

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	No.
)	
v.)	Violations: Title 18, United
)	States Code, Sections 2, 666,
STUART LEVINE,)	1001, 1341, 1343, 1346, 1951,
JACOB KIFERBAUM,)	1956, and 1957
P. NICHOLAS HURTGEN)	

COUNT ONE

The SPECIAL MARCH 2004 GRAND JURY charges:

1. At times material to this indictment:

Relevant Entities and Individuals

a. The Finch University of Health Sciences/Chicago Medical School ("Chicago Medical School" and "CMS"), now known as the Rosalind Franklin University of Medicine and Science, was a not-for-profit private educational institution located in North Chicago, Illinois. The Chicago Medical School built an addition to its facilities in or about 2001, and built student housing in or about 2002.

b. The Northshore Supporting Organization ("NSO") was a charitable trust established to support and operate for the benefit of the Chicago Medical School.

c. Mercy Health System Corporation ("Mercy Hospital") was a not-for-profit corporation located in Janesville, Wisconsin that operated hospitals and provided health care services to the public in Wisconsin and Illinois.

d. Edward Hospital, which was part of Edward Health Services Corporation, (collectively referred to as "Edward

Hospital"), was a not-for-profit corporation located in Naperville, Illinois that operated a hospital and provided health care services to the public.

e. The Illinois Health Facilities Planning Board ("Planning Board") was a commission of the State of Illinois, established by statute, whose members were appointed by the Governor of the State of Illinois. State law required an entity seeking to build a hospital, medical office building, or other medical facility in Illinois to obtain a permit, known as a "Certificate of Need" ("CON"), from the Planning Board prior to beginning construction.

f. Defendant STUART LEVINE was an attorney and businessman, whose business interests included S.L. Investment Enterprises, L.P. In addition, LEVINE was:

i. A member of the Illinois Health Facilities Planning Board. In that capacity he owed a duty of honest services to the Planning Board, the State of Illinois, and the people of the State Illinois.

ii. A member of the Board of Trustees of the Chicago Medical School, and he was the Chairman of the Real Estate Committee. In that capacity, he owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

iii. A trustee of the NSO. In that capacity he owed a fiduciary duty and a duty of honest services to the NSO.

g. Defendant JACOB KIFERBAUM owned and operated Kiferbaum Construction Company, a construction company located in Deerfield,

Illinois. In addition, KIFERBAUM was a member of the Board of Trustees of the Chicago Medical School. In that capacity, he owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

h. Defendant P. NICHOLAS HURTGEN was employed as a Senior Managing Director in the Chicago office of Bear Stearns & Co., an investment bank that did business and sought to do business with Edward Hospital, Mercy Hospital, and the State of Illinois.

i. Individual 1 was a medical doctor and businessman, and shared a business suite with LEVINE. In addition, Individual 1 was:

i. A member of the Board of Trustees of the Chicago Medical School. In that capacity, he owed a fiduciary duty and a duty of honest services to the Chicago Medical School.

ii. A trustee of NSO. In that capacity, he owed a fiduciary duty and a duty of honest services to NSO.

j. Individual 2 was the President and Chief Executive Officer of a consulting company located in Chicago, Illinois. In addition, Individual 2 was an attorney.

k. Individual 3 was a businessman based in Europe who at times traveled to the United States, and maintained accounts at various financial institutions in Chicago, Illinois.

Applications for Certificates of Need

l. Pursuant to the Illinois Health Facilities Planning Act (5 ILCS 3960), and the Planning Board Rules, members of the Planning Board were required to base their decision on an application

for a CON on a reasonable and objective application of the pertinent standards set forth in the Planning Act and the Planning Board Rules. Prior to each meeting of the Planning Board, the staff of the Planning Board reviewed each CON application to be presented at that meeting and prepared a written analysis of whether the application was consistent with the standards for the issuance of a CON. The Planning Board could approve, deny, or defer an application, or it could issue an "intent-to-deny", and the application would ordinarily be reconsidered by the Planning Board within a specified time period.

m. Beginning in or about 2003, Mercy Hospital sought a CON to construct hospital in Crystal Lake, Illinois.

i. In connection with a meeting of the Planning Board in or about December 2003, the staff of the Planning Board issued a report stating that the proposed hospital in Crystal Lake did not appear to meet all of the Planning Board's stated criteria for approval. At its December 2003 meeting, the Planning Board issued an intent-to-deny with respect to the hospital.

ii. In connection with a meeting of the Planning Board in or about April 2004, the staff of the Planning Board issued a supplemental report after the receipt of additional information and project modifications from Mercy Hospital regarding the proposed Crystal Lake hospital. The staff report stated that the proposed hospital still did not appear to meet all of the Planning Board's stated criteria for approval. At its April 2004 meeting, the

Planning Board approved the issuance of a CON for the Crystal Lake Hospital.

n. Beginning in or about 2003, Edward Hospital sought CONs to construct a hospital and a medical office building in Plainfield, Illinois.

i. In connection with a meeting of the Planning Board in or about December 2003, the staff of the Planning Board issued a report stating that the proposed medical office building in Plainfield did not appear to meet all of the Planning Board's criteria for approval. At its December 2003 meeting, the Planning Board issued an intent-to-deny with respect to the CON sought for the medical office building.

ii. In connection with a meeting of the Planning Board in or about April 2004, the staff of the Planning Board issued a report stating that the proposed hospital in Plainfield did not appear to meet all of the Planning Board's criteria for approval. At its April 2004 meeting, the Planning Board issued an intent-to-deny with respect to the CON sought for the hospital.

Illinois Laws Regarding Conduct of Public Officials and Bribery

o. Pursuant to the State Officials and Employees Ethics Act (5 ILCS 430/5-50), which became effective on December 9, 2003, Planning Board members were prohibited from having any material communications with a representative of a party concerning a pending matter, without reporting that contact to the Board in writing. The

Board's Ethical Guidelines, which were circulated in August 2003, also prohibited such communications.

p. The Board's Ethical Guidelines provided, *inter alia*:

A Member should not accept, or offer to accept, either directly or indirectly, any economic opportunity or thing of value, if a substantial possibility exists that the opportunity or thing of value is made available to the Member for the purpose of influencing an official action.

A Member should not solicit, accept or agree to accept, directly or indirectly, anything of value from from any person having an interest in any matter which is pending before the Board, under circumstances from which it might reasonably be inferred that the donor's purpose is to influence an official action....

A Member should not communicate with any party in support of, or opposed to, a matter pending before the Board or with the representative of any such party concerning such matter, except as a matter of official record[.]

q. Counsel for the Planning Board advised Board members in writing that Board members should not participate in Board activities if the independent exercise of the Board member's judgment was threatened, or participation would jeopardize public confidence in the integrity of the decisions of the Board.

r. Pursuant to the criminal laws of the State of Illinois, relating to bribery (720 ILCS 5/33-1(d)), LEVINE, as a member of the Planning Board, was prohibited from agreeing to accept any property or personal advantage which he was not authorized by law to accept knowing that such property or personal advantage was promised or tendered with intent to cause him to influence the performance of any act related to the employment or function of any public officer.

s. Pursuant to the criminal laws of the State of Illinois, relating to bribery (720 ILCS 5/33-1(e)), defendants HURTGEN and KIFERBAUM were each prohibited from soliciting or agreeing to accept any property or personal advantage pursuant to an understanding that he would improperly influence or attempt to influence the performance of any act related to the employment or function of any public officer.

t. Pursuant to the criminal laws of the State of Illinois, relating to official misconduct (720 ILCS 5/33-3(c)), LEVINE, as a member of the Planning Board, was prohibited from committing the following acts in his official capacity: (1) performing any act in excess of his lawful authority, with intent to obtain a personal advantage for himself or others; and (2) soliciting or knowingly accepting, for the performance of any act, a fee or reward which he knew was not authorized by law.

The Scheme To Defraud

2. Beginning no later than in or about early 2001 and continuing through at least in or about June 2004, in the Northern District of Illinois, Eastern Division, and elsewhere:

STUART LEVINE,
JACOB KIFERBAUM, and
P. NICHOLAS HURTGEN,

defendants herein, and others known and unknown to the Grand Jury, devised and intended to devise, and participated in, a scheme and artifice to defraud CMS, NSO, the Planning Board, the State of Illinois, and the people of Illinois, of money, property, and the

intangible right to the honest services of defendants LEVINE and KIFERBAUM, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, and in furtherance thereof used the United States mails and other interstate carriers, and interstate and foreign wires, which scheme is further described below.

Overview of the Scheme

3. It was part of the scheme that defendant LEVINE, with the assistance of defendants KIFERBAUM and HURTGEN, fraudulently obtained and sought to obtain millions of dollars for the benefit of LEVINE, and his nominees and associates, and multi-million dollar contracts for the benefit of businesses involving KIFERBAUM and HURTGEN, which conduct involved a series of kickbacks related to construction contracts, as well as the diversion of assets from CMS and NSO. In carrying out this scheme, LEVINE misused the positions of trust that he held with, variously, CMS, NSO, the Planning Board, the State of Illinois, and the people of Illinois, and defrauded those victims of their rights to his honest services. Among the defendants' fraudulent transactions in the course of the scheme were the following:

a. **CMS Addition:** In connection with a contract for the construction of an addition to CMS by Kiferbaum Construction Company, LEVINE and KIFERBAUM agreed that KIFERBAUM would include an extra \$1,000,000 for LEVINE in the cost of the project. KIFERBAUM then paid approximately \$700,000, at LEVINE's direction, to a business

operated by Individual 2. LEVINE and KIFERBAUM subsequently agreed that the remaining portion of those funds would be paid to a company operated by Individual 1. LEVINE and KIFERBAUM did not disclose to CMS the nature or purpose of those additional costs to CMS, nor did they disclose that LEVINE was directing the disposition of CMS funds, or that Individuals 1 and 2 had agreed to receive them. LEVINE, KIFERBAUM, and Individuals 1 and 2, used sham marketing and consulting contracts to conceal the fraudulent nature of the diversion, and the planned diversion, of CMS funds to Individuals 1 and 2.

b. **CMS Student Housing:** In connection with a contract for the construction of a student dormitory for CMS by Kiferbaum Construction Company, LEVINE and KIFERBAUM agreed that KIFERBAUM would include an extra \$1,000,000 for LEVINE in the cost of the project. KIFERBAUM then paid those funds, at LEVINE's direction, to Individual 3. LEVINE and KIFERBAUM did not disclose to CMS the nature or purpose of those additional costs to CMS, nor did they disclose that LEVINE was directing the disposition of CMS funds. LEVINE and KIFERBAUM concealed the fraudulent nature of the diversion of CMS funds to Individual 3 through the use of a sham marketing contract.

c. **Diversion of Assets From NSO and CMS:** LEVINE caused NSO to lend \$3 million to a company controlled by LEVINE, and \$3 million to a company controlled by Individual 1. Notes were executed on behalf of the companies requiring repayment to NSO with

substantial interest. LEVINE and Individual 1 were later substituted as the borrowers. LEVINE then arranged for NSO to "donate" the promissory notes to CMS in a sealed envelope not to be opened by CMS, with the condition that the promissory notes would be immediately sold to Individual 3 for \$1 million - which was the amount of the kickback proceeds that LEVINE and KIFERBAUM fraudulently obtained from CMS in connection with the construction of the student dormitory and diverted to Individual 3. Individual 3 paid \$1 million to CMS for the promissory notes and then transferred them to LEVINE and Individual 1 as "gifts," thereby extinguishing their debts to NSO. By means of this transaction LEVINE fraudulently obtained \$3 million from NSO for himself, and \$3 million for Individual 1, through the use of the \$1 million that was fraudulently obtained from CMS by LEVINE and KIFERBAUM.

d. **Mercy Hospital:** LEVINE solicited a kickback of approximately \$1.5 million from KIFERBAUM relating to the construction of Mercy Hospital's Crystal Lake facility. KIFERBAUM agreed to pay a kickback, with the exact amount and manner of the payments to be determined at a later date. LEVINE used his influence with the Planning Board to ensure that Mercy Hospital received approval of its application for the Crystal Lake hospital after hiring Kiferbaum Construction Company, and LEVINE did not disclose to the Planning Board his financial arrangement or contacts with KIFERBAUM. LEVINE directed that KIFERBAUM pay the kickback proceeds relating to the Mercy Hospital project to Individual 1. LEVINE,

KIFERBAUM, and Individual 1 agreed to use a sham consulting contract to conceal the fraudulent nature of the intended payments from KIFERBAUM to Individual 1.

e. **Edward Hospital:** LEVINE, KIFERBAUM, and HURTGEN agreed that they would use LEVINE's position as a member of the Planning Board to attempt to force Edward Hospital to hire Kiferbaum Construction Company to build Edward Hospital's Plainfield facility, by threatening representatives of Edward Hospital that the Planning Board would not approve the application for the Plainfield facility unless Edward Hospital hired KIFERBAUM to build the hospital and medical office building. HURTGEN wanted his employer, Bear Stearns, to receive the financing work from the Edward Hospital project.

CHICAGO MEDICAL SCHOOL

The CMS Addition

4. It was further part of the scheme that in or about the summer of 2001, LEVINE directed KIFERBAUM to include an extra \$1,000,000 for LEVINE in the costs set forth in the proposed construction contract to build an addition to the School. KIFERBAUM agreed to pay a kickback of \$1,000,000 to LEVINE, and, did in fact pay approximately \$700,000 of that kickback, as directed by LEVINE. In furtherance of this aspect of the scheme:

a. LEVINE and KIFERBAUM caused CMS to award the construction contract - of approximately \$18 million - to Kiferbaum Construction Company, and to pay an extra \$1,000,000 in connection with the construction of an addition to the School. In connection

with the consideration of the construction contract by the CMS Board of Trustees, LEVINE and KIFERBAUM concealed from the Board of Trustees that they had agreed to the payment of this kickback using CMS funds, and that LEVINE - who participated in the CMS Board of Trustees' consideration of the contract - had a substantial personal financial interest in its approval.

b. In order to conceal the fraudulent nature of the extra \$1 million to be paid by CMS to Kiferbaum Construction Company, LEVINE directed KIFERBAUM to pay this extra \$1 million to Individual 2's consulting company, and KIFERBAUM agreed to do so.

c. In order to conceal the fraudulent nature of the payments to Individual 2, LEVINE caused a sham marketing contract to be prepared, which was signed by KIFERBAUM and Individual 2 in or about early December 2001. This contract provided that Kiferbaum Construction Company would pay Individual 2's company \$28,000 a month for approximately three years, for a total of approximately \$1 million.

d. Beginning in or about December 2001 and continuing through in or about June 2004, Individual 2 sent invoices requesting payment of \$28,000 every month, despite the fact that Individual 2 and his company did not provide any substantial services in exchange for those payments. KIFERBAUM caused his company to pay Individual 2's company a total of approximately \$700,000.

e. In or about December 2003 or January 2004, LEVINE and KIFERBAUM agreed that the balance that KIFERBAUM still owed on the

