

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 20-354
v.	:	DATE FILED: June 9, 2021
JOSEPH SMITH	:	VIOLATIONS:
	:	18 U.S.C. § 1349 (conspiracy – 1 count)
	:	18 U.S.C. § 1343 (wire fraud – 2 counts)
	:	26 U.S.C. § 7201 (tax evasion – 3 counts)
	:	26 U.S.C. § 7203 (failure to file tax return – 3 counts)
	:	Notice of forfeiture

SUPERSEDING INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

At all times material to this Superseding Indictment:

1. Defendant JOSEPH SMITH, a resident of New York, was the founder and President of New York Bagel Enterprises, Inc. (“New York Bagel”), which was in the business of selling bagel franchise opportunities in multiple states, including in the Eastern District of Pennsylvania.
2. Dennis Mason, charged elsewhere, sold food service franchises as an independent contractor, primarily doing business as Franchise Ventures, Inc.
3. Starting as early as 2008, Dennis Mason sold New York Bagel franchises on behalf of defendant JOSEPH SMITH. Dennis Mason provided information to prospective franchisees about, among other things, the cost to open a franchise, the availability of financing, and the profits made by existing franchises. Between 2008 and 2018, Dennis Mason sold more than 160 New York Bagel franchises. These prospective franchisees paid more than \$2.1 million

in franchise fees to New York Bagel.

4. The fee that prospective franchisees paid to New York Bagel ranged between \$7,500 and \$44,500. Defendant JOSEPH SMITH shared a percentage of these franchise fees with Dennis Mason.

5. Defendant JOSEPH SMITH and Dennis Mason communicated with prospective franchisees using interstate communications, including e-mails and telephone calls.

6. From in or about 2008 through on or about July 25, 2018, in the Eastern District of Pennsylvania, and elsewhere, defendant

JOSEPH SMITH

conspired and agreed together with Dennis Mason, and other persons unknown to the grand jury, to commit wire fraud, that is, knowingly executing and attempting to execute a scheme to defraud prospective franchisees and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, in violation of 18 U.S.C. § 1343.

MANNER AND MEANS

It was part of the conspiracy that defendant JOSEPH SMITH, Dennis Mason, and others known and unknown to the grand jury:

7. Met with and spoke to prospective franchisees in the Eastern District of Pennsylvania and throughout the country.

8. Made material misrepresentations to prospective franchisees about the profitability of the franchise. In particular, defendant JOSEPH SMITH and Dennis Mason understated the startup costs, overstated the number of franchises that were up and running, overstated the success of existing franchises, and falsely promised that additional franchises would be opened in the future.

9. Placed advertisements using interstate communications, such as Craigslist.
10. Made material misrepresentations and false guarantees about the ability of New York Bagel to arrange financing for the prospective franchisee.
11. Made false and inconsistent statements to prospective franchisees.
12. Obtained franchise fees from more than 160 prospective franchisees.
13. Accepted payments of franchise fees using personal checks, cashier's checks, and credit card payments.
14. Refused to refund franchisee fees paid by prospective franchisees who learned of the material misrepresentations.

All in violation of Title 18, United States Code, Section 1349.

COUNT TWO AND THREE

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 5 of Count One are incorporated here.
2. From on or about January 1, 2008 through on or about July 25, 2018, defendant

JOSEPH SMITH

and Dennis Mason, charged elsewhere, devised and intended to devise a scheme to defraud prospective franchisees and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

3. Paragraphs 7 through 14 of Count One are incorporated here.

It was further part of the scheme that:

4. Defendant JOSEPH SMITH and Dennis Mason provided false information to prospective buyers of New York Bagel franchises in order to obtain franchise fees, including prospective franchisee S.A.

5. Defendant JOSEPH SMITH communicated with prospective franchisees through interstate e-mail communication, including prospective franchisee S.A.

6. On or about the dates below, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendant

JOSEPH SMITH,

for the purpose of executing the scheme described above, caused signals and sounds, that is an e-mail, to be transmitted by means of wire communication in interstate commerce.

COUNT	DATE	SENDER	RECIPIENT
TWO	June 4, 2016	Dennis Mason	S.A.
THREE	September 18, 2016	Defendant JOSEPH SMITH	S.A.

All in violation of Title 18, United States Code, Section 1343.

COUNTS FOUR THROUGH SIX

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 4 of Count One are incorporated here.
2. Pursuant to the Internal Revenue Code and attendant regulations, United States citizens and residents who earned sufficient income were required, on an annual basis, to report accurately their income, tax obligations, and, where appropriate, any claim for a refund on a U.S. Individual Income Tax Return, Form 1040 ("Form 1040"), which must be filed with the Internal Revenue Service ("IRS").
3. Pursuant to the Internal Revenue Code and attendant regulations, corporations were required annually to file a corporate income tax return (Form 1120) with the IRS. A subchapter S corporation had to file a return (Form 1120-S) but was not required to pay income taxes in its own right. The income or loss from its operation, by law, flowed through to its shareholders, who were required to report such income or loss on their individual income tax return (Form 1040) and, when required, pay any individual income taxes owed based upon that income. The precise amount of each shareholder's distributive share of income or loss was reported on an IRS Schedule K-1, which the corporation was required to provide to each shareholder and file with the IRS together with the corporation's Form 1120-S.
4. Defendant JOSEPH SMITH was a citizen of the United States and resided in the Southern District of New York.
5. Defendant JOSEPH SMITH filed and caused to be filed corporate tax returns (Form 1120) for New York Bagel for tax years through 2010. In or about February 2011, defendant SMITH re-organized New York Bagel as a subchapter S corporation. New York Bagel

has not filed a corporate tax return since making the election to organize as a subchapter S corporation.

6. Defendant JOSEPH SMITH also was the founder and sole shareholder of SMS, Inc., a subchapter C corporation, which was in the business of selling New York Bagel franchises. SMS, Inc., did not file any corporate income tax returns until at least in or about 2019, as further described below.

7. In calendar year 2014, defendant JOSEPH SMITH directed approximately \$361,000 in fees from prospective New York Bagel franchisees into a bank account he controlled in the name of New York Bagel.

8. In calendar year 2015, defendant JOSEPH SMITH directed approximately \$510,500 in fees from prospective New York Bagel franchisees into bank accounts he controlled in the names of New York Bagel and SMS, Inc.

9. In calendar year 2016, defendant JOSEPH SMITH directed approximately \$489,500 in fees from prospective New York Bagel franchisees into bank accounts he controlled in the names of New York Bagel and SMS, Inc.

10. Despite earning substantial income, defendant JOSEPH SMITH failed to timely file any corporate or individual federal income tax returns for calendar years 2014 through 2016 and did not pay any taxes due and owing on the income defendant SMITH received for the said years, until at least in or about 2019, as further described below.

11. Defendant JOSEPH SMITH took various affirmative steps to evade the assessment of taxes on the income that defendant SMITH received in calendar years 2014 through 2016. To conceal defendant SMITH's income, and avoid paying federal income tax thereon, defendant SMITH routinely directed substantial amounts of income to bank accounts

held in the name of New York Bagel and SMS, Inc., which defendant SMITH controlled and used to pay personal expenses.

12. In or about 2019, defendant JOSEPH SMITH filed individual income tax returns (Forms 1040) for the calendar years 2017 through 2019, and corporate tax returns (Forms 1120) for SMS, Inc., for the years 2015 and 2016. Defendant SMITH filed these returns after he was interviewed by federal agents investigating New York Bagel franchisee payments.

13. From on or about January 1 on each of the calendar years set forth below through on or about April 15 of the following year, in the Southern District of New York, defendant

JOSEPH SMITH,

a resident of Fishkill, New York, having received taxable income upon which there was income tax due and owing to the United States of America, and having failed to make an income tax return on or about April 15 of the following year, as required by law, to any proper officer of the Internal Revenue Service, and having failed to pay to the Internal Revenue Service this income tax, willfully attempted to evade and defeat an income tax due and owing by him to the United States of America for the calendar years set forth below by concealing and attempting to conceal from all proper officers of the United States of America his true and correct income through various means, including, among other things: by dispersing business funds from corporate accounts to pay defendant SMITH's personal expenses and otherwise using said accounts as defendant SMITH's personal accounts:

COUNT	TAX YEAR
4	2014
5	2015

6	2016
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All in violation of Title 26, United States Code, Section 7201.

COUNTS SEVEN THROUGH NINE**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 12 of Counts Four through Six are incorporated here.
2. During the calendar years set forth below, in the Southern District of New York, defendant

JOSEPH SMITH,

a resident of Fishkill, New York, had and received gross income substantially in excess of the minimum filing requirement, as set forth below, and that by reason of such gross income he was required by law, following the close of each calendar year and on or before dates listed below of the following year, to make an income tax return to the Director, Internal Revenue Service Center, at Kansas City, Missouri, or other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; well knowing and believing all the foregoing, he did willfully fail to make an income tax return to the Director of the Internal Revenue Service Center, or to any other proper officer of the United States:

COUNT	TAX YEAR	APPROXIMATE DUE DATE OF INCOME TAX RETURN	GROSS INCOME FILING REQUIREMENT
7	2014	April 15, 2015	\$10,150
8	2015	April 15, 2016	\$10,300
9	2016	April 17, 2017	\$10,350

All in violation of Title 26, United States Code, Section 7203.

NOTICE OF FORFEITURE

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Sections 1343 and 1349, set forth in this Superseding Indictment, defendant

JOSEPH SMITH

shall forfeit to the United States of America any property, constituting, or derived from, proceeds obtained directly or indirectly, as the result of such violations, including, but not limited to \$707,741:

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:


- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;


it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other

property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 28 United States Code, Section 2461(c) and Title 18, United States Code, Section 981(a)(1)(C).

A TRUE BILL:


GRAND JURY FOREPERSON



JENNIFER A. WILLIAMS
ACTING UNITED STATES ATTORNEY