

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
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- v - :
:
SHALOM LAMM, :
KENNETH NAKDIMEN, and :
VOLVY SMILOWITZ; :
a/k/a "Zev Smilowitz," :
:
Defendants. :
:
----- X

INDICTMENT

16 Cr. 818

COUNT ONE

(Conspiracy to Corrupt the Electoral Process)

The Grand Jury charges:

1. SHALOM LAMM, KENNETH NAKDIMEN, and VOLVY SMILOWITZ, a/k/a "Zev Smilowitz," the defendants, were real estate developers who, starting in or about 2006, sought to build and sell real estate in Bloomingburg, New York. From these real estate development projects, the defendants hoped for and anticipated making hundreds of millions of dollars. But by late 2013, the first of their real estate developments had met local opposition, and still remained under construction and uninhabitable. When met with resistance, rather than seek to advance their real estate development project through legitimate means, the defendants instead decided to corrupt the electoral process in Bloomingburg by falsely registering voters and paying

bribes for voters who would help elect public officials favorable to their project.

2. Specifically, in advance of an election in March 2014 for Mayor of Bloomingburg and other local officials, SHALOM LAMM, KENNETH NAKDIMEN, and VOLVY SMILOWITZ, a/k/a "Zev Smilowitz," the defendants, and others working on their behalf, developed and worked on a plan to falsely register numerous people who were not entitled to register and vote in Bloomingburg, because they actually lived elsewhere. Those the defendants falsely sought to register to vote in Bloomingburg included people who never intended to live in Bloomingburg, people who had never kept a home in Bloomingburg, and indeed, some people who had never even set foot in Bloomingburg in their lives. The defendants took steps to cover up their scheme to register voters who did not actually live in Bloomingburg by, among other things, creating and back-dating false leases and placing items like toothbrushes and toothpaste in unoccupied apartments to make it seem as if the falsely registered voters lived there.

3. SHALOM LAMM, KENNETH NAKDIMEN, and VOLVY SMILOWITZ, a/k/a "Zev Smilowitz," the defendants, also bribed potential voters by offering payments, subsidies, and other items of value to get non-residents of Bloomingburg to unlawfully register and vote there. LAMM, for example, agreed to pay an individual \$500

for every voter that the individual procured, and LAMM and NAKDIMEN's real estate company ultimately paid the individual more than \$30,000 per month for his efforts.

RELEVANT BACKGROUND INFORMATION

4. At all times relevant to this Indictment:

a. In New York, to register to vote in any local, state, or federal election, a person is required to complete and file with the local board of elections a New York State Voter Registration Form. Registration to vote is unitary, that is, a single registration qualifies a registrant to cast ballots in any election - local, state, and federal - indefinitely. As part of the Voter Registration Form, the registrant is required to provide the address where he or she lives. The registrant is also required to swear or affirm that he or she has lived within the voting district for a period of 30 days prior to the election.

b. The Village of Bloomingburg (hereinafter "Bloomingburg" or the "Village") is located in Sullivan County, New York. Its population is approximately 420 people. The Village has a mayor and two trustees. The mayor's duties include presiding over the Village Board, entering into contracts for the Village and approving legislation.

c. SHALOM LAMM and KENNETH NAKDIMEN, the defendants, are real estate developers.

d. VOLVY SMILOWITZ, a/k/a "Zev Smilowitz," the defendant, is a business associate of SHALOM LAMM and KENNETH NAKDIMEN, the defendants.

5. From in or about 2006 through in or about March 2014, SHALOM LAMM and KENNETH NAKDIMEN, the defendants, planned to develop numerous residential real estate projects that would ultimately accommodate thousands of families. The first of these projects was an approximately 396-unit townhouse project (the "Development"). LAMM and NAKDIMEN planned to sell the Development to, among other people, VOLVY SMILOWITZ, a/k/a "Zev Smilowitz," the defendant.

6. SHALOM LAMM and KENNETH NAKDIMEN, the defendants, chose Bloomingburg as the site for the Development. They did so in part because of Bloomingburg's small population, which made its local government vulnerable to being taken over. A "Very Highly Confidential" "Executive Summary" circulated on or about January 15, 2013, by LAMM to investors in the Development summarized LAMM's and NAKDIMEN's efforts thusly: "The developers of [the Development] have worked for 7 years in complete secrecy to achieve a fully approved project (Phase I). It is intended to be a transformative development Critically, the development is in Bloomingburg, NY, the smallest village in NYS. With its initial occupancy of these homes, the owners of [the

Development] will effectively control the local government, its zoning and ordinances."

7. By in or about late 2013, the Development became the subject of local opposition. The Development was under construction, but was neither inhabitable nor certified for occupancy. Investments in the Development, which ultimately totaled more than fifty million dollars, were unreturned, and would remain so unless and until the Development was completed, approved, and sold.

8. On or about December 12, 2013, the Village's Planning Board voted against measures sought by SHALOM LAMM and KENNETH NAKDIMEN, the defendants. For this and other reasons, LAMM, NAKDIMEN, and VOLVY SMILOWITZ, a/k/a "Zev Smilowitz," placed importance on the election of local officials who would support the Development. As NAKDIMEN described following the Planning Board meeting, "it's no more mr nice guy time. We need to win this election now more than ever and replace the entire planning board."

9. Approximately three months later, on or about March 18, 2014, village elections in New York were held. In Bloomingburg, mayor and two trustee positions were up for election. Two candidates ran for mayor: one was opposed to the Development; the other was a confidante of SHALOM LAMM, the defendant.

THE CONSPIRACY

10. From in or about 2013 through in or about March 2014; in the Southern District of New York and elsewhere; SHALOM LAMM, KENNETH NAKDIMEN, and VOLVY SMILOWITZ, a/k/a "Zev Smilowitz," the defendants, together with others known and unknown, unlawfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, (1) giving false voter registrations, in violation of Title 52, United States Code, Section 10307(c), (2) buying voter registrations, in violation of Title 52, United States Code, Section 10307(c); and (3) facilitating the promotion, management, and carrying on of bribery after traveling interstate and using facilities of interstate commerce, in violation of Title 18, United States Code, Section 1952, and New York Election Law, Sections 17-142(1), (3), and (4).

OBJECTS OF THE CONSPIRACY

Giving False Voter Registrations

11. It was an object of the conspiracy that SHALOM LAMM, KENNETH NAKDIMEN, and VOLVY SMILOWITZ, a/k/a "Zev Smilowitz," the defendants, and others known and unknown, would and did knowingly give false information as to registrants' addresses and periods of residence in the voting district for the purpose of establishing the registrants' eligibility to register and

vote, in violation of Title 52, United States Code, Section 10307(c).

Buying Voter Registrations

12. It was a further object of the conspiracy that SHALOM LAMM, KENNETH NAKDIMEN, and VOLVY SMILOWITZ, a/k/a "Zev Smilowitz," the defendants, and others known and unknown, would and did knowingly pay and offer to pay and accept payment for registrations to vote, in violation of Title 52, United States Code, Section 10307(c).

Influencing Voter Registration and Procuring Votes Through Bribery

13. It was a further object of the conspiracy that SHALOM LAMM, KENNETH NAKDIMEN, and VOLVY SMILOWITZ, a/k/a "Zeve Smilowitz," the defendants, and others known and unknown, would and did knowingly travel in interstate and foreign commerce and use the mail and facilities in interstate and foreign commerce, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on, of an unlawful activity, namely bribery in violation of New York Election Law §§ 17-142(1), (3), and (4), and thereafter would and did perform and attempt to perform an act to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of the

unlawful activity, in violation of Title 18, United States Code, Section 1952.

MEANS AND METHODS OF THE CONSPIRACY

14. The conspiracy between and among SHALOM LAMM, KENNETH NAKDIMEN, VOLVY SMILOWITZ, a/k/a "Zev Smilowitz," and others, included the following means and methods:

a. LAMM and NAKDIMEN purchased residential properties in Bloomingburg. Many of the properties, however, were unoccupied, unleased, under construction, and/or uninhabitable thirty days prior to the Village elections on March 18, 2014.

b. LAMM, NAKDIMEN, and SMILOWITZ offered cash and other payments, and other items of value including rent-free housing, to individuals who did not live in Bloomingburg provided that they register to vote and vote in Bloomingburg.

c. LAMM, NAKDIMEN, and SMILOWITZ, together with agents who were working for them including employees of a public relations firm that LAMM and NAKDIMEN had retained, submitted to the Sullivan County Board of Elections signed, sworn Voter Registration Forms that were false. The Voter Registration Forms were false because the registrants did not live at the addresses listed on the form. The false addresses were for properties owned by LAMM and NAKDIMEN that were unoccupied, unleased, under construction, and/or uninhabitable, and

properties that LAMM and NAKDIMEN did not yet own and that were occupied by others. The Voter Registration Forms were also false because the registrants swore and affirmed that they had lived in the voting district for 30 days prior to the election, when in fact they had not.

d. LAMM, NAKDIMEN, and SMILOWITZ, together with agents acting on their behalf, took steps to give the false appearance that the unoccupied properties in which registrants falsely claimed to live were occupied, including:

i. they created sham lease agreements between LAMM and NAKDIMEN and the registrants, which were back-dated to give the false appearance that the registrant's lease had been executed at least thirty days prior to the election when in fact it was not;

ii. they placed personal items in the properties, such as toothpaste and toothbrushes;

iii. they posted names of registrants at the properties, assigning apartment numbers to the registrants in multi-apartment properties, in some instances alphabetically; and

iv. they picked up mail from mailboxes at properties.

e. Aware that their voter registration scheme would likely draw scrutiny, LAMM, NAKDIMEN, and SMILOWITZ attempted to

create the false appearance that their actions were undertaken in good faith reliance on the advice of legal counsel. But they did not rely in good faith on the advice of legal counsel, as they neither made full and accurate disclosure of the voter registration scheme to legal counsel, nor acted in accordance with reasonable legal advice.

i. LAMM and NAKDIMEN initially obtained legal advice that to qualify to vote in Bloomingburg, a person had to "manifest an intent, coupled with physical presence [in Bloomingburg], without any aura of a sham. In simple terms, to establish residency in the Village, an individual must live in the Village of Bloomingburg and demonstrate an intent to stay there on a long-term basis."

ii. Shortly thereafter, they retained new legal counsel, who instead provided them a list of "indica [sic] of residence," including, among other things, "leases," "library card," "bank accounts," and "postal change of address form."

iii. They then attempted to create the false appearance that people whom they registered were residents because they had "indica of residence," by, for example, creating sham, back-dated leases, preparing postal changes of address, making arrangements with a local bank to open accounts, and by placing household items such as toothpaste in unoccupied apartments.

f. For election day, LAMM, NAKDIMEN, and SMILOWITZ, together with agents acting on their behalf, arranged transportation to Bloomingburg for registrants who lived elsewhere, and prepared to coach the registrants on their false addresses in order to respond to challenges to the false registrations.

OVERT ACTS

15. In furtherance of the conspiracy and to effect the illegal objects thereof, SHALOM LAMM, KENNETH NAKDIMEN, and VOLVY SMILOWITZ, a/k/a "Zev Smilowitz," the defendants, together with others known and unknown, committed the following overt acts, in the Southern District of New York and elsewhere:

a. On or about February 13, 2014, LAMM sent an email to SMILOWITZ and others, subject line "Occupancy/Vote Update," attached to which was a spreadsheet setting forth, among other things, a "goal" of 150 leases and 150 registered voters.

b. On or about February 13, 2014, LAMM, SMILOWITZ, and others created a to do list, which included "Write leases up for everyone, dated to March 15"; "Pick up mail from all leased apartments every 2 days"; and "Pick up home goods and furnishings from Walmart for every apartment," including "soda," "beer," "non-perishable snacks," "clothes in closets," "toothbrushes," and "toothpaste."

c. In or about early to mid-February, 2014, LAMM met with an individual ("Individual-1") and offered Individual-1 \$500 and rent-free housing for every person Individual-1 brought to Bloomingburg, provided that each person register to vote.

d. In or about early to mid-February, 2014, SMILOWITZ met with an individual ("Individual-2") and offered Individual-2 \$500 and a rent-free apartment, provided that Individual-2 registered to vote and voted, and offered the same exchange for up to ten acquaintances of Individual-2.

e. In or about mid-February, 2014, NAKDIMEN completed a false Voter Registration Form in which he claimed to live in Bloomingburg.

f. On or about February 18 and 19, 2014, LAMM, NAKDIMEN, and SMILOWITZ submitted, with agents acting on their behalf, false Voter Registration Forms to the Sullivan County Board of Elections.

g. On or about February 24, 2014, LAMM signed lease agreements with people who registered to vote, which were back-dated to February 14, 2014.

h. In or about late February 2014, NAKDIMEN spoke to a United States Post Office employee about having someone pick up other people's undelivered mail.

i. In or about late March, 2014, LAMM gave Individual-1 \$31,000, in the form of a check from LAMM's development company to an entity led by Individual-1.

(Title 18, United States Code, Section 371.)



Preet Bharara
PREET BHARARA
United States Attorney

United States District Court

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VOLVY SMILOWITZ,
a/k/a "Zev Smilowitz,"

Defendant.

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(In Violation of Title 18, United States Code, Section 371)

PREET BHARARA

United States Attorney.

A TRUE BILL

Foreperson.

