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SEARCH

[HOME](#) [ABOUT](#) [U.S. ATTORNEY](#) [DIVISIONS](#) [NEWS](#) [PROGRAMS](#) [EMPLOYMENT](#)

[CONTACT](#)

[U.S. Attorneys](#) » [Southern District of New York](#) » [News](#) » [Press Releases](#)

Department of Justice

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE

Thursday, September 22, 2016

Nine Defendants, Including Joseph Percoco, Former Executive Deputy Secretary To The Governor, And Alain Kaloyeros, President Of Suny Polytechnic Institute, Charged With Federal Corruption And Fraud Offenses

Percoco Charged with Taking More than \$315,000 in Bribes; Kaloyeros Charged with Fraud in Connection with the Buffalo Billion Program

Preet Bharara, the United States Attorney for the Southern District of New York, Adam Cohen, Special Agent-in-Charge of the Buffalo Field Office of the Federal Bureau of Investigation ("FBI"), and Shantelle P. Kitchen, the Special Agent in Charge of the New York Field Office of the Internal Revenue Service, Criminal Investigation ("IRS-CI"), announced today the unsealing of a Complaint charging eight defendants with federal public corruption offenses, including JOSEPH PERCOCO, the former Executive Deputy Secretary to the Governor of the State of New York, and ALAIN KALOYEROS, the President of SUNY Polytechnic Institute ("SUNY Poly"). The charges arise from two separate but overlapping schemes involving bribery, corruption, and fraud in the award of hundreds of millions of dollars in New York State contracts and other official state actions.

In the first scheme, PERCOCO is charged with soliciting and accepting more than \$315,000 in bribes in return for taking official state action to benefit an energy company (the "Energy Company") and a Syracuse-based real estate developer (the "Syracuse Developer"). As part of this scheme, PETER GALBRAITH KELLY JR., an executive at the Energy Company, and STEVEN AIELLO and JOSEPH GERARDI, executives at the Syracuse Developer, are charged with orchestrating the payment of bribes to PERCOCO.

In the second scheme, AIELLO and GERARDI, along with LOUIS CIMINELLI, MICHAEL LAIPPLE, and KEVIN SCHULER, who are executives at a Buffalo-based development company (the “Buffalo Developer”), are charged with paying hundreds of thousands of dollars in bribes to TODD HOWE, a consultant hired by KALOYEROS to help administer the state’s “Buffalo Billion” initiative and related programs. As the charges allege, in exchange for the bribe payments, HOWE and KALOYEROS secretly rigged the bids on lucrative state-funded contracts to ensure that the Syracuse Developer and the Buffalo Developer would win the contracts.

All eight defendants charged in the Complaint were arrested this morning. PERCOCO, KELLY, and KALOYEROS are scheduled to be presented later today before U.S. Magistrate Judge Sarah Netburn in Manhattan federal court. AIELLO and GERARDI are scheduled to appear later today in federal court in Syracuse. CIMINELLI, LAIPPLE, and SCHULER are scheduled to appear later today in federal court in Buffalo.

Also unsealed today is the guilty plea of TODD HOWE in connection with his participation in both corruption schemes described above. HOWE pled guilty pursuant to an Information before U.S. District Judge Richard M. Berman on September 20, 2016, and is cooperating with the Government.

U.S. Attorney Preet Bharara said: “Today’s charges shine a light on yet another sordid side of the show-me-the money culture that has so plagued Albany. As alleged, Joseph Percoco, the former Executive Deputy Secretary to the Governor, was on the take. And pervasive corruption and fraud allegedly infected signature state development projects like the Buffalo Billion program. The bids allegedly were rigged, the results preordained; companies got rich and the public got bamboozled. As alleged in the Complaint, it turns out the state legislature does not have a monopoly on crass corruption in New York.”

FBI Special Agent-in-Charge Adam Cohen said: “These arrests speak volumes to those who, as alleged in the complaint, arrogantly took what was not theirs and who acted without morals and ignored ethics. Each of them allegedly broke the law because they chose greed, and, as a result, personally tarnished an historic opportunity. Their alleged behavior compromised the integrity of government and impeded the promise of liberty. We cannot say it often enough: It is the expectation of the public that government officials are not in their positions to self-deal or to serve their personal interests.”

IRS-CI SAC Shantelle P. Kitchen said: “The honest taxpayer’s confidence in the tax system depends on everyone paying their fair share, regardless of their occupation, wealth or prominence – or their public office or public position. IRS Criminal Investigation takes allegations of public corruption by public officials and public employees very seriously, and we are always ready to contribute to an investigation when the allegation has a financial component.”

According to the allegations contained in the Complaint^[1] unsealed today in Manhattan federal court:

The PERCOCO Bribery Scheme

In the first scheme alleged in the Complaint, PERCOCO, who served as the Executive Deputy Secretary to the Governor between January 2012 and mid-2014, and again in 2015, is charged with abusing his official position and extensive influence within the Executive Branch of New York

State (the “State”) by seeking and accepting bribe payments from executives at companies that were seeking benefits and business from the State, in exchange for PERCOCO’s use of his official authority and influence to benefit those companies.

PERCOCO solicited the bribe payments from two clients of HOWE –the Energy Company and the Syracuse Developer – both of which had retained HOWE as a consultant to help them obtain official State action. In email correspondence between HOWE and PERCOCO obtained through judicially-authorized search warrants, PERCOCO and HOWE referred to the bribe payments as “ziti,” a reference to a term for money used by the characters in the television show “The Sopranos.”

Bribes from KELLY and the Energy Company

The bribes paid to PERCOCO from the Energy Company were orchestrated by KELLY, the head of external affairs and government relations for the Energy Company. Kelly conspired with PERCOCO and HOWE to funnel more than \$287,000 in bribe payments from the Energy Company to PERCOCO and PERCOCO’s wife in exchange for PERCOCO’s official assistance for the Energy Company on an as-needed basis.

As alleged in the Complaint: (a) State action was critical to the Energy Company’s business; (b) starting as early as 2010, KELLY provided personal benefits to PERCOCO, including expensive meals and a Hamptons fishing trip, in an effort to cultivate access to PERCOCO; (c) in response to KELLY’s requests for official State assistance, PERCOCO, who was experiencing financial difficulties at the time, requested that the Energy Company hire his then-unemployed wife; (d) in or around the end of 2012, KELLY caused the Energy Company to create a position for PERCOCO’s wife that paid approximately \$90,000 per year while requiring PERCOCO’s wife to do little work. In exchange for these payments, PERCOCO agreed to use his official position and influence, and did in fact use his official position and influence, to help the Energy Company with specific State matters as the opportunities arose. Among other things, PERCOCO agreed to use his official position and influence to assist the Energy Company’s efforts to obtain (i) a valuable agreement from the State allowing the Energy Company to buy lower-cost emissions credits in New York for a power plant proposed to be built in New Jersey and (ii) a lucrative long-term power purchase agreement (the “PPA”) with the State guaranteeing a buyer for the power to be produced at a power plant proposed to be built in New York, which was expected to save the Energy Company approximately \$100 million in development costs.

The Energy Company’s payments to PERCOCO’s wife were concealed in various ways to hide their true source. KELLY ran the monthly payments to PERCOCO and his wife through a consultant who worked for the Energy Company in order to disguise the source of the payments. KELLY also made sure that PERCOCO’s wife’s photograph and full name were not included in promotional materials for the Energy Company, and he falsely told his superiors at the Energy Company – on two separate occasions – that PERCOCO had obtained an ethics opinion from the Governor’s Office approving of PERCOCO’s wife’s employment with the Energy Company, when in fact no such opinion existed. For his part, PERCOCO concealed the criminal scheme by failing to include the Energy Company as the source of payments on his State-mandated financial disclosure forms.

Bribes from AIELLO, GERARDI, and the Syracuse Developer

Beginning in early 2014, PERCOCO was also paid bribes totaling approximately \$35,000 from the Syracuse Developer. These bribe payments were orchestrated by AIELLO, the president of the Syracuse Developer, and GERARDI, its general counsel. AIELLO and GERARDI arranged for the payment of these bribes in exchange for PERCOCO's official assistance for the Syracuse Developer on an as-needed basis.

Specifically, PERCOCO agreed to, and did, take official action for the benefit of the Syracuse Developer to (a) reverse an adverse decision by the Empire State Development Corporation ("ESD"), which is the State's main economic development agency, that would have required the Syracuse Developer to enter into a costly labor peace agreement, (b) free up a backlog of more than \$14 million in State funds that had already been awarded to the Syracuse Developer but were delayed in payment, and (c) secure a substantial pay raise for AIELLO's son, who worked in the Executive Chamber.

To disguise the nature and source of the bribe payments, the Syracuse Developer's bribes to PERCOCO were funneled through bank accounts and a shell company set up by HOWE.

The "Buffalo Billion" Fraud and Bribery Scheme

The second scheme alleged in the Complaint involves bribery, corruption, and fraud in the award of contracts under the "Buffalo Billion" initiative and similar programs. In that scheme, executives at two companies, one of which was the Syracuse Developer, conspired with KALOYEROS and HOWE to deceive Fort Schuyler Management Corporation ("Fort Schuyler"), a State-funded entity charged with awarding State contracts worth hundreds of millions of dollars, by secretly rigging the bidding process so that the contracts would be awarded to those two companies.

KALOYEROS, who oversaw the application process for many of the State grants awarded under the Buffalo Billion and similar programs, retained HOWE to assist with developing the projects and identifying developers for those projects. HOWE in turn solicited and received bribe and gratuity payments from (a) the Syracuse Developer, facilitated by AIELLO and GERARDI, when the Syracuse Developer was seeking State development grants for projects in Syracuse, New York, and (b) the Buffalo Developer, facilitated by LOUIS CIMINELLI, MICHAEL LAIPPLE, and KEVIN SCHULER, when the Buffalo Developer was seeking State development grants for projects in Buffalo, New York. In exchange for the bribe payments, HOWE worked with KALOYEROS to deceive Fort Schuyler by secretly tailoring the required qualifications for those development deals so that the Syracuse Developer and the Buffalo Developer would be awarded the contracts, in Syracuse and Buffalo respectively, without any meaningful competition, while falsely representing to Fort Schuyler that the bidding process was fair, open, and competitive.

More specifically, in or about October 2013, Fort Schuyler issued requests for proposals ("RFPs") to solicit bids from interested and qualified developers for the Syracuse and Buffalo projects. KALOYEROS, with HOWE's assistance, oversaw the drafting of the RFPs and, unbeknownst to Fort Schuyler, KALOYEROS and HOWE secretly solicited from AIELLO, GERARDI, CIMINELLI, LAIPPLE, and SCHULER qualifications of the Syracuse Developer and Buffalo Developer to put in the RFPs so that the RFPs would request qualifications specifically held by those companies. For example, the Syracuse RFP requested the use of specific project management software used by the Syracuse Developer. After HOWE emailed GERARDI and AIELLO a draft of the Syracuse RFP approximately two weeks before its public issuance, GERARDI sent back to HOWE and AIELLO a

handwritten mark-up of the draft RFP, on which GERARDI had, among other things, underlined the software names and wrote “too telegraphed?? I would leave out these specific programs.” For its part, the Buffalo RFP, as initially issued, required 50 years of experience by a local developer – a qualification touted by the Buffalo Developer in promotion materials provided to KALOYEROS. This requirement was later changed and claimed to be a “typographical error.” The Buffalo Developer also was provided internal State documents to use in its submission.

False Statements by Aiello and Gerardi

On or about June 21, 2016, AIELLO and GERARDI were voluntarily interviewed by law enforcement agents conducting the investigation in this case. As alleged in the Complaint, both AIELLO and GERARDI made false statements during their respective interviews. Specifically, they both denied (i) hiring or making payments to PERCOCO and (ii) being asked by HOWE to make any campaign contributions to the Governor. GERARDI further claimed that his handwritten edits and suggestions on the early nonpublic draft of the RFP were intended not to help the Syracuse Developer win the RFP, but to ensure that a broader, more open RFP was created so more companies could compete to be SUNY Poly’s preferred developer in Syracuse. As alleged in the Complaint, those statements were false.

A chart containing the names, ages, residences, charges, and maximum penalties for the defendants is attached. The maximum potential sentences in this case are prescribed by Congress and are provided here for informational purposes only, as any sentencing of the defendants will be determined by a judge.

U.S. Attorney Bharara praised the work of the FBI and Internal Revenue Service-Criminal Investigation, which jointly conducted this investigation with investigators from the U.S. Attorney’s Office. Mr. Bharara also recognized the New York State Attorney General’s Office, which This case is being prosecuted by the Office’s Public Corruption Unit. Assistant U.S. Attorneys Janis Echenberg, Robert Boone, David Zhou, and Matthew Podolsky are in charge of the prosecution.

The charges contained in the Complaint are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

United States v. Joseph Percoco, et al. 16 Mag. 6005

DEFENDANT	AGE	RESIDENCE	CHARGE(S)	MAXIMUM SENTENCE(S)
JOSEPH PERCOCO	47	South Salem, NY	Conspiracy to Commit Extortion Under the Color of Official Right, 18 U.S.C. § 1951 (Count One)	20 years
			Extortion Under the Color of Official Right,	20 years

			<p>18 U.S.C. § 1951 (Counts Two and Three)</p> <p>Conspiracy to Commit Honest Services Fraud, 18 U.S.C. § 1349 (Count Four)</p> <p>Solicitation of Bribes and Gratuities,</p> <p>18 U.S.C. § 666 (Counts Five and Six)</p>	<p>20 years</p> <p>10 years (on each count)</p>
ALAIN KALOYEROS	60	Slingerlands, NY	<p>Conspiracy to Commit Wire Fraud,</p> <p>18 U.S.C. § 1349 (Count Nine)</p>	20 years
PETER GALBRAITH KELLY, JR.	53	Canterbury, CT	<p>Conspiracy to Commit Honest Services Fraud, 18 U.S.C. § 1349 (Count Four)</p> <p>Payment of Bribes and Gratuities,</p> <p>18 U.S.C. § 666 (Count Seven)</p>	<p>20 years</p> <p>10 years</p>
STEVEN AIELLO	58	Fayetteville, NY	<p>Conspiracy to Commit Honest Services Fraud, 18</p>	20 years

			<p>U.S.C. § 1349 (Count Four)</p> <p>Payment of Bribes and Gratuities, 18 U.S.C. § 666 (Counts Eight and Ten)</p> <p>Conspiracy to Commit Wire Fraud, 18 U.S.C. § 1349 (Count Nine)</p> <p>False Statements to Federal Officers, 18 U.S.C. § 1001 (Count Twelve)</p>	<p>10 years (on each count)</p> <p>20 years</p> <p>5 years</p>
JOSEPH GERARDI	57	Fayetteville, NY	<p>Conspiracy to Commit Honest Services Fraud, 18 U.S.C. § 1349 (Count Four)</p> <p>Payment of Bribes and Gratuities, 18 U.S.C. § 666 (Counts Eight and Ten)</p> <p>Conspiracy to Commit Wire Fraud, 18 U.S.C. § 1349 (Count Nine)</p> <p>False Statements to Federal</p>	<p>20 years</p> <p>10 years (on each count)</p> <p>20 years</p> <p>5 years</p>

			Officers, 18 U.S.C. § 1001 (Count Twelve)	
LOUIS CIMINELLI	61	Buffalo, NY	Conspiracy to Commit Wire Fraud, 18 U.S.C. § 1349 (Count Nine) Payment of Bribes and Gratuities, 18 U.S.C. § 666 (Count Eleven)	20 years 10 years
MICHAEL LAIPPLE	51	Orchard Park, NY	Conspiracy to Commit Wire Fraud, 18 U.S.C. § 1349 (Count Nine) Payment of Bribes and Gratuities, 18 U.S.C. § 666 (Count Eleven)	20 years 10 years
KEVIN SCHULER	45	North Tonawanda, NY	Conspiracy to Commit Wire Fraud, 18 U.S.C. § 1349 (Count Nine)	20 years

			Payment of Bribe and Gratuities, 18 U.S.C. § 666 (Count Eleven)	10 years
<i>United States v. Todd Howe (Information)</i>				
TODD HOWE	56	Washington, DC	Conspiracy to Commit Honest Services Fraud, 18 U.S.C. § 1349 (Count One)	20 years
			Conspiracy to Commit Extortion Under the Color of Official Right, 18 U.S.C. § 1951 (Count Two)	20 years
			Extortion Under the Color of Official Right, 18 U.S.C. § 1951 (Count Three)	20 years
			Conspiracy to Commit Wire Fraud Wire Fraud, 18 U.S.C. § 1349 (Count Four)	20 years
			Wire Fraud, 18 U.S.C. § 1343 (Counts Five and Seven)	20 years (on each count)

			Conspiracy to Commit Bribery, 18 U.S.C. § 371 (Count Six)	5 years
			Tax Fraud 26 U.S.C. § 7201 (Count Eight)	5 years

[1] As the introductory phrase signifies, the entirety of the text of the Complaint and the description of the Complaint set forth herein constitute only allegations, and every fact described should be treated as an allegation.

16-253

USAO - New York, Southern

Topic:

Public Corruption

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