IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 93-00097
	)	
URETHANE APPLICATIONS INC., AND DONALD FREEMAN,	)	
	)	
Defendants.	)	

GOVERNMENT'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

The United States, by and through its attorneys, hereby submits the following Proposed Findings of Fact and Conclusions of Law with respect to the petitions to revoke the probation of Urethane Applications, Inc. (UAI) and the supervised release of Donald Freeman. The United States also sets forth herein the relief it will seek from this Court should the revocation petitions be granted.

I

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Background

On March 15, l993, UAI and Donald Freeman entered pleas of guilty to one-count of bid rigging in violation of 15 U.S.C. § 1. On July 20, l993, this Court imposed sentence. Donald Freeman was fined $160,000 and sentenced to serve a seven month prison term to be followed by one year of supervised release. UAI was fined $800,000 payable in installments over a five year period of probation. Freeman belatedly paid his individual fine only after

the Government began investigating in the fall of 1994 the nonpayment of the individual and corporate fines. In March 1995 UAI made a single $30,000 payment on its fine only after becoming aware that the Government would be urging the filing of the instant revocation petitions.

On March 13, 1995, U.S. Probation Officer Ronald DeCastro filed a petition requesting the revocation of Donald Freeman's supervised release and a petition requesting the revocation of UAI's probation. DeCastro's petition alleged that UAI violated its probation (1) by perpetrating a fraud on the Court by lying about UAI's activities and prospects and concealing the existence of a second company, Urethane Applications North, Inc. (UAN); (2) by failing to comply with a special condition of its probation, that is to notify the Probation Office of any material adverse change in its business; and (3) by committing another Federal crime, that is making false statements to a probation officer on May 3 and June 6, 1994 in violation of 18 U.S.C. § 1001. The revocation petition for Freeman alleged that Freeman violated the terms of his supervised release when he committed a Federal crime, that is when he made false statements to a probation officer on May 3 and June 6, 1994 in violation of 18 U.S.C. § 1001.

B. Findings of Fact

1. On August 28, 1993, during the government's grand jury investigation of the defendants UAI and Donald Freeman for bid rigging, Donald Freeman's wife, Lizabeth Freeman, paid off a term

note UAI owed Connecticut Bank and Trust. Mrs. Freeman paid this $725,000 note at a price discounted to $624,600. On September 14, l992, UAI executed a term note whereby it committed to pay Lizabeth Freeman $624,600 in monthly installments beginning October 14, l992. This note was secured by the assets of UAI (Gov. Ex. 61). The balance of this note was subsequently reduced to $442,526.69 on September 29, 1992 (Gov. Ex. 61a).

3. On September 30, l992, following a shareholder vote on August 25, l992, Donald Freeman's partner, William Rush, executed a Certificate of Amendment purporting to change the name of a company called Foamcoat to Urethane Applications North, Inc. (UAN) (Gov. Ex. 8). This action was undertaken despite the fact that Foamcoat had discontinued operations several years before and had been dissolved into UAI as of January 1, l988 (Gov. Exs. 4, 5, 6, and 7).

4. On November 14, l992, Freeman's accountant, Daniel Gotthilf prepared a document entitled "Don Freeman Planning Memo" In this document, Gotthilf outlined the steps necessary to put UAI out of business while starting up a new company (Gov. Ex. 9).

5. In early December l992, Donald Freeman's partner at UAI, William Rush, left the company.

6. On December 14, l992, Government counsel met with counsel for UAI and Donald Freeman and advised counsel that an indictment would be forthcoming unless UAI and Freeman entered into a plea agreement.

7. On December 27, l992, according to UAI records, Lizabeth Freeman demanded payment in full by UAI on an outstanding $442,526.69 balance due on the September 14, l992 note (Gov. Ex. 63). This demand was made despite the fact that UAI's accountant's records show that at some point during December l992 UAI made payments totalling $35,000 on the note, an amount in excess of the principal and interest than due and owing on the note (Gov. Ex. 62). The Court finds that this demand notice was issued as part of the defendant's plan to transfer the assets of UAI to a new company owned by Lizabeth Freeman.

8. In or around December 1992 one of UAI's supplier's of material, Dow Corning, was notified by UAI that UAI was going out of business but that it was going to keep doing business with a new company, UAN, owned by Mrs. Freeman. (Testimony of German Flores and Mary Gatti and Gov. Ex. 23) Thereafter, UAI's applicator's license lapsed on February 28, 1993 (Gov. Ex. 21), and it was replaced as an approved applicator by UAN on April 12, 1993 (Gov. Ex. 22).

9. On January 8, l993, the Government advised UAI and Donald Freeman, through counsel, that they would be indicted on January l9, l993 if no plea agreement was reached (Gov. Ex. 18a).

10. On January 11, l993, Lizabeth Freeman foreclosed on substantially all the assets of UAI as of result of UAI's alleged default on the loan to her (Gov. Ex. 64).

11. On January ll, l993, Lizabeth Freeman simultaneously transferred ownership of the foreclosed assets to her new

company, UAN, a company that began operations that same day UAN agreed to repay Lizabeth Freeman for the book value of these assets. UAN had no material assets other than those transferred from UAI (Gov. Ex. 15).

12. On January ll, l993, the very same day that Lizabeth Freeman transferred the foreclosed assets to UAN, she purported to enter into a lease agreement with UAI whereby she personally agreed to lease the foreclosed equipment back to UAI, notwithstanding the fact that these assets did not belong to her personally but rather were owned by UAN (Gov. Ex. 65). The Court finds that UAN was not identified in the rental agreement as the owner of foreclosed equipment as part of the defendants' plan to keep the existence of UAN secret from the Government, Probation and this Court.

13. In or around January l993, and continuing throughout 1993, UAI's principal salesmen stopped attempting to secure work for UAI and began soliciting business only for UAN. (Testimony of Vincent Montani and Donald Miller; Gov. Ex. 79).

14. In or around January 1993 and continuing throughout l993, Donald Freeman stopped soliciting work for UAI and began soliciting work only for UAN. When soliciting work for the new company, UAN, Freeman frequently would represent himself as president of that company (Gov. Exs. 34, 35, 35a, 36, 38, 40, 42).

15. On January 18, 1993, UAI and Donald Freeman agreed to plead guilty to a one-count information, thereby avoiding indictment on bid-rigging charges (Gov. Ex. 18b).

16. On February 23, 1993 the one-count Sherman Act information was filed in the instant case.

17. On February 24, l993, UAI undertook to cancel its outstanding insurance policies effective March 4, 1993 at which time replacement policies were to be issued for a new company, UAN (Gov. Ex. 24). On or before March l0, l994, commercial liability and automobile insurance policies went into effect for UAN (Gov. Ex. 26).

18. On or before March 2, l993, UAI's bonding agent, Surre & Goldberg, was advised by UAI that UAI would be dissolved once its accounts receivable were converted to cash. Surre & Goldberg was further advised by UAI that UAI was not taking on any new work. Surre & Goldberg thereupon attempted to obtain bonding for the new company, UAN (Gov. Exs. 50, 51, 52, 53). At this time Surre & Goldberg was unaware of UAI's bid-rigging activities.

19. On March 15, l993, UAI and Donald Freeman pleaded guilty to the bid-rigging charges in this case. As of this date UAI had ceased trying to obtain new work whereas UAN was actively seeking to obtain new work. At plea colloquy that day, however, Mr. Freeman said nothing to the Court concerning the fact that UAI was going out of business and that a new company UAN was now operating in its place. Indeed, Freeman did not even inform the

Court as to the mere existence of UAN. Rather, Freeman testified under oath as follows:

> THE COURT: Is Urethane Applications, Inc. financially able to pay a fine that could be imposed by the Court to the charge involved in the plea of guilty?
>
> THE DEFENDANT: It really depends. I don't know what the fine is going to be
>
> THE COURT: Well, I think the question is, is Urethane Applications in business?
>
> THE DEFENDANT: Urethane Applications at the present time is in business.
>
> THE COURT: And how many employees do you have?
>
> THE DEFENDANT: Urethane Applications is a seasonal business. At the present time we have a payroll covering probably fix or six people.
>
> THE COURT: Well my question really, Mr. Freeman, involves whether it is an operating company. You're taking in orders and doing work and going to work everyday?
>
> THE DEFENDANT: That's true, sir. That's true.

(Transcript of March 15, l993 Rule ll hearing, Gov. Ex. 74 at p. 27) (emphasis added) The Court finds that defendant Freeman's underscored testimony was knowingly false and was given as part of defendant's plan to deceive the Government, Probation and the Court into believing UAI was attempting to continue in business when, in truth, its business had been taken over in its entirety by UAN.

20. On March l5, l993 this Court ordered that a Presentence Investigation report be prepared for both UAI and Donald Freeman. That same day, USPO Joan Leiby conducted a preliminary interview of Donald Freeman in connection with the preparation of those reports. Freeman provided Ms. Leiby an employment history that

was incomplete in that he failed to inform Ms. Leiby that he was currently working for UAN (Gov. Ex. 68). In fact, Mr. Freeman told Ms. Leiby nothing whatsoever about UAN's existence, despite the fact that he personally was actively soliciting new business for UAN whereas UAI was merely winding up its affairs before discontinuing operations. Moreover, at no time thereafter did Freeman tell Ms. Leiby anything whatsoever about the existence of UAN (Testimony of Joan Leiby). The Court finds that Freeman knowingly withheld that information as part of the aforesaid plan to keep secret the very existence of UAN as well as the fact that UAN had taken over the business activity of UAI.

21. By April 5, l993, UAI's bonding company, International Fidelity Insurance Company (IFIC) was closing out UAI's bonding account while opening UAN's account (Gov. Ex. 20 53a, 54). At that time the bonding company was unaware of the Sherman Act charge to which UAI and Donald Freeman had pleaded guilty. Rather, the UAI account was closed out because UAN had come into existence and was now the only company seeking bonding (testimony of Kimberly DeOliveira).

22. On April 7, l993, USPO Carol Dray, of White Plains, New York, conducted a home and office visit in connection with the preparation of presentence investigation reports for Freeman and UAI. During the office visit, Freeman told Dray that UAI had three full-time employees and that he "expects or hopes business [of UAI] to pick up after the instant case proceedings come to a conclusion" (Gov. Ex. 70). Freeman made these representations

despite the fact that UAI had already ceased active business operations in favor of the new company, UAN. The Court further finds that these statements were knowingly false and were made as part of the aforesaid plan to deceive the Government, Probation and the Court.

23. On May 12, l993, Freeman executed a personal financial statement prepared for him by Daniel Gotthilf which was submitted to USPO Leiby on May 14, l993 (Gov. Ex. 72). In this financial statement, Freeman listed UAI as an asset with a fair market value of $354,521 as of March 31, l993. However, UAI's March 31, 1993 financial statement actually reveals that as of March 31, 1993, UAI had a negative net worth of $200,881 (Gov. Ex. 13). Moreover, by March 31, 1993 UAI had ceased active business operations in favor of UAN and was in the process of dissolving. Thus, UAI actually had no fair market value whatsoever as of March 31, 1993. Defendants, however, had not informed Probation as to the existence of UAN and the fact that it was operating in place of UAI. The Court finds that the defendants submitted this financial statement knowing it contained false information as part of the aforesaid plan to deceive the Government, Probation and the Court.

24. On May 26, UAI's counsel sent USPO Leiby, with a copy to the Government, a draft of UAI's l992 year end financial statement (Gov. Ex. 1). This financial statement reveals that UAI and Freeman had pleaded guilty and were awaiting sentencing. Absent from the financial statement, however, is any mention of

the new company UAN or the fact that UAI was being dissolved in favor of this new company.

25. UAI paid both its own and UAN's payroll during the early part of 1993 although its employees worked nearly exclusively for UAN (Gov. Ex. 47; Testimony of Vincent Montani and Donald Miller). On June 7, 1993, however, UAI paid its last payroll and discontinued business entirely (Gov. Ex. 47). Again, this information was not disclosed to the Government, Probation or the Court.

26. Sometime in June, UAI's bonding agent, Surre & Goldberg, learned for the first time about the Sherman Act charges against UAI and Freeman upon reviewing UAI's 1992 financial statement. Surre & Goldberg thereupon relayed this information to IFIC, the company that had formerly bonded UAI and was currently bonding UAN. On July 7, 1993, a meeting was held between Freeman, Gotthilf, Surre & Goldberg representatives and Kimberly DeOliveira of IFIC to discuss future bonding. IFIC was upset that it had not been told about the conviction at an earlier date. Nonetheless, IFIC agreed to issue performance bonds for any jobs on which it had previously issued bid bonds (testimony of Louis Spina, Peter Henry and Kim DeOliveira). IFIC reserved decision about whether it would continue to bond UAN in the future. Neither at that meeting nor thereafter did UAI seek a commitment for future bonds from IFIC or from any other source. (testimony of Kim DeOliveira, Peter Henry, Louis Spina). On August 11, 1993 IFIC decided it would no longer bond UAN due, not

only to the fact of the conviction in this matter but, more importantly, to the fact that IFIC was not told about it at an earlier date. (Testimony of Kim DeOliveira and Gov. Ex. 58)

27. On June 24, l993, counsel for UAI belatedly sent the Government additional financial materials which had been subpoenaed by the Government six months earlier (Gov. Ex. 2). Among the materials provided to the Government were UAI's final l992 year-end financial statement (Gov. Ex. 12) and its first quarter l993 financial statement (Gov. Ex. 13). Again, neither financial statement disclosed the existence of UAN or the fact that UAI was going out of business in favor or UAN. Both the financial statements, however, did state that UAI's ability to continue as a going concern might be adversely impacted by the sentence received in this case (Gov. Exs. 12 and 13). In an effort to accurately assess UAI's financial condition and future prospects, the Government asked its Senior Financial Analyst, Gregory Polonica, to analyze the financial statements and to speak personally with UAI's accountant, Daniel Gotthilf, who had prepared the statements.

28. On July 6, l993, Mr. Polonica conducted a pre-arranged telephone interview of Daniel Gotthilf. During this interview, Gotthilf told Mr. Polonica that UAI was still operating and bidding for new work. Gotthilf also gave information indicating that UAI's sales for l993 would be between $2,000,000 and $3,000,000 and he stated that UAI would be profitable for the year. Gotthilf said nothing about the existence of the new

company UAN or the fact that UAN was now operating in UAI's place, using UAI's former equipment and employing former UAI employees (testimony of Gregory Polonica). Nor did Gotthilf mention the fact that UAI had paid its last payroll on June 7, l993, a month before this conversation. The Court finds that Daniel Gotthilf knowingly provided certain false information and knowingly withheld certain other information as part of the aforesaid plan to deceive the Government, Probation and the Court.

29. On July 20, l993, UAI and Donald Freeman were sentenced in this matter. The presentence report on UAI concluded that UAI's fine guideline range was $800,000 to $1,000,000. Based upon information provided to Probation by UAI, the presentence report concluded that there was no basis for departure (Gov. Ex. 78). At no time prior to the July 20, l993 sentencing hearing did UAI make a motion for departure based on an inability to pay. Moreover, at the outset of the sentencing hearing, UAI's counsel indicated that UAI had no objection to the presentence report (Gov. Ex. 75 at pp. 4-5).

30. At the sentencing hearing, counsel for UAI and Freeman presented the testimony of Harold B. Stockdale, a supplier of UAI, and Manual Lojo, a former employee of UAI. Mr. Stockdale testified as follows:

> Q. Currently is Mr. Freeman -- are Mr. Freeman and his company, do they remain active along with those other companies that you have mentioned in this industry?
>
> A. Yes, sir.

(Testimony of Harold B. Stockdale, Gov. Ex. 75 at p. 14).

Mr. Lojo testified as follows:

Q. Okay. And so you've been with him [Freeman] for 16 years.

A. Right.

Q. And how many crews do you normally work. How many men do you supervise?

A. 17, 10, 25, all depends, you know, the work we have to do.

Q. How many crews do you have working right now.

A. Two and a half crews. It means l8 men.

Q. l8 men?

A. Right.

Q. How is business right now?

A. Very good.

(Testimony of Manual Lojo, Gov. Ex. 75 at pp. 21-22).

31. Although the defense presented Mr. Stockdale and Mr. Lojo as witnesses to UAI's economic viability, it is clear today that they were testifying about work being done by Freeman's new company, UAN, a company whose very existence at the time of sentencing remained unknown to the Court, Probation and the Government. The Court finds that this misleading testimony was offered by the defendants as part of the aforesaid plan to deceive the Government, Probation and the Court.

32. Mr. Freeman made no effort at sentencing to clear up the confusion caused by the aforesaid testimony. Similarly he said nothing when his counsel added to the confusion with the following argument:

> In terms of UAI, sir, I don't think the idea here is to put this company out of business. I mean, it simply wouldn't make any sense. I mean, we recognize again there has to be -- a fine has to be paid. We need time to pay it. If you're going to impose a fine that is severe, we're going to need ample time to pay it otherwise it just doesn't -- just simply doesn't make sense. I mean, we need to continue to work. We need to continue to keep people on the payroll. We need to continue to put these roofs on these commercial buildings. Clearly we can afford to pay a fine within reason. I'd ask you to consider departing on the fine only because it simply -- an $800,000 fine is -- is a lot of money and it's a lot of money that is paid -- even over time its a lot of money. . . .
> So that, you know a fine balanced with -- with the concept of permitting this company to stay in business I think is important.

(Gov. Ex. 75 at pp. 31-32). The Court finds that this argument was predicated upon false information in that UAI had discontinued payroll and was out of business. The Court further finds that the defendants permitted counsel to make this false argument as part of the aforesaid plan to deceive the Government, Probation and the Court.

33. At sentencing, the Government expressed its concern that Freeman might set up a new company in an attempt to evade payment of the fine (Gov. Ex. 75 at pp. 38-39). Rather than finally revealing that it had already set up a new company, UAI instead responded by arguing that it hypothetically might be appropriate to form a new company, if, for example, its bonding were threatened (Gov. Ex. 75 at pp. 39-40). UAI's bonding had not been threatened, however, at the time UAN was set up in January l993. In fact, neither UAI's bonding agent nor its bonding company was even aware of this matter until many months later (Testimony of Louis Spina and Kim DeOliveira). In

addition, UAI did not seek bonding for any new jobs after UAN began soliciting work in UAI's place in January 1993. (Testimony of Louis Spina and Kim DeOliveira). Finally, of the 137 jobs bid between January 1, l993 and December 31, l993, only 15 required bid bonds (Gov. Ex. 79). The Court therefore finds that the UAI did not cease doing business nor was UAN formed in response to any threat to bonding.

34. On the basis of the information provided to this Court on the day of sentencing, as well as the information earlier provided to the Government and Probation, UAI and Freeman were sentenced. Believing UAI was a going concern, and completely unaware that UAI already had gone out of business in favor of UAN, this Court specifically directed that the payments on the $800,000 fine be structured over a five-year term "to assist the corporation to remaining in business and as a source of employment" (Gov. Ex. 75 at p. 45).

35. Following the sentencing, UAI's bonding agents, Surre & Goldberg, were asked by Daniel Gotthilf to send a letter to Freeman advising him that it was their opinion that neither UAI nor any company owned by Freeman would be able to obtain bonding (Testimony of Louis Spina). A draft of this letter was telefaxed to Gotthilf for his review and editing (Gov. Ex. 56). The letter thereafter was issued on August 3, 1993 (Gov. Ex. 57). This opinion letter was not sent in response to any request by UAI for bonding, for UAI, which had long since ceased actively soliciting work, had no reason to seek bonding from any source at

this time. This Court finds, rather that defendants sought this letter so that they might use it to mislead the Government, Probation or this Court if and when it was discovered that UAI was out of business. Indeed, defendants attempted to make just such use of this letter in UAI's Motion to Reduce Corporate Fine filed March 8, 1995.

36. On August 9, 1993, counsel for Freeman moved this Court to allow Freeman to report to jail to serve his seven-month sentence on October 1, 1993 rather than August 19, 1993 as originally scheduled. In support of that motion, counsel averred that Freeman was needed "to operate his business during the peak selling season so that he may maximize the financial opportunity given the $960,000 in personal and corporate fines imposed" (Gov. Ex. 76). The Government, believing that UAI was operating as a going concern and that it was honestly seeking to pay its fine as it claimed, did not oppose this motion. The Court, which like the Government remained unaware both of the true status of UAI or of the existence of UAN, granted this unopposed motion "for cause shown" on August 15, 1993 (Gov. Ex. 77). Freeman however neither obtained nor attempted to obtain any work for UAI between August 19, 1993 and October 1, 1993. In contrast, during this same period UAN submitted bids or proposals for work worth over $1,100,000 (Gov. Ex. 79).

37. Upon release from prison on April 29, 1994, Freeman was placed on supervised release for a period of one year in accordance with this Court's sentencing order. On May 3, 1994,

Freeman met with USPO Carol Dray and told her that he was affiliated with two "active companies," UAI and UAN (Gov. Ex. 73). He also told Ms. Dray that UAN had been in business for five years (Gov. Ex. 73) and that Lizabeth Freeman had been the sole officer during that period. He told Ms. Dray that UAI was bidding for new work. The Court finds that the aforesaid information was false in that UAI was not an active company but rather was out of business; UAN had been in business for not five years but rather slightly more than one year; and UAI was not bidding for new work (Gov. Ex. 23, 45, 46, 47, 47a, 49, 50, 51, 52, 79). The Court further finds that this false information was knowingly provided by Freeman as part of the aforesaid plan to deceive the Government, Probation and the Court.

38. On June 6, l994, Freeman again met with USPO Dray. He that day told her that although UAI was in terrible financial shape the "tell tale" period for determining whether UAI would succeed was one year, i.e., June 6, 1995. The Court finds that the aforesaid information was false in that UAI already was out of business. The Court further finds that this false information was knowingly provided by Freeman as part of the aforesaid scheme to deceive the Government, Probation and the Court, and to delay until after expiration of his supervised release discovery of the fact that UAI actually had discontinued operations in 1993.

C. Conclusions of Law

The Court concludes that UAI's probation should be revoked because the Government has demonstrated by a preponderance of the

evidence that, as alleged in the revocation petition, defendant UAI, through its President Donald Freeman and others, (1) perpetrated a Fraud on this Court by lying to the Government, Probation and this Court about its business activities and future prospects, while concealing the very existence of UAN, the company that had been created to take over UAI's business; (2) violated the special conditions of its probation requiring it to report "any material adverse change in its business"; and (3) committed another federal crime through the false statements made by its President Donald Freeman on May 3, and June 6, l994 to a probation officer in violation of l8 U.S.C. § l00l. While the Court finds that defendant UAI violated its probation in each of the aforesaid ways, the Court also finds that any one of the bases for revocation, standing alone would be sufficient to revoke UAI's probation.

Like Probation, a mandatory condition of supervised release is that the defendant not commit another federal crime. l8 U.S.C. § 3583(d). This Court further finds by a preponderance of the evidence that Donald Freeman violated the terms of his supervised release by making false statements on May 3 and June 6, l994 to a probation officer in violation of l8 U.S.C. l00l.

The Court's specific conclusions as to each of the alleged bases for revoking the company's probation and the individual's supervised release are set forth more fully below:

1. Fraud on the Court

The Third Circuit has expressly recognized that "revocation of probation is permissible when defendant's acts prior to sentencing constitute a fraud on the court." United States v. Kendis, 883 F.2d 209, 210 (3d Cir. 1989). In Kendis, the Court of Appeals affirmed a district court's order revoking probation because a defendant had used clients' converted funds to pay restitution and then relied on the fact of restitution to persuade the district court to give him a light prison sentence. Id. The Court's decision in Kendis concerning the fraud on the court doctrine serves to emphasize that this doctrine was fashioned in order to protect the integrity of the judicial process. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991). Other Courts have similarly relied on this doctrine in the sentencing context noting that a sentence should be based on accurate information and "when the sentence imposed is based upon fraudulent information provided by the defendant, the Court has the inherent power to correct that sentence." United States v. Bishop, 774 F.2d 771, 775 (7th Cir. 1985); Accord Trueblood Longknife v. United States, 381 F.2d 17, 20 (9th Cir. 1967)(where defendant failed to disclose he had previously filed bankruptcy under another name at the time he entered a plea to making a false oath in a bankruptcy proceeding, court did not abuse its discretion in revoking probation for fraud on the court), cert. denied, 390 U.S. 926 (1968).

In this case, the Court is convinced that the defendants withheld material facts and made affirmative misrepresentations to the Government, Probation and this Court sufficient to constitute a fraud on the Court. The evidence clearly establishes that Donald Freeman, together with his accountant, developed a plan at least as early as November 1992 to put UAI out of business and start up a new company, UAN, in its place. The defendants proceeded to carry out this plan in the months that followed. By January 11, 1993, Mrs. Freeman had foreclosed on the assets of UAI, transferred those assets to UAN, which began operations that very day. From the time UAN came into existence, UAI no longer actively sought any business.

More importantly, prior to entering their guilty pleas, defendants notified their suppliers, their insurance carriers, their employees, and their bonding agents about UAN taking the place of UAI. On the other hand, the evidence shows that this plan to replace UAI with UAN was intentionally kept secret from the Government, Probation and this Court both before, during and after sentencing. To keep this plan secret the defendants deliberately withheld all information which might directly or indirectly lead the Government, Probation or this Court to discover UAN. More specifically, not only was the very existence of UAN withheld but the defendants made affirmative misrepresentations about the business activities and future prospects of UAI at various times, including: the March 15, 1993 guilty plea hearing, during the presentence investigation that

followed, during the July 6, 1993 conversation between the Government's Senior Financial Analyst and UAI's accountant, at the July 20, l993 sentencing hearing, in the August 9, l993 motion to delay Freeman's reporting date and in statements made by Freeman to the probation officer during his period of supervised release in l994. In sum, the Court finds that before, during and after sentencing, Freeman and his company perpetrated a systematic and continuing fraud on this Court sufficient to warrant revocation of probation.

2. Violation of the Special Condition

This Court imposed as a special condition of UAI's probation a requirement that it "notify the Probation Office immediately upon learning of any material adverse change in its business or financial conditions or prospects." UAI violated this special condition repeatedly. Specifically, at no time following sentencing did defendants inform this Court that UAI had ceased operations and been replaced by UAN. To the contrary, in a post-sentencing motion to delay Freeman's reporting date filed on August 9, l993, UAI and Freeman falsely represented to this Court that Freeman was needed to operate his business in order to pay the personal and corporate fines imposed by this Court. Similarly, on May 3, 1994 the defendants falsely told Probation that UAI was an active company when, in truth, it had long been out of business.

3. False Statements

This Court further finds that UAI violated a general condition of probation and Donald Freeman violated a general condition of supervised release when Freeman made false statements to USPO Dray on May 3, l994 and June 6, l994. False statements to a probation officer are subject to prosecution under the provisions of l8 U.S.C. 1001. United States v. Inserra, 34 F.3d 83, 88 (2d Cir. l994); United States v. Gonzalez-Mares, 752 F.2d 1485, 1492-93 (9th Cir.), cert. denied, Gonzalez-Mares v.United States, 473 U.S. 913 (1985); United States v. Derewal, l995 WL 54919 (E.D.Pa. l995)(a copy of which is attached hereto as Exhibit A).

Defendants statements to USPO Dray on May 3, l994 to the effect that he was affiliated with two active companies and that one of those companies, UAN, had been in business for five years were clearly false. UAN did not begin business until January ll, l993 at which time UAI discontinued operations and was no longer active.[1] Similarly, Freeman's statements to USPO on June 6, l994

[1] A conviction under l8 U.S.C. § l00l requires proof of five elements: (1) a statement, (2) falsity, (3) materiality, (4) specific intent, and (5) agency jurisdiction. United States v. Barr, 963 F.2d 641, 645 (3d Cir.), cert. denied, Barr v. United States, 113 S.Ct. 811 (1992). Each of these elements of proof is satisfied in this case. Freeman made false statements during interviews by USPO Dray who was carrying out her duties to monitor Freeman while he was on supervised release. These statements were material to the extent they were relevant to whether the defendant was making good faith efforts to comply with this Court's order to pay a personal and corporate fine. Finally, in light of the pattern of deceptive behavior engaged in by this defendant during the entire course of this matter, it is clear to this Court that these statements were made with the requisite specific intent.

to the effect that UAI was in terrible financial shape but that it would take a least a year to determine whether that company would succeed was also false since, as the defendant knew full well, that company had already discontinued it operations. Finally, this Court believes that these false statements made to probation officer were part of the defendants' considered plan to deceive the Government, Probation and this Court into believing that UAI was an active company, when in truth, that company's operations had long ago been discontinued in favor of its replacement, UAN.

II

CONCLUSION AND PROPOSED RELIEF

The Government will establish at the April 26, 1995 hearing that defendants UAI and Donald Freeman, faced with imminent indictment, devised in late 1992 early 1993 a careful plan whereby UAI would avoid payment of the criminal fine which was virtually certain to be imposed upon it for its involvement in a multiyear bid-rigging conspiracy. Moreover, defendants deliberately acted to keep this plan secret from the Government, Probation and the Court. To keep the plan secret the defendants carefully and systematically withheld material information about UAI and UAN and, when necessary, affirmatively misrepresented material facts to Government, Probation and this Court. This deliberate and deceptive conduct began well prior to sentencing and continued into the period of Donald Freeman's supervised release.

Wherefore, the Government submits that the Court should grant the Petition for Revocation of UAI's Probation, and the Petition for Revocation of Donald Freeman's Supervised Release. The Government further requests that UAI be resentenced and ordered to pay the maximum fine of $1,000,000 and that Donald Freeman be imprisoned for a period of one year.

Respectfully submitted,

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WILLARD S. SMITH

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LAURA HEISER

Attorneys, Antitrust Division
U.S. Department of Justice
Middle Atlantic Office
The Curtis Center, Suite 650 West
7th and Walnut Streets
Philadelphia, Pennsylvania 19106
Tel.: (215) 597-7401

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 93-00097
	)	
URETHANE APPLICATIONS INC., AND DONALD FREEMAN	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

This is to certify that on this 21st day of April 1995, a copy of the Government's Proposed Findings of Fact and Conclusions of Law, was telefaxed and mailed, postage prepaid, to counsel of record for the defendant as follows:

Scott D. Godshall, Esquire
Pepper, Hamilton & Scheetz
3000 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103-2799

_____
WILLARD S. SMITH

Attorney, Antitrust Division
U.S. Department of Justice
Middle Atlantic Office
The Curtis Center, Suite 650 West
7th and Walnut Streets
Philadelphia, Pennsylvania 19106
Tel.: (215) 597-7401