

DUPLICATE

FILED IN OPEN COURT
U.S.D.C. - Atlanta

OCT 17 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES M. HATTEN, Clerk
Deputy Clerk

UNITED STATES OF AMERICA

v.

ELVIS GORDON AND
IVAN PONDER

Criminal Indictment

No. **1 : 17 - CR - 354**

UNDER SEAL

THE GRAND JURY CHARGES THAT:

Count 1

*Defendants Elvis Gordon and Ivan Ponder
Conspiracy to Commit Bribery – 18 U.S.C. § 371*

Background

At all times relevant to this Indictment:

1. The U.S. Food and Drug Administration ("FDA") was an agency of the United States based in Rockville, Maryland with a district office located in Atlanta, Georgia (the "FDA Office").
2. Defendant ELVIS GORDON was employed by the FDA. Among other things, GORDON was responsible for scheduling and overseeing certain building maintenance related to the FDA Office, including identifying and selecting vendors to perform certain maintenance and janitorial work at the FDA Office. GORDON selected and influenced the selection of vendors who performed the work required; reviewed proposals for accuracy and economic impact to the FDA; validated performance; and certified completion for payment.

3. Until in or around August 2015, GORDON was authorized to hire vendors directly for maintenance projects valued below a certain threshold, called "micro-purchases," without going through the federal procurement process. The FDA issued GORDON and others at the FDA Office purchase cards ("P-Cards") for the purpose of, among other things, making micro-purchases. As it pertained to those jobs completed through the use of a P-Card, FDA personnel would rely on GORDON to provide sound information and advice on which vendors to utilize for those purchases and requisitions related to the FDA Office and for those maintenance requests within the FDA Office.

4. GORDON used his position to obtain personal benefits in exchange for selecting certain vendors to perform work at the FDA Office.

5. P&E Management, LLC ("P&E") was a Georgia corporation formed in or around October 2010 that supplied building maintenance and janitorial services. P&E was selected as a vendor for certain maintenance and janitorial work at the FDA Office.

6. Defendant IVAN PONDER was a manager and owner of P&E, and had primary responsibility for managing P&E's work at the FDA Office and P&E's financial affairs, including its bank accounts.

Manner and Means

7. Beginning at least as early as November 2010 and continuing until at least February 2016, GORDON selected and influenced the selection of P&E as the vendor to perform various projects at the FDA Office and used his P-Card to pay P&E. GORDON, and other FDA employees at GORDON's direction, used P-

Cards to direct over \$100,000 in micro-purchases to P&E during the time period relevant to this Indictment.

8. In exchange for selecting and influencing the selection of P&E as an FDA vendor, GORDON received financial remuneration from PONDER and P&E. At times, PONDER, acting with and through P&E, paid GORDON directly for selecting P&E to perform work at the FDA Office by issuing or causing to be issued checks payable to GORDON and O.C., GORDON's romantic partner for GORDON's personal benefit.

9. At other times, PONDER, acting with and through P&E, made indirect payments to GORDON as a result of GORDON selecting and influencing the selection of P&E to perform work at the FDA Office.

a. For example, for at least four (4) years, P&E made monthly car payments for a vehicle purchased for O.C., GORDON's romantic partner and insured by GORDON.

b. GORDON also had a debit card ending in -3109, which was linked to P&E's business checking account, which he used to make personal purchases at gasoline stations, restaurants, and other business establishments. GORDON also used this debit card to fund his personal travel.

c. GORDON also used his P&E debit card to pay for work-related travel expenses, for which he then claimed reimbursement from the FDA for himself.

10. Beginning on a date unknown to the Grand Jury, but at least as early as October 2010, and continuing through at least May 2016, in the Northern District of Georgia and elsewhere, defendants ELVIS GORDON and IVAN PONDER did knowingly and willfully combine, conspire, confederate, agree, and have a tacit understanding with each other and others known and unknown to the Grand Jury, to commit offenses against the United States, that is:

a. Defendant ELVIS GORDON, a public official, directly and indirectly did corruptly demand, seek, receive, accept, and agree to receive and accept, something of value personally and for another person, namely, monetary payments and other forms of financial remuneration from defendant IVAN PONDER by and through P&E Management, LLC, in return for being influenced in the performance of an official act, that is, promoting, selecting, contracting with, and making recommendations and requests for work to be performed at the U.S. Food and Drug Administration Atlanta District Office by PONDER and his company, in violation of Title 18, United States Code, Section 201(b)(2); and

b. Defendant IVAN PONDER did directly and indirectly give, offer, and promise a thing of value to GORDON, a public official, namely monetary payments and other forms of financial remuneration, with intent to influence an official act, that is, promoting, selecting, contracting with, and making recommendations and requests for work to be performed at the U.S. Food and Drug Administration Atlanta District Office by

PONDER and P&E Management, LLC, in violation of Title 18, United States Code, Section 201(b)(1).

Overt Acts

11. In furtherance of the conspiracy, GORDON and PONDER committed the following overt acts, in the Northern District of Georgia and elsewhere:

- a. On or about February 1, 2011, PONDER issued or caused to be issued check number 1029, drawn on P&E's business checking account, payable to GORDON in the amount of \$1,800.
- b. On or about July 29, 2011, PONDER issued or caused to be issued check number 1119, drawn on P&E's business checking account, payable to GORDON in the amount of \$564.58.
- c. On or about October 4, 2011, PONDER issued or caused to be issued check number 1156, drawn on P&E's business checking account, payable to GORDON in the amount of \$213.86.
- d. Beginning on or about April 3, 2012, and continuing until at least on or about April 4, 2016, PONDER, by and through P&E, made monthly payments of \$763 for a Cadillac Escalade purchased for GORDON's wife and insured by GORDON.
- e. Between on and around February 19, 2013 and continuing through on and around February 22, 2013, GORDON used a debit card linked to P&E's business checking account to finance a vacation to Destin and Miramar Beach, Florida.

f. On or about June 4, 2013, GORDON used a debit card linked to P&E's business checking account to pay for service to the Cadillac Escalade described above in Paragraph 11(d) at a Cadillac dealership in Smyrna, Georgia.

g. Between on and around March 22, 2015 through on and around March 23, 2015, GORDON used a debit card linked to P&E's business checking account to finance a vacation to Savannah, Georgia.

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

Counts 2 through 11

Defendant Elvis Gordon
Bribery – 18 U.S.C. § 201(b)(2)

The factual allegations alleged in Paragraphs 1 through 9 of this Indictment are realleged and incorporated as if fully set forth herein.

12. On or about the dates listed below in Column B, within the Northern District of Georgia, defendant ELVIS GORDON, a public official, directly and indirectly, did corruptly demand, seek, receive, accept, and agree to receive and accept, something of value personally, namely, the payments listed in Column C and described in Column D, which were all drawn on P&E's business checking account, in return for being influenced in the performance of an official act, that is, promoting, selecting, contracting with, and making recommendations and requests for work to be performed at the United States Food and Drug Administration by defendant IVAN PONDER and P&E, all in violation of Title 18, United States Code, Section 201(b)(2):

A Count	B Date	C Amount	D Description
2.	8/3/12	\$763	Payment to CarMax Auto Finance for a Cadillac Escalade
3.	2/22/13	\$258.75	Payment to Embassy Suites Hotel in Destin, Florida for a three-night stay
4.	6/4/13	\$313.55	Payment to Capital Cadillac for work done on a Cadillac Escalade
5.	6/24/13	\$231.81	Payment to Amazon.com for Australian Sheepskin Seat Covers
6.	8/5/13	\$763	Payment to CarMax Auto Finance for a Cadillac Escalade
7.	5/4/14	\$58.80	Payment to Copeland's of New Orleans restaurant for a meal
8.	8/4/14	\$763	Payment to CarMax Auto Finance for a Cadillac Escalade
9.	10/31/14	\$146.90	Payment to Country Inn & Suites in Jacksonville, Florida for one-night stay
10.	1/17/15	\$246.20	Payment to Delta Airlines for a flight taken by GORDON's mother
11.	8/3/15	\$763	Payment to CarMax Auto Finance for a Cadillac Escalade

Counts 12 through 21

Defendant Ivan Ponder

Offering Bribes – 18 U.S.C. § 201(b)(1)

The factual allegations alleged in Paragraphs 1 through 9 of this Indictment are realleged and incorporated as if fully set forth herein.

14. On or about the dates listed below in Column B, in the Northern District of Georgia, defendant IVAN PONDER, directly and indirectly, did corruptly give, offer, and promise a thing of value, namely, making the payments listed below in

Column C and described in Column D, which were drawn on P&E's business checking account, with intent to influence GORDON to perform an official act, that is, promoting, selecting, contracting with, and making recommendations and requests for work to be performed at the U.S. Food and Drug Administration by PONDER and P&E, in violation of Title 18, United States Code, Section 201(b)(2).

A Count	B Date	C Amount	D Description
12.	8/3/12	\$763	Payment to CarMax Auto Finance for a Cadillac Escalade
13.	2/22/13	\$258.75	Payment to Embassy Suites Hotel in Destin, Florida for a three-night stay
14.	6/4/13	\$313.55	Payment to Capital Cadillac for work done on a Cadillac Escalade
15.	6/24/13	\$231.81	Payment to Amazon.com for Australian Sheepskin Seat Covers
16.	8/5/13	\$763	Payment to CarMax Auto Finance for a Cadillac Escalade
17.	5/4/14	\$58.80	Payment to Copeland's of New Orleans restaurant for a meal
18.	8/4/14	\$763	Payment to CarMax Auto Finance for a Cadillac Escalade
19.	10/31/14	\$146.90	Payment to Country Inn & Suites in Jacksonville, Florida for one-night stay
20.	1/17/15	\$246.20	Payment to Delta Airlines for a flight taken by GORDON's mother
21.	8/3/15	\$763	Payment to CarMax Auto Finance for a Cadillac Escalade

Count 22

Defendant Elvis Gordon
Conflicts of Interest – 18 U.S.C. § 208(a)

The factual allegations alleged in Paragraphs 1 through 9 of this Indictment are realleged and incorporated as if fully set forth herein.

15. Beginning on a date unknown to the Grand Jury but at least as early as April 3, 2012, and continuing until at least April 4, 2016, in the Northern District of Georgia, defendant ELVIS GORDON, being an officer and employee of the executive branch of the United States Government, willfully participated personally and substantially as a Government officer and employee, through decision, approval, recommendation, and otherwise, in an application, contract, claim, charge, and other particular matter in which GORDON and his wife had a financial interest.

All in violation of Title 18, United States Code, Section 208(a).

Count 23

Defendant Elvis Gordon
False Claims – 18 U.S.C. § 287

The factual allegations alleged in Paragraphs 1 through 9 of this Indictment are realleged and incorporated as if fully set forth herein.

16. In or around October 2014, in the Northern District of Georgia, defendant ELVIS GORDON, knowingly made and presented, and caused to be made and presented to the United States Food and Drug Administration, a claim against the United States for payment, that is, reimbursement for approximately \$586.99 in work-related travel expenses that GORDON claimed he incurred personally,

which claim he knew to be materially false, fictitious, and fraudulent, in that he used a debit card linked to P&E's business checking account to pay for the work-related travel expenses rather than personally incurring those expenses, in violation of Title 18, United States Code, Section 287.

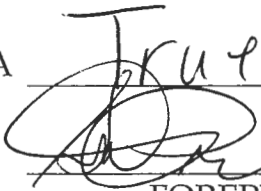

Forfeiture

17. Upon conviction of one or more of the offenses alleged in Counts One through Twenty-three of this Indictment, the Defendants, ELVIS GORDON and IVAN PONDER, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, which constitutes or is derived from proceeds traceable to such violations, including, but not limited to, a money judgment equal to the value of the proceeds of the offense.

18. If, as a result of any act or omission of GORDON and PONDER, any property subject to forfeiture:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- 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 subdivided without difficulty;

the United States intends, pursuant to Title 18, United States Code, Sections 982(b)(1); Title 21, United States Code, Section 853(p); and Title 28, United States Code, Section 2461(c) to seek forfeiture of any other property of said defendant up to the value of the forfeitable property.

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FOREPERSON

BYUNG J. PAK
United States Attorney


LYNSEY M. BARRON
Assistant United States Attorney
Georgia Bar No. 661005

600 U.S. Courthouse
75 Ted Turner Drive SW
Atlanta, GA 30303
404-581-6000; Fax: 404-581-6181

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U.S. ATTORNEY
ATLANTA, GA