

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : Criminal No. 01 Cr. 925 (GEL)
v. : Filed: 9/6/01
KENNETH JACOBSON and : Violation: 15 U.S.C. § 1
JACOBSON PRODUCE, INC., :
Defendants. :

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INFORMATION

The United States of America, acting through its attorneys, charges:

1. Kenneth Jacobson and Jacobson Produce, Inc. are hereby made defendants on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Information:

2. Kenneth Jacobson resided in South Salem, New York. Kenneth Jacobson owned 9.9% of Jacobson Produce, Inc.

3. Jacobson Produce, Inc. was a New York State corporation located in the Hunts Point Market in the Bronx, New York. Jacobson Produce, Inc. was a vendor of food, primarily produce.

4. The Department of Citywide Administrative Services of the City of New York ("DCAS") was the agency that provided support to those city entities that served the public. DCAS became responsible for providing this support in July 1996, when it replaced the Department of General Services of the City of New York.

Through its Division of Municipal Supply Services, DCAS conducted competitive bidding for the supply of necessary items, including food, on behalf of several municipal entities.

5. DCAS solicited bids from, and awarded contracts to, vendors of food, including produce, on a monthly basis. The food contracts awarded by DCAS were requirements contracts that obligated the vendor to supply and deliver food at the stated prices for the contract period. Under these contracts, the municipal facilities placed orders as needed, usually once or twice a week.

6. Whenever in this Information reference is made to any act, deed, or transaction of any corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

7. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These include Selwyn Lempert ("Lempert"), an employee of Nick Penachio Co., Inc.

II. TRADE AND COMMERCE

8. During the period covered by this Information, Jacobson Produce, Inc. purchased substantial quantities of food, including produce, for resale to municipal entities serviced by DCAS from suppliers located throughout the United States, or from brokers, who obtained their goods on behalf of Jacobson Produce, Inc. from suppliers located throughout the United States.

9. From approximately June 1996 until approximately June 1998, pursuant to contracts that are the subject of this Information, the municipal entities serviced by DCAS purchased approximately \$5 million of food from members of the conspiracy.

10. During the period covered by this Information, the activities of the defendants and co-conspirators with respect to the sale of food to the municipal entities serviced by DCAS, including the sale of food pursuant to the contracts that are the subject of this Information, were within the flow of, and substantially affected, interstate trade and commerce.

III. DESCRIPTION OF THE OFFENSE

11. From approximately June 1996 until approximately June 1998, the exact dates being unknown to the United States, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

12. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to rig the bids for and allocate portions of monthly contracts awarded by DCAS for the supply of produce to municipal entities serviced by DCAS.

13. From approximately June 1996 until approximately June 1998, as a result of the conspiracy charged herein, Lempert arranged for Nick Penachio Co., Inc. to pay Jacobson Produce, Inc. approximately \$148,000, in exchange for Kenneth Jacobson causing Jacobson Produce, Inc. to refrain from bidding on approximately 16 contracts to supply produce to municipal entities serviced by DCAS.

14. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Lempert and Kenneth Jacobson discussed and agreed that Jacobson Produce, Inc. would refrain from submitting bids to DCAS in return for monthly payments to Jacobson Produce, Inc.;

(b) In accordance with these discussions and agreements, Kenneth Jacobson caused Jacobson Produce, Inc. to refrain from submitting bids to DCAS on approximately 16 occasions. Pursuant to the conspiracy, Jacobson Produce, Inc. was never awarded a DCAS contract;

(c) Lempert collected cash from certain co-conspirators for the purpose of paying other co-conspirators, including Jacobson Produce, Inc., either to refrain from bidding or to submit intentionally high, complementary bids to DCAS;

(d) Lempert caused Nick Penachio Co., Inc. to issue checks to Jacobson Produce, Inc. During the conspiracy, the payments to Jacobson Produce, Inc. made in furtherance of the conspiracy totaled approximately \$148,000; and

(e) In order to conceal the true purpose of the payments from Nick Penachio Co., Inc. to Jacobson Produce, Inc., Kenneth Jacobson caused Jacobson Produce, Inc. to create phony sales tickets that made it appear that Jacobson Produce, Inc. had sold produce to Nick Penachio Co., Inc. when, in fact, it had not. Similarly, to conceal the true purpose of these payments, Lempert caused Nick Penachio Co., Inc. to create phony purchase orders that made it appear that Nick Penachio Co., Inc. had purchased produce from Jacobson Produce, Inc. when, in fact, it had not.

IV. JURISDICTION AND VENUE

15. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the

filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

Dated:

CHARLES A. JAMES, JR.
Assistant Attorney General

RALPH T. GIORDANO
Chief, New York Office

JAMES M. GRIFFIN
Deputy Assistant Attorney General

REBECCA MEIKLEJOHN

SCOTT D. HAMMOND
Director of Criminal Enforcement
Antitrust Division
U.S. Department of Justice

DOUGLAS M. TWEEN

MARY ANNE F. CARNIVAL

MARY JO WHITE
United States Attorney
Southern District of New York

ELIZABETH PREWITT

Attorneys

Antitrust Division
U.S. Department of Justice
26 Federal Plaza, Room 3630
New York, New York 10278
(212) 264-0654