

MCV/KCV: USAO2013R00070

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

2016 DEC 21 P 3:35

CLERK'S OFFICE
AT GREENBELT

UNITED STATES OF AMERICA

v.

DAVID J. SIMARD,

Defendant

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CRIMINAL NO. RWT-13-0176

**(Corrupt Interference with the
Administration of Internal Revenue
Laws, 26 U.S.C. § 7212(a));
(Failure to File Federal Income Tax
Returns, 26 U.S.C. § 7203)**

THIRD SUPERSEDING INDICTMENT

The Grand Jury for the District of Maryland charges that:

At all times relevant to this Indictment, unless otherwise indicated:

COUNT ONE

(Corrupt Interference with the Administration of Internal Revenue Laws)

Introduction

1. The defendant, DAVID J. SIMARD ("SIMARD"), has engaged in the business of purchasing, repairing, and selling residential real estate in Maryland and elsewhere since at least the early 2000s. During the years 2008 through 2010 SIMARD purchased and sold more than 100 residential properties in both his own name and a corporate name. The total dollar value of the sales exceeded \$30 million.

2. The Internal Revenue Service ("IRS") is an agency within the U.S. Department of Treasury responsible for administering and enforcing the federal internal revenue laws regarding

the ascertainment, computation, assessment, and collection of taxes owed to the United States by its citizens and residents.

3. Citizens and legal residents of the United States who have income in any one calendar year in excess of a threshold amount are obligated to file a U.S. Individual Income Tax Return, Form 1040 (“Form 1040”), for that calendar year with the IRS. On Form 1040, U.S. taxpayers are obligated to report, among other things, their income from any source.

4. Officers or employees of corporations are obligated to file a U.S. Corporation Income Tax Return, Form 1120, for each year the corporation is in existence, irrespective of whether the corporation has taxable income.

5. Forms 1099-S are IRS forms that persons responsible for closing real estate transactions must file with the IRS in connection with each reportable transaction. Forms 1099-S must include, among other things, the name, address, and tax identification number of the transferor (or seller), the date of the closing of the transaction, the address of the property sold, and the gross proceeds received in connection with the transfer of the property.

The IRS Audit

6. In or about July 2007, the IRS opened a civil examination of SIMARD’s income based in part on his history of not filing tax returns during years for which the IRS received information showing that SIMARD had received proceeds from real estate transactions. At the time the IRS commenced this examination in 2007, SIMARD had last filed a Form 1040 for the 1995 tax year.

7. On three separate occasions from in or about October 2007 through in or about December 2007, the IRS sent notices to SIMARD regarding his unfiled individual income tax returns for the years 2001 through 2006. These notices requested that SIMARD schedule an

appointment with an IRS examiner. The IRS received no response from SIMARD to any of these requests.

8. In an effort to obtain information about SIMARD's sources of income, in or about late 2007, the IRS sent summonses to third-party businesses and institutions requesting information regarding transactions conducted with and by SIMARD. On or about January 9, 2008, SIMARD signed a certified mail notice sent from the IRS confirming that he had been informed of the summonses issued by the IRS.

The Incorporation and Use of Pegasus

9. On or about January 30, 2008, SIMARD caused Pegasus Home Corporation ("Pegasus"), to be incorporated as a subchapter C corporation. According to the articles of incorporation, Pegasus was created to, among other purposes, "acquire, hold, improve, manage and sell real estate property within and without the State of Maryland." Despite the fact that SIMARD owned and controlled Pegasus, SIMARD failed to file a Form 1120 for each tax year between 2008 and 2012.

10. In or about February 2008, SIMARD caused a relative to apply to the IRS for a federal Employer Identification Number ("EIN") on behalf of Pegasus.

11. In or about February 2008, SIMARD caused the same relative to open a bank account ending in xxxxx0162, at Wells Fargo Bank, N.A., in the name of Pegasus using the EIN obtained by the relative.

12. After establishing Pegasus, SIMARD primarily purchased properties in Pegasus' name rather than in his own name. For example, after on or about January 30, 2008 and continuing through in or about 2010, SIMARD purchased approximately five properties in his own name and purchased approximately 100 properties in the name of Pegasus.

13. By purchasing and selling properties through Pegasus rather than in his own name, SIMARD attempted to conceal from IRS his involvement in and receipt of proceeds from his real estate transactions. SIMARD caused the title companies facilitating the transactions to not issue or transmit Forms 1099-S, Proceeds from Real Estate Transactions, to the IRS with SIMARD's name or Social Security Number. Any Forms 1099-S that were transmitted to the IRS reported Pegasus and its associated EIN as the transferor of the properties. The publicly filed records generated from the transactions reflected that Pegasus, rather than SIMARD, purchased, owned, and sold the properties.

14. While using Pegasus in an attempt to conceal his involvement in real estate transactions, from in or about 2008 through in or about 2012, SIMARD provided title companies with Pegasus corporate documents that falsely represented SIMARD's relative was the owner of Pegasus. In fact, SIMARD owned and controlled Pegasus. By providing title companies with these false documents, SIMARD further concealed his ownership and control of Pegasus from the IRS.

15. During in or about 2009 and continuing through in or about 2010, SIMARD transferred more than \$3 million from Pegasus's bank account ending in xxxxx0162, at Wells Fargo Bank, N.A., to his personal bank account ending in xxxxx7528, at Bank of America, N.A. SIMARD used a portion of the corporate funds transferred to his personal bank account for expenditures, including payment of his personal mortgage.

16. SIMARD also withdrew funds from his personal bank account ending in xxxxx7528, which constituted a portion of the money that he had transferred from the Pegasus bank account ending in xxxxx0162. From in or about 2009 and through in or about 2010, this withdrawal activity included more than \$100,000 withdrawn by SIMARD in cash and by checks

payable to himself. Through such financial transactions, SIMARD concealed from the IRS whether he used that money for business or personal purposes.

The Charge

17. Beginning in or about January 2008, and continuing through in or about 2012, in the District of Maryland and elsewhere, the defendant,

DAVID J. SIMARD

did corruptly endeavor to obstruct and impede the due administration of the internal revenue laws by the following means, among others: (1) purchasing and selling real estate properties using Pegasus rather than in his own name, to conceal his involvement in and receipt of proceeds from real estate transactions; (2) selling properties through Pegasus and its associated EIN, rather than in his own name and Social Security Number, to thwart the transmittal of third-party reporting forms to the IRS; (3) falsely representing to third parties that SIMARD's relative was the owner of Pegasus, in order to conceal his ownership and control of Pegasus; and, (4) withdrawing cash and making checks payable to himself from money that had originated from Pegasus, to conceal whether SIMARD used that money for business or personal purposes.

26 U.S.C. § 7212(a)

COUNT TWO

(Failure to File a U.S. Individual Income Tax Return, Form 1040, for Tax Year 2009)

The Grand Jury for the District of Maryland further charges:

During the calendar year 2009, in the District of Maryland, the defendant,

DAVID J. SIMARD,

a resident of Berwyn Heights, Maryland, had and received gross income substantially in excess of \$9,350.00, the minimum filing amount established by law and applicable to him for that year; that by reason of such gross income he was required by law, following the close of the calendar year 2009, and on or before October 15, 2010, pursuant to a timely-filed extension, to make an income tax return to any proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; and that well knowing all of the foregoing, he did willfully and knowingly fail to make an income tax return to the aforementioned officers or to any other proper officer of the United States.

26 U.S.C. § 7203

COUNT THREE

(Failure to File a U.S. Corporation Income Tax Return, Form 1120, for Tax Year 2009)

The Grand Jury for the District of Maryland further charges:

During the calendar year 2009, in the District of Maryland, the defendant,

DAVID J. SIMARD,

a resident of Berwyn Heights, Maryland, was the President of Pegasus, a corporation not expressly exempt from tax, with its principal place of business at Berwyn Heights, Maryland. He therefore was required by law, after the close of the calendar year 2009 and on or about March 15, 2010, to make an income tax return, for and on behalf of the corporation, to any proper officer of the United States, stating specifically the items of Pegasus' gross income and the deductions and credits allowed by law. Well knowing and believing all of the foregoing, he did willfully fail, on or about March 15, 2010, in the District of Maryland, to make an income tax return to the aforementioned officers or to any other proper officer of the United States.

26 U.S.C. § 7203

COUNT FOUR

(Failure to File a Corporate Income Tax Return, Form 1120, for Tax Year 2010)

The Grand Jury for the District of Maryland further charges that:

During the calendar year 2010, in the District of Maryland, the defendant,

DAVID J. SIMARD

a resident of Berwyn Heights, Maryland, was the president of Pegasus, a corporation not expressly exempt from tax, with its principal place of business at Berwyn Heights, Maryland. He therefore was required by law, after the close of calendar year 2010 and on or before September 15, 2011, pursuant to a timely filed extension, to make an income tax return, for and on behalf of the corporation, to any proper officer of the United States, stating specifically the items of Pegasus' gross income and the deductions and credits allowed by law. Well knowing and believing all of the foregoing, he did willfully fail, on or about September 15, 2011, in the District of Maryland, to make an income tax return to the aforementioned officers or to any other proper officer of the United States.

26 U.S.C. § 7203

COUNT FIVE

(Failure to File a U.S. Individual Income Tax Return, Form 1040, for Tax Year 2010)

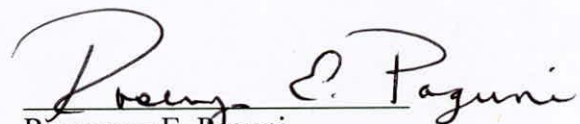
The Grand Jury for the District of Maryland further charges that:

During the calendar year 2010, in the District of Maryland and elsewhere, the defendant,

DAVID J. SIMARD,

a resident of Berwyn Heights, Maryland, had and received gross income in excess of \$9,350.00, the minimum filing amount established by law and applicable to him for that year; that by reason of such gross income he was required by law, following the close of the calendar year 2010, and on or before October 17, 2011, pursuant to a timely-filed extension, to make an income tax return to the Internal Revenue Service stating specifically the items of his gross income and any deductions and credits to which he was entitled; and that well knowing all of the foregoing, he did willfully fail, at the time required by law, to make an income tax return to the Internal Revenue Service.

26 U.S.C. § 7203



Rosemary E. Paguni
Chief, Northern Crim. Enforcement Section,
U.S. Department of Justice, Tax Division

A TRUE BILL:

SIGNATURE REDACTED

Foreperson

Dec 21, 2014