

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA)	Criminal No.: H-97-93
)	
v.)	Filed: [5/15/97]
)	
MARK ALBERT MALOOF,)	Violations:
)	15 U.S.C. § 1
Defendant.)	18 U.S.C. § 371

Judge: Atlas

INDICTMENT

The Grand Jury charges:

COUNT ONE

CONSPIRACY TO RESTRAIN TRADE

15 U.S.C. § 1

I

DESCRIPTION OF THE OFFENSE

1. Mark Albert Maloof is hereby indicted and made a defendant in this Count.
2. Beginning as early as January 1994 and continuing at least until June 1995, the exact dates being unknown to the Grand Jury, the defendant and co-conspirators entered into and engaged in a combination and conspiracy to suppress and restrain competition in the sale of metal building insulation from their facilities in the State of Texas, in unreasonable restraint of interstate trade and commerce in violation of Section One of the Sherman Act (15 U.S.C. § 1).

II

DEFENDANT AND CO-CONSPIRATORS

3. During the period covered by this Count, Mark Albert Maloof, of Birmingham, Alabama, was Regional Sales Manager for Bay Industries, Inc. d/b/a Bay Insulation Supply Co. and was responsible for supervising the fabrication, pricing, sale and distribution of metal building insulation from the State of Texas. Bay Industries, Inc. d/b/a Bay Insulation Supply Co. is organized and exists under the laws of the State of Wisconsin with its principal place of business in Green Bay, Wisconsin.

4. Various individuals and corporations, not made defendants in this Count, participated as co-conspirators in the offense charged and performed acts and made statements in furtherance of it.

III

THE CONSPIRACY

5. The charged combination and conspiracy consisted of an agreement, understanding and concert of action among the defendant and co-conspirators, the substantial term of which was to raise, fix and maintain prices of metal building insulation sold by the defendant and co-conspirators from their facilities in the State of Texas.

6. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators performed the following acts, among others:

- (a) discussed prices to be charged for metal building insulation sold by the defendant and co-conspirators from their facilities in the State of Texas;
- (b) agreed to raise, fix and maintain prices for metal building insulation sold by the defendant and co-conspirators from their facilities in the State of Texas;
- (c) raised, fixed and maintained prices for metal building insulation sold by the defendant and co-conspirators from their facilities in the State of Texas; and
- (d) monitored and enforced compliance with the agreement to raise, fix and maintain prices for metal building insulation sold by the defendant and co-conspirators from their facilities in the State of Texas.

IV

INTERSTATE TRADE AND COMMERCE

7. During the period covered by this Count, substantial quantities of fiberglass used to fabricate metal building insulation were purchased by co-conspirator corporations from suppliers located outside the State of Texas and transported into the State of Texas.

8. During the period covered by this Count, the defendant and co-conspirator corporations transported and sold metal building insulation fabricated in the State of Texas to locations outside the State of Texas.

9. The business activities of the defendant and co-conspirators that are the subject of this Count were within the flow of, and substantially affected, interstate trade and commerce.

V

JURISDICTION AND VENUE

10. The combination and conspiracy charged in this Count was formed and carried out, in part, within the Southern District of Texas, Houston Division, within the five years preceding the return of this Indictment.

ALL IN VIOLATION OF TITLE 15 U.S.C. § 1.

The Grand Jury further charges:

COUNT TWO

CONSPIRACY TO COMMIT WIRE FRAUD

18 U.S.C. § 371

1. Mark Albert Maloof is hereby indicted and made a defendant in this Count.

2. Each and every allegation contained in paragraphs 3 and 4 of Count

One of this Indictment is here realleged with the same force and effect as if fully set forth in this Count.

I

DESCRIPTION OF THE OFFENSE

3. Beginning as early as January 1994 and continuing at least until June 1995, the exact dates being unknown to the Grand Jury, in the Southern District of Texas, the defendant and co-conspirators did knowingly and willfully conspire, combine and agree with each other to commit an offense against the United States, that is, to knowingly transmit and cause to be transmitted certain writings, signals or sounds by means of wire communication in interstate commerce, for the purpose of executing and carrying out a scheme and artifice to defraud customers of money by means of false and fraudulent pretenses, in violation of 18 U.S.C. § 1343.

II

THE SCHEME

4. It was a part and object of the aforesaid conspiracy and scheme to defraud that the defendant and co-conspirators would and did agree to raise, fix and maintain prices of metal building insulation sold by the defendant and co-conspirators from their facilities in the State of Texas.

5. It was further a part and object of the aforesaid conspiracy and scheme to defraud that the defendant and co-conspirators would and did deceive customers into believing that the prices they charged for metal building insulation were

arrived at independently and without consultation or agreement with competing suppliers of metal building insulation when, in fact, the prices charged were noncompetitive and arrived at as a result of the communications and agreement between the defendant and co-conspirators.

III

OVERT ACTS

6. In furtherance of the conspiracy described in this Count, and to effect the objects thereof, the defendant and co-conspirators committed overt acts in the Southern District of Texas and elsewhere, including, but not limited to, the following:

- (a) In January 1994, the defendant, in Birmingham, Alabama, had telephone conversations with a co-conspirator in Atlanta and Stone Mountain, Georgia, for the purpose of entering into an agreement to raise, fix and maintain prices of metal building insulation;
- (b) In February 1994, the defendant, in Birmingham, Alabama, had telephone conversations with a co-conspirator in Kansas City, Missouri, and with an employee of Bay Insulation Supply Co. in Houston, Texas, about pricing to a customer in Texas for the purpose of monitoring and enforcing the agreement to raise, fix and maintain prices of metal building insulation;
- (c) In April 1994, the defendant, in Birmingham, Alabama, sent a telephone facsimile transmission to a co-conspirator in Dallas, Texas, and had a telephone conversation regarding freight charges with that

co-conspirator for the purpose of executing and carrying out the agreement to raise, fix and maintain prices of metal building insulation;

- (d) In May 1994, the defendant received an interstate telephone facsimile transmission of a draft price sheet from a co-conspirator and had interstate telephone conversations with that co-conspirator for the purpose of executing and carrying out the agreement to raise, fix and maintain prices of metal building insulation;
- (e) In May 1994, the defendant, in Birmingham, Alabama, sent a telephone facsimile transmission of a Bay Insulation Supply Co. price sheet to a co-conspirator in Atlanta, Georgia, and had telephone conversations with that co-conspirator for the purpose of executing and carrying out the agreement to raise, fix and maintain prices of metal building insulation;
- (f) In November 1994, the defendant, in Atlanta, Georgia, sent a telephone facsimile transmission of a Bay Insulation Supply Co. price sheet to a co-conspirator in Atlanta, Georgia, and had a telephone conversation with that co-conspirator for the purpose of executing and carrying out the agreement to raise, fix and maintain prices of metal building insulation; and
- (g) In February and March 1995, the defendant had interstate telephone conversations regarding panel insulation pricing with a co-conspirator

for the purpose of executing and carrying out the agreement to raise,
fix and maintain prices of metal building insulation.

ALL IN VIOLATION OF TITLE 18 U.S.C. § 371

DATED this _____ day of _____, 1997.

A TRUE BILL

FOREPERSON

_____/s/_____
JOEL I. KLEIN
Acting Assistant Attorney General

_____/s/_____
MARK R. ROSMAN

_____/s/_____
GARY R. SPRATLING
Deputy Assistant Attorney General

_____/s/_____
KAREN J. SHARP

_____/s/_____
ALAN A. PASON
Chief, Dallas Office
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