

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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:
THE PEOPLE OF THE STATE OF NEW YORK,
:
-against- :
JAMES ZIMMERMAN, :
:
Defendant. :
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THE GRAND JURY OF THE COUNTY OF NEW YORK, by this indictment, accuses the defendant of the crime of **PERJURY IN THE FIRST DEGREE, in violation of Penal Law §210.15**, committed as follows:

The Antitrust Bureau of the New York State Attorney General’s Office is located in New York County at 120 Broadway. The Bureau is responsible for enforcing the antitrust laws to prevent restraints of trade and to promote competition in New York State, and competition affecting New York consumers or markets. Its responsibilities under the New York State antitrust law (the Donnelly Act) include:

1. using the extensive investigative powers of the Attorney General to probe into any arrangement or activity that appears to be an antitrust violation;
2. preventing or enjoining anticompetitive practices that are harmful to the public; and
3. bringing civil or criminal prosecutions against violators of the antitrust laws in the appropriate forum, including New York County Supreme Court.

In 2003, the Antitrust Bureau commenced an investigation into anticompetitive practices among Waterford, Wedgewood USA, Lenox, Federated Department Stores and May Department Stores. Specifically, in 2000 and 2001, Waterford and Lenox had negotiated with Bed Bath & Beyond retail stores to participate in a test program, in which six Bed Bath & Beyond stores would sell Waterford and Lenox products. In or about June of 2001, one or more people from Federated Department Stores were alleged to have exerted pressure on Waterford, or otherwise interfered with the negotiations for the test program, thereby causing the test program to be aborted. To determine whether such conduct had occurred and the nature thereof, the Attorney General's Office subpoenaed documents to its New York County office, and took sworn statements in New York County of employees and officers of Waterford, Lenox Federated and May.

The defendant was the Chairman of the Board and the Chief Executive Officer of Federated Department Stores during the relevant time period until his retirement in February of 2004. Pursuant to the Attorney General's investigation, the defendant gave sworn testimony. As an accommodation to the defendant, the Assistant Attorney General conducting the investigation traveled to Cincinnati, Ohio to take the defendant's statement, although nearly all other statements were taken in New York County either in person or telephonically. After being duly sworn, the defendant was asked whether he had called Sir Anthony O'Reilly, the Chairman of the Board of Waterford, Wedgewood, PLC, to dissuade him from selling Waterford products through Bed Bath & Beyond or to otherwise encourage him to pull out of the negotiations to do so. As such information was the focus of the Attorney General's investigation, the Assistant Attorney General's questions and the defendant's responses on the matter were material to the investigation, and to any potential lawsuit the Attorney General could have brought.

On or about April 9, 2004, the defendant swore falsely, and his false statement

consisted of testimony and was material to the action, proceeding and matter in which it was made. Specifically, the defendant, being duly sworn, testified in the course of his sworn statement that he had never discussed Bed Bath & Beyond in any way with anyone at Waterford, including Sir Anthony O'Reilly, and that he had never told Sir Anthony O'Reilly, in sum and substance, that selling Waterford product to Bed Bath & Beyond would not be a good thing for the Waterford brand, and such testimony included the following:

Q: Did you ever talk to anyone at Waterford about their selling product to Bed Bath and Beyond in 2001?

A: No;

and later such testimony included the following:

Q: Did you ever discuss Bed Bath and Beyond with Sir Anthony O'Reilly?

A: No;

and later such testimony included the following:

Q: Do you have any reason – You say you never discussed Bed Bath and Beyond with Sir Anthony O'Reilly, yes?

A: That is correct;

and later such testimony included the following:

Q: Do you remember talking to him about Bed Bath and Beyond and expressing a view about whether it was good or bad for the American company to do?

A: I recall I did not discuss Bed Bath and Beyond;

and later such testimony included the following:

Q: And if you had a conversation with him about Bed Bath and Beyond, you'd remember it, wouldn't you?

A: I've said consistently I did not discuss Bed Bath and Beyond;

Q: So I gather you never said to him in words or substance that Waterford opening

Bed Bath and Beyond would not be a good thing for the brand, fair?

A: That is correct;

and later such testimony included the following:

Q: You say you've never discussed Bed Bath and Beyond with Sir Anthony O'Reilly, right?

A: I've said that consistently.

Whereas in truth and in fact, as the defendant well knew, said testimony was false.

EFFECT ON THE JURISDICTION

AND THE GRAND JURY AFORESAID, finds that the crime of Perjury in the First Degree was designed to prevent a particular effect in the County and State of New York and, based on the foregoing, that the defendant's conduct constituting the above crime was performed with intent that it would, and knowledge that it would be likely to, have such an effect herein.

ELIOT SPITZER
Attorney General of the State of New York
