

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : HON.
 :
 v. : Criminal No. 15-
 :
 IMADELDIN AWAD KHAIR, : 18 U.S.C. §§ 1347, 1516, 1956, 2
 a/k/a "Nadr Khair" : 26 U.S.C. § 7201

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

BACKGROUND

1. At all times relevant to the Indictment, unless otherwise indicated:

a. The defendant, IMADELDIN AWAD KHAIR ("KHAIR"), resided in Clifton, New Jersey.

KHAIR'S EXCLUSION FROM MEDICARE/MEDICAID

b. The Medicare Program ("Medicare") was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare was a "health care benefit program" as defined in 18 U.S.C. § 24(b) and a "Federal health care program" as defined in 42 U.S.C. § 1320a-7b(f).

c. The Medicaid Program ("Medicaid") was a jointly funded, federal-state health insurance program established by Congress under Title XIX of the Social Security Act of 1965 to provide certain health benefits to the disabled, as well as to individuals and families with low income and resources. Medicaid

was overseen and administered by the Centers for Medicare and Medicaid Services, an agency within the United States Department of Health and Human Services ("HHS"). The federal government provided matching funds to Medicaid and ensured that the states complied with minimum standards in the administration of the program.

d. In New Jersey, Medicaid ("NJ Medicaid") was administered by the New Jersey Department of Human Services. NJ Medicaid was a "health care benefit program" as defined in 18 U.S.C. § 24(b) and a "Federal health care program" as defined in 42 U.S.C. § 1320a-7b(f).

e. Payment of a claim by Medicare or NJ Medicaid was conditioned upon certification by a provider that the claims and underlying transactions billed by a provider complied with all applicable laws, regulations, program instructions, and conditions of participation in Medicare and NJ Medicaid, including that no payment by Medicare or NJ Medicaid may be made for any items or services furnished by individuals excluded (sometimes referred to as "debarred") from participation, or at the direction of an excluded/debarred individual.

f. On May 22, 2003, KHAIR pleaded guilty in the Superior Court of New Jersey, Passaic County, to Health Care Claims Fraud, in violation of N.J.S.A. 2C: 21-4A.

g. As part of his 2003 guilty plea, KHAIR signed a Consent Order of Debarment on January 21, 2004, which was filed in the Superior Court of New Jersey, Passaic County, on February 6, 2004. The Consent Order of Debarment provided that, after previously having been entitled to participate in NJ Medicaid, KHAIR "shall be debarred as a provider from the New Jersey Medical Assistance and Health Services Program (Medicaid), from the Title XVIII (Medicare) program, and any other federally or state funded health insurance program as defined in Section 1128 of the Social Security Act for a minimum period of five (5) years." The Order further provided that KHAIR understood his right to a hearing regarding his exclusion/debarment, waived such a hearing and understood the consequences of exclusion/debarment.

h. In or about February 2004, KHAIR was excluded and debarred by the United States Department of Health and Human Services from participating in any capacity in Medicare, Medicaid and all other federal health care programs for a minimum of eleven years. Reinstatement for excluded individuals was not automatic; rather, an excluded individual was required to apply to the United States Department of Health and Human Services, Office of the Inspector General, after the required period of exclusion, in order to request reinstatement.

K&S INVALID COACH

2. K&S Invalid Coach, LLC ("K&S"), was a medical transportation company organized under the laws of the state of New Jersey with its principal place of business located at 490 Getty Avenue, Clifton, New Jersey. K&S was an approved Medicare provider from in or about September 2011 through October 2014, and an approved NJ Medicaid provider from in or about 2000 through October 2014. K&S received the vast majority of its revenue from Medicare and NJ Medicaid. Between September 2011 and October 2014, K&S billed Medicare more than \$14 million and received more than \$6.5 million in payments from Medicare as a result of those billings. Between January 2010 and October 2014, K&S billed NJ Medicaid and received more than \$1 million in payments from NJ Medicaid as a result of those billings. In 2014 alone, K&S received more than \$2.6 million in payments from Medicare and NJ Medicaid as a result of K&S billings to Medicare and NJ Medicaid.

3. K&S was required, among other things, to deduct and withhold payroll taxes (including Federal Insurance Contribution Act ("FICA") taxes) from its employees' wages. In addition, K&S was required to prepare and file forms with the Internal Revenue Service ("IRS") that reported, among other things, the total amount of wages paid by K&S and the federal payroll taxes withheld (for all employees) ("Forms 941") and to transmit to the IRS the payroll

taxes withheld from the employees as well as the additional payroll taxes owed by K&S as the employer. Forms 941 inform the total amount due and owing to the IRS for the employee wages paid in that quarter.

4. Despite his status as an excluded individual from Medicare and NJ Medicaid, from as early as in or about 2005 through October 2014, KHAIR, was employed by and, along with others, operated, managed and controlled K&S's operations and finances and received a substantial share of K&S's profits.

5. KHAIR regularly identified himself as the owner of K&S to company employees and to other entities with whom K&S did business. KHAIR demonstrated his authority at the K&S office by, among other things, wielding the power to hire and fire employees, determine employee salaries, and enforce company policies.

PAYMENT OF K&S EMPLOYEES

6. In addition to determining employee salaries, KHAIR also regularly distributed employee paychecks and other wages. Certain K&S employees were paid entirely "off the books," receiving all of their wages either in cash or by handwritten K&S checks (often signed by KHAIR) and without any payroll taxes withheld. Other K&S employees were paid forty hours per week "on the books," with payroll taxes withheld, but regularly worked in excess of eighty hours per biweekly pay period and received all of their overtime

wages either in cash or by handwritten K&S check (often signed by KHAIR) and without any payroll taxes withheld for the overtime wages.

7. K&S used an outside company (the "Payroll Company") to prepare the employee paychecks from which payroll taxes were withheld. From at least ~~January~~^{May} 2012 through October 2014, KHAIR directed an administrative K&S employee (originally "Employee 1" and, then, beginning in or around July 2014, "Employee 2") to, on a biweekly basis, review the employee time cards and report to KHAIR the total hours worked by each employee. KHAIR would then direct Employee 1 or Employee 2 to underreport the number of overtime hours worked by each employee to the Payroll Company.

8. K&S failed to file a Form 941 in April 2012 for the wages paid to K&S employees in the first quarter of 2012.

9. For the time period of May 2012 through October 2014, the Payroll Company prepared and filed with the IRS the quarterly Forms 941 on behalf of K&S. The Payroll Company prepared those filings based on the underreported wages that had been provided to the Payroll Company by Employee 1 and Employee 2 at the direction of KHAIR. Thus, the K&S Forms 941 filed with the IRS underreported the total amount of wages paid by K&S and the employee and employer portions of payroll taxes due to the IRS.

10. KHAIR regularly paid in cash the K&S employees who were entirely "off the books" as well as the "off the books" overtime wages of K&S employees who worked more than 80 hours in a biweekly pay period. In order to pay these wages in cash, KHAIR regularly wrote K&S checks to himself or "Cash" and then endorsed and negotiated those checks.

11. As one example, on or about November 9, 2012, KHAIR wrote a K&S check in the amount of \$6,000 to "Cash" with the memo section notation (in Arabic) "to brother [individual first name] for the drivers." As further example, on or about May 15, 2012, KHAIR wrote a K&S check in the amount of \$7,000 to "Imadeldin Khair" with the memo section notation (in Arabic) "5 thousand [individual first name] and 2 thousand [KHAIR] for drivers."

12. KHAIR was among the employees for whom the Payroll Company prepared biweekly payroll checks. In addition to the biweekly payroll checks that KHAIR received from K&S, KHAIR also regularly wrote K&S checks to himself for his own benefit and then endorsed and negotiated those checks.

13. As one example, on or about May 10, 2013, KHAIR wrote out a K&S check in the amount of \$2,500 to "Cash" with the memo section notation (in Arabic) "[KHAIR] salary." As further example, on or about May 24, 2013, KHAIR wrote a K&S check in the amount of \$2,500

to "Cash" with the memo section notation (in Arabic) "[Khair] salary."

DOL AUDIT

14. In or around August 2014, the United States Department of Labor ("DOL") began an audit of K&S regarding potential wage and hour violations with respect to K&S employee regular and overtime pay. In interviews with DOL regarding K&S practices, KHAIR identified himself as the supervisor of the K&S employees.

15. In or around September 2014, KHAIR held an employee meeting wherein he stated that DOL would soon begin interviewing K&S employees regarding the wage and hour practices at K&S.

16. KHAIR instructed K&S employees to falsely state in those interviews that they never worked more than 80 hours per biweekly pay period.

17. KHAIR also caused the employees who worked entirely "off the books" to not appear at the office on the date of the DOL employee interviews.

18. In preparation for the DOL audit of the K&S timekeeping system, KHAIR directed Employee 2 to alter and falsify the timekeeping system records to match the false amounts previously reported to the Payroll Company.

COUNT ONE

(Health Care Fraud)

19. From at least in or about 2005 through in or about October 2014, in Passaic County, in the District of New Jersey, and elsewhere, the defendant,

IMADELDIN AWAD KHAIR,
a/k/a "Nadr Khair,"

did knowingly and willfully execute and attempt to execute a scheme and artifice to defraud a health care benefit program, as defined under Title 18, United States Code, Section 24(b), namely the Medicare and Medicaid programs, and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, or under the custody and control of, a health care benefit program, namely the Medicare Part B program, in connection with the delivery of or payment for health care benefits, items and services.

In violation of Title 18, United States Code, Sections 1347 and 2.

COUNT TWO

(Obstruction of a Federal Audit)

1. Paragraphs 1 through 18 of Pages 1 through 8 of this Indictment are hereby incorporated by reference and realleged as if fully set forth herein.

2. From in or about August 2014 through in or about September 2014, in Passaic County, in the District of New Jersey, and elsewhere, the defendant,

IMADELDIN AWAD KHAIR,
a/k/a "Nadr Khair,"

did, with intent to deceive or defraud the United States, endeavor to influence, obstruct, and impede a Federal auditor in the performance of official duties relating to a person, entity, or program receiving in excess of \$100,000, directly and indirectly, from the United States in any 1 year period under a contract or subcontract, grant or cooperative agreement.

In violation of Title 18, United States Code, Sections 1516(a) and 2.

COUNTS THREE THROUGH THIRTEEN

(Attempt to Evade or Defeat Tax)

1. Paragraphs 1 through 18 of Pages 1 through 8 of this Indictment are hereby incorporated by reference and realleged as if fully set forth herein.

2. On or about the dates set forth below, in Passaic County, in the District of New Jersey, and elsewhere, the defendant,

IMADELDIN AWAD KHAIR,
a/k/a "Nadr Khair,"

did willfully attempt in any manner to evade and defeat any tax imposed by Title 26 of the United States Code and the payment thereof, in that he caused to be submitted quarterly tax filings on behalf of K&S which failed to reflect all of the employee wages paid and payroll taxes due, as set forth below, each failure constituting a separate count of this Indictment:

Count	Tax Quarter Ending	Failure to File/Pay Over Taxes
3	March 31, 2012	Failure to file with the IRS a Form 941 for K&S and failure to pay payroll taxes in the amount of approximately \$11,994.83
4	June 30, 2012	Failure to pay payroll taxes in the amount of approximately \$13,319.43
5	September 30, 2012	Failure to pay payroll taxes in the amount of approximately \$5,268.90
6	December 31, 2012	Failure to pay payroll taxes in the amount of approximately \$4,109.57

7	March 31, 2013	Failure to pay payroll taxes in the amount of approximately \$7,632.41
8	June 30, 2013	Failure to pay payroll taxes in the amount of approximately \$23,717.21
9	September 30, 2013	Failure to pay payroll taxes in the amount of approximately \$25,221.70
10	December 31, 2013	Failure to pay payroll taxes in the amount of approximately \$25,966.78
11	March 31, 2014	Failure to pay payroll taxes in the amount of approximately \$31,588.42
12	June 30, 2014	Failure to pay payroll taxes in the amount of approximately \$15,056.74
13	September 30, 2014	Failure to pay payroll taxes in the amount of approximately \$16,378.35

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

COUNTS FOURTEEN THROUGH SEVENTEEN

(Money Laundering)

1. Paragraphs 1 through 18 of Pages 1 through 8 of this Indictment are incorporated by reference and realleged as if fully set forth herein.

2. On or about the dates set forth below, in Passaic County, in the District of New Jersey, and elsewhere, the defendant,

IMADELDIN AWAD KHAIR,
a/k/a "Nadr Khair,"

knowing that the property represented the proceeds of unlawful activity, that is, health care fraud, in violation of Title 18, United States Code, Section 1347, did conduct and attempt to conduct financial transactions involving the proceeds of health care fraud: with the intent to promote the carrying on of health care fraud; and, with the intent to engage in conduct constituting a violation of Title 26, United States Code, Section 7201; and knowing that the transaction was designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of health care fraud, on or about the dates set forth below, each transaction constituting a separate count of this Indictment:

Count	Date	Financial Transaction
14	May 15, 2012	Check in the amount of \$7,000 written to "Imadeldin Khair"
15	November 9, 2012	Check in the amount of \$6,000 written to "Cash"
16	May 10, 2013	Check in the amount of \$2,500 written to "Cash"
17	May 24, 2013	Check in the amount of \$2,500 written to "Cash"

In violation of Title 18, United States Code, Sections
1956(a)(1)(A)(i), (ii) and (B)(i).

FORFEITURE ALLEGATION AS TO COUNT ONE

1. As a result of committing the Federal health care fraud offense in violation of Title 18, United States Code, Section 1347, as alleged in Count One of this Indictment, defendant **IMADELDIN AWAD KHAIR**, a/k/a "Nadr Khair," shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), all property, real and personal, that constitutes or is derived directly or indirectly, from gross proceeds traceable to the violation of Title 18, United States Code, Section 1347.

FORFEITURE ALLEGATION AS TO
COUNTS FOURTEEN THROUGH SEVENTEEN

2. As a result of committing the money laundering offenses in violation of Title 18, United States Code, Section 1956, as alleged in Counts Fourteen through Seventeen of this Indictment, defendant **IMADELDIN AWAD KHAIR**, a/k/a "Nadr Khair," shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), all property, real and personal, involved in such money laundering offenses, and all property traceable to such property.

Substitute Assets Provision

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

- 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 shall be entitled, pursuant to 21 U.S.C.

§ 853(p), as incorporated by 18 U.S.C. § 982(b), to forfeiture of any other property of the defendant up to the value of the above-described forfeitable property.

A TRUE BILL



FOREPERSON

Paul J. Fishman / jmc

PAUL J. FISHMAN
United States Attorney

CASE NUMBER:

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UNITED STATES OF AMERICA

v.

**IMADELDIN AWAD KHAIR
a/k/a "Nadr Khair"**

INDICTMENT FOR

18 U.S.C. §§ 1347, 1516, 1956, 2,
26 U.S.C. § 7201

A True Bill,



foreperson

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