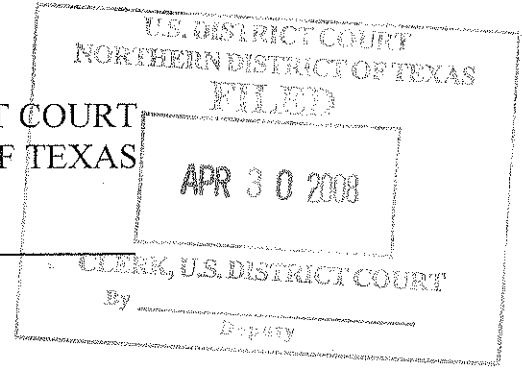


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



UNITED STATES OF AMERICA §
v. §
ANDREA L. SPENCER (11) §

No. 3:07-CR-289-M
ECF

FACTUAL RESUME

Andrea L. Spencer, the defendant, Sam Ogan, the defendant's attorney, and the United States of America agree to the law and facts as follows:

I. Elements of the Offense: Conspiracy to Commit Bribery Concerning a Local Government Receiving Federal Benefits

The essential elements of an offense under 18 U.S.C. § 371(18 U.S.C. § 666(a)(2)), that is, conspiracy to commit bribery concerning a local government receiving federal benefits are as follows:

- First:* that the defendant and at least one other person made an agreement to commit the crime of bribery as charged in the indictment;
- Second:* that the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and
- Third:* that one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the indictment, in order to accomplish some object or purpose of the conspiracy.

II. Stipulated Facts

The stipulated facts that support the defendant's plea of guilty to Count Ten of the indictment are as follows:

Defendant **Andrea L. Spencer**, along with a business partner, formed Trinity Signature Homes LLC (“TSH”), a home building business, in 2004. **Spencer** and her business partner also formed Article IV Development, an entity through which they intended to purchase land to sell to TSH.

Sometime in or about April 2004, **Spencer** met co-defendant Ron Slovacek, who was doing business as Millennium Land Development. Slovacek owned some residential building lots in Rockwall, Texas that **Spencer** and her business partner wanted to purchase. **Spencer** and her business partner, along with a third person, formed Vision Planning and Development (“Vision”) to purchase the lots. TSH and Vision entered into a contract to purchase the Rockwell lots from Millennium Land Development for approximately \$2 million and paid Slovacek \$60,000.00 in earnest money. After their initial investor backed out of the transaction, **Spencer** and her business partner met co-defendants D’Angelo Lee, Rick Robertson and Jibreel Rashad, who held themselves out as experienced builders who owned a company together and had sufficient funds to close the deal with Slovacek. Ultimately, when the group was unable to obtain the requisite financing, the deal fell through and **Spencer** and her business partner lost their earnest money. Lee told **Spencer** he was sorry that she lost her earnest money and that he was going to talk to Slovacek about it, but Slovacek did not return the funds.

Several months later, in or about September 2004, Lee called **Spencer** and her business partner regarding an opportunity to bid on some individual lots, but did not provide any specific details. Lee mentioned, however, that he had been talking to Slovacek.

Approximately two weeks later, Lee asked **Spencer** whether any of her businesses were minority certified. **Spencer** informed Lee that TSH and Article IV were not minority certified, but that another one of her businesses, Lynnea Consulting Group (“LCG”), was certified. Lee told **Spencer** that she could use that business to bid on projects as a general contractor and subcontract the work to someone else at a profit of \$50,000.00-60,000.00 per contract. Lee said this was a way **Spencer** could recover some of the earnest money she and her business partner lost on the Rockwall lots. At this time, Lee told **Spencer** that he was a city plan commissioner and implied he had a bid package for her, but again did not mention any specific projects.

Arbor Woods Concrete Subcontracts

It was not until October 2004 that Lee called **Spencer** about bidding on a specific project—Southwest Housing Development Corporation, Inc.’s (“SWH”) Arbor Woods multifamily affordable housing development in South Dallas. Lee told **Spencer** that Slovacek was bidding on some concrete contracts and that, if she acted as the general contractor and subcontracted the work to Slovacek, she could get some of her earnest money back. Lee said he was offering this opportunity to **Spencer** because he thought highly of her and it would look better to have a minority on the contract. Lee also said that he told Brian Potashnik to award the contract to **Spencer**. As the conversation continued, Lee brought in Slovacek on a three-way call. Both Lee and Slovacek told **Spencer** that this was a good way for her to get some experience and to use her minority certification. Slovacek said that he had already prepared a bid for the concrete work on

Arbor Woods and that he would email it to **Spencer** so that she could put it on her company's letterhead. Lee and Slovacek told **Spencer** that she would make approximately \$40,000.00 by acting as the general contractor on the deal.

Shortly thereafter, on or about October 17, 2004, Lee invited **Spencer** to have coffee with him at a Starbucks coffee shop to discuss a different matter, unrelated to the Arbor Woods bid. When **Spencer** arrived, Lee was already there with co-defendants Don Hill and Sheila Farrington. Lee introduced Hill as the "deputy mayor" and Farrington as a campaign worker. When Lee introduced **Spencer** to Hill and Farrington, he said that **Spencer** was a residential builder and consultant, and added, "This is the one I was talking about." After the introductions, Lee and **Spencer** went to another table.

On October 27, 2004, Slovacek emailed his concrete bid for Arbor Woods to **Spencer** and instructed her to edit the header to insert her company's name and certification number and then to print, sign and fax the bid to Affordable Housing Construction as soon as possible. Because **Spencer** and her business partner were both interested in the Arbor Woods contract initially, **Spencer** put the bid on Article IV's letterhead, but used LCG's minority certification number. Later, when Spencer's business partner withdrew from the deal, **Spencer** listed LCG Development Group, not Article IV, as the general contractor on the Arbor Woods contracts.

On November 9, 2004, Lee, Slovacek and **Spencer** met at Taco Diner. During the meeting, Lee invited **Spencer** to Don Hill's birthday party, which was scheduled for later that evening. Lee named numerous people who were going to attend Hill's party and the

amounts of money they were giving. Lee asked Slovacek to make a \$1,500.00 contribution and told Slovacek that he needed the money by the next day. Before going to Hill's party, Slovacek went to his office to get a check. At the party, Slovacek pointed out certain people to **Spencer**, including Brian Potashnik and Jack Potashnik. Slovacek told **Spencer** that the Potashniks owned SWH and were involved in the award of the Arbor Woods concrete subcontracts.

In early December 2004, Lee and Slovacek asked **Spencer** to meet with Brian Potashnik. Lee referred to Brian Potashnik as a "good friend" and "my boy." Slovacek and **Spencer** went to SWH's offices and met with Brian Potashnik and Kent Plemons, the head of SWH's construction business, Affordable Housing Construction ("Affordable"). During the meeting, Potashnik and Plemons asked questions of Slovacek only and told Slovacek to meet with Matt Martin, also of Affordable, regarding the contract. It was obvious to **Spencer** that she did not serve any real purpose at the meeting. **Spencer** came to know, based on a conversation with Matt Martin, that Brian Potashnik ordered Affordable to award the concrete contract to her company, LCG, as opposed to a lower-bidding qualified subcontractor. **Spencer** understood that she received the contract because Lee told Potashnik to award it to her.

On December 22, 2004, and on January 7, 2005, **Spencer** signed contracts with Affordable in the amounts of \$741,000.00 and \$58,500.00, respectively, to perform concrete work at Arbor Woods. Affordable paid **Spencer** and Slovacek their draws on these contracts by checks made payable to both LCG and RON-SLO in the amounts set forth below:

<u>Date</u>	<u>Check No.</u>	<u>Amount</u>
2/28/05	28783	\$54,630.00
3/29/05	29132	\$41,580.00
3/29/05	29133	\$140,310.00
5/4/05	29434	\$106,470.00
5/23/05	29710	\$12,766.00 ¹
5/23/05	29711	\$276,134.00

Typically, **Spencer** and Slovacek endorsed the checks and Slovacek deposited them into his RON-SLO account. Later, Slovacek told **Spencer** that he had to pay ten percent of the draws to Lee and that such monies had to be factored into the bids that Lee helped them get. Lee would often call Brian Potashnik to inquire when Affordable was going to issue **Spencer** and Slovacek's check, ten percent of which **Spencer** understood was going to be paid to Lee.

Laureland and Scyene Concrete Subcontracts

In early January 2005, Lee began pressing **Spencer** and Slovacek to submit bids for concrete work on two other SWH developments, Rosemont at Laureland ("Laureland") and Rosemont at Scyene ("Scyene"). Lee and Slovacek worked on the bids and forwarded them to **Spencer** to submit to Affordable. In late February or early March 2005, **Spencer** became aware that, when preparing bids on SWH projects, Slovacek

¹Check number 29710 was made payable to LCG only.

reviewed bids that Affordable had received from competing bidders. Lee obtained the competing bids from Brian Potashnik. Slovacek told **Spencer** that, upon reviewing the competing bids, he prepared LCG's bid and factored in Lee's ten percent. In reference to LCG's bid numbers, Lee told **Spencer**, "Potashnik knows I need to get paid." Lee talked about money frequently, including his desire to earn one million dollars. Lee told **Spencer** that his position on the City Plan and Zoning Commission was voluntary and without pay and that, even though the city thought he was not supposed to make any money, he had to make some money out of the deals. Lee told **Spencer** that he could not vote on the projects on which he was bidding.

On April 11, 2005, Slovacek emailed concrete bids to **Spencer** for both Laureland and Scyene and told her to change the headings and addresses on the bids from RON-SLO to LCG. The following week, on April 19, 2005, Lee told **Spencer** and Slovacek to call Matt Martin at Affordable to find out whether the bid numbers needed to be adjusted.

On April 22, 2005, Lee instructed **Spencer** to email the Laureland and Scyene concrete bids to Brian Potashnik. Several days later, on April 26, 2005, **Spencer**, Slovacek, Lee and Hill participated in a conference call to discuss the bids. Hill told Lee, Slovacek and **Spencer** to keep the bids at the "higher number" because Brian Potashnik was asking for another favor. It became clear to **Spencer** that Hill and Lee were seeking money from Potashnik in exchange for a favorable vote at the Dallas City Council. During that call, Brian Potashnik called Lee on another line. Lee told Hill, Slovacek and **Spencer** that, in a few minutes, he was going to return Potashnik's call and have a

conversation with him about “the fee.” When Lee said he was going to go “head-to-head” with Potashnik about keeping the bids high because Potashnik was asking for another favor from Hill, Hill told Lee, “No, no, you’re not gonna go head-to-head ... you’re gonna, you’re gonna reason and you gonna make sense to everybody.” Lee responded, “Yes, sir. It’s like, the Councilman has spoken.”

On or about April 28, 2005, Slovacek and **Spencer** learned that Affordable had awarded the Laureland and Scyene concrete subcontracts to a lower bidder. Despite this knowledge, Lee instructed **Spencer** to continue sending bids to Affordable. Accordingly, on May 13, 2005, **Spencer** emailed revised concrete bids for Laureland and Scyene to Matt Martin at Affordable and copied Brian Potashnik on the email. Shortly thereafter, however, Lee told Slovacek and **Spencer** that Hill wanted them to stop pursuing those concrete subcontracts. It was **Spencer’s** intent to make money off of any future contracts she and Slovacek received from SWH.

Public Funds for Kiest Blvd. and The LKC

In January 2005, Lee, **Spencer** and Slovacek became equal partners in Kiest Blvd., L.P. (“Kiest Blvd.”) and The LKC Dallas (“The LKC”), two for-profit entities they created to purchase and develop real estate, with the understanding that such entities would benefit from the official assistance of Hill and Lee. Kiest Blvd. was formed to purchase and develop approximately thirty-seven acres of property located near the intersection of Kiest Boulevard and Southerland Avenue, known as Cedar Crest Square. Lee’s interest in Kiest Blvd. was hidden. The LKC was formed to purchase and develop

property in the Lancaster Kiest Corridor. Lee's interest in The LKC was selectively disclosed.

On or about November 12, 2004, Lee and Slovacek called **Spencer** and asked her to help Slovacek put together an application for bond funds for Cedar Crest Square. They asked **Spencer** for single-family residence floor plans that she had from previous work. That same day, she took the floor plans to Slovacek's office, where they inserted them into a bond application package. Immediately thereafter, Slovacek and **Spencer** rushed the application package to City Hall to meet the bond application deadline.

Upon submission of Kiest Blvd.'s application to the City of Dallas, personnel with the City's Housing Department met with Slovacek and **Spencer** regarding the application. When Lee and **Spencer** discussed such meeting, Lee told **Spencer** it was a good sign.

On or about February 4, 2005, Lee, **Spencer** and Slovacek met with two bankers in an effort to obtain bank financing for Cedar Crest Square. Lee told the bankers that the City of Dallas had already committed funds to the project, even though the City had not yet done so.

In late February 2005, Lee informed Slovacek and **Spencer** about the City's award of more than \$1 million in general obligation bond funds and residential development acquisition loan program monies for Cedar Crest Square, exclaiming, "It's done!" Lee had a copy of the City Council's agenda items and instructed **Spencer** to tell Hill's assistant to fax a copy of the items, highlighting the funds approved for Cedar Crest Square, to one of the bankers they met with several weeks earlier.

Spencer came to understand that Hill was using his official position as a Dallas City Council member to help her, Lee and Slovacek obtain over \$1 million in City funds for Kiest Blvd. and \$1 million in federal earmark funds for The LKC. She also came to understand that Hill was using his official position as a Dallas Police and Fire Pension (“DPFP”) System trustee to assist them in their efforts to obtain \$5.5 million in DPFP System funds for The LKC. In connection with the DPFP System funds, Hill invited **Spencer** to a December 2004 meeting at the Veterans Administration Hospital. At the meeting, Lee made a presentation about The LKC and its proposed development of the Lancaster Kiest Corridor. DPFP System real estate investment advisors were in attendance. This meeting led to further discussions between The LKC and the DPFP System real estate investment advisers regarding the purchase of the Lancaster Kiest Shopping Center for \$5.5 million. As for the federal earmark, **Spencer** understood that Hill facilitated a May 2005 meeting with a member of the United States House of Representatives during which The LKC requested federal funding for the development of a transit-oriented mixed-use development in the Lancaster Kiest Corridor, known as the Dallas Lancaster Station.

On May 26, 2005, Lee instructed **Spencer** to write a \$5,000.00 check for Hill, but to make it payable to Farrington & Associates. Lee told **Spencer**, “Ron’s gonna do the same thing, and I’m gonna do the same thing. It’s for ahh, I mean, just to show, ahh, Don that we appreciate him.” He also told **Spencer** to get Hill a gift. In reference to the money and gift for Hill, Lee told **Spencer**: “[J]ust let him know that you appreciate him

and you know. And uhm, you know, don't speak, you know, real clearly over the phone. Just kind of, you know, just want thank you for everything you do. Of course, you know, we 100 percent support you. We think you're a great councilperson and just want to show our appreciation to you." **Spencer** signed two checks totaling \$5,500.00, made payable to Farrington & Associates, and gave them to Sheila Farrington. Lee and Slovacek instructed **Spencer** to write another check in the amount of \$9,500.00, also made payable to Farrington & Associates, and to give it to Farrington, which **Spencer** did. This money, which totaled \$15,000.00, was from Lee, Slovacek and **Spencer** and was intended to reward Hill for his official support of their business interests.

Spencer admits that she knowingly and willfully combined, conspired, confederated, and agreed with Lee, Slovacek and others, in a transaction and series of transactions, to corruptly offer, give and agree to give something of value of \$5,000.00 or more to a person, in connection with any business, transaction, and series of transactions of the City of Dallas, with intent to influence and reward an agent of local government that received benefits in excess of \$10,000.00 in each of the one-year periods beginning October 1, 2003, and October 1, 2004, pursuant to a federal program involving a grant and other forms of federal assistance, and is pleading guilty to Count Ten of the Indictment exactly as charged.

AGREED TO AND SIGNED this 24 day of April, 2008.

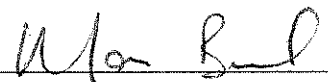
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