

DOJ drops charges against former VP in New Jersey tax lien price-fixing case

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IN BRIEF

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Gregg Gehring, who served as vice president of Plymouth Park Tax Services, was indicted in 2013 along with five others accused of rigging bids at tax lien auctions in New Jersey. During a hearing in New Jersey federal court, prosecutors asked to dismiss the charges against Gehring and US District Judge Susan D. Wigenton approved their motion.

Peter Carr, a DOJ spokesman, confirmed Friday that prosecutors had dismissed the charges, but declined to discuss the reasoning because of privacy concerns.

Gehring's former co-defendants — James Jeffers, Robert Jeffrey, Joseph Wolfson and two business entities of which Wolfson was part-owner — are set to go to trial on Sept. 15 in Newark.

According to prosecutors, from 1998 until 2009, various bidders at New Jersey tax lien auctions allocated among themselves who would bid on certain liens.

Tax lien auctions allow municipalities to sell off unpaid tax debts to private companies or individuals, who bid to offer the lowest interest rate a debtor will have to pay to redeem his or her lien. The bidding in New Jersey begins at 18

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percent and, depending on the bids, can reach zero.

The winner of the auction pays off the debt to the municipality, and the property owner then owes money with interest to the lien holder. If a lien remains unpaid for two years, the holder can begin foreclosure proceedings on the property.

By allocating who would bid on the particular liens at auction, the conspiracy led property owners to pay higher interest rates than they might otherwise, prosecutors alleged.

Gehring's employer Plymouth, which does business as Xspand, was bought by Bear Stearns in 2006, and became a unit of JPMorgan in 2008 when the troubled investment bank was sold during the financial crisis.

The company acknowledged receiving a subpoena related to the DOJ's tax liens investigation in 2009, but was never charged. In December 2013, it agreed to settle a class action brought by New Jersey property owners for \$1.5 million without admitting liability.

Aside from Gehring, no one else from Plymouth was ever charged. Gehring was responsible for reviewing and rating various properties before tax lien auctions, overseeing bidding and on occasion attended auctions on behalf of the company.

According to court filings in Gehring's case, James Hansen, who worked as a contract bidder for Plymouth for three years, admitted to rigging bids at auctions both while at Plymouth and for other companies. Hansen entered into a cooperation and non-prosecution agreement with the government and hasn't been charged.

In interviews with the FBI cited in court filings, Hansen said that he never informed Gehring of the bid-rigging and acknowledged he was told by Plymouth not to engage in bid-rigging and signed an agreement not to do so.

In other filings, prosecutors suggested they could still prove that Gehring was aware of the bid-rigging and joined the conspiracy from his own attendance at auctions.

Prosecutors didn't indicate in court filings what other substantive evidence they had against Gehring, but his lawyers had planned a vigorous defense and indicated he might take the stand.

In cases with several co-defendants, it's not unusual for the jury to convict what it determines are the most culpable individuals in the group and acquitting the others. The last trial by DOJ's antitrust prosecutors with a large group of

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defendants, the 2012 trial of AU Optronics and its top executives, ended with two individual acquittals, four convictions – the company, its US unit and two individuals – and a hung-jury on the last defendant.

Removing Gehring from the trial is likely to allow prosecutors to streamline their case and increase the probability of convicting the remaining defendants.

– Tax liens and the Sherman Act –

At Thursday’s hearing, Wigenton first heard and granted prosecutors’ motion to dismiss the charges against Gehring, one of his lawyers, Nelson Boxer said. She later denied a motion to dismiss filed by Gehring’s lawyers challenging the indictment on the grounds that the Sherman Act doesn’t apply to tax liens. Gehring’s lawyers, who researched and submitted the motion, didn’t argue it Thursday, however, having left after Gehring’s charges were dismissed.

The court’s docket doesn’t indicate whether Wigenton denied that motion as moot since Gehring was no longer a defendant, or if she considered the substantive arguments related to the motion before denying the motion. Calls to the judge’s chambers weren’t returned.

In a July 27 motion, Gehring’s lawyers had argued that the Sherman Act as written forbids conspiracies that restrain trade or commerce. Various courts have interpreted “trade or commerce” to mean transactions that are commercial in nature, and that non-commercial activity, such as efforts targeting abortion clinics, are exempt from the law.

Tax lien auctions aren’t commercial transactions, the lawyers argued, but rather a method by which governments seek to obtain money for delinquent taxes owed on property. As such they are a non-commercial, governmental function and not commerce subject to the Sherman Act, they said, citing a 1983 decision by an Ohio court.

“The underlying activity of the auctions at issue – paying property taxes owed to a municipality under the law – is not a commercial transaction,” they argued. “The payment of taxes is merely an execution of an obligation owed to the government, which cannot be waived or bargained away. ...The monetary obligation to the government remains static no matter whose obligation it becomes.”

In their reply, prosecutors argued that tax liens are a good sold in commerce.

“The collection of taxes may be a governmental function but the sale of liens is commercial,” they argued. At the auctions “the municipality has in essence sold an asset; a valuable secured debt instrument in which the lien owner is conferred a concrete, tangible benefit of receiving a potential return based on

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the interest rate on which the lien was successfully bid as well as any additional overdue taxes that subsequently remain unpaid.”

They also sought to distinguish the Ohio case, which involved a township that sued a city for allegedly monopolizing the water supply. That case involved monopolization allegations under Section 2 of the Sherman Act, not price-fixing which falls under Section 1, they argued.

“The Defendants here are not municipalities, but private individuals or companies who purchased tax liens as an investment opportunity to earn a return at a certain interest rate above what they paid,” they said. “Without question, a secured, interest-bearing loan is a transaction that is commercial in nature.”

In a response, Gehring’s lawyers said the analogy to a loan is an inapt comparison.

“Tax liens are not assets purchased by a municipality with tax revenue; they are tax revenue,” the lawyers said. “It is also a mischaracterization to refer to tax liens as secured loans offered to taxpayers. ...The taxpayer’s obligation remains unchanged in every relevant way; neither the amount, nor the schedule, nor the recipient of the taxes changes. Even after a lien has been sold at auction to a private party, the taxpayer continues to send the taxes he or she owes to the municipality, who then conveys the tax payments to the lien holder.”

Linked Case File(s)

[Antitrust investigation - tax lien price-fixing](#)

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