

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

UNITED STATES OF AMERICA	:	CRIMINAL NO.
v.	:	DATE FILED: _____
ROBERT D. MATTEI	:	VIOLATION:
LEO T. MCGLYNN		18 U.S.C. § 371 (conspiracy - 1 count)
JOSEPH B. DONNELLY	:	26 U.S.C. § 7201 (tax evasion - 5 counts)
BRIAN F. WELSH		18 U.S.C. § 1344 (bank fraud - 1 count)
ELENA V. RUIZ	:	31 U.S.C. § 5324(a)(3) (aggravated structuring - 1 count)
	:	Notice of Forfeiture

INFORMATION

COUNT ONE

THE UNITED STATES ATTORNEY CHARGES THAT:

1. At all times relevant to this information, Nifty Fifty's was a restaurant chain with locations in metropolitan Philadelphia including Southeastern Pennsylvania and Southern New Jersey. Nifty Fifty's restaurants were operated as Subchapter S corporations or as limited liability corporations.

2. From the establishment of the first Nifty Fifty's restaurant in 1986, and continuing until the present time, defendants ROBERT D. MATTEI and LEO T. MCGLYNN were, either directly or indirectly through other corporations or partnerships, both 50% owners of the Nifty Fifty's restaurants, and split all profits equally.

3. In or about 1987, defendant BRIAN F. WELSH joined the Nifty Fifty's organization and was eventually promoted to a head manager position. In that role he was responsible for, among other things, tracking income and expenses.

4. In or about 1989, defendant JOSEPH B. DONNELLY joined the Nifty Fifty's organization and was eventually promoted to a head manager position. In that role he

was responsible for, among other things, tracking income and expenses.

5. In or about 1991, defendant ELENA V. RUIZ, the daughter of defendant ROBERT D. MATTEI, joined the Nifty Fifty's organization and was eventually promoted to the position of office manager. In that role she was responsible for, among other things, administering payroll for, and paying the bills of, the Nifty Fifty's restaurants.

6. From in or about 1986 to in or about October 2010, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendants

**ROBERT D. MATTEI,
LEO T. MCGLYNN,
JOSEPH B.DONNELLY,
BRIAN F. WELSH and
ELENA V. RUIZ**

conspired and agreed, together and with others known and unknown to the United States Attorney, to defraud the United States by impeding, impairing, obstructing, and defeating the lawful functions of the Internal Revenue Service of the Department of the Treasury in the ascertainment, computation, assessment and collection of income taxes.

MANNER AND MEANS

7. It was part of the conspiracy that, from 1986 on, the defendants did not report as income to the Nifty Fifty's restaurants millions of dollars of the cash paid by customers of those restaurants (the "Skimmed Cash").

It was further a part of the conspiracy that:

8. The defendants prepared Cash Flow Reconciliation Sheets ("Cash Sheets") to accurately document and track the receipt and disbursement of funds that had been received by the Nifty Fifty's restaurants, including the Skimmed Cash.

9. The defendants stored hundreds of thousands of dollars of the skimmed cash in the Nifty Fifty's restaurants, in personal safes in the defendants' homes, and in bank safe deposit boxes.

10. The defendants and most of the other employees of the Nifty Fifty's restaurants received only a portion of their compensation from the Nifty Fifty's restaurants by means of an official pay check.

11. The defendants and most of the other employees of the Nifty Fifty's restaurants received the remainder of their compensation from the Nifty Fifty's restaurants in cash from the Skimmed Cash, including in excess of \$6.4 million dollars in cash payroll between January 2006 and August 2010, resulting in the evasion of more than \$850,000 in Nifty Fifty's employment taxes.

12. Between January 2006 and August 2010 alone, the defendants concealed approximately \$4.1 million dollars in Skimmed Cash in safe deposit boxes for the exclusive benefit of defendants ROBERT D. MATTEI and LEO T. MCGLYNN.

13. Defendant ROBERT D. MATTEI transported tens of thousands of dollars in Skimmed Cash secreted on his person on domestic airline flights between Pennsylvania, where it had been illegally skimmed, and Florida, where he maintained his retirement home.

14. Between about January 2006 and about June 2008, defendant ROBERT D. MATTEI regularly directed defendant BRIAN F. WELSH to purchase and send to him one thousand dollar money orders using Skimmed Cash.

15. Between January 2006 and August 2010 alone, the defendants used approximately \$5 million dollars of Skimmed Cash to pay people and businesses who supplied goods and services to the Nifty Fifty's restaurants, providing those persons and businesses with the opportunity to evade the payment of their own taxes.

16. The defendants retained the services of an individual, identified here as Accountant A, to prepare false federal tax returns for the Nifty Fifty's restaurants that did not report the millions of dollars of Skimmed Cash as income to those businesses.

17. The defendants retained the services of Accountant A to prepare individual federal income tax returns for themselves that falsely under-reported income by failing to report the Skimmed Cash received by them, and that also falsely inflated expenses and deductions in order to obtain tax refunds to which the defendants were not entitled.

18. Between January 1, 2006 and August 23, 2010 alone, the defendants deliberately failed to properly account for more than \$15.6 million in gross receipts of the Nifty Fifty's restaurants, thereby evading federal employment and personal tax payments of more than \$2.2 million.

OVERT ACTS

In furtherance of the conspiracy and to accomplish its objects, defendants ROBERT D. MATTEI, LEO T. MCGLYNN, JOSEPH B. DONNELLY, BRIAN F. WELSH and ELENA V. RUIZ committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. On or about April 15, 2007, defendant ROBERT D. MATTEI caused to be filed his 2006 joint tax return, Form 1040, which falsely understated MATTEI's taxable income as \$0, and requested a refund.

2. On or about April 15, 2009, defendant ROBERT D. MATTEI caused to be filed his 2008 joint tax return, Form 1040, which falsely understated MATTEI's taxable income as \$0.

3. On or about April 15, 2007, defendant LEO T. MCGLYNN caused to be filed his 2006 joint tax return, Form 1040, which falsely understated MCGLYNN's taxable income and requested a refund.

4. On or about April 15, 2008, defendant LEO T. MCGLYNN caused to be filed his 2007 joint tax return, Form 1040, which falsely understated MCGLYNN's taxable income and requested a refund.

5. On or about April 15, 2007, defendant JOSEPH B.DONNELLY caused to be filed his 2006 joint tax return, Form 1040, which falsely understated DONNELLY's taxable income as \$0, and requested a refund.

6. On or about April 15, 2010, defendant JOSEPH B.DONNELLY caused to be filed his 2009 joint tax return, Form 1040, which falsely understated DONNELLY's taxable income as \$0, and requested a refund.

7. On or about April 15, 2007, defendant BRIAN F. WELSH caused to be filed his 2006 joint tax return, Form 1040, which falsely understated WELSH's taxable income as \$0, and requested a refund.

8. On or about April 15, 2010, defendant BRIAN F. WELSH caused to be filed his 2009 joint tax return, Form 1040, which falsely understated WELSH's taxable income as \$0, and requested a refund. In that return, WELSH requested that a payment be made to him by the government of more than \$4,000 for the earned income tax credit for which he would not have qualified if he had honestly reported his income.

9. On or about April 15, 2007, defendant ELENA V. RUIZ caused to be filed her 2006 joint tax return, Form 1040, which falsely understated RUIZ's taxable income as \$0, and requested a refund.

10. On or about April 15, 2008, defendant ELENA V. RUIZ caused to be filed her 2007 joint tax return, Form 1040, which falsely understated RUIZ 's taxable income as \$0, and requested a refund.

11. On or about January 6, 2008, defendant ROBERT D. MATTEI directed defendant BRIAN F. WELSH to purchase and send to defendant MATTEI a \$1,000 money order using Skimmed Cash.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. Paragraphs 1 through 2 of Count One of this information are incorporated here.

2. From on or about January 1, 2006 through on or about April 15, 2010, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendant

ROBERT D. MATTEI,

who during calendar years 2006 through 2009 was married, willfully attempted to evade and defeat a large part of the tax due and owing by him and his spouse to the United States of America for the calendar years 2006 through 2009 by a continuous course of conduct employing various means, including, among other things:

(1) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent corporate income tax returns, Forms 1120S and 1065, for each of the years 2006 through 2009, on behalf of the Nifty Fifty's restaurants, in which those corporations did not report as income to the Nifty Fifty's restaurants millions of dollars of the cash receipts received by those businesses (the "Skimmed Cash");

(2) by paying to himself a portion of the Skimmed Cash to be used for his own personal benefit;

(3) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent joint U.S. individual income tax returns, Forms 1040, for each of the years 2006 through 2009, on behalf of the defendant and his spouse, in which it was stated that the defendant's taxable income included only his allocable portion of the income from the Nifty Fifty's restaurants disclosed to the Internal Revenue Service, in the approximate amount of \$66,084, but, as he then well knew and believed, his income also included his allocable portion

of the cash skimmed from the Nifty Fifty's restaurants, in the approximate amount of \$1,837,666, and that upon that additional income there was owing to the United States of America an additional tax of approximately \$551,885 ;

(4) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent joint U.S. individual income tax returns, Forms 1040, for each of the years 2006 through 2009, on behalf of the defendant and his spouse, which falsely inflated expenses and deductions in order to obtain refunds to which the defendant was not entitled;

(5) by making and causing to be made payments to employees of, and suppliers to, the Nifty Fifty's restaurants using Skimmed Cash and by causing the Nifty Fifty's restaurants to file false quarterly employment tax returns (Forms 941) that excluded the payments made in Skimmed Cash; and,

(6) by concealing in personal safes and bank safe deposit boxes Skimmed Cash on which taxes had not been paid.

In violation of Title 26, United States Code, Section 7201.

COUNT THREE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. Paragraphs 1 through 2 of Count One of this information are incorporated here.

2. From on or about January 1, 2006 through on or about April 15, 2010, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendant

LEO T. MCGLYNN,

who during calendar years 2006 through 2009 was married, willfully attempted to evade and defeat a large part of the tax due and owing by him and his spouse to the United States of America for the calendar years 2006 through 2009 by a continuous course of conduct employing various means, including, among other things:

(1) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent corporate income tax returns, Forms 1120S and 1065 for each of the years 2006 through 2009, on behalf of the Nifty Fifty's restaurants, in which those corporations did not report as income to the Nifty Fifty's restaurants millions of dollars of the cash receipts received by those businesses (the "Skimmed Cash");

(2) by paying to himself a portion of the Skimmed Cash to be used for his own personal benefit;

(3) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent joint U.S. individual income tax returns, Forms 1040, for each of the years 2006 through 2009, on behalf of the defendant and his spouse, in which it was stated that the defendant's taxable income included only (i) those payments made to him by the Nifty Fifty's restaurants in the form of official pay checks in the approximate amount of \$275,000 and (ii) his allocable portion of the income from the Nifty Fifty's restaurants disclosed

to the Internal Revenue Service, in the approximate amount of \$262,688, but, as he then well knew and believed, his income also included cash skimmed from the Nifty Fifty's restaurants, in the approximate amount of \$2,085,440, and that upon that additional income there was owing to the United States of America an additional tax of approximately \$654,495;

(4) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent joint U.S. individual income tax returns, Forms 1040, for each of the years 2006 through 2009, on behalf of the defendant and his spouse, which falsely inflated expenses and deductions in order to obtain refunds to which the defendant was not entitled;

(5) by making and causing to be made payments to employees of, and suppliers to, the Nifty Fifty's restaurants using Skimmed Cash and by causing the Nifty Fifty's restaurants to file false quarterly employment tax returns (Forms 941) that excluded the payments made in Skimmed Cash; and,

(6) by concealing in personal safes and bank safe deposit boxes Skimmed Cash on which taxes had not been paid.

In violation of Title 26, United States Code, Section 7201.

COUNT FOUR

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. Paragraphs 1 through 2 and 4 of Count One of this information are incorporated here.

2. From on or about January 1, 2006 through on or about April 15, 2010, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendant

JOSEPH B. DONNELLY,

who during calendar years 2006 through 2009 was married, willfully attempted to evade and defeat a large part of the tax due and owing by him and his spouse to the United States of America for the calendar years 2006 through 2009 by a continuous course of conduct employing various means, including, among other things:

(1) by collecting, accounting for, and maintaining in safes and safe deposit boxes, a portion of the cash receipts received by the Nifty Fifty's restaurants for each of the years 2006 through 2009, which he knew was not going to be reported as income on those businesses' corporate income tax returns, Forms 1120S and 1065 (the "Skimmed Cash");

(2) by paying to himself a portion of the Skimmed Cash to be used for his own personal benefit;

(3) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent joint U.S. individual income tax returns, Forms 1040, for each of the years 2006 through 2009, on behalf of the defendant and his spouse, in which it was stated that the defendant's taxable income included only those payments made to him by the Nifty Fifty's restaurants in the form of official pay checks in the approximate amount of \$184,000, but, as he then well knew and believed, his income also included cash skimmed from the Nifty Fifty's restaurants in the approximate amount of \$342,933, and that upon that

additional income there was owing to the United States of America an additional tax of approximately \$49,366;

(4) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent joint U.S. individual income tax returns, Forms 1040, for each of the years 2006 through 2009, on behalf of the defendant and his spouse, which falsely inflated expenses and deductions in order to obtain refunds to which the defendant was not entitled; and,

(5) by making payments to employees of, and suppliers to, the Nifty Fifty's restaurants using Skimmed Cash.

In violation of Title 26, United States Code, Section 7201.

COUNT FIVE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. Paragraphs 1 through 3 of Count One of this information are incorporated here.

2. From on or about January 1, 2006 through on or about April 15, 2010, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendant

BRIAN F. WELSH,

who during calendar years 2006 through 2009 was married, willfully attempted to evade and defeat a large part of the tax due and owing by him and his spouse to the United States of America for the calendar years 2006 through 2009 by a continuous course of conduct employing various means, including, among other things:

(1) by collecting, accounting for, and maintaining in safes and safe deposit boxes, a portion of the cash receipts received by the Nifty Fifty's restaurants for each of the years 2006 through 2009, which he knew was not going to be reported as income on those businesses' corporate income tax returns, Forms 1120S and 1065 (the "Skimmed Cash");

(2) by paying to himself a portion of the Skimmed Cash to be used for his own personal benefit;

(3) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent joint U.S. individual income tax returns, Forms 1040, for each of the years 2006 through 2009, on behalf of the defendant and his spouse, in which it was stated that the defendant's taxable income included only those payments made to him by the Nifty Fifty's restaurants in the form of official pay checks in the approximate amount of \$223,800, but, as he then well knew and believed, his income also included cash skimmed from the Nifty Fifty's restaurants in the approximate amount of \$488,656, and that upon that

additional income there was owing to the United States of America an additional tax of approximately \$87,551;

(4) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent joint U.S. individual income tax returns, Forms 1040, for each of the years 2006 through 2009, on behalf of the defendant and his spouse, which falsely inflated expenses and deductions in order to obtain refunds to which the defendant was not entitled; and,

(5) by making payments to employees of, and suppliers to, the Nifty Fifty's restaurants using Skimmed Cash.

In violation of Title 26, United States Code, Section 7201.

COUNT SIX

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. Paragraphs 1 through 2 and 5 of Count One of this information are incorporated here.

2. From on or about January 1, 2006 through on or about April 15, 2010, in Philadelphia, in the Eastern District of Pennsylvania, and elsewhere, defendant

ELENA V. RUIZ,

who during calendar years 2006 through 2009 was married, willfully attempted to evade and defeat a large part of the tax due and owing by her and her spouse to the United States of America for the calendar years 2006 through 2009 by a continuous course of conduct employing various means, including, among other things:

(1) accounting for, and maintaining in safes and safe deposit boxes, a portion of the cash receipts received by the Nifty Fifty's restaurants for each of the years 2006 through 2009, which she knew was not going to be reported as income on those businesses' corporate income tax returns, Forms 1120S and 1065 (the "Skimmed Cash");

(2) by accepting as payment for her work for the Nifty Fifty's restaurants a portion of the Skimmed Cash to be used for her own personal benefit;

(3) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent joint U.S. individual income tax returns, Forms 1040, for each of the years 2006 through 2009, on behalf of the defendant and her spouse, in which it was stated that the defendant's taxable income included only those payments made to her by the Nifty Fifty's restaurants in the form of official pay checks in the approximate amount of \$61,682, but, as she then well knew and believed, her income also included cash skimmed from the Nifty Fifty's restaurants in the approximate amount of \$254,894, and that upon that

additional income there was owing to the United States of America an additional tax of approximately \$35,612;

(4) by executing and causing to be executed in the Eastern District of Pennsylvania, false and fraudulent joint U.S. individual income tax returns, Forms 1040, for each of the years 2006 through 2009, on behalf of the defendant and her spouse, which falsely inflated expenses and deductions in order to obtain refunds to which the defendant was not entitled; and,

(5) by tracking payments to employees of, and suppliers to, the Nifty Fifty's restaurants using Skimmed Cash.

In violation of Title 26, United States Code, Section 7201.

COUNT SEVEN

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. Paragraphs 1 through 4 of Count One of this information are incorporated here.

2. At all times material to this information, Sovereign Bank was a financial institution with accounts insured by the Federal Deposit Insurance Corporation, cert. no. 29950.

3. From on or about December 16, 2003 to on or about November 30, 2009, in Philadelphia, in the Eastern District of Pennsylvania and elsewhere, defendants

**ROBERT D. MATTEI,
LEO T. MCGLYNN,
JOSEPH B. DONNELLY and
BRIAN F. WELSH**

knowingly executed and attempted to execute, and aided and abetted the execution of, a scheme to defraud Sovereign Bank and to obtain money owned by and under the custody and control of Sovereign Bank by means of false and fraudulent pretenses, representations and promises.

THE SCHEME

It was part of the scheme that:

4. The defendants did not report as income to the Nifty Fifty's restaurants millions of dollars of cash that those restaurants received in the ordinary course of their business (the "Skimmed Cash").

5. The defendants prepared Cash Flow Reconciliation Sheets ("Cash Sheets") to accurately document and track the receipt and disbursement of funds that had been received by the Nifty Fifty's restaurants, including the Skimmed Cash.

6. The defendants and most of the other employees of the Nifty Fifty's restaurants received only a portion of their compensation from the Nifty Fifty's restaurants by means of an official pay check.

7. The defendants and most of the other employees of the Nifty Fifty's restaurants received the remainder of their salary or other pay from the Nifty Fifty's restaurants in cash from the Skimmed Cash.

8. The defendants retained the services of an individual, identified here as Accountant A, to prepare federal tax returns for the Nifty Fifty's restaurants that falsely failed to report some or all of the Skimmed Cash as income to those businesses.

9. The defendants retained the services of Accountant A to prepare individual federal income tax returns for themselves that falsely under-reported income by failing to report some or all of the Skimmed Cash received by them and that also falsely inflated expenses and deductions in order to obtain refunds to which the defendants were not entitled.

10. In order to obtain and retain business loans totaling in excess of \$2.28 million from Sovereign Bank to operate the Nifty Fifty's restaurants, the defendants were required to submit to Sovereign Bank copies of their filed federal income tax returns. With knowledge of the fact that the false returns that they had actually submitted to the Internal Revenue Service would not be sufficient to obtain and retain the loans that they desired, the defendants retained the services of Accountant A to prepare false and fraudulent documents that purported to be their federal income tax returns but which showed income far in excess of that actually reported to the Internal Revenue Service.

11. In order to deceive Sovereign Bank, the defendants submitted the bogus federal income tax returns to Sovereign Bank in support of the business loans that they desired to obtain and retain for the Nifty Fifty's restaurants.

In violation of Title 18, United States Code, Sections 1344 and 2.

COUNT EIGHT

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

From October 30, 2009 through December 11, 2009, in the Eastern District of Pennsylvania, defendants

**LEO T. MCGLYNN and
JOSEPH B. DONNELLY**

for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a) and the regulations promulgated thereunder, knowingly structured and assisted in structuring, transactions with Sovereign Bank, a domestic financial institution, as part of a pattern of illegal activity involving transactions of more than \$100,000 in a twelve-month period, that is, approximately 22 cash deposit transactions totaling over \$200,000 between October 30, 2009 and December 11, 2009.

In violation of Title 31, United States Code, Sections 5324(a)(3) and (d)(2).

NOTICE OF FORFEITURE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. The allegations contained in Count Eight of this information are hereby realleged and incorporated by reference for the purposes of alleging forfeitures pursuant to Title 31, United States Code, Section 5317.

2. Pursuant to Title 31, United States Code, Section 5317, upon conviction of an offense in violation of Title 31, United States Code, Section 5324, the defendants,

**LEO T. MCGLYNN and
JOSEPH B. DONNELLY**

shall forfeit to the United States of America, the currency involved in the commission of such offense, including, but not limited to: \$205,300 in United States currency.

3. If any of the property described above, as a result of any act or omission of the defendants:

- 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,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 5317(c) and by Title 28, United States Code, Section 2461(c).

ZANE DAVID MEMEGER
UNITED STATES ATTORNEY