

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

NIGEL KENNETH JOSEPH,

Defendant.

25 MAG 2271**SEALED COMPLAINT**Violations of 26 U.S.C. § 7202,
18 U.S.C. §§ 1028A, 1343, 1349COUNTY OF OFFENSES:
BRONX

SOUTHERN DISTRICT OF NEW YORK, ss.:

JENNIFER LEWINTER, being duly sworn, deposes and says that she is a Special Agent with Internal Revenue Service Criminal Investigation ("IRS-CI") and charges as follows:

COUNTS ONE THROUGH ELEVEN
(Failure to Account for and Pay Over Payroll Taxes)

1. From in or about April 2019 through in or about December 2021, in the Southern District of New York and elsewhere, NIGEL KENNETH JOSEPH, the defendant, being the president of BWK Construction LLC ("BWK"), and a responsible person with respect to its payroll taxes, and thereby being required to collect, account for, and pay over to the Internal Revenue Service (the "IRS") payroll taxes of the BWK employees, among others, willfully and knowingly failed to collect, truthfully account for, and pay over to the IRS payroll taxes for BWK for each of the following calendar quarters, in the approximate amounts set forth below:

Count	Tax Period	Approximate Amount
One	Second Quarter 2019	\$122,800
Two	Third Quarter 2019	\$62,633
Three	Fourth Quarter 2019	\$121,091
Four	First Quarter 2020	\$182,801
Five	Second Quarter 2020	\$185,429
Six	Third Quarter 2020	\$558,020
Seven	Fourth Quarter 2020	\$526,021
Eight	First Quarter 2021	\$245,837
Nine	Second Quarter 2021	\$265,939
Ten	Third Quarter 2021	\$229,554
Eleven	Fourth Quarter 2021	\$421,192

(Title 26, United States Code, Section 7202.)

COUNT TWELVE
(Conspiracy to Commit Wire Fraud)

2. From at least in or about October 2021 through at least in or about August 2022, in the Southern District of New York and elsewhere, NIGEL KENNETH JOSEPH, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit wire fraud, in violation of Title 18, United States Code, Section 1343.

3. It was a part and an object of the conspiracy that NIGEL KENNETH JOSEPH, the defendant, and others known and unknown, knowingly having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343, to wit, JOSEPH engaged in a scheme to make and to cause to be made false representations concerning the BWK payroll in order to receive construction contract payments, and sent and received, and caused others to send and receive, electronic funds transfers, e-mails, and other electronic communications, to and from the Southern District of New York and elsewhere, in furtherance of that scheme.

(Title 18, United States Code, Section 1349.)

COUNT THIRTEEN
(Wire Fraud)

4. From at least in or about October 2021 through at least in or about August 2022, in the Southern District of New York and elsewhere, NIGEL JOSEPH, the defendant, knowingly having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, JOSEPH engaged in a scheme to make and to cause to be made false representations concerning the BWK payroll in order to receive construction contract payments, and sent and received, and caused others to send and receive, electronic funds transfers, e-mails, and other electronic communications, to and from the Southern District of New York and elsewhere, in furtherance of that scheme.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT FOURTEEN
(Aggravated Identity Theft)

5. From at least in or about October 2021 through at least in or about June 2022, in the Southern District of New York and elsewhere, NIGEL JOSEPH, the defendant, knowingly transferred, possessed, and used, without lawful authority, a means of identification of another person, during and in relation to a felony violation enumerated in Title 18, United States Code,

Section 1028A(c), to wit, JOSEPH used and transferred the names, addresses, and Social Security numbers of other persons during and in relation to the conspiracy to commit wire fraud and wire fraud violations charged in Counts Twelve and Thirteen of this Complaint.

(Title 18, United States Code, Sections 1028A(a)(1), 1028A(b), and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

6. I have been involved in the investigation of this matter, and I base this complaint on that experience, my conversations with other law enforcement agents, and my examination of various reports, records, and tax filings. Because this complaint is being submitted for the limited purpose of demonstrating probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part.

JOSEPH Failed to Pay \$3.6 Million in Taxes

7. For the reasons that follow, I believe that NIGEL KENNETH JOSEPH, the defendant, had a duty to collect, truthfully account for, and pay over taxes, and that he willfully failed to fulfill this duty beginning in or about April 2019, *i.e.*, the second tax quarter of 2019, until at least in or about December 2021, *i.e.*, the fourth tax quarter of 2021. Specifically, based on my participation in the investigation of this matter, my conversations with other law enforcement agents, my review of tax documents and other records, and my interviews with various employees and involved individuals, I have learned, in substance and in part, the following:

a. JOSEPH founded BWK, a masonry subcontractor registered in the Bronx, New York, in 2019. JOSEPH was responsible for the company's financial matters, including contracting, payroll, and taxes. A business associate ("Employee-1") managed the company's construction projects. Between 2019 and 2021, BWK earned at least \$10 million performing construction across New York, New Jersey, and Connecticut. Despite this revenue, JOSEPH willfully refused to collect payroll taxes from his employees, and refused to pay taxes he owed as an employer. My analysis of BWK financial records indicates that JOSEPH failed to pay at least approximately \$2.9 million on behalf of his employees, and failed to pay at least approximately \$750,000 he owed as an employer. For years, JOSEPH failed to file any BWK tax forms at all.

b. Specifically, between 2019 and 2021, BWK failed to issue its employees Forms W-2 or 1099; failed to withhold payroll taxes from employees' pay; and failed to pay over taxes owed to the IRS. JOSEPH did not file any Form 941 quarterly withholding tax forms between 2019 and the third quarter of 2021, and JOSEPH has not filed a personal tax return since 2018. BWK made no business income tax payments for any quarter between 2019 and 2021.

c. Based on my review of corporate and financial records, and interviews I have conducted with BWK's employees, contractors, and suppliers, I believe that JOSEPH was a "responsible person" who had a duty to collect payroll taxes on behalf of BWK. In particular, I know that JOSEPH incorporated BWK as a single-member LLC; was listed as the President of BWK on various financial documents; obtained BWK's employee identification number from the IRS; was identified as a signatory on multiple BWK bank accounts; made decisions about when

and where dozens of employees worked; and determined how much employees got paid. Further, I know that JOSEPH reviewed payroll reports for employees, signed employee paychecks, oversaw bidding for construction contracts, paid bills, and executed a range of financial transactions on BWK's behalf, including making deposits and withdrawals from the company's bank accounts, obtaining lines of credit for the business, and seeking payment from general contractors for BWK's services.

JOSEPH Willfully Refused to Pay the Taxes He Owed

8. I believe that NIGEL KENNETH JOSEPH, the defendant, acted willfully in refusing to pay BWK taxes. IRS-CI's investigation has revealed that JOSEPH was informed by multiple employees and accountants that BWK was required to withhold and pay employee payroll taxes, but JOSEPH refused to do so. JOSEPH failed to make payments to the IRS even as BWK had sufficient bank account balances to pay the taxes it owed. Rather than pay taxes, JOSEPH used BWK funds to pay creditors and employees, and to finance his own personal lifestyle—including by transferring tens of thousands of dollars to his wife; making personal rental payments; purchasing courtside NBA tickets and a Rolex; leasing a BMW 3-Series, a Mercedes GLE, and a BMW 5-Series; and traveling to the Dominican Republic and Jamaica. Specifically, based on my participation in the investigation of this matter, my conversations with other law enforcement agents, my review of tax documents and other records, and interviews with various employees and involved individuals, I have learned, in substance and in part, the following:

a. According to e-mails I have reviewed, a BWK employee ("Employee-2"¹) responsible for payroll told one of the company's third-party accountants ("Accountant-1") in December 2021 that the company had never registered for the IRS's Electronic Federal Tax Payment System ("EFTPS") and there had been "[n]o Federal or State taxes paid as of right now." Although Accountant-1 advised Employee-2 in an e-mail in or about January 2022 that "[t]he payroll taxes need to be paid," none ever were. Accountant-1 again told Employee-2 in or about February 2022 to "process weekly payroll tax payments to avoid getting penalized," but, according to an interview with Employee-2, JOSEPH instructed Employee-2, in sum and substance, not to do so.² In an e-mail sent in or about February 2022, Employee-2 wrote to Accountant-1 that taxes had not been paid because "I haven't received any information from [JOSEPH] as to when to pay the taxes." Employee-2 wrote in another e-mail to Accountant-1 in or about April 2022 that Employee-2 had "already spoke to [JOSEPH] in regards to taxes payment" but, in sum and substance, that JOSEPH refused to pay them. E-mails between Employee-2 and Accountant-1 indicate that Employee-2 repeatedly received detailed instructions from JOSEPH in payroll matters, including for example, JOSEPH directing specific changes to payroll reports and directing the timing for such changes to be made. According to e-mails I have reviewed, none of these instructions directed Employee-2 to withhold employee payroll taxes.

¹ Based on my participation in this investigation, I have learned that Employee-2 was formerly in a romantic relationship with JOSEPH.

² Based on my review of documents, I have learned that, when BWK registered for EFTPS at Accountant-1's direction, JOSEPH received a letter addressed to him from the IRS indicating that "[y]ou're responsible for the timely filing of employment tax returns and the timely payment of employment taxes for your employees, even if you've authorized a third party to do these for you."

b. According to interviews I conducted and text message records I have reviewed, a second third-party accountant ("Accountant-2") repeatedly notified JOSEPH of his payroll tax obligations, including during a phone call and in text messages. In one text message, sent on or about February 25, 2022, Accountant-2 wrote, "Just wanted to reach out to you as [Accountant-1] advised that [they] had not heard back regarding filing the 4th quarter payroll taxes as well as payments of the taxes due to the government. Please call me when you have a chance, thanks." JOSEPH did not reply, only to then respond to a message sent immediately after the February 25, 2022, message, in which JOSEPH requested that an upcoming meeting with Accountant-2 be rescheduled.

c. According to multiple interviews I conducted with BWK employees, JOSEPH told employee construction workers, in sum and substance, that he would pay them in cash. More than a dozen BWK employees whom I interviewed reported never having received tax forms from JOSEPH, and one employee ("Employee-3") said that, when Employee-3 asked about withholding taxes, JOSEPH responded, in sum and substance, that he would pay you cash and not to worry about taxes. JOSEPH told Employee-2 that because his business was new, he did not have to pay taxes for five years, saying, in sum and substance, he did not want to file taxes. Employee-2 said, in sum and substance, that JOSEPH did not want to file taxes and that JOSEPH sometimes refused to speak to an accountant because JOSEPH did not want to talk about how much he owed to the Government. Employee-1 said that JOSEPH chose to not collect or file taxes because the IRS was, JOSEPH said in sum and substance, not paying attention during the COVID-19 pandemic. Employee-1 said he repeatedly told JOSEPH to collect and pay taxes, but JOSEPH refused to do so.

d. In a letter submitted to IRS-CI, JOSEPH's counsel represented that JOSEPH did not file payroll taxes because JOSEPH expected a business associate, Employee-1, to do so in connection with a related corporate entity ("Company-1") controlled by Employee-1, which JOSEPH claimed employed BWK's workers. In fact, JOSEPH knew that Company-1 was not the entity responsible for BWK's payroll because JOSEPH himself frequently and directly managed his employees' pay. According to Employee-2, JOSEPH personally made withdrawals of tens of thousands of dollars from BWK's bank accounts in order to compensate workers, and on other occasions directed Employee-2 to make such withdrawals. According to bank records and text messages I have reviewed and employee interviews I have conducted, workers were generally paid by BWK, not by Company-1. JOSEPH personally reviewed employees' hours in a spreadsheet for the purpose of calculating their pay, and personally signed bank withdrawal slips and hundreds of employee pay checks that bore the name of BWK, not Company-1.³ For example, in or about

³ My review of financial records does not indicate BWK made regular payments to Company-1 for the purpose of subcontracting payroll. Other records, moreover, indicate that JOSEPH knew BWK was an operating company, not a passive parent company. For example, according to records I have reviewed and interviews I have conducted, JOSEPH personally purchased workers' compensation insurance for BWK in 2019, whereas Company-1 canceled its workers' compensation insurance in 2019 after going into business with BWK; JOSEPH signed hundreds of checks to employees from BWK accounts; and JOSEPH represented on a small business loan application that BWK employed construction workers as a "masonry contractor." Multiple contracts into which BWK entered, moreover, required that the company provide labor as well as

2019, JOSEPH personally signed approximately 345 of the approximately 346 payroll checks BWK paid to its employees, and JOSEPH signed more than 1,400 such payroll checks in or about 2020. Moreover, JOSEPH sent Employee-2 numerous text messages requesting weekly payrolls for dozens of employees; revealing personal knowledge of specific employees' pay rates and weekly total payroll amounts; setting the company's overall payroll limits; reconciling payroll spreadsheets to checks; directing financial transfers to meet payroll; and even dictating the specific memo line of an individual check. Among those messages, JOSEPH said to Employee-1 and Employee-2, for example, on or about April 30, 2020, that "[o]ur payroll for the month of May cannot exceed \$60,000"; JOSEPH said to Employee-2 on or about January 7, 2021, that "we have no money for payroll this week"; and JOSEPH said to Employee-2 on or about February 19, 2021, "Don't forget [I] need you[] to transfer that money for payroll today."

e. BWK had its principal place of business in the Southern District of New York.

JOSEPH Falsified Payroll Reports to Obtain Nearly \$2 Million in Construction Contracts

9. Further, I have learned that because NIGEL KENNETH JOSEPH, the defendant, knew that no payroll taxes had been properly withheld by BWK, JOSEPH also directed the production of falsified certified payroll documents in order to obtain money, *i.e.* payments pursuant to at least two construction contracts, valued at approximately \$1.96 million, which the company could not have otherwise obtained. According to documents I have reviewed and interviews I have conducted with Employee-2, JOSEPH conspired with others, including Employee-2, to produce falsified documents listing the names, hours worked, wages, and tax deductions for at least approximately ten BWK employees between in or about October 2021 and June 2022 in order to obtain payment for performing masonry work as part of two elementary school construction projects in Long Island, New York. Specifically, I have learned the following, in substance and in part:

a. According to the contracts BWK entered into with a general contractor ("Company-2"), I know that each project required BWK to comply with "prevailing wage" rules, which, among other things, set minimum pay rates for workers. The contracts expressly required that "[t]he amount to be paid . . . for [] labor . . . shall be in accordance with the most current New York State Department of Labor Prevailing Wage Rate Schedule published by the New York State Department of Labor," meaning that BWK was required to pay "laborers, workers, or mechanics employed in the performance of . . . [the] contract not less than the prevailing rate of wage and supplements (fringe benefits) in the locality where the work is performed." The contracts provided that "[a]ll work shall be performed in accordance with the prevailing wage requirements set forth by relevant government agencies" and that "[n]o payment will be made without fully executed Prevailing Wage Rate Certified Payroll Forms" and that "Final Payment will not be made without a notarized [] letter . . . that certifies that all workers on the project have been paid at prevailing wage rates." The contracts further specified that "failing to comply fully with all applicable

equipment and other services, and my investigation thus far provides no indication that those obligations were ever subcontracted or otherwise assigned. I have learned, based on my review of financial records and tax filings, that Company-1 paid payroll taxes on behalf of between zero to six of its own employees during other periods, including between in or about June 2019 and in or about December 2021.

federal, state and local laws, rules, regulations and ordinances including Prevailing Wage Rate requirements” would permit payments to be withheld and that failure to comply with payroll records requirements—including “submit[ting] . . . on a weekly basis complete and accurate certified payroll records . . . of each employee”—could be “deemed a material breach” of the contract permitting immediate termination. The contracts also required BWK to “complete and submit [a] Labor Rate sheet” detailing workers’ base hourly rates and withholdings for payroll tax and insurance, Federal Insurance Contributions Act tax, federal and state unemployment insurance, workers’ compensation, disability, and other withholdings including employment benefits.

b. I know that JOSEPH understood the specific requirements for “prevailing wage” jobsites and the purpose of the certified payroll documents. In text messages JOSEPH sent to Employee-2, JOSEPH explained on or about September 22, 2021, that “a prevailing wage job . . . means everyone has to be on the books . . . [e]verything has to be clean.” JOSEPH explained that “[t]he masons [have] to make \$85 an hour,” “[t]he foreman \$90 an hour,” “[t]he laborers \$75 an hour,” and “[e]veryone has to have papers to work on this job.” JOSEPH wrote that “the books for this [have] to be [audited] and payroll has to be submitted.”

c. However, as described further above, JOSEPH also knew that BWK had not properly collected employee identification information for payroll or tax purposes, and therefore could not submit truthful certifications. Accordingly, JOSEPH directed Employee-2 to produce falsified certifications in order to obtain payments. In a text message sent to Employee-2 on or about September 29, 2021, JOSEPH said he “figured [] out” how to comply with the terms of the contracts without paying workers their rightful wages by using other BWK employees’ or associates’ names “to put them down on the payroll as if they [are] the masons.” JOSEPH told Employee-2, in sum and substance, that JOSEPH could earn millions by paying his workers non-prevailing wages and then pocketing the difference. According to Employee-2, JOSEPH called the elementary school construction projects his “retirement” fund.

d. According to my review of text messages sent by JOSEPH, I know that JOSEPH received, edited, and approved drafts of the certified payroll documents before they were transmitted, directing Employee-2 to make specific changes regarding employees’ addresses, providing Employee-2 with employees’ Social Security numbers, and directing that the documents be falsified. For example, early on in the scheme, on or about November 17, 2021, JOSEPH texted Employee-2 to “Put [Employee-1], [another employee], yourself and one other laborer” as employees on a construction site where Employee-2—who performed only payroll functions for BWK—in fact never worked. In a text message he sent on or about November 8, 2021, JOSEPH directed Employee-2 to identify JOSEPH as a “foreman”; JOSEPH’s wife as a “laborer”; Employee-2 as a “laborer”; and another employee (“Employee-4”) as a “laborer.” In fact, JOSEPH was not a foreman; his wife was not a laborer; Employee-2 was not a laborer; and Employee-4 was not a laborer. Moreover, JOSEPH directed the ultimate submission of the certifications, telling Employee-2 by text, for example, on or about January 3, 2022, “Go ahead and send those timesheets for December to [Company-2].” Similarly, on or about March 17, 2022, JOSEPH texted Employee-2, “What’s up with the payroll for February . . . Did you tell them as I instructed you?”

e. JOSEPH knew that the documents submitted to Company-2 contained falsified information. For example, JOSEPH signed falsified payroll documents indicating his wife worked seven hours as a laborer on or about April 22, 2022. In fact, as JOSEPH knew and according to hospital records, JOSEPH's wife delivered a child on that date, rather than working on a construction site. In or about December 2021, JOSEPH also signed forms falsely certifying purported work conducted by Employee-4, who had in fact been hospitalized that month for three weeks with COVID-19. According to a letter from Employee-4's doctor, Employee-4 was later "released on portable oxygen which severely limited his ability to leave his home." JOSEPH nonetheless reported that Employee-4 worked 35 hours each week in December 2021 as a laborer at a school in Uniondale, New York. On or about December 31, 2021, JOSEPH signed a certified payroll document claiming Employee-4 worked 28 hours between December 20, 2021, and December 26, 2021, even as JOSEPH expressly discussed Employee-4's health with Employee-2 the week before, asking in a text message on or about December 20, 2021, "[H]ow's he doing? Is his condition improving?"

f. JOSEPH also attested on each payroll certification that each employee had in fact "been paid the full weekly wages earned," and that each employee "has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract." In fact, as JOSEPH texted Employee-2 on or about November 29, 2021, JOSEPH knew that the employees had not always been paid, writing that, "I signed my name to that certified payroll but no money to cut those checks you know how serious that is I can go to prison for that."

g. JOSEPH appears to have not understood that, in later hiring an independent accountant to produce the certified payroll documents, the accountant would not only draft the documents but also submit payroll information to the IRS. In text messages to Employee-2, JOSEPH repeatedly expressed concern that Accountant-1 submitted the falsified payrolls to the IRS, which he believed could lead to the discovery of his fraudulent scheme. In a text message sent on or about February 3, 2022, JOSEPH expressed concern that the falsified certifications would be uncovered, writing in response to a warning from Employee-2 that "[w]e have big problems . . . [w]ith the taxes," that, "Damn . . . I'm thinking I should not have put everyone working 35 hours every week." On or about March 28, 2022, JOSEPH directed Employee-2 in text messages that "this is going to be the last month that we do this with [the] accountant . . . [a]nd then you and I gonna do it ourselves," adding, "Fake it until we make it." Later, on or about May 11, 2022, JOSEPH repeated in a message that "we not letting the accountant do that payroll no more . . . I need it but not by the accountant."


h. On the basis of my review of financial records, I know that at least one interstate wire transfer in furtherance of the scheme traveled into, through, or from the Southern District of New York.

JOSEPH Stole Identity Information to Advance His Fraudulent Scheme

10. NIGEL KENNETH JOSEPH, the defendant, sought personally identifying information from multiple employees or acquaintances, including Social Security numbers, to be used in completing the certified payrolls. At least one person—an acquaintance of JOSEPH's who had previously hired BWK as a subcontractor, and who was never an employee of JOSEPH's

(“Individual-1”)—said in an interview I conducted that they refused to give JOSEPH permission to use the information. Nonetheless, in a text message on or about November 17, 2021, JOSEPH sent Employee-2 a list of ten names to be used in the certified payroll documents, including the name of Individual-1. JOSEPH then signed at least ten certified payroll documents identifying Individual-1 as a “mason” between in or about October 2021 and December 2021. As JOSEPH knew, Individual-1 never worked for BWK as a mason, and according to an interview I conducted with Individual-1, when Individual-1 later asked JOSEPH whether he had used Individual-1’s identity without permission, JOSEPH falsely claimed he had not. Because JOSEPH knew that some individuals would refuse to permit their personally identifying information to be used on false documents, he directed Employee-2 to collect the information on false pretenses. For example, on or about December 17, 2021, JOSEPH texted Employee-2 to ask two other employees for their Social Security numbers because “they will probably feel more comfortable giving it to you” than to JOSEPH. Because Employee-2 did not know Individual-1’s complete Social Security number, JOSEPH directed Employee-2 in a text message sent on or about December 21, 2021, to “Just make it up[,] you got the last 4 [digits].”

WHEREFORE, I respectfully request that a warrant be issued for the arrest of NIGEL KENNETH JOSEPH, the defendant, and that he be arrested, and imprisoned or bailed, as the case may be.



JENNIFER LEWINTER
Special Agent
Internal Revenue Service Criminal Investigation

Sworn to me on this 21st day of July, 2025



THE HONORABLE KATHARINE H. PARKER
United States Magistrate Judge
Southern District of New York