,000 for ROCCO MIRANTI and \$2,000 for JOHNNIE MIRANTI.

b. In or about December 2014, LOUIS SMITH, a/k/a "Lou," the defendant, in New Jersey, accepted \$12,000 in cash from the CW.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Conspiracy to Embezzle From an Employee Benefit Plan)

28. The allegations contained in paragraphs 1 through 24 above are hereby repeated, re-alleged, and incorporated by reference as if fully set forth herein.

29. From at least in or about 2003, through and including in or about June 2015, in the Southern District of New York and elsewhere, ROCCO MIRANTI, a/k/a "Rocky," JOHNNIE MIRANTI, and LOUIS SMITH, a/k/a "Lou," the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States.

30. It was a part and an object of the conspiracy that ROCCO MIRANTI, a/k/a "Rocky," JOHNNIE MIRANTI, and LOUIS SMITH, a/k/a "Lou," the defendants, would and did knowingly embezzle, steal, and unlawfully and willfully abstract and convert to his own use and the use of another, money, funds, securities, premiums, credits, property, and other assets of employee welfare benefit plans and funds connected therewith, in violation of Title 18, United States Code, Section 664.

Overt Acts

31. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about December 2014, ROCCO MIRANTI, a/k/a "Rocky," and JOHNNIE MIRANTI, the defendants, in Manhattan, accepted \$10,000 in cash from the CW, \$8,000 for ROCCO MIRANTI and \$2,000 for JOHNNIE MIRANTI.

b. In or about December 2014, LOUIS SMITH, a/k/a "Lou," the defendant, in New Jersey, accepted \$12,000 in cash from the CW.

(Title 18, United States Code, Section 371.)

COUNT THREE

(Conspiracy to Commit Theft or Embezzlement in Connection with a Health Care Benefit Program)

32. The allegations contained in paragraphs 1 through 24 above are hereby repeated, re-alleged, and incorporated by reference as if fully set forth herein.

33. From at least in or about 2003, through and including in or about June 2015, in the Southern District of New York and elsewhere, ROCCO MIRANTI, a/k/a "Rocky," JOHNNIE MIRANTI, and LOUIS SMITH, a/k/a "Lou," the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States.

34. It was a part and object of the conspiracy that ROCCO MIRANTI, a/k/a "Rocky," JOHNNIE MIRANTI, and LOUIS SMITH, a/k/a "Lou," the defendants, would and did knowingly and willfully embezzle, steal, and otherwise without authority convert to the use of a person other than the rightful owner, and intentionally misapply moneys, funds, securities, premiums, credits, property, and other assets, the value of which exceeded \$100, of a health

care benefit program, in violation of Title 18, United States Code, Section 669.

Overt Acts

35. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about December 2014, ROCCO MIRANTI, a/k/a "Rocky," and JOHNNIE MIRANTI, the defendants, in Manhattan, accepted \$10,000 in cash from the CW, \$8,000 for ROCCO MIRANTI and \$2,000 for JOHNNIE MIRANTI.

b. In or about December 2014, LOUIS SMITH, a/k/a "Lou," the defendant, in New Jersey, accepted \$12,000 in cash from the CW.

(Title 18, United States Code, Section 371.)

FORFEITURE ALLEGATION

36. As a result of committing the offenses in connection with employee health care programs and benefit plans charged in Counts One through Three of this Indictment, ROCCO MIRANTI, a/k/a "Rocky," JOHNNIE MIRANTI, and LOUIS SMITH, a/k/a "Lou," the defendants, shall forfeit to the United States pursuant to Title 18, United States Code, Section 982(a)(7), all property, real and personal, that constitutes or is derived, directly or

indirectly, from proceeds traceable to the commission of such offenses.


Substitute Assets Provision

37. 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 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property.

(Title 18, United States Code, Section 982(a)(7);
Title 21, United States Code, Section 853.)


FOREPERSON


PREET BHARARA
UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

ROCCO MIRANTI,
a/k/a "Rocky,"
JOHNNIE MIRANTI,
and
LOUIS SMITH,
a/k/a "Lou,"

Defendants.

SEALED INDICTMENT

15 Cr. ____ ()

(18 U.S.C. §§ 371 and 982(a)(7);
21 U.S.C. § 853.)

PREET BHARARA

United States Attorney.

A TRUE BILL


Foreperson.
