

INDICTMENT
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

T1-M

THE PEOPLE OF THE STATE OF NEW YORK

-against-

X. MICHAEL WEISS,
X. RSBY NY BUILDERS INC.,
X. PARK AVE BUILDERS INC.,
X. SHULEM LEIFER, and
X. Y&S FRAMERS INC.

Defendants.

INDICTMENT NO. 282/2017

Non-Aligned
Investigations Division
Frauds Bureau
Labor Frauds Unit

Counts:

Manslaughter in the Second Degree, Penal Law § 125.15 (Michael Weiss, RSBY NY Builders Inc. and Park Ave Builders Inc.)	(1 Count)
Criminally Negligent Homicide, Penal Law § 125.10 (Michael Weiss, RSBY NY Builders Inc. and Park Ave Builders Inc.)	(1 Count)
Reckless Endangerment in the Second Degree, Penal Law § 120.20 (All defendants)	(2 Counts)
Assault in the Third Degree, Penal Law § 120.00(2) (Michael Weiss, RSBY NY Builders Inc. and Park Ave Builders Inc.)	(2 Counts)
Grand Larceny in the Third Degree, Penal Law § 155.35 (Michael Weiss)	(1 Count)
Criminal Tax Fraud in the Fourth Degree, Tax Law § 1803 (Michael Weiss)	(1 Count)
Falsifying Business Records in the First Degree, Penal Law § 175.10 (Michael Weiss and Park Ave Builders Inc.)	(1 Count)
Offering a False Instrument for Filing, Penal Law § 175.35 (Michael Weiss and Park Ave. Builders Inc.)	(1 Count)
Fraudulent Practices, Workers' Compensation Law § 114 (Michael Weiss and Park Ave Builders Inc.)	(1 Count)

2017 MAR 29 PM 12:42
CRIMINAL TERM ARR/MOT
SUPREME COURT KINGS

Failure to Secure the Payment of Compensation for More than Five Employees
Within a Twelve Month Period, Workers' Compensation Law § 52(1)(a)

(Michael Weiss, RSBY NY Builders Inc., and Park Ave Builders Inc.) (1 Count)

Criminal Tax Fraud in the Fifth Degree, Tax Law § 1802

(RSBY NY Builders Inc. and Park Ave Builders Inc.) (2 Counts)

A TRUE BILL

ERIC GONZALEZ
ACTING DISTRICT ATTORNEY

Samuel Boal
FOREPERSON

At all times relevant to this Indictment unless otherwise indicated:

INTRODUCTION

September 3, 2015 Construction Death

On September 3, 2015, employees of Michael Weiss and his companies, RSBY NY Builders Inc. and Park Ave Builders Inc., were working at the construction site at 656 Myrtle Avenue in Brooklyn. Weiss ordered several of his employees to excavate in the rear of the lot, even though the plans had not called for excavation in that area, and workers had previously complained that the wall of the adjacent building was unstable. Despite repeated requests from his workers, Weiss refused to provide any material for shoring or underpinning of the excavation and adjacent exposed walls. At approximately 11:32 a.m, the wall of the adjacent building collapsed, and masonry blocks and other debris fell on three of the workers, killing one worker and severely injuring two other workers.

Relevant Entities

New York City Department of Buildings

The New York City Department of Buildings (“DOB”) regulated the lawful use of over one million buildings and construction sites in the five boroughs. DOB enforced the City’s Building Code and Administrative Codes.

Occupational Health and Safety Administration

The Occupational Safety and Health Administration (“OSHA”) was part of the United States Department of Labor. The mission of OSHA was to assure safe and healthful working conditions for workers by setting and enforcing standards and by providing training, outreach, education, and assistance.

New York State Insurance Fund

The New York State Insurance Fund was a not-for-profit agency of the State of New York that offered Workers' Compensation and Disability Benefits Insurance coverage to employers with workers in New York State.

RSBY NY Builders Inc.

RSBY NY Builders Inc. was a construction company operated by Michael Weiss, created on October 21, 2014, with a business address of 495 Park Avenue, Suite 103 in Brooklyn. Neither Michael Weiss nor RSBY NY Builders Inc. was licensed by DOB to file for and obtain permits to perform construction work.

Park Ave Builders Inc.

Park Ave Builders Inc. was a construction company operated by Michael Weiss, created on July 16, 2015, with a business address of 495 Park Avenue, Suite 103 in Brooklyn. Neither Michael Weiss nor Park Ave Builders Inc. was licensed by DOB to file for and obtain permits to perform construction work.

Y&S Framers Inc.

Y&S Framers Inc. was a construction company owned and operated by Shulem Leifer, created on April 28, 2014, with a business address of 199 Lee Avenue, Suite 537 in Brooklyn. Y&S Framers Inc. had a safety registration with DOB, with endorsements in concrete, construction and demolition, allowing Y&S Framers Inc. to obtain permits from DOB to perform construction work in New York City.

Employers' Duty to Provide a Safe Workplace and New York City's Building Code

Under the federal Occupational Safety and Health Act of 1970, all employers were required to provide a workplace free from recognized hazards that were causing or likely to

cause death or serious physical harm to employees, and to comply with the regulations promulgated by OSHA.

OSHA regulations governing the construction industry stated that where excavation operations undermined the stability of adjoining buildings, walls or other structures, employers had to provide support systems such as shoring, bracing or underpinning to ensure the stability of such structures for the protection of employees. The OSHA regulations stated that employers could not allow workers to perform any work in such excavations without such support systems.

The New York City Building Code required all construction contractors and subcontractors to follow the Occupational Safety and Health Act of 1970 and the OSHA rules on construction sites.

The New York City Building Code also required all construction contractors to submit detailed plans of proposed excavations to DOB to obtain permits to perform such work, including the exact location and depth of the excavation, information about adjacent structures that could be affected by such excavation, and underpinning details. Once DOB approved the excavation plans, the builder was required to have competent professionals conduct special inspections of the site regarding the structural stability of the adjoining buildings. Further, the person causing the excavation had to notify DOB between 24 and 48 hours before commencement of the excavation work; provide sheeting, shoring and bracing or other means, such as underpinning, to avoid a collapse; and monitor the sides of the adjacent properties during the excavation.

Weiss Recklessly Caused the Death of His Worker During Construction at 656 Myrtle Avenue

Defendant Michael Weiss recklessly caused the death of one employee and recklessly caused severe injury to two other employees ("Worker 2 and Worker 3") because he hired

untrained workers and failed to provide training to his employees; he directed the workers to excavate in an area not permitted by the approved DOB plans and without the knowledge of the other professionals involved in the project; he failed to provide guidance and materials for shoring, bracing and underpinning of the wall that collapsed; and he failed to listen to the safety concerns of the workers regarding the unstable wall and insisted they continue working in an unsafe area.

On or about June 17, 2015, the owner of 656 Myrtle Avenue, an individual whose identity is known to the grand jury, contracted with Weiss and his company, RSBY NY Builders Inc., to perform all labor and provide all material to complete the construction project at 656 Myrtle Avenue, pursuant to the approved drawings, for a contract price of \$806,000. The contract specifically stated that Weiss would perform all excavations and demolitions according to the plans and stated "Please Note: This job is done with approved plans and permits and D.O.B. filings. We will do the very best as possible to keep a safety environment follow all codes and regulations as per approved plans...."

The project called for the construction of a five-story, mixed use building of approximately 6,000 square feet. The owner originally planned to demolish the existing one story building, except for several existing walls, and replace it with a shoe store on the ground floor, an expanded cellar for the store's showroom, covering the entire rear of the lot, and two duplex apartments above the store. DOB did not approve the original plans with the expanded cellar so new plans without the extension of the cellar were submitted and approved.

Since Weiss did not have the appropriate licenses with DOB to apply for the necessary permits to perform the work, in July 2015, Weiss engaged Shulem Leifer and his company, Y&S Framers Inc., to sign the work permit applications and insurance certificates as General

Contractor. The documents Leifer signed that Weiss's expediter filed with DOB included a "PGL1: Project Specific General Liability Insurance Summary and Affirmation," affirming that Leifer and Y&S Framers Inc. had the required \$5 million in insurance to cover the construction of the five-story building; and a "PW2: Work Permit Application" to perform the construction work contained in the approved plans as General Contractor. Weiss paid Leifer \$10,000 for the use of his license and insurance, through an intermediary, Weiss's insurance broker, an individual whose identity is known to the grand jury, (the "Insurance Broker").

In June 2015, Weiss began demolition work at the site, employing approximately seven workers, with little to no training in demolition, excavation or construction work and who did not have OSHA safety certifications. Weiss was at the site several times a week, including after the initial demolition work was complete in July 2015.

In late July 2015, Weiss began the next phase of construction. At first, Weiss and his supervisor, an individual whose identity is known to the grand jury, told the workers to dig trenches around the perimeter of the existing cellar area for foundation structures, in accordance with the DOB-approved plans. Weiss, however, did not notify DOB prior to this excavation, as required by the New York City Building Code, and did not provide the necessary shoring, bracing or underpinning to protect the workers.

After the workers began this perimeter excavation, Weiss then instructed them to excavate beyond the approved area. Weiss told his workers to excavate in the rear of the site adjacent to the concrete masonry wall of the building directly to the rear of the lot, in direct contradiction to the DOB-approved plans. The workers excavated without any heavy machines, using shovels and other hand tools to dig out the rear area.

Throughout the excavation, several of the workers complained to Weiss and his supervisor that the excavation was unsafe because the adjacent walls were unstable, especially the rear concrete masonry wall because it had a crack. The workers requested lumber to shore up the adjacent walls. Despite these articulated safety concerns, Weiss refused to provide any materials to shore up the walls or provide instructions and materials for underpinning. One worker also asked Weiss to hire more experienced workers, because most of the workers had no training and little experience performing this type of construction. Weiss refused this request as well.

By September 2, 2015, the excavation in the rear of the lot was more than six feet below the foundation of the adjacent building to the rear. This undermined the concrete masonry wall of the adjacent building. On that day, two of the workers again asked Weiss for lumber to support the undermined adjacent wall. On September 3, 2015, at 8:00 a.m., Weiss's employees reported to work. One worker, concerned about the crack in the concrete masonry wall of the adjacent building, asked Weiss and Weiss's supervisor for 2x4s to shore up the wall, and informed Weiss that the wall could collapse. Weiss stated that the materials were coming, and shortly thereafter lumber arrived. However, Weiss told the worker that this lumber was intended for formwork for the upcoming concrete pour and that he would bring other lumber to shore up the adjacent wall the next day. Weiss also told the workers that they were working too slowly, and Weiss and the supervisor ordered at least three workers, including the deceased, to work in the rear excavated pit. Weiss and the supervisor left the site at approximately 11:00 a.m.

At approximately 11:32 a.m., while several workers were working in the excavated pit, preparing the foundation for the concrete pour planned for the following day, the concrete masonry wall of the rear adjacent building collapsed onto three of the workers.

Weiss Failed to Secure Workers' Compensation Insurance for His Employees and Submitted a False Application for Workers' Compensation Insurance to the New York State Insurance Fund

Under the New York State Workers' Compensation Law, all employers had to secure workers' compensation insurance coverage for their employees. Although Weiss, RSBY NY Builders Inc., and Park Ave Builders Inc. employed at least seven workers at 656 Myrtle Avenue beginning in June 2015, they did not obtain workers' compensation coverage until on or about August 14, 2015. Furthermore, Weiss made false statements on the application that he submitted to the New York State Insurance Fund to obtain the required coverage.

Weiss signed the application, dated August 12, 2015, as owner and chief executive officer of applicant Park Ave Builders Inc. Rather than describing the true nature of his construction business, Weiss stated in the application that he was the "[b]uilding construction broker. Coordinating all subs for a construction project. Not on job site." He further stated that he had four clerical office employees who made phone calls, with an annual payroll of \$48,000. The premium rate for clerical workers was \$.31 per \$100 in annual payroll.

On the afternoon of September 3, 2015, the Insurance Broker emailed the New York State Insurance Fund, requesting to add four additional employees to the policy, at the carpentry rate, with annual payroll of \$40,000. The premium rate for carpentry was \$18.53 per \$100 in annual payroll.

Weiss Committed Tax Fraud

Under the New York State Tax Law, individuals were required to report all income on their yearly income tax returns and pay any taxes owed on the date the income tax return was due. Personal income tax returns and payments for 2015 were due on April 18, 2016. Throughout 2015, Weiss used a credit card in his name belonging to Harrison Place Lofts LLC,

charging over \$75,000 for personal expenses, but did not declare this income on his state tax returns. He used an account held in the name of RSBY NY Builders Inc. to make payments on the credit card. Based on this unreported income, Weiss had state income taxes due of \$4,310 on April 18, 2016, but because he hid the income from the credit card usage, he obtained a refund of \$3,686. Weiss thereby stole \$7,996 from the New York State Department of Taxation and Finance.

New York State Tax Law also required corporations to submit income tax returns and report all gross receipts and pay income tax. For yearly filers, the 2015 returns and taxes were due March 15, 2016. Neither RSBY NY Builders Inc. nor Park Avenue Builders Inc. filed any income tax return for 2015.

COUNT ONE

THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, accuses the defendants MICHAEL WEISS, RSBY NY BUILDERS INC., and PARK AVE BUILDERS INC. of the crime of MANSLAUGHTER IN THE SECOND DEGREE, in violation of Penal Law § 125.15, committed as follows:

The defendants, in the County of Kings, on or about September 3, 2015, recklessly caused the death of another person.

COUNT TWO

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendants MICHAEL WEISS, RSBY NY BUILDERS INC., and PARK AVE BUILDERS INC. of the crime of CRIMINALLY NEGLIGENT HOMICIDE, in violation of Penal Law § 125.10, committed as follows:

The defendants, in the County of Kings, on or about September 3, 2015, with criminal negligence, caused the death of another person.

COUNT THREE

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendants MICHAEL WEISS, RSBY NY BUILDERS INC., PARK AVE BUILDERS INC., SHULEM LEIFER, and Y&S FRAMERS INC. of the crime of RECKLESS ENDANGERMENT IN THE SECOND DEGREE, in violation of Penal Law § 120.20, committed as follows:

The defendants, acting in concert, in the County of Kings, on or about September 3, 2015, recklessly engaged in conduct which created a substantial risk of serious physical injury to another person.

COUNT FOUR

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendants MICHAEL WEISS, PARK AVE BUILDERS INC., SHULEM LEIFER, and Y&S FRAMERS INC., of the crime of RECKLESS ENDANGERMENT IN THE SECOND DEGREE, in violation of Penal Law § 120.20, committed as follows:

The defendants, acting in concert, in the County of Kings, from on or about August 8, 2015 to on or about May 19, 2016, as part of an ongoing course of conduct, recklessly engaged in conduct which created a substantial risk of serious physical injury to another person.

COUNT FIVE

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendants MICHAEL WEISS, RSBY NY BUILDERS INC., and PARK AVE

BUILDERS INC. of the crime of ASSAULT IN THE THIRD DEGREE, in violation of Penal Law § 120.20(2), committed as follows:

The defendants, in the County of Kings, on or about September 3, 2015, recklessly caused physical injury to Worker 2.

COUNT SIX

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendants MICHAEL WEISS, RSBY NY BUILDERS INC., and PARK AVE BUILDERS INC. of the crime of ASSAULT IN THE THIRD DEGREE, in violation of Penal Law § 120.20(2), committed as follows:

The defendants, in the County of Kings, on or about September 3, 2015, recklessly caused physical injury to Worker 3.

COUNT SEVEN

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendant MICHAEL WEISS of the crime of GRAND LARCENY IN THE THIRD DEGREE, in violation of Penal Law § 155.35, committed as follows:

The defendant, in the County of Kings and elsewhere, on or about April 18, 2016, stole property, the value of which exceeded three thousand dollars.

COUNT EIGHT

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendant MICHAEL WEISS of the crime of CRIMINAL TAX FRAUD IN THE FOURTH DEGREE, in violation of Tax Law § 1803, committed as follows:

The defendant, in the County of Kings and elsewhere, on or about April 18, 2016, committed a tax fraud act and with intent to evade any tax due under the Tax Law, and to

defraud the state, paid the state, in a period of not more than one year in excess of three thousand dollars less than the tax liability that was due.

COUNT NINE

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendants MICHAEL WEISS and PARK AVE BUILDERS INC. of the crime of FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10, committed as follows,

The defendants, in the County of Kings and elsewhere, on or about August 12, 2015, with intent to defraud, including an intent to commit another crime and to aid and conceal the commission thereof, made and caused a false entry in the business records of an enterprise, namely, a false Application for New York Workers' Compensation and Employer's Liability Insurance for Park Ave Builders Inc.

COUNT TEN

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendants MICHAEL WEISS and PARK AVE BUILDERS INC. of the crime of OFFERING A FALSE INSTRUMENT FOR FILING IN THE FIRST DEGREE, in violation of Penal Law § 175.35, committed as follows:

The defendants, in the County of Kings and elsewhere, on or about August 12, 2015, knowing that a written instrument contained a false statement and false information, and with intent to defraud the New York State Insurance Fund, offered and presented it to a public office, public servant, public authority, and public benefit corporation with the knowledge and belief that it would be filed with, registered and recorded in and otherwise become a part of the records of such public office, public servant, public authority, and public benefit corporation, in that the

defendants submitted a false application for New York Workers' Compensation and Employers' Liability Insurance to the New York State Insurance Fund.

COUNT ELEVEN

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendants MICHAEL WEISS and PARK AVE BUILDERS INC. of the crime of FRAUDULENT PRACTICES, in violation of Workers' Compensation Law § 114, committed as follows:

The defendants, in the County of Kings and elsewhere, on or about August 12, 2015, knowingly and with intent to defraud presented, caused to be presented, and prepared with knowledge and belief that it would be presented to and by an insurer and purported insurer, and any agent thereof, a written statement as part of and in support of, an application for the issuance of and the rating of an insurance policy for compensation insurance, which he or she knew to contain a false statement and false representation concerning any fact material thereto and to omit any fact material thereto.

COUNT TWELVE

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendants MICHAEL WEISS, RSBY NY BUILDERS INC., and PARK AVE BUILDERS INC. of the crime of FAILURE TO SECURE THE PAYMENT OF COMPENSATION FOR MORE THAN FIVE EMPLOYEES WITHIN A TWELVE MONTH PERIOD, in violation of Workers' Compensation Law § 52(1)(a), committed as follows:

The defendants, in the County of Kings, from in or about June 2015 to on or about August 13, 2015, as part of an ongoing course of conduct, failed to secure the payment of compensation for more than five employees within a twelve month period.

COUNT THIRTEEN

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendant RSBY NY BUILDERS INC. of the crime of CRIMINAL TAX FRAUD IN THE FIFTH DEGREE, in violation of Tax Law § 1802, committed as follows:

The defendant, in the County of Kings and elsewhere, on or about March 15, 2016, committed a tax fraud act.

COUNT FOURTEEN

AND THE GRAND JURY OF THE COUNTY OF KINGS, by this Indictment, further accuses the defendant PARK AVE BUILDERS INC. of the crime of CRIMINAL TAX FRAUD IN THE FIFTH DEGREE, in violation of Tax Law § 1802, committed as follows:

The defendant, in the County of Kings and elsewhere, on or about March 15, 2016, committed a tax fraud act.

**ERIC GONZALEZ
ACTING DISTRICT ATTORNEY**