
UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : **CRIMINAL COMPLAINT**

 v. :

DENNIS J. GIBLIN : Mag No. 09-3505 (MF)

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief.

SEE ATTACHMENT A

I further state that I am a Postal Inspector, and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached page and made a part hereof.

Jeffrey T. DeFuria, Postal Inspector
United States Postal Inspection
Service

Sworn to before me and subscribed in my presence,
January 20, 2009, at Newark, New Jersey

HONORABLE MARK FALK
UNITED STATES MAGISTRATE JUDGE

Signature of Judicial Officer

ATTACHMENT A

Count One

Between in or about August 2005 and in or about September 2005, in Essex and Hudson Counties, in the District of New Jersey and elsewhere, defendant Dennis J. Giblin, being the Administrator of the Education Fund, knowingly solicited and received and agreed to receive a fee, kickback, commission, gift, loan, money, and thing of value, from Company One because of and with respect to his actions, decisions, and other duties relating to questions and matters concerning the Education Fund, an employee benefit plan subject to Title I of the Employee Retirement and Income Security Act of 1974, in violation of Title 18, United States Code, Section 1954 and Title 18, United States Code, Section 2.

Count Two

From in or about August 2005 through in or about September 2005, in Essex and Hudson Counties, in the District of New Jersey and elsewhere, defendant Dennis J. Giblin, knowingly and willfully conspired and agreed with others to embezzle, steal, unlawfully and willfully abstract, and convert to the use of defendant Dennis J. Giblin and the use of others, money, funds, property, and other assets of the Education Fund, an employee benefit plan subject to ERISA, totaling at least \$5,200, contrary to Title 18, United States Code, Section 664, in violation of Title 18, United States Code, Section 371.

Count Three

From in or about late 2005 through in or about November 2006, in the District of New Jersey and elsewhere, defendant Dennis J. Giblin knowingly and willfully embezzled, stole, unlawfully abstracted, and converted, and caused to be embezzled, stolen, unlawfully abstracted, and converted to his use and the use of others, property of the Education Fund, an employee benefit plan subject to Title I of the Employee Retirement and Income Security Act of 1974, to wit, a couch belonging to the Education Fund, in violation of Title 18, United States Code, Sections 664 and 2.

ATTACHMENT B

I, Jeffrey T. DeFuria, am a Postal Inspector with the United States Postal Inspection Service. I have knowledge of the facts set forth herein through my personal participation in this investigation and through oral and written reports from other federal agents or other law enforcement officers. Where statements of others are related herein, they are related in substance and part. Since this Criminal Complaint is being submitted for a limited purpose, I have not set forth every fact that I know concerning this investigation. I have only set forth those facts that I believe are sufficient to show probable cause exists to believe that the defendant has committed the offenses set forth in Attachment A. Where I assert that an event took place on a particular date, I am asserting that it took place on or about the date alleged.

Introduction

1. At all times relevant to this Criminal Complaint:

a. Local 68 of the International Union of Operating Engineers (hereinafter "Local 68"), located at 11 Fairfield Place, West Caldwell, New Jersey, was a "labor organization" within the meaning of the provisions of Title 29, United States Code, Sections 152(5), 402(i), and 402(j) and an "employee organization" within the meaning of Title 29, United States Code, Section, 1002(4). Local 68 represented, sought to represent, and would have admitted to membership operating engineers who worked for private and public sector employers in New Jersey.

b. Local 68 was affiliated with the Local 68 Education Fund (hereinafter "Education Fund"), an employee benefit plan headquartered at the John J. Giblin Building and Training Center, located at 14 Fairfield Place, West Caldwell, New Jersey (hereinafter "Fund Office"). The Education Fund provided occupational training and educational opportunities to Local 68's members related to their union jobs. The Education Fund, an employee benefit plan within the meaning of the Employee Retirement and Income Security Act of 1974 (hereinafter "ERISA"), Title 29, United States Code, Section 1002(1) and (3), was subject to the provisions of Title I of ERISA.

c. Defendant Dennis J. Giblin (hereinafter "Giblin") was the Administrator of the Education Fund, as the term "administrator" is defined under Title 29, United States Code, Section, 1002(16). Under Title 29, United States Code, Sections 1104 and 1106, defendant Giblin was a fiduciary to the Education

Fund. As a fiduciary to the Education Fund, federal law imposed on him the following obligations, among others: (1) to act solely in the interests of the participants of the fund; (2) to avoid acting in his own personal self-interest; and (3) to avoid acting on behalf of any party whose interests were adverse to the interests of the fund. Defendant Giblin owned a condominium in Jersey City, New Jersey (hereinafter "condo").

d. A company incorporated in New Jersey and located in Essex County, New Jersey was an audio visual company that designed and installed custom electronic systems (hereinafter "Company One"). An individual, a co-conspirator not named as a defendant herein, was an employee of Company One (hereinafter "Co-Conspirator One").

Counts One and Two - Use of Position to Solicit and Receive Kickbacks and Other Things of Value and Conspiracy to Embezzle From the Education Fund

2. Based on an investigation conducted by Your Affiant and other federal agents, it was revealed that beginning in or about November 2004, defendant Giblin caused the Education Fund to hire Company One for the purpose of designing, purchasing, and installing electronic audio and visual (hereinafter "AV") systems and equipment in the Fund Office. From in or about January 2005 through August 2005, defendant Giblin approved and caused the Education Fund to pay Company One in excess of \$315,000 for the purchase and installation of AV equipment in the Fund Office.

3. In or about August 2005, while the Administrator of the Education Fund, defendant Giblin offered and promised Company One additional contracting work with the Education Fund in exchange for the company giving him substantially discounted AV equipment for his condo and free labor for the work associated with the project for his condo. Defendant Giblin also instructed Co-Conspirator One to charge the Education Fund for any labor costs associated with work performed in defendant Giblin's condo.

4. According to Co-Conspirator One, who was interviewed by federal agents, defendant Giblin met Co-Conspirator One and another Company One employee (hereinafter "Employee One") at the company's office. According to Co-Conspirator One, defendant Giblin requested free installation of AV equipment in his condo because of all the Local 68 work that defendant Giblin gave to Company One. In addition, according to Co-Conspirator One, Co-Conspirator One, Employee One, and defendant Giblin discussed increasing the labor charges to the Education Fund by inflating a pending installation estimate to the Fund for the purpose of

causing the Fund to pay for the installation parts and labor associated with the work to be performed in defendant Giblin's condo.

5. According to documents obtained from Company One, the company provided and installed AV equipment, including digital receivers, DVD players, speakers, cables, wires, and remote systems, in defendant Giblin's condo between in or about August 3, 2005 through in or about September 9, 2005. According to records from Company One, its employees spent approximately 56 hours installing the aforementioned AV equipment in defendant Giblin's condo.

6. According to records obtained from Company One, defendant Giblin received the following from the company: (1) approximately \$5,100 in discounts for AV components (e.g., receivers, DVD players, and speakers, etc.); (2) approximately \$1,000 in free installation parts (e.g., cables and wires); and (3) approximately \$6,200 in free labor.

7. According to documents obtained from Company One, Co-Conspirator One created two Installation Estimates, both dated September 14, 2005, for the same work to be performed at the Fund Office. These documents list the scope of work and estimates of required installation parts and necessary labor (by hour). The first estimate lists a total of 22 hours and a total estimate of approximately \$7,100 for the proposed work for the Education Fund. The second estimate was doctored, listing a total of 44 hours and a total estimate of approximately \$12,300 for the proposed work for the Education Fund. Attached to the second estimate was a "Post It" note with the words: "Fake to include house work." During the interview with Co-Conspirator One, as referred to in Paragraph 4 above, Co-Conspirator One admitted that (1) he created both estimates; (2) he inflated the second estimate (i.e., the doctored estimate) to include the estimated cost of the free installation parts and labor associated with defendant Giblin's condo; and (3) he created the "Post It" note with the words: "Fake to include house work." Based on this evidence, Your Affiant submits that defendant Giblin and others conspired to improperly and unlawfully cause the Education Fund to pay at least \$5,200 for installation parts and labor associated with defendant Giblin's condo.

8. After defendant Giblin requested and received the substantially discounted components and free installation parts and labor, defendant Giblin, as promised, approved and caused the Education Fund to again retain Company One for the purpose of installing AV equipment for the Education Fund. From in or about

September 2005 through November 2005, defendant Giblin approved and caused the Education Fund to pay Company One in excess of \$140,000 for such services.

Count Three - Embezzlement of Education Fund Property

9. During the course of this investigation, federal agents obtained various records, including estimates, invoices, and checks, from the Education Fund. According to these records, in or around October 2004, defendant Giblin approved and caused the Education Fund to purchase an upholstered "Butter Twill" (*i.e.*, yellow) couch (hereinafter "couch") in the approximate amount of \$1,329.60. The couch was purchased through a company (hereinafter "Company Two") that was owned by a relative of defendant Giblin (hereinafter "Relative").

10. On or about October 7, 2004, defendant Giblin signed a check drawn on the Education Fund's checking account that represented payment for the couch and other furniture. This check was payable to Company Two.

11. During the course of this investigation, federal agents obtained various records from Company Two. According to records from Company Two, the couch was intended to be directly shipped to the Fund Office.

12. On March 13, 2007, the Relative testified before a federal Grand Jury sitting in Newark, New Jersey. The Relative testified that (1) the couch was delivered to the Education Fund; and (2) the Relative had observed the couch that was purchased by the Education Fund in defendant Giblin's condo sometime after the summer of 2005.

13. On August 7, 2007, an employee of Local 68 testified before a federal Grand Jury sitting in Newark, New Jersey (hereinafter "Union Employee"). The Union Employee testified that in early November 2007, at defendant Giblin's request, he assisted defendant Giblin in removing the couch from defendant Giblin's condo and delivering it to the Fund Office.

14. An employee who works at the Fund Office was interviewed by federal agents on November 21, 2007 (hereinafter "Employee Two"). According to Employee Two, in 2004, a yellow couch was placed in the Fund Office. According to Employee Two, in 2005, the yellow couch and other furniture were removed and replaced by an ordinary brown couch. Employee Two further stated that the yellow couch had re-appeared in the Fund Office two weeks before the interview.