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U.S. DISTRICT COURT E.D.N.Y.
★ APR - 7 2017 ★

DMP:KTF
F#:2016R01384

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

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UNITED STATES OF AMERICA

INDICTMENT

- against -

CR 17 0186
(T. 26, U.S.C., § 7202; T. 18, U.S.C., §§ 2
and 3551 et seq.)

ROBERT N. BERTRAND,

MAUSKOPF, J.

Defendant.

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LEVY, M.J.

THE GRAND JURY CHARGES:

INTRODUCTION

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

1. The defendant ROBERT N. BERTRAND was the Chief Financial Officer of Soupman, Inc. (collectively with its subsidiaries, "Soupman"). Soupman was a corporation doing business in Staten Island, New York. Soupman licensed the name and recipes of Al Yeganeh, who was widely known as the "Soup Nazi," a character portrayed in the Seinfeld television series. Soupman manufactured and sold soup to grocery chains and to its franchised restaurants under the brand name "Original Soupman."

2. One of Soupman's subsidiaries was The Original Soupman, Inc. ("TOSI"). TOSI was the employer of record for employees of Soupman for tax reporting purposes. The defendant ROBERT N. BERTRAND exercised control over TOSI's payroll and tax operations.

3. TOSI was required by law to withhold and pay taxes to the U.S. Treasury Department from its employees' paychecks, including federal income taxes and Medicare and Social Security taxes (collectively, "trust fund taxes").

4. TOSI was required to make deposits of trust fund taxes to the U.S. Treasury Department on a quarterly basis. In addition, TOSI was required to file, following the end of each calendar quarter, an Employer's Quarterly Federal Tax Return (Form 941), setting forth the total amount of wages and other compensation subject to withholding, the total amount of federal income tax withheld, the total amount of Medicare and Social Security taxes due, and the total tax deposits.

5. The defendant ROBERT N. BERTRAND was a "responsible person" as defined by the Internal Revenue Service ("IRS"), that is, he had the corporate responsibility to collect, truthfully account for, and pay over TOSI's trust fund taxes.

6. TOSI used a payroll processor to pay its employees. Between 2010 and 2014, a portion of employee salaries were reported to and paid through the payroll processor. For this portion of employee salaries, the payroll processor ensured that the proper trust fund taxes were accounted for and paid to the U.S. Treasury Department.

7. Between 2010 and 2014, an additional portion of employee salaries was paid in unreported cash amounts. Specifically, in calendar years 2010, 2011, 2012, 2013, and 2014, the defendant ROBERT N. BERTRAND paid TOSI employees approximately \$1,853,312.59 through cash payments that were not disclosed to TOSI's payroll processor (the "cash payments"). No trust fund taxes were reported, withheld, or paid over to the U.S. Treasury Department for the cash payments.

8. In addition, in calendar years 2011, 2012, and 2013, Soupman awarded shares valued at \$997,655 to certain employees for services rendered (“stock payments”). The defendant ROBERT N. BERTRAND did not disclose the stock payments to TOSI’s payroll processor. BERTRAND did not (i) report the stock payments to the IRS; (ii) withhold trust fund taxes from the stock payments; or (iii) pay trust fund taxes on these stock payments to the U.S. Treasury Department.

9. In 2012, TOSI’s independent auditor (the “Auditor”) alerted the defendant ROBERT N. BERTRAND that TOSI had not remitted the required taxes for the accrued payroll payments in the quarterly periods ending on the following dates: September 30, 2011, December 31, 2011, March 31, 2012, June 30, 2012, and September 30, 2012. The Auditor instructed the defendant ROBERT N. BERTRAND to file amended tax returns for those quarters and to pay the U.S. Treasury Department the owed taxes. BERTRAND acknowledged the Auditor’s warning in a signed representation letter dated December 14, 2012. The defendant ROBERT N. BERTRAND never filed the amended tax returns and never paid the U.S. Treasury Department the owed trust fund taxes. In 2013, TOSI fired the Auditor, and hired a new independent auditor.

10. In 2010, TOSI’s total approximate unreported cash compensation was \$519,322.56. The approximate 2010 tax loss to the United States was \$40,033.69.

11. In 2011, TOSI’s total approximate unreported cash compensation was \$426,306.11, and TOSI’s total approximate unreported stock compensation was \$930,000. The approximate 2011 tax loss to the United States was \$422,118.14.

12. In 2012, TOSI's total approximate unreported cash compensation was \$342,300, and TOSI's total approximate unreported stock compensation was \$21,125. The approximate 2012 tax loss to the United States was \$45,624.81.

13. In 2013, TOSI's total approximate unreported cash compensation was \$235,279.43, and TOSI's total approximate unreported stock compensation was \$46,530. The approximate 2013 tax loss to the United States was \$44,900.26.

14. In 2014, TOSI's total approximate unreported cash compensation was \$330,104.49. The approximate 2014 tax loss to the United States was \$41,294.62.

15. From 2010 through 2014, TOSI's total approximate unreported cash and stock compensation was \$2,850,967.59, and the total approximate tax loss to the United States was \$593,971.52.

COUNTS ONE THROUGH TWENTY

(Failure to Collect, Account For, and Pay Over Trust Fund Taxes)

16. The allegations in paragraphs one through 15 are realleged and incorporated as if fully set forth in this paragraph.

17. On or about the dates listed below, within the Eastern District of New York and elsewhere, the defendant ROBERT N. BERTRAND, being a responsible person for TOSI, together with others, did knowingly and willfully fail to collect, truthfully account for, and pay over federal income taxes and Medicare and Social Security taxes due and owing to the United States, for the filing periods listed below, knowing that such federal income taxes and Medicare and Social Security taxes were due and owing:

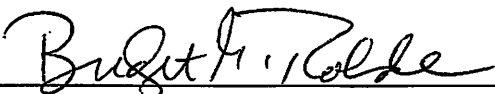
Count	Approximate Date Filing Due	Filing Period
ONE	April 30, 2010	2010, Q1
TWO	July 31, 2010	2010, Q2
THREE	October 31, 2010	2010, Q3
FOUR	January 31, 2011	2010, Q4
FIVE	April 30, 2011	2011, Q1
SIX	July 31, 2011	2011, Q2
SEVEN	October 31, 2011	2011, Q3
EIGHT	January 31, 2012	2011, Q4
NINE	April 30, 2012	2012, Q1
TEN	July 31, 2012	2012, Q2
ELEVEN	October 31, 2012	2012, Q3
TWELVE	January 31, 2013	2012, Q4
THIRTEEN	April 30, 2013	2013, Q1
FOURTEEN	July 31, 2013	2013, Q2
FIFTEEN	October 31, 2013	2013, Q3
SIXTEEN	January 31, 2014	2013, Q4
SEVENTEEN	April 30, 2014	2014, Q1
EIGHTEEN	July 31, 2014	2014, Q2
NINETEEN	October 31, 2014	2014, Q3
TWENTY	January 31, 2015	2014, Q4

(Title 26, United States Code, Section 7202; Title 18, United States Code,

Sections 2 and 3551 et seq.)

A TRUE BILL


 FOREPERSON


 BRIDGET M. ROHDE
 ACTING UNITED STATES ATTORNEY
 EASTERN DISTRICT OF NEW YORK