

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

BIG APPLE DESIGNERS, INC., and,
MALKY HOROWITZ
a/k/a MALKY TEITELBAUM

Defendants.

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuses the defendants of the crime of **CONSPIRACY IN THE FIFTH DEGREE**, in violation of Penal Law § 105.05(1), committed as follows:

The defendants, in the County of New York and elsewhere, during the period from on or about October 8, 2018, to on or about November 9, 2021, with the intent that conduct constituting the felonies of Falsifying Business Records in the First Degree and Offering a False Instrument for Filing in the First Degree be performed, agreed with each other and others to engage in and cause the performance of such conduct.

PREAMBLE

The purpose of the conspiracy was to increase Big Apple Designers, Inc.'s business and revenues by obtaining contracts on construction projects based on false representations regarding

minority-owned and woman-owned business enterprise (“M/WBE”) firms. The New York State Homes & Community Renewal (“HCR”) and New York City Housing Preservation & Development (“HPD”) agencies, headquartered in New York County, require that construction projects receiving public loans, grants, and other funding meet M/WBE participations goals as set forth in contracts, commitments, and other related documents. To meet a project’s M/WBE goals, construction management (“CM”) companies and general Contractors (“GC”) hire M/WBE firms directly and/or rely on commitments made by non-M/WBE subcontractors to contract with M/WBE firms.

To accomplish the objective of the conspiracy, Big Apple Designers, Inc. falsified business records and offered false instruments for filing to make it appear that Big Apple Designers, Inc. ordered, purchased, and received materials from Eco Geek Living, Inc., a New York State certified M/WBE firm, when in fact the materials were supplied by Tri-State Lumber, Ltd., a non-M/WBE firm. During the relevant period of the conspiracy, Malky Horowitz a/k/a Malky Teitelbaum (“Malky Horowitz”) was employed by Big Apple Designers, Inc. as its Accounting Manager and was responsible for conducting financial transactions and preparing business records to facilitate the M/WBE pass-through fraud. The defendants engaged in the scheme in connection with the construction projects located at 11 West 118th Street, New York, New York (“11 West 118th Street project”); 50 Nevins Street, Brooklyn, New York (“50 Nevins Street project”); and, 347 Henry Street, Brooklyn, New York (“347 Henry Street project”).

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, during the period from on or about October 8, 2018, to on or about November 9, 2021, the following overt acts, among others, were committed:

1. On or about October 8, 2018, Leah Guttman met with co-conspirator-1 (“CC-1”), the principal and sole employee of Eco Geek Living, Inc., to discuss the M/WBE scheme.
2. On or about October 12, 2018, Israel Wiesenfeld sent a voice message via WhatsApp, which stated in substance, “Make sure the invoices for the customer, she sends it to that email address, not to Tri-State Lumber, and you have to email it to the customer from that email address. It can’t be a Tri-State Lumber chain here.”
3. On or about October 15, 2018, an employee of Tri-State opened an email account with Google, Inc. in the name of Eco Geek Living, Inc. (“the Gmail Account”). Brenda Neustadt’s cellphone number was listed as the Gmail Account’s recovery account cellphone.
4. On or about January 3, 2019, Israel Wiesenfeld, Leah Guttman, Brenda Neustadt, of Tri-State Lumber, Ltd. had an email exchange with Eco Geek Living, Inc., and an individual from Velocity Framers, a company controlled by Big Apple Designers, Inc. The individual from Velocity Framers asked Tri-State Lumber, Ltd. to give Big Apple Designers, Inc. the M/WBE certificate for Eco Geek Living, Inc. to use on the 347 Henry Street project.

5. On or about April 9, 2019, a Big Apple Designers, Inc. employee emailed Israel Wiesenfeld, a Tri-State Lumber, Ltd. executive responsible for Big Apple Designers, Inc.'s account, copying Malky Horowitz and others, stating in substance, "Izzy, Need to fill this out for the MWBE job 347 Henry." Attached to the email was an M/WBE registration form.
6. On or about May 8, 2019, a Big Apple Designers, Inc. employee emailed representatives from General Contractor-1 ("GC-1"), headquartered in New York County, stating in substance, "Since this job is prevailing wage, most of the cost is in Labor, we can not do 30% on material W/MBE, 20% is more reasonable."
7. On or about May 8, 2019, Big Apple Designers, Inc.'s President executed a rider containing the 20% M/WBE commitment on the part of Big Apple Designers, Inc., and the rider was emailed to GC-1, located in New York County.
8. On or about May 16, 2019, Big Apple Designers, Inc., through its President, executed a contract in connection with the 11 West 118th Street project, which contained an M/WBE participation rider detailing the project's M/WBE participation goal.
9. On or about June 4, 2019, a Big Apple Designers, Inc. employee replied via email to a request for information concerning the subcontractors and materials suppliers being used by Big Apple Designers, Inc. from the project compliance team at GC-1, located in New York County, for 11 West 118th Street, stating in substance, "Here is our list, just 1 for labor and 1 for material . . . Material: Eco Geek Living, Inc. See attached MBE certificate."

10. On or about June 19, 2019, Brenda Neustadt, a Tri-State Lumber, Ltd. employee responsible for managing the Eco Geek Living, Inc. M/WBE pass-through, emailed Malky Horowitz, stating in substance, “I see orders are being put in thur jack Teitelbaum. For 357 Henry st under big apple. Hes not aware of Eco Geek . please advise how I go about. Do I switch over all those pick ups?”
11. On the same date, Malky Horowitz sent a series of email replies, which together stated in substance, “I will look into this and get back to you in a few . . . Please switch over all orders from till now. I reached out to all managers ordering for this address to make sure they know to order through Eco Geek . . . Please note on this job from your end that whatever order comes in for this address should go through Eco Geek, no matter how the managers place the order.”
12. On or about September 9, 2019, Malky Horowitz emailed Brenda Neustadt at both her Tri-State Lumber, Ltd. email address and the Eco Geek Living, Inc. gmail account (which was created and used by Brenda Neustadt), stating in substance, “Please sign and notarize the attached.” Attached to the email was a lien waiver addressed to Eco Geek Living, Inc. for the 11 West 118th Street project.
13. On or about December 10, 2019, Malky Horowitz emailed Brenda Neustadt at both her Tri-State Lumber, Ltd. email address and the Eco Geek Living, Inc. gmail account, stating in substance, “Hi Brenda, Trying to call you regarding 50 Nevins . . . please call me back.”

14. On or about February 4, 2020, co-conspirator-1 (“CC-1”), the principal of Eco Geek Living, Inc., executed an HCR Affirmation of Income Payments form falsely representing that Eco Geek sold materials to Big Apple Designers, Inc., when Tri-State Lumber, Ltd. had sold and supplied the materials for the 50 Nevins Street project. The affirmation was filed with HCR in New York County.
15. On or about February 11, 2020, Malky Horowitz sent an email with the subject name “Victory waiver 12/31/2019,” to Brenda Neustadt (at her Tri-State Lumber, Ltd. email address) and a second Tri-State Lumber, Ltd. employee, stating in substance, “Please sign the attached waiver and send along an open balance statement showing the December waivers either as paid or not due yet.” Attached to the email was a lien waiver related to the 11 West 118th Street project to be executed by Eco Geek Living, Inc. for purportedly supplying materials to Big Apple Designers, Inc. at the project.
16. On or about May 13, 2020, Malky Horowitz emailed the client construction firm, located in New York County, for the 11 West 118th Street project, stating in substance, “See attached waivers and sworn statement, I think otherwise we are fully compliant.” Attached to the email were sworn statements executed by the President of Big Apple Designers, Inc. and CC-1 which falsely stated that Eco Geek Living, Inc. was hired to supply materials to Big Apple Designers, Inc. and was paid for said materials.

17. On or about July 1, 2020, in a series of emails between Malky Horowitz and Brenda Neustadt (at her Tri-State Lumber, Ltd. email address), Malky Horowitz stated in substance that Tri-State Lumber, Ltd. could send a representative to Big Apple Designers, Inc.'s office to pick up a check made payable to Eco Geek Living, Inc. Malky Horowitz attached an account statement evidencing a series of payments made from Big Apple Designers, Inc. to Eco Geek Living, Inc.
18. On or about August 12, 2020, Malky Horowitz emailed GC-1, located in New York County, for the 11 West 118th Street project, stating in substance, "My bad, there was a mistake in my calculations, I went through it now with Eco Geek. See attached sworn statement. The amount to pay directly to Eco Geek is \$81,992.84, and the amount to pay us is \$119,872.66."
19. On or about August 17, 2020, in response to a request for contact information for Eco Geek Living, Inc. regarding the 11 West 118th Street project, Malky Horowitz sent a series of emails to the client construction firm, stating in substance, "Please send the paperwork to Brenda – eglivinginc@gmail.com . . . 718-599-4700 ask for Brenda."
20. On or about November 9, 2020, Malky Horowitz emailed Israel Wiesenfeld, stating in substance, "I am waiting for the Nevins report in order to make the check."
21. On or about November 9, 2020, Israel Wiesenfeld replied, copying Brenda Neustadt, stating in substance, "First make a check for what u have open approx. 48k . . . I sent the new invoices to eco geek to process hopefully she will do them today Lmk when check is ready so I can someone to pick up."

22. On or about March 3, 2021, Israel Wiesenfeld sent an email with the subject name “Report – ECO GEEK” to Malky Horowitz, copying Brenda Neustadt and a second Tri-State Lumber, Ltd. employee, stating in substance, “See attached 86,769.48 has to be cleared up they r all over 60 days.” Attached to the email was a Tri-State Lumber, Ltd. account statement in the name of Eco Geek Living, Inc., which identified Big Apple Designers, Inc.’s open balance for the 347 Henry Street project as \$90,256.93.
23. On or about March 11, 2021, CC-1 executed an HCR Affirmation of Income Payments form falsely representing that Eco Geek sold materials to Big Apple Designers, Inc., when Tri-State Lumber, Ltd. sold and supplied the materials for the 50 Nevins Street project. The affirmation was filed with HCR in New York County.
24. On or about April 7, 2021, CC-1 executed an HCR Affirmation of Income Payments form falsely representing that Eco Geek sold materials to Big Apple Designers, Inc., when Tri-State Lumber, Ltd. sold and supplied the materials for the 50 Nevins Street project. The affirmation was filed with HCR in New York County.
25. On or about April 29, 2021, a Big Apple Designers, Inc. employee replied via email to the project compliance team at GC-1 for the 11 West 118th Street project, stating in substance, “See attached Eco Geek waiver, Exclusive will follow shortly.” Attached to the email was a sworn affidavit of payment executed by CC-1, which falsely stated that Eco Geek Living, Inc. supplied materials to Big Apple Designers, Inc. with a value of \$462,383.98.

26. On or about June 10, 2021, following an email exchange between Malky Horowitz and Brenda Neustadt (using her Tri-State email address) with the subject title, "MWBE," Malky Horowitz sent a series of emails, which together stated in substance, " Thanks, please also fill out and sign the attached . . . When can I expect the filled out paperwork from you." The final email had an attachment consisting of a partially executed New York City Small Business Services Division of Labor Services Contract Compliance Unit M/WBE document listing Eco Geek Living, Inc. as a WBE lumber and drywall supplier.
27. On or about July 13, 2021, Big Apple Designers, Inc., through its president, executed an affirmation of income payment to M/WBE document in connection with the 347 Henry Street project, which falsely stated that \$446,106 was paid to Eco Geek Living, Inc. in connection with materials it supplied. The affirmation was filed with an M/WBE compliance firm in New York County.
28. On or about August 2, 2021, Big Apple Designers, Inc. falsely reported to the New York City Department of Housing Preservation & Development, in New York County, that Big Apple Designers, Inc. purchased \$462,383.98 in materials from Eco Geek Living, Inc. as an M/WBE supplier in connection with the compliance reporting for the 11 West 118th Street project.
29. On or about August 31, 2021, Israel Wiesenfeld sent a message via WhatsApp, which contained a screenshot of a text message exchange between Israel Wiesenfeld and Big Apple Designers, Inc.'s Treasurer. As set forth in the text message image, Israel Wiesenfeld stated, "347 Henry \$2550 50 nevins 57,450 . . . Need 60k for eco geek."

30. On or about August 31, 2021, Israel Wiesenfeld sent a message via WhatsApp, which contained a screenshot of a text message exchange between Israel Wiesenfeld and Big Apple Designers, Inc.'s Treasurer. As set forth in the text message image, in response to Israel Wiesenfeld's above-mentioned payment demands, the Treasurer replied in substance, "Told you on it . . . I didn't forget."
31. On or about September 1, 2021, Israel Wiesenfeld sent a WhatsApp message, which stated, "Don't take any orders for big apple eco geek account."
32. On or about October 14, 2021, CC-1 executed an HCR Affirmation of Income Payments form falsely representing that Eco Geek sold materials to Big Apple Designers, Inc., when Tri-State Lumber, Ltd. sold and supplied the materials for the 50 Nevins Street project. The affirmation was filed with HCR in New York County.

SECOND COUNT:

THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, further accuses the defendants of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE**, in violation of Penal Law § 190.65(1)(b), committed as follows:

The defendants, in the County of New York, and elsewhere, during the period from on or about February 11, 2019, to on or about November 9, 2021, engaged in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person and to obtain property from more than one person, to wit, multiple general contractor firms and government

entities, by false and fraudulent pretenses, representations and promises, and so obtained property with a value in excess of one thousand dollars from one or more such persons.

THIRD COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants of the crime **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law §175.10, committed as follows:

The defendants, in the County of New York, on or about November 11, 2019, with intent to defraud, and to commit another crime and to aid and conceal the commission thereof, made and caused a false entry in the business records of General Contractor-1, to wit, a Sub-Tier Subcontractor/Supplier Release, Waiver and Affidavit of Payment document.

FOURTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants of the crime **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law §175.10, committed as follows:

The defendants, in the County of New York, on or about May 13, 2020, with intent to defraud, and to commit another crime and to aid and conceal the commission thereof, made and caused a false entry in the business records of General Contractor-1, to wit, a Sub-Tier Subcontractor/Supplier Release, Waiver and Affidavit of Payment document.

FIFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants of the crime **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law §175.10, committed as follows:

The defendants, in the County of New York, on or about April 29, 2021, with intent to defraud, and to commit another crime and to aid and conceal the commission thereof, made and caused a false entry in the business records of General Contractor-1, to wit, a Sub-Tier Subcontractor/Supplier Release, Waiver and Affidavit of Payment document.

SIXTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants of the crime of **OFFERING A FALSE INSTRUMENT IN THE FIRST DEGREE**, in violation of Penal Law §175.35(1), committed as follows:

The defendants, in the County of New York, during the period on or about October 15, 2021, to on or about October 20, 2021, knowing that a written instrument, to wit, New York City Department of Housing Preservation & Development M/WBE compliance reports, contained a false statement and false information, and with intent to defraud the state and any political subdivision, public authority, and public benefit corporation, offered and presented it to a public office, public servant, public authority and public benefit corporation, with the knowledge and belief

that it would be filed with, registered and recorded in and otherwise become part of the records of such public office, public servant, public authority and public benefit corporation.

SEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants of the crime **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law §175.10, committed as follows:

The defendants, in the County of New York and elsewhere, on or about July 17, 2020, with intent to defraud, and to commit another crime and to aid and conceal the commission thereof, made and caused a false entry in the business records of General Contractor-2, to wit, a New York State Homes and Community Renewal (“HCR”) affirmation of income document.

EIGHTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants of the crime **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law §175.10, committed as follows:

The defendants, in the County of New York and elsewhere, on or about October 14, 2021, with intent to defraud, and to commit another crime and to aid and conceal the commission thereof, made and caused a false entry in the business records of General Contractor-2, to wit, a New York State Homes and Community Renewal (“HCR”) affirmation of income document.

NINTH COUNT

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants of the crime of **OFFERING A FALSE INSTRUMENT IN THE FIRST DEGREE**, in violation of Penal Law §175.35(1), committed as follows:

The defendants, in the County of New York, during the period from on or about July 17, 2020, to on or about August 25, 2020, knowing that a written instrument, to wit, a New York State Homes and Community Renewal (“HCR”) M/WBE payment affirmation, contained a false statement and false information, and with intent to defraud the state and any political subdivision, public authority, and public benefit corporation, offered and presented it to a public office, public servant, public authority and public benefit corporation, with the knowledge and belief that it would be filed with, registered and recorded in and otherwise become part of the records of such public office, public servant, public authority and public benefit corporation.

TENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants of the crime of **OFFERING A FALSE INSTRUMENT IN THE FIRST DEGREE**, in violation of Penal Law §175.35(1), committed as follows:

The defendants, in the County of New York, during the period from on or about March 11, 2021, to on or about April 1, 2021, knowing that a written instrument, to wit, a New York State Homes and Community Renewal (“HCR”) M/WBE payment affirmation, contained a false

statement and false information, and with intent to defraud the state and any political subdivision, public authority, and public benefit corporation, offered and presented it to a public office, public servant, public authority and public benefit corporation, with the knowledge and belief that it would be filed with, registered and recorded in and otherwise become part of the records of such public office, public servant, public authority and public benefit corporation.

ELEVENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants of the crime of **OFFERING A FALSE INSTRUMENT IN THE FIRST DEGREE**, in violation of Penal Law §175.35(1), committed as follows:

The defendants, in the County of New York, during the period from on or about February 4, 2021, to on or about February 10, 2021, knowing that a written instrument, to wit, a New York State Homes and Community Renewal (“HCR”) M/WBE payment affirmation, contained a false statement and false information, and with intent to defraud the state and any political subdivision, public authority, and public benefit corporation, offered and presented it to a public office, public servant, public authority and public benefit corporation, with the knowledge and belief that it would be filed with, registered and recorded in and otherwise become part of the records of such public office, public servant, public authority and public benefit corporation.

TWELFTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants of the crime of **OFFERING A FALSE INSTRUMENT IN THE FIRST DEGREE**, in violation of Penal Law §175.35(1), committed as follows:

The defendants, in the County of New York, during the period from on or about April 7, 2021, to on or about April 9, 2021, knowing that a written instrument, to wit, a New York State Homes and Community Renewal (“HCR”) M/WBE payment affirmation, contained a false statement and false information, and with intent to defraud the state and any political subdivision, public authority, and public benefit corporation, offered and presented it to a public office, public servant, public authority and public benefit corporation, with the knowledge and belief that it would be filed with, registered and recorded in and otherwise become part of the records of such public office, public servant, public authority and public benefit corporation.

THIRTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants of the crime of **OFFERING A FALSE INSTRUMENT IN THE FIRST DEGREE**, in violation of Penal Law §175.35(1), committed as follows:

The defendants, in the County of New York, during the period from on or about July 1, 2021, to on or about July 27, 2021, knowing that a written instrument, to wit, a New York State Homes and Community Renewal (“HCR”) M/WBE payment affirmation, contained a false statement and false information, and with intent to defraud the state and any political subdivision, public authority,

and public benefit corporation, offered and presented it to a public office, public servant, public authority and public benefit corporation, with the knowledge and belief that it would be filed with, registered and recorded in and otherwise become part of the records of such public office, public servant, public authority and public benefit corporation.

FOURTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse defendants of the crime of **OFFERING A FALSE INSTRUMENT IN THE FIRST DEGREE**, in violation of Penal Law §175.35(1), committed as follows:

The defendants, in the County of New York, during the period from on or about October 14, 2021, to on or about October 28, 2021, knowing that a written instrument, to wit, a New York State Homes and Community Renewal (“HCR”) M/WBE payment affirmation, contained a false statement and false information, and with intent to defraud the state and any political subdivision, public authority, and public benefit corporation, offered and presented it to a public office, public servant, public authority and public benefit corporation, with the knowledge and belief that it would be filed with, registered and recorded in and otherwise become part of the records of such public office, public servant, public authority and public benefit corporation.

FIFTEENTH COUNT:

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the defendants of the crime **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE**, in violation of Penal Law §175.10, committed as follows:

The defendants, in the County of New York, during the period from on or about June 24, 2021, to on or about July 13, 2021, with intent to defraud, and to commit another crime and to aid and conceal the commission thereof, made and caused a false entry in the business records of Consulting Company-1, to wit, M/WBE compliance documents.

ALVIN L. BRAGG, JR.
District Attorney

7th Additional Grand Jury for the 1st Term; GJ Case # 3D

Filed:

NA

No.

THE PEOPLE OF THE STATE OF NEW YORK

-against-

BIG APPLE DESIGNERS, INC., and,
MALKY HOROWITZ,
a/k/a MALKY TEITELBAUM

Defendants.

INDICTMENT

CONSPIRACY IN THE FIFTH DEGREE, P.L. §105.05(1)
SCHEME TO DEFRAUD IN THE FIRST DEGREE, P.L. §190.65(1)(b)
FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, P.L. §175.10 (6 counts)
OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, P.L. §175.35 (7 counts)

ALVIN L. BRAGG, JR., District Attorney

A True Bill

James J. Hanley
Zachary L. Weintraub
Rackets Bureau

Foreman