

PKC:DDB
F.#2005R01856

NO9-0184

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

TO BE FILED UNDER SEAL

- against -

AFFIDAVIT IN SUPPORT
OF APPLICATION FOR
ARREST WARRANT

RUSSELL BALL,

Defendant.

(18 U.S.C. §§ 666(a)(2),
and 1956(h))

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EASTERN DISTRICT OF NEW YORK, SS:

EVAN CAMPANELLA, being duly sworn, deposes and says that he is a Special Agent with United States Immigration and Customs Enforcement ("ICE"), duly appointed according to law and acting as such.

Upon information and belief, in or about and between January 2002 and January 2005, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RUSSELL BALL did knowingly, intentionally and corruptly give, offer and agree to give something of value, to wit, United States currency, to agents of an organization that received in excess of \$10,000 in any one year period under a Federal program involving a grant, subsidy and other form of Federal assistance, with the intent to influence those agents in connection with business and a series of transactions of such organization, involving \$5,000 or more.

(Title 18, United States Code, Section 666(a)(2))

Upon information and belief, in or about and between January 2004 and January 2005, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RUSSELL BALL, together with others, did knowingly and intentionally conspire to conduct and attempt to conduct financial transactions, knowing that the property involved in the transactions represented the proceeds of some form of unlawful activity and which in fact involved the proceeds of a specified unlawful activity, to wit; bribery, and knowing that these transactions were designed in whole or in part to conceal and disguise the nature, location, ownership and control of the proceeds of the specified unlawful activity, in violation of Title 18, United States Code, Section 1956 (a)(1)(B)(i).

(Title 18, United States Code, Section 1956(h)).

The source of your deponent's information and the grounds for his belief are as follows:¹

1. I have been a Special Agent with ICE since 2006. I am currently assigned to ICE's El Dorado Task Force, which investigates money laundering.

¹ Because the purpose of this affidavit is only to state probable cause to arrest, I have not described all the relevant facts, circumstances and conversations that I am aware of related to this investigation. All conversations and statements reported in this affidavit, unless directly quoted, are described in substance and in part.

2. The facts set forth in this affidavit are based upon my own investigation of the facts, a review of documents, witness interviews and upon what I have learned from other agencies, including the Internal Revenue Service and the Office of the Inspector General of The Port Authority of New York and New Jersey.

I. Roadway and Con Ed

3. Roadway Contracting, Inc. ("Roadway") is a construction company, incorporated in New York State, that was formed in 1984. Roadway's main office is located on Gardner Avenue in Brooklyn, New York. Roadway performs excavating construction and specializes in gas, electric and steam installation and repair. The majority of Roadway's contracts have been with the New York City Transit Authority and Consolidated Edison ("Con Ed").

4. Con Ed is a New York-based corporation that provides electrical and steam utility services in New York City. From 2002 to 2006, Con Ed received approximately \$65.5 million from the Empire State Development Corporation for work Con Ed performed in lower Manhattan pursuant to a plan approved by the United States Department of Housing and Urban Development, which administered a \$783 million federal appropriation for damaged properties and businesses, restoration of utility infrastructures, and economic revitalization related to the

terrorist attacks at the World Trade Center on September 11, 2001.

II. The Co-Conspirators

5. Between at least late 2001 and July 1, 2008, Cooperating Witness #1 ("CW-1") was employed as a Senior Specialist for Con Edison.² CW-1's duties included reviewing the invoices collected by Con Ed's Construction Representatives, approving those invoices and passing them up Con Ed's chain of command for payment.

6. Cooperating Witness #2 ("CW-2") was a member of the Board of Directors of a financial institution located in Long Island, New York ("Bank-1"), from at least January 2000 through 2005. CW-2 also had an account at Bank-1.

7. The defendant RUSSELL BALL has been the CEO of Roadway since its inception in 1984.

III. The DEP Projects

8. The New York City Department of Environmental Protection ("DEP") is the New York City agency responsible for, among other things, managing the City's water supply and wastewater system. One of DEP's functions is to repair and maintain the City's water mains that run beneath the roads' surfaces.

² On March 19, 2007, CW-1 was arrested and has since signed a cooperation agreement with the government. CW-1 is expected to plead guilty in the near future.

9. Starting in 2001, Roadway was hired by Con Ed to perform certain work, commonly referred to as "interference," on DEP construction sites in Manhattan. At these sites, DEP contractors created trenches where the water mains were to be repaired, and Roadway employees moved the utility pipes and cables within the trenches so that DEP contractors could repair the water mains. Con Ed paid Roadway based on purchase orders that Roadway submitted to Con Ed listing "time and equipment," i.e., the labor and equipment costs to Roadway to complete their portion of the project.

IV. The Lower Manhattan Project

10. Soon after September 11, 2001, Roadway was contracted by Con Ed to perform "interference" work related to various construction sites in lower Manhattan, which consisted mainly of projects initiated by the Metropolitan Transit Authority. Roadway and Con Ed negotiated contracts regarding the work Roadway was to perform at each of the work sites, as well as the compensation Roadway would receive, based on the known specifications of each job at the time the contracts were negotiated. Once the jobs started, Roadway was paid by Con Ed based on its submission of invoices to Con Ed officials. The monetary amounts stated on the invoices were calculated based on costs negotiated in the contracts. The invoices often also included additional time and equipment charges to Con Ed based on

costs associated with supplemental work Roadway claimed it performed due to conditions discovered at the site only after the projects were commenced.

V. The Kickback Scheme

11. Starting in approximately 2002, after Roadway began performing interference work on the DEP and Lower Manhattan projects described above, CW-1 arranged with the defendant RUSSELL BALL that BALL would make kickback payments to CW-1, which CW-1 would share with other Con Ed officials ("the "Con Ed co-conspirators"). In exchange for the kickbacks, CW-1 and the other Con Ed co-conspirators agreed to expedite payments to Roadway, as well as approve Roadway invoices that included inflated and/or fraudulent charges. Between 2002 and mid-2004, Con Ed paid Roadway hundreds of thousands of dollars for work performed on the DEP and Lower Manhattan projects. According to CW-1, a significant amount of the billing submitted by Roadway and paid by Con Ed for these projects was either inflated or fraudulent.

12. According to CW-1, between 2002 and mid-2004, BALL paid approximately \$20,000 to \$30,000 cash in kickbacks directly to CW-1, which CW-1 then shared with the Con Ed co-conspirators.

13. In or about mid-2004, BALL told CW-1 that he was unable to continue making the kickback payments in cash. BALL and CW-1 agreed that BALL would thereafter pay by check through a

shell company ("Company-1") created by CW-2.

14. Starting in or about July 2004, and until approximately early 2005, CW-1 provided invoices to BALL in the name of Company-1. These invoices purported to be for construction services rendered to Roadway. However, no services were actually rendered, and the invoices were merely a cover for CW-1 and the Con Ed co-conspirators to receive bribes.

15. As part of this scheme, BALL delivered the kickback checks to CW-1, who, in turn, delivered them to CW-2. CW-2 deposited these checks into his account at Bank-1, and later withdrew the funds in cash. CW-2 took a small percentage of the negotiated check amounts for himself, and gave the rest of the cash to CW-1, who shared these proceeds with the other Con Ed co-conspirators.

16. In or about November 2005, ICE examined bank records that revealed that three checks, which were drawn on Roadway's account, were deposited into CW-2's personal account at Bank-1. These check were in the amounts of \$9,100, \$8,800 and \$9,900 and were dated July 28, 2004, September 9, 2004 and December 9, 2004, respectively. However, none of these checks deposited by CW-2 were payable to CW-2. Instead, they were payable to Company-1. Records from Bank-1 indicate that shortly after depositing these checks into his account at Bank-1, CW-2 withdrew from his account cash in amounts corresponding to each

of the checks.

17. In early 2005, CW-2 told CW-1 that he could no longer negotiate Company-1 checks at Bank-1 because officials at Bank-1 were asking CW-2 questions about Company-1. As a result, CW-1 stopped providing the defendant BALL with Company-1 invoices. In late 2005 or early 2006, BALL had a meeting with CW-1 concerning the fact that federal agents had been to Roadway's offices asking questions about the checks that Roadway had issued to Company-1.³ BALL initiated this meeting by handing CW-1 a note asking if CW-1 was "wired." After CW-1 shook his head indicating "no," BALL informed CW-1 of his knowledge of the federal investigation and informed CW-1 that BALL would no longer issue checks to CW-1. After that meeting, BALL made no further kickback payments to CW-1.

WHEREFORE, your deponent respectfully requests that an arrest warrant be issued for the defendant RUSSELL BALL so that he may be dealt with according to law.

³ In fact, as a part of this investigation, ICE agents conducted an interview with Roadway's attorney in November 2005.

