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Approved: Daniel C. Becker
DANIEL C. BECKER
Assistant United States Attorney

Before: HONORABLE SHARON E. GRUBIN
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA	:	SEALED <u>COMPLAINT</u>
-v-	:	
HEBERT TANNENBAUM,	:	Violation of 18 U.S.C. § 371.
	:	
Defendant.	:	COUNTY OF OFFENSE: NEW YORK

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SOUTHERN DISTRICT OF NEW YORK, ss.:

DAVID CLARK, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE

1. From in or about 1996, until on or about today's date, in the Southern District of New York and elsewhere, HERBERT TANNENBAUM, the defendant, and others known and unknown, unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with others to commit an offense against the United States, to wit, to violate the Foreign Corrupt Practices Act of 1977, Title 15, United States Code, Sections 78dd-2(a)(1)(A) and (B).

2. It was a part and object of the conspiracy that the defendant, HERBERT TANNENBAUM, and others known and unknown, being domestic concerns, as that term is defined in the Foreign Corrupt Practices Act, Title 15, United States Code Section 78dd-2(h)(1), unlawfully, wilfully and knowingly, would and did use the mails and other means and instrumentalities of interstate commerce, corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of money to foreign officials for the purposes of influencing any acts or decisions of such foreign officials in their official capacities, and inducing such foreign officials to do or omit to do acts in violation of the lawful duty of such officials, and inducing such foreign officials to use their influence with foreign governments or instrumentalities thereof to affect or influence acts or decisions of such governments or instrumentalities, in order to assist such domestic concerns in obtaining or

retaining business for or with, or directing business to, any person.

OVERT ACTS

3. In furtherance of said conspiracy and to effect the object thereof, HERBERT TANNENBAUM, the defendant, and others known and unknown, committed the following overt acts in the Southern District of New York and elsewhere:

a. On or about June 9, 1997, the defendant HERBERT TANNENBAUM met with a confidential informant and an undercover law enforcement agent (the "UC") at the Park Lane Hotel in Manhattan.

b. On or about October 7, 1997, in Long Island, New York, the defendant HERBERT TANNENBAUM and a coconspirator not named as a defendant herein offered to make a payment to the UC, who was posing as an official of the Government of Argentina, to obtain business, namely, a contract for the sale of a garbage incinerator to the Government of Argentina.

(All in violation of Title 18, United States Code, Section 371.)

4. The bases for my knowledge and the foregoing charge are, in part, as follows:

a. In late 1996, I received information from a confidential informant ("CI") that the defendant, HERBERT TANNENBAUM, had previously made payments to foreign government officials to induce them to purchase garbage incinerators from the defendant.¹

b. The CI further advised me that the defendant, HERBERT TANNENBAUM, had offered to make payments to government officials of various foreign countries in order to sell garbage incinerators in those countries.

5. In order to confirm the veracity of the information I received from the CI, I began an investigation into the defendant HERBERT TANNENBAUM. Based on my review of records, I determined that TANNENBAUM was the principal of a garbage incinerator manufacturer located in Long Island, New York, named Tanner Management Corporation.

6. On or about January 30, 1997, acting under the direction of FBI agents, the CI, in California, placed a consensually-recorded telephone call to TANNENBAUM, in Long Island, New York. During the call, TANNENBAUM admitted that he was willing to make payments to sell his garbage incinerators, stating that if people want to pay him \$3 million for an incinerator, "they can stick their hands out all they want, I'll fill it." During the call, the CI referred to an intermediary for

¹ The CI pled guilty to conspiracy charges in January 1996, and was later sentenced to 16 months incarceration. The CI's sentence was reduced to 12 months based on cooperation unrelated to this investigation. The CI is currently serving his sentence in a halfway house.

the governing authorities of Taiwan² (the "Taiwan Intermediary"), and TANNENBAUM confirmed that he was willing to make a payment in order to sell an incinerator to the jurisdiction of Taiwan (hereafter "Taiwan").

7. On or about February 4, 1997, acting under the direction of FBI agents, the CI placed a consensually-recorded telephone conversation to the Taiwan Intermediary, during which they discussed the fact that the defendant HERBERT TANNENBAUM would make a payment to a Taiwan official to obtain a contract for the sale of garbage incinerators.

8. On or about February 5, 1997, acting under the direction of FBI agents, the CI placed a consensually-recorded telephone call to the defendant HERBERT TANNENBAUM. During the telephone call, the CI referred to "kickbacks," and TANNENBAUM warned the CI not to talk about such subjects over the telephone.

9. On or about April 29, 1997, acting under the direction of FBI agents, the CI placed a consensually-recorded telephone call to the defendant HERBERT TANNENBAUM. During the telephone call, at the FBI's direction, the CI stated that the CI knew an official of the Government of Argentina who was interested in purchasing an incinerator. The FBI arranged for a Special Agent to act in an undercover capacity, posing as an Argentine government procurement official who wanted to purchase a garbage incinerator (the "UC").

10. On or about May 8, 1997, acting under the direction of FBI agents, the CI placed a consensually-recorded telephone call to the defendant HERBERT TANNENBAUM. During the telephone call, TANNENBAUM asked the CI when the Taiwan Intermediary and the UC were coming to New York, and they agreed to try to arrange to meet at the end of the month.

11. On or about May 28, 1997, acting under the direction of FBI agents, the CI placed a consensually-recorded telephone call to the defendant HERBERT TANNENBAUM. During the telephone call, TANNENBAUM asked when the Taiwan Intermediary and the UC were coming to New York. The CI arranged for a meeting in early June 1997.

12. In or about early June, 1997, the Taiwan Intermediary flew to New York from California to meet with the CI and TANNENBAUM to discuss the purchase of an incinerator and the payment of bribes.

13. On or about June 7, 1997, the Taiwan Intermediary met with the CI and the defendant HERBERT TANNENBAUM at TANNENBAUM's office in Long Island. The meeting was consensually-recorded by FBI agents, and the following occurred:

² Under 22 U.S.C. § 3303(b)(1), "[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan." Therefore, the Foreign Corrupt Practices Act of 1977 applies to Taiwan and payments made to officials of Taiwan.

a. After discussing financial terms concerning the proposed purchase of garbage incinerators by Taiwan, the Taiwan Intermediary asked the defendant HERBERT TANNENBAUM about the amount of the "commission." TANNENBAUM replied that he would give a 10% "commission," but later increased his offer to a 15% "commission," for the sale of two incinerators. TANNENBAUM explained that he had to give a little "schmeear" to induce people to purchase his incinerators.

b. The defendant HERBERT TANNENBAUM told the Taiwan Intermediary that the recipients of the payments were going to have to come to New York to get the money, and the Taiwan Intermediary replied that the recipients of the payments, foreign officials of Taiwan, would travel to New York to receive their payments. TANNENBAUM told the Taiwan Intermediary to be present for any payments, because otherwise the foreign officials would complain that they never received the money.

c. The Taiwan Intermediary expressly told TANNENBAUM that the person who would receive the payment was "a government officer" from Taiwan. TANNENBAUM raised no objection to this, and commented that if the official was taking money, he was "basically a crook." TANNENBAUM further told the Taiwan Intermediary that he knew how to deal with a "crook."

14. On or about June 9, 1997, acting under the direction of FBI agents, the CI met with HERBERT TANNENBAUM at the Park Lane Hotel, in New York, New York, in a meeting that was consensually-audiotaped by the FBI. During this meeting, TANNENBAUM confirmed to the CI that he had previously made a \$75,000 cash payment to an official of the Government of Barbados, as an inducement for the purchase by his government of a garbage incinerator from TANNENBAUM. TANNENBAUM and the CI also discussed the meeting on June 7 with the Taiwan Intermediary, and TANNENBAUM confirmed that he was going to inflate the purchase invoice for the incinerators sold to Taiwan in order to cover the cost of the payments. TANNENBAUM and the CI also discussed that somebody from Taiwan was going to come to New York, and that that person was going to want his money in cash. TANNENBAUM replied that he might have to go out onto the "street" to get enough cash to make the payment, and that he would charge the recipient of the payment a fee for paying him in cash.

15. Later on June 9, the CI introduced the UC to the defendant HERBERT TANNENBAUM at the Park Lane Hotel. The UC and the CI told TANNENBAUM that the UC was an official of the Government of Argentina, and that his government was interested in purchasing garbage incinerators. During a consensually-audiotaped meeting between the UC and TANNENBAUM that day, the following occurred:

a. TANNENBAUM offered to sell the UC an incinerator, and stated that he was willing to make a payment to the UC to facilitate the deal. TANNENBAUM added that he could use cash to make the payment, but noted that he had difficulty getting cash from banks in quantities in excess of \$10,000. TANNENBAUM explained that he uses several bank accounts when

he needs to obtain cash in excess of \$10,000.

b. TANNENBAUM further advised the UC that he does not pay cash up-front, noting that "it's your own money coming back to you." TANNENBAUM added that he had been known to give 25% as payments.

16. On or about July 23, 1997, the UC met on Long Island with the defendant HERBERT TANNENBAUM, purportedly to visit the plant in Long Island where TANNENBAUM's company manufactured the garbage incinerators. During this consensually-recorded meeting, TANNENBAUM again tried to persuade the UC to purchase incinerators for the Government of Argentina. During the meeting, TANNENBAUM referred to making payments to the UC, telling the UC that the UC had to split his first payment with the CI. TANNENBAUM added that the payment would be ten percent of the cost of the incinerator and that he would make the payment in cash, noting that he could not give a check because the UC was a foreign government official. TANNENBAUM stated that to further conceal the payments, he would set up a fictitious corporation on behalf of the UC, and that he would make his payments to that corporation on the UC's behalf. TANNENBAUM stated that nobody would know who owned the corporation and that he could open a bank account for the corporation at a bank where he had contacts. TANNENBAUM emphasized that there would be no way to trace the bank account back to the UC, and the UC responded that this would be useful, because the UC had received cash for other, "similar transactions." TANNENBAUM responded that the UC should take all of those cash payments and put them into the bank account. TANNENBAUM stated that he would handle the money, as long as it was not drug money, noting that he did not care if it was "clean money." TANNENBAUM emphasized that he and a coconspirator not named as a defendant herein (the "CC") would "bury [the money] for you," and that the CC was good at that type of conduct. Furthermore, TANNENBAUM told the UC that it would be "silly" for him not to order an incinerator because of all of the money that TANNENBAUM could give the UC. Finally, the UC was told by TANNENBAUM that the CC, who worked in TANNENBAUM's company, was fully involved in the deal and was aware of the payments.

17. On or about August 20, 1997, the UC telephoned TANNENBAUM and in a consensually-recorded telephone call between the UC and TANNENBAUM, the parties discussed creating a fictitious name for the corporation that TANNENBAUM was going to establish to handle the illegal payment payments. The parties agreed that the corporation would be in the name of "Cybernet USA," and TANNENBAUM subsequently incorporated in New York State a shell company in that name on behalf of the UC.

18. On or about August 22, 1997, the defendant HERBERT TANNENBAUM, in New York, called an undercover telephone number in Florida that the UC had provided as a contact telephone number in the United States ("the UC Telephone Number"). TANNENBAUM left a message for the UC to call him with the person who answered the telephone.

19. On or about October 7, 1997, there was a consensually-recorded meeting

between the UC, the defendant HERBERT TANNENBAUM, and the CC in Long Island, New York. The purpose of the meeting was for TANNENBAUM to assist the UC to open a bank account and to deposit \$40,000 in cash into the account.³ During the meeting, the CC confirmed that he was aware of the 10% payment that TANNENBAUM agreed to make to the UC to induce him to purchase an incinerator for the government of Argentina. CC added that he knew that there would be no documentation concerning the payment, that the payment would be made to the Cybernet USA account, and that the payments would be kept secret. TANNENBAUM stated that the corporation would list "Eduardo Dean" as the president, and that there would be no way to trace the corporation to TANNENBAUM.⁴ TANNENBAUM further confirmed that the CC was aware that he had made similar payments on other occasions. TANNENBAUM then discussed opening a bank account using the Cybernet USA name. The UC told TANNENBAUM that he had traveled from Argentina to the United States to obtain other, similar payments, and that he was going to use the bank account established by TANNENBAUM in the name of Cybernet USA to send the illegal proceeds overseas.

20. The UC further advised me that during the meeting on October 7, the defendant HERBERT TANNENBAUM and the UC went to a bank in Long Island, New York (the "Bank"), to open a bank account. On the drive to the Bank, TANNENBAUM told the UC that he had initially been concerned about the UC, adding that for all he knew, the UC could have been an FBI agent. TANNENBAUM added that he is in his seventies, and did not want to get into trouble. The UC responded that if he got caught, he would go to jail in Argentina for a long time. TANNENBAUM also told the UC that it would be best to keep the deposits at the Bank down to about \$9,500 on one day, and that on a subsequent day, he could deposit the same amount. When TANNENBAUM and the UC arrived at the Bank, they learned that TANNENBAUM's contact at the Bank was not there that day, and they left the Bank.

21. On or about October 8, 1997, the CI in California telephoned TANNENBAUM in New York, and in a consensually-recorded telephone call between the CI and TANNENBAUM, TANNENBAUM confirmed that the CC knew about the ten percent "commission" and "everything else."

22. On or about October 10, 1997, the UC, wearing a recording device, again met with the defendant HERBERT TANNENBAUM to open a bank account to launder the purported proceeds of illicit kickbacks. The UC subsequently advised of the following: TANNENBAUM and the UC went back to the Bank, where they met with two employees of the Bank. During the meeting, TANNENBAUM told the bankers that the UC was purchasing incinerators and getting payments back from TANNENBAUM. TANNENBAUM added, however, that because the UC was a foreign government official, TANNENBAUM could not legally make the payments to the UC. TANNENBAUM told the bankers that the UC had received \$40,000 in cash as payments from other

³ The tape recorder did not work for the entire meeting. Parts of the meeting were recorded, and I learned about the rest of the meeting by debriefing the UC.

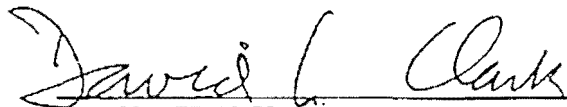
⁴ The UC had previously told TANNENBAUM that Dean was his brother-in-law.

deals, and that he wanted to deposit the cash into a bank account, and wire the money to an offshore account. The Bank employees opened an account for the UC using the fictitious corporate entity, Cybernet USA, established by TANNENBAUM, but refused to accept his cash that day. TANNENBAUM stated that he could deposit the money into his accounts at Fleet Bank, and then send the money to the Cybernet USA account. A Bank employee offered instructions about how the deposits could be structured, to avoid reporting requirements. Specifically, the Bank employee told TANNENBAUM to deposit the cash into various corporate accounts that TANNENBAUM had at Fleet Bank. Outside the presence of the bankers, TANNENBAUM told the UC that 10% of every check received in payment for the incinerator would be deposited into the Cybernet USA account. TANNENBAUM further mentioned that he had previously made a payment to an official of the Government of Aruba, but that that payment had been fruitless due to a subsequent change of government. TANNENBAUM confirmed that he had previously paid cash to an official of the government of Barbados in TANNENBAUM's office, as a payment for the sale of an incinerator to that country.

23. On or about November 6, 1997, the UC met the defendant HERBERT TANNENBAUM and gave him \$16,000 in United States currency. The UC advised TANNENBAUM that the \$16,000 represented "commissions" like the "commissions" that TANNENBAUM was going to pay the UC. TANNENBAUM agreed to deposit the cash into the Cybernet USA account, and wire transfer it to Monaco, stating that he would make two deposits with the money. TANNENBAUM joked that he hoped the money was not marked. TANNENBAUM further advised the UC that when he paid the UC "commissions" for their deal, he would also transfer the money through the Cybernet USA account.

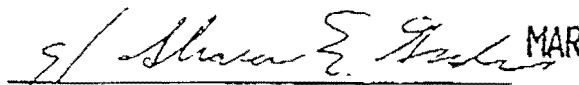
24. On or about January 12, 1998, the defendant HERBERT TANNENBAUM told the UC in a telephone conversation that he was willing to wire transfer, through the Cybernet USA account, "commissions" that the UC received from other transactions. TANNENBAUM further advised the UC that he had deposited the \$16,000 into the Bank and that he would go with the UC to the Bank to wire transfer the money to Monaco.

WHEREFORE, deponent prays that a warrant issue for the arrest of the above-named individual, and that he be imprisoned or bailed as the case may be.



DAVID CLARK
Special Agent
Federal Bureau of Investigation

Sworn to before me this
day of March, 1998.

 MAR 24 1998
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK