

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon.
	:	
v.	:	Criminal No. 16-____
	:	
ROBERT R. DATTILO	:	18 U.S.C. §§ 981(a)(1)(C) and 1349
	:	28 U.S.C. § 2461

INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

(18 U.S.C. § 1349)
(Conspiracy to Commit Wire Fraud and Mail Fraud)

1. At all times relevant to this Information:
 - a. Defendant ROBERT R. DATTILO (“defendant DATTILO”) was part owner of Bayway Lumber, a privately-owned corporation that sold commercial and industrial products, including hardware, lumber and other equipment. Bayway Lumber’s principal offices were located in Linden, New Jersey. Bayway Lumber sold commercial and industrial products to both public and private entities in New Jersey, New York, Pennsylvania and elsewhere, to include: the University of Medicine and Dentistry of New Jersey, the City of Elizabeth, the New York City Transit Authority, the Philadelphia Housing Authority, Consolidated Edison Company of New York, Inc., the City of Newark, the New York Department of Corrections, the Plainfield Board of Education, Amtrak, and a privately-held company based in Bergen County, New Jersey (collectively, the “Customer Entities”).
 - b. Defendant DATTILO was responsible for overseeing and managing, among other things, Bayway Lumber’s sales, various customer accounts and the submission of bids and quotes to many of Bayway Lumber’s customers.
 - c. Bayway Lumber employed individuals in various departments, including the sales department, the door department, the hardware department, the lumber yard, accounts receivable and accounts payable. Bayway Lumber’s sales associates reported directly to defendant DATTILO. To maintain its sales, Bayway Lumber’s representatives, including defendant DATTILO,

developed relationships with the employees of the Customer Entities who were responsible for purchasing items from Bayway Lumber.

2. From in or about 2007 to in or about November 2015, in Union County, in the District of New Jersey, and elsewhere, defendant

ROBERT R. DATTILO

and others, did knowingly and intentionally combine, conspire and confederate and agree to devise a scheme and artifice to defraud, and to obtain money and property from, private and public entities by means of materially false and fraudulent pretenses, representations and promises, facilitated and furthered through the use of the United States mails, private and commercial interstate carriers, and interstate wire communications, contrary to Title 18, United States Code, Sections 1341 and 1343.

3. The principal object of the conspiracy was to obtain money and other things of value from the Customer Entities by means of a number of fraudulent business practices and through the use of the United States Postal Service, private and commercial interstate carriers and interstate wire communications. The fraudulent business practices included: (a) overbilling the Customer Entities by inflating Bayway Lumber's prices or by intentionally failing to provide the prices called for in contractual agreements between Bayway Lumber and the Customer Entities; (b) charging the Customer Entities for more expensive items or larger quantities of items but providing the Customer Entities with lower quality, less expensive items or smaller quantities of the items; and (c) providing free items to employees of Customer Entities then recouping the cost of the items (plus additional profits for Bayway Lumber) by overbilling and fraudulently billing the Customer Entities. Throughout the course of the conspiracy, Bayway Lumber, at the direction and under the supervision of defendant DATTILO, engaged in hundreds of transactions involving

fraud of the types described above, leading to losses of at least \$708,386.

Overbilling

4. It was part of the conspiracy that:

a. At the direction and under the supervision of defendant DATTILO, Bayway Lumber fraudulently overbilled the Customer Entities to ensure that Bayway Lumber achieved its desired profits, by inflating the prices of items sold to the Customer Entities or by intentionally failing to provide the prices called for in contractual agreements between Bayway Lumber and the Customer Entities.

b. For example, from in or about February 2008 to at least in or about January 2015, Bayway Lumber had contracts with the University of Medicine and Dentistry of New Jersey (“UMDNJ”) and its successor entities—Rutgers, the State University of New Jersey and University Hospital—(hereinafter referred to as “UMDNJ”) to provide supplies, materials and equipment to UMDNJ. Under the terms of the contracts, Bayway Lumber was required to provide non-stock and special order items to UMDNJ at a specified mark-up above Bayway Lumber’s cost. Bayway Lumber also was required to submit to UMDNJ the underlying cost sheets, quotes or invoices showing Bayway Lumber’s cost for non-stock or special order items to support Bayway Lumber’s charges to UMDNJ.

c. At the direction and under the supervision of defendant DATTILO, Bayway Lumber charged UMDNJ prices higher than those permitted by the Bayway Lumber -UMDNJ contracts for non-stock and special order items. Bayway Lumber employees used various means to conceal the true cost of these items. First, Bayway Lumber employees obtained various quotes from different vendors and purchased the items at the lowest quoted prices, but billed UMDNJ amounts reflecting the contractually-permitted mark-up of the highest quoted prices. Bayway

Lumber employees then submitted the highest quotes to UMDNJ to support the inflated charges. Second, Bayway Lumber employees manually altered Bayway Lumber's vendor cost sheets to make it appear as if Bayway Lumber paid more for items than it actually did, then charged UMDNJ the contractually-permitted mark-up on the higher, inflated cost. Third, defendant DATTILO negotiated discounts with Bayway Lumber vendors whereby the vendors sold Bayway Lumber items at a lower, discounted price. Bayway Lumber hid these discounts—which sometimes were as high as 25 percent—from UMDNJ, and charged UMDNJ the contractually-permitted mark-up on the higher, non-discounted prices that were reflected on the vendor invoices. The use of these fraudulent methods was so frequent and pervasive that Bayway Lumber employees maintained a binder with copies of the higher-priced quotes and invoices and the falsified cost sheets that Bayway Lumber employees, in agreement with and at the direction of defendant DATTILO, routinely submitted to UMDNJ to support the inflated charges that Bayway Lumber billed to UMDNJ.

d. Bayway Lumber engaged in similar overbilling practices with other Customer Entities. For example, from in or about 2008 to in or about 2012, Bayway Lumber had contractual agreements with the City of Elizabeth ("Elizabeth") to provide Elizabeth with hardware supplies contained in a certain industrial supply catalogue (the "Supply Catalogue"), at specified discounts from the prices in the Supply Catalogue. Defendant DATTILO directed Bayway Lumber employees to charge Elizabeth prices that did not apply the discounts called for by the contracts and, at times, to charge Elizabeth prices that were even higher than those in the Supply Catalogue.

e. Similarly, in or about May 2008, Bayway Lumber entered into a contract with the New York City Transit Authority (the "Transit Authority") requiring Bayway Lumber to,

among other things, provide certain goods, primarily doors, frames, and door hardware, to the Transit Authority at the prices specified in the governing contract. The contract contained line item numbers for each of the items in the contract, and Bayway Lumber was required to bill the Transit Authority using the appropriate contract line item numbers. From in or about 2008 to in or about November 2013, at the direction of defendant Robert DATTILO, Bayway Lumber employees provided the Transit Authority with the items requested by the Transit Authority, but billed the Transit Authority for the most expensive doors, frames and hardware sets on the contract, as opposed to billing the Transit Authority for the less-expensive items that the Transit Authority actually ordered and received.

Product Substitution and Providing Fewer Items than Ordered

5. It was further part of the conspiracy that:
 - a. At the direction and under the supervision of defendant DATTILO, Bayway Lumber charged certain Customer Entities for more expensive items or larger quantities of items, but provided those Customer Entities with lower quality, less expensive items or smaller quantities of the items than the Customer Entities purchased. For instance, certain Customer Entities had contracts with Bayway Lumber wherein Bayway Lumber agreed to provide the Customer Entities with certain types of lumber at prices set forth in the contracts between Bayway Lumber and the Customer Entities. Rather than provide the lumber described in the contract or in purchase orders submitted by the Customer Entities, Bayway Lumber sent the Customer Entities lower-quality lumber, but charged the Customer Entities for the higher-quality lumber called for by the contracts or the purchase orders. For example, many of the Customer Entities placed orders for CDX graded plywood, a type of plywood graded by mills that have been certified by trade associations, such as the APA – The Engineered Wood Association (“APA”). CDX graded plywood is

construction-grade plywood that meets certain industry specifications. Bayway Lumber routinely sent certain Customer Entities substitute plywood, in place of the CDX, that was not certified and was not construction-grade material.

b. To ensure that the Customer Entities did not detect the fact that Bayway Lumber was sending them lower-quality lumber, defendant DATTILO directed Bayway Lumber employees to spray paint or rearrange the lumber to hide any markings on the lumber that would indicate that the lumber was of a lower quality than what the Customer Entities ordered and expected to receive from Bayway Lumber. For example, at defendant DATTILO's instruction, Bayway Lumber employees covered up the term "reject," which often appeared on lower-quality lumber that did not meet certain industry specifications, before delivering the lower-quality lumber to certain Customer Entities. Furthermore, Bayway Lumber's invoices to the Customer Entities falsely described the lower-quality lumber as the higher-quality lumber that the Customer Entities ordered, even though Bayway Lumber provided the Customer Entities with lower-quality lumber.

c. DATTILO, in agreement with others, perpetrated the lumber substitution scheme with various Customer Entities, including the Philadelphia Housing Authority, Consolidated Edison Company of New York, Inc. ("Con Edison"), the New York Department of Corrections and the City of Newark.

"The Bank" and Free Items to Employees of the Customer Entities

6. It was further part of the conspiracy that:

a. At the direction and under the supervision of defendant DATTILO, Bayway Lumber employees provided free items to employees of certain Customer Entities and overbilled or fraudulently billed those Customer Entities—with the agreement and consent of the Customer

Entities' employees who were receiving the gifts—to recoup the cost of the free items and to generate additional profits for Bayway Lumber. Defendant DATTILO kept a running tally of how much Bayway Lumber overbilled and fraudulently billed the Customer Entities—which defendant DATTILO referred to as the “Bank”—to ensure that Bayway Lumber recovered the full cost of any free items that Bayway Lumber provided to the employees of the Customer Entities, plus additional profits from the overbilling and fraudulent billing. The Customer Entities were not informed that they were being overbilled and fraudulently billed to cover the cost of gifts to the employees of the Customer Entities.

b. Bayway Lumber, at the direction of defendant DATTILO, employed various methods to overbill and fraudulently bill the Customer Entities in connection with these gifts. Certain Customer Entities, such as Amtrak, were consistently charged significant markups, sometimes as high as 200 or 300 percent, on items purchased from Bayway Lumber. During the course of the conspiracy, employees of Bayway Lumber, at the direction and under the supervision of defendant DATTILO, gave Amtrak employees numerous items for free, including a camera, a sound system, tires, televisions, memory cards, computer equipment and other items, and recovered the cost of those items—plus additional profits to Bayway Lumber—by overbilling and fraudulently billing Amtrak.

c. Other Customer Entities were charged for items that they did not receive at all to cover the cost of free gifts to certain employees of the Customer Entities. For example, Bayway Lumber, at the direction and under the supervision of defendant DATTILO, gave furniture, gift cards, tickets to baseball games, a television, a bicycle, boots, a camera and other free items to an employee of a Customer Entity that was a company based in Bergen County, New Jersey (“Company 1”) and then recovered the cost of those items—plus additional profits to

Bayway Lumber —by fraudulently billing Company 1 for items that Company 1 never received.

d. As described above, Bayway Lumber overbilled Customer Entities by purposely not applying the discounts required by the contracts between Bayway Lumber and the Customer Entities, and then used a portion of the proceeds from the overbilling to purchase gifts for the Customer Entities' employees. At the direction of defendant DATTILO, Bayway Lumber frequently overbilled one such entity, the Plainfield Board of Education, and spent some of the overbilling proceeds to purchase items, including binoculars, a dishwasher, a laptop computer, boots, coats, and other items for certain employees of the Plainfield Board of Education. The rest of the proceeds from the overbilling scheme were added to Bayway Lumber's profits.

e. Defendant DATTILO was principally in charge of the "Bank" system, and Bayway Lumber employees reported primarily to defendant DATTILO before purchasing items for Customer Entities employees. Defendant DATTILO used various methods to keep track of the "Bank." One method was to have Bayway Lumber employees print out "screen shots" of an internal viewer page from Bayway Lumber's computerized point of sales system, which defendant DATTILO maintained in a file in his office. The screen shots demonstrated the cost to Bayway Lumber of an item or items, the price at which Bayway Lumber sold the item or items to a Customer Entity, and the gross profit that Bayway Lumber made on the item or items. A second method was for Bayway Lumber to maintain individual customer accounts for the employees of the Customer Entities who were receiving items for free to keep track of the value of these free items. Once the Customer Entities had been sufficiently overbilled to cover the cost of the items and pad Bayway Lumber's profits, the employees' accounts were zeroed out.

Interstate Wires and Mailings

7. It was further part of the conspiracy, in order to execute and attempt to execute the scheme, that defendant DATTILO sent and caused to be sent numerous interstate wire communications which were transmitted into and out of the District of New Jersey. For example:

Date (on or about)	Wire Transmission
April 21, 2012	Defendant DATTILO sent an e-mail to a Bayway Lumber employee, using a server located outside of New Jersey, asking whether the Bayway Lumber employee had taken care of a request by an employee of Company 1 for Bayway Lumber to purchase the Company 1 employee Yankee tickets and cover the cost of the tickets by fraudulently charging Company 1 for blacktop patch and diamond blades.
August 2, 2013	At the direction of defendant DATTILO, a Bayway Lumber employee sent by facsimile, from Bayway Lumber's office in New Jersey to the Transit Authority's office in New York, an invoice containing fraudulent charges for doors, frames, and hardware.
August 6, 2013	At the direction of defendant DATTILO, a Bayway Lumber employee sent an e-mail, using a server located outside of New Jersey, to a UMDNJ employee, attaching a summary bill containing fraudulent charges.
October 24, 2013	Defendant DATTILO emailed a Bayway Lumber employee, using a server located outside of New Jersey, regarding an order from Con Edison for five 10lb boxes of copper nails, and instructed the employee to attempt to send 7lb boxes instead of 10lb boxes.

8. It was further part of the conspiracy, in order to execute and attempt to execute the scheme, that defendant DATTILO used, and caused the use of, the United States Postal Service and private and commercial interstate common carriers. For example:

Date (on or about)	Mailing
May 13, 2011	The Philadelphia Housing Authority mailed a check to Bayway Lumber, via the United States Postal Service, in the amount of \$21,934, including \$2,870 as payment for lower-quality substituted lumber.
August 6, 2013	Defendant DATTILO caused a Bayway Lumber employee to send UMDNJ, via United Parcel Service ("UPS"), a summary bill containing fraudulent charges.

In violation of Title 18, United States Code, Section 1349.

Forfeiture Allegation

1. As a result of committing the aforementioned offense in violation of Title 18, United States Code, Section 1349, as alleged in this Information, defendant ROBERT DATTILO shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of such offense, and all property traceable thereto, including but not limited to, a sum of money equal to \$708,386, representing the proceeds of the offense charged in this Information.

2. If any of the above-described forfeitable property, as a result of any act or omission of defendant ROBERT DATTILO:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), to seek forfeiture of any other property of defendant ROBERT DATTILO, up to the value of the above-described forfeitable property.



PAUL J. FISHMAN
United States Attorney

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INFORMATION FOR

18 U.S.C. § 981(a)(1)(C)

18 U.S.C. § 1349

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PAUL J. FISHMAN

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