

FILED
02-17-2022
Anna Hodges
Clerk of Circuit Court
2022CF000668
Honorable Jean Marie
Kies-45
Branch 45

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

STATE OF WISCONSIN

Plaintiff,

DA Case No.: 2021ML023274

Court Case No.:

vs.

CRIMINAL COMPLAINT

DONG, MEILING NMI
8409 PALOMIN DRIVE
OAK CREEK, WI 53154
DOB: 01/27/1988

Defendant(s).

For Official Use

THE BELOW NAMED COMPLAINANT BEING DULY SWORN, ON INFORMATION AND BELIEF STATES THAT:

Count 1: INTENTIONALLY FAIL TO PAY SALES TAX (>\$10,000)

The above-named defendant between 2013 and 2016, at 2116 North Farwell Avenue 5, in the City of Milwaukee, Milwaukee County, Wisconsin, as a person who collected tax moneys imposed under s. 77.52, 77.53 or 77.71 from a consumer, user or purchaser and who received those tax moneys as trust funds and state property, did intentionally fail or refuse to pay over those tax moneys to the state at the time required by s. 77.60 or fraudulently withheld, appropriated or used any of those tax moneys whose value exceeds \$10,000 contrary to s. 943.20, and s. 943.20 (3) (c), contrary to sec. 77.60(11), 939.50(3)(g) Wis. Stats.

Upon conviction for this offense, a Class G Felony, the defendant may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than ten (10) years, or both.

Probable Cause:

Complainant is a Special Agent with the Wisconsin Department of Revenue (WDOR) and bases this complaint upon his own investigation as well as statements of citizen witnesses and review of documentary evidence.

BACKGROUND¹

The defendant, Meiling Dong, was a partner in the business of Lin & Dong Fushinami LLC, d/b/a Fushinami, located at 2116 North Farwell Avenue, in the City and County of Milwaukee. Between 2013 and 2016, Dong would repeatedly underreport sales made for the year. In addition, Dong would fail to remit sales tax to the State from those unreported sales. As a result, Dong underreported her sales by

¹ This complaint alleges a continuing course of theft occurring from approximately 2013 until 2016. Wisconsin Statute § 971.36 allows these thefts to be prosecuted as a single crime because the property belonged to a single owner and the thefts were committed as part of a single deceptive scheme, as well as the property was stolen by a person in possession of it. Wis. Stat. § 971.36(3)(a) and (c). In alleging a continuing offense, it is sufficient to "allege generally a theft of property to a certain value committed between certain dates, without specifying any particulars." Wis. Stat. § 971.36(4). Further, the offense is not completed until the last act is completed and the statute of limitations does not begin to run until that time. See *State v. Elverman*, 2015 WI App 91, ¶ 30, 32, 367 Wis. 2d 126, 876 N.W.2d 511.

approximately \$858,182. She failed to remit sale tax on that underreported income in the amount of \$48,056.²

As a partner in Fushinami, Dong did all of the front of house duties, including tracking and managing the Point of Sale (POS) system. She also did all of the accounting for the business. While three others had access to the POS system, Dong was the only person that had access to all areas within the POS system. Further, she was the individual who reported all sale tax information verbally to Fushinami's accountant.

TAX LAWS

Wisconsin Statutes Section 77.52(1)(a) requires retailers, including restaurants, to collect 5% sales tax on retail sales. In Milwaukee County, the following additional sales taxes apply: 0.5% Milwaukee County; 0.1% Stadium tax; and 0.05% Expo tax. The total applicable sales tax is 5.65%.

Section 77.60(11) provides that retailers collect sales taxes as trust funds and State of Wisconsin property. Conversion of such sales taxes constitutes theft by trustee:

(11) Whenever a person collects tax moneys imposed under s. 77.52, 77.53 or 77.71 from a consumer, user or purchaser, the person receives those tax moneys as trust funds and state property. Any person who intentionally fails or refuses to pay over those tax moneys to the state at the time required by this subchapter or who fraudulently withholds, appropriates or uses any of those tax moneys is guilty of theft under s. 943.20, punishable as specified in s. 943.20 (3) according to the amount of tax moneys involved. This subsection applies regardless of the person's interest in those tax moneys. Payment to creditors in preference to the payment of those tax moneys to the state by any person is prima facie evidence of an intent to fraudulently use those tax moneys.

With regards to sales tax, retailers report the amount collected on their Wisconsin Sales and Use Tax Return (Form ST-12). This form is used to document the total sales on a monthly basis and to calculate the total State sales and use tax owed as a result of those sales. As Fushinami's sales tax for any calendar quarter exceeded \$3,600, the sales taxes owing were due and payable on the 20th day of the month after the calendar month for which the tax was imposed. (i.e. the June sales tax is due July 20th). See Wis. STAT. § 77.58(1)(b).

TAX AUDIT

Adam Swenson is a field auditor for WDOR. Auditor Swenson conducted a field audit of Dong's sale tax returns for Lin & Dong Fushinami LLC d/b/a Fushinami. He determined that Dong collected far more sales taxes than she remitted to the State of Wisconsin.

As part of the audit, Swenson reviewed Dong's Wisconsin Sales and Use Tax Returns (Form ST-12) for tax years 2013 through 2016. Companies that process credit card transactions report those transactions to the retailer and to the WDOR on a Form 1099 K. Form 1099 K reports show the annual credit card sales for tax years 2013-2016. Swenson was also able to review Fushinami's point of sale (POS) system results. The POS system is a system that documents all of the different transactions

² "A proceeding for a criminal violation under [chapter 71] may be brought in the circuit court for Dane County or for the county in which the defendant resides or is located when charged with the violation." See Wis. STAT. § 71.80(6)(m). Dong resides at 8409 S. Palomino Drive in the City of Oak Creek, Milwaukee County. As such, venue lies in Milwaukee County.

conducted by the business. The system is meant to provide documentation of the total sales occurring at the business, documenting each transaction that occurs.

On approximately April 17, 2017, Auditor Swenson requested a copy of the POS system data from Dong. On April 19, 2017, transactions began being voided from the system. Swenson's audit found that the POS system showed a significant number of transactions, approximately 3,100, were voided months or years after the original transaction. Those voided transactions started on April 19, 2017, and continued until May 8, 2017. May 8 was the date that Auditor Swenson was scheduled to pick up a copy of the POS system. When he asked about the voided transactions, Auditor Swenson was told that the POS system company had conducted an update on the POS system and that could've voided transactions. Swenson spoke with representatives of the POS system company. He was informed that an update of the system would have no effect at all on transactions and would not cause any transactions to be voided.

Further, a comparison of the ST-12s with the Form 1099 K showed that the total gross receipts reported by Fushinami seemed to be based on the Form 1099 K, which only accounted for credit card sales. Each year, the total sales from the POS system significantly exceeded the reported retail sales. This discrepancy showed that Dong was underreporting sales by failing to report cash sales. She was further failing to report Grub Hub sales. This allowed Dong to avoid paying significant amounts of sales tax on the unreported income. As a result, a referral was made to criminal investigators with the WDOR.

CRIMINAL INVESTIGATION

As part of this investigation Complainant reviewed records, obtained through the audit as well as through subpoena, relating to Dong's payment of sales tax from 2013-2016. In addition, an interview was conducted with Dong. Those records and Dong's statements demonstrate that Dong would fail to report any cash sales or GrubHub delivery orders when reporting her sales. She would also underreport any credit and debit card transactions.

Complainant reviewed the 2013-2016 POS system, which revealed numerous instances of underreporting of transactions on the POS system, deleting of cash transactions, and non-reporting of GrubHub delivery orders by Dong. This confirmed the investigation conducted by Auditor Swenson as described above.

In 2013, Dong reported a total of \$1,021,425.95 in sales. However, in reviewing the POS system, Fushinami conducted actual sales of \$1,240,869.78. This means that Dong underreported the total sales to WDOR by \$219,443.83. Further, a review of the POS system shows that Dong deleted 1,069 transactions between April 22, 2017, and May 5, 2017, for a total of \$90,929 in deleted cash transactions. As a result of Dong's actions, \$12,288.85 in sales tax was collected on the unreported \$219,443.83 and was not paid over to the State as required.

In 2014, Dong reported a total of \$943,677.43 in sales. However, in reviewing the POS system, Fushinami conducted actual sales of \$1,106,018.40. This means that Dong underreported the total sales to WDOR by \$162,340.97. Further, a review of the POS system shows that Dong deleted 833 transactions between May 7, 2017, and May 8, 2017, for a total of \$40,669 in deleted cash transactions. In addition, a review of bank account records for Fushinami showed that Dong did not report \$16,360 in sales from Grub Hub orders. As a result of Dong's actions, \$9,091.09 in sales tax was collected on the unreported \$162,340.97 and was not paid over to the State as required.

In 2015, Dong reported a total of \$1,004,205.87 in sales. However, in reviewing the POS system, Fushinami conducted actual sales of \$1,210,464.39. This means that Dong underreported the total

sales to WDOR by \$206,258.52. Further, a review of the POS system shows that Dong deleted 498 transactions between April 19, 2017, and May 8, 2017, for a total of \$10,634 in deleted cash transactions. In addition, a review of bank account records for Fushinami showed that Dong did not report \$39,259 in sales from Grub Hub orders. As a result of Dong's actions, \$11,550.48 in sales tax was collected on the unreported \$206,258.52 and was not paid over to the State as required.

In 2016, Dong reported a total of \$1,034,433.00 in sales. However, in reviewing the POS system, Fushinami conducted actual sales of \$1,304,574.62. This means that Dong underreported the total sales to WDOR by \$270,141.62. Further, a review of the POS system shows that Dong deleted 708 transactions all on May 8, 2017, for a total of \$20,967 in deleted cash transactions. In addition, a review of bank account records for Fushinami showed that Dong did not report \$66,593 in sales from Grub Hub orders. As a result of Dong's actions, \$15,127.93 in sales tax was collected on the unreported \$270,141.62 and was not paid over to the State as required.

Between 2013 and 2016, Dong deleted 3,108 separate transactions from the POS system. That resulted in a failure to report \$163,199 in cash transactions. She failed to report any Grub Hub sales during that same period, resulting in a failure to report \$122,212 in Grub Hub transactions. All of this behavior contributed to her underreporting of sales tax.

The total amount of sales that were intentionally underreported, deleted, or not-reported from 2013 through 2016 was \$858,184.94. As a result of failing to report that amount, Dong failed to remit to WDOR sales tax in the amount of \$48,058.35. Complainant compiled his analysis results in the below table. This table shows the total sales that Dong reported (State Taxable Sales Previously Reported), the actual amount of total sales (State Taxable Sales Per Audit), as well as the difference between those figures (Adjustment to State Taxable Sales) and the ultimate amount of sales tax not remitted to the State (Additional Sales Tax).

	2013-12-31	2014-12-31	2015-12-31	2016-12-31	Total
Sales					
State Taxable Sales Per Audit	1,240,869.78	1,106,018.40	1,210,464.39	1,304,574.62	4,861,927.20
State Taxable Sales Previously Reported	1,021,425.95	943,677.43	1,004,205.87	1,034,433.00	4,003,742.25
Percentage Increase in Taxable Sales	21.4841	17.2030	20.5395	26.1149	21.4346
Adjustment to State Taxable Sales	219,443.83	162,340.97	206,258.52	270,141.62	858,184.95
Additional State Sales Tax	10,972.19	8,117.05	10,312.93	13,507.08	42,909.25
County Taxable Sales Per Audit	1,240,869.79	1,106,018.40	1,210,464.39	1,304,574.62	4,861,927.21
County Taxable Sales Previously Reported	1,021,425.96	943,677.43	1,004,205.87	1,034,433.00	4,003,742.26
Adjustment to County Taxable Sales	219,443.83	162,340.97	206,258.52	270,141.62	858,184.95
Additional County Sales Tax	1,097.22	811.70	1,031.29	1,350.71	4,290.92
Baseball Stadium Taxable Sales Per Audit	1,240,869.79	1,106,018.40	1,210,464.39	1,304,574.62	4,861,927.21
Baseball Stadium Taxable Sales Previously Reported	1,021,425.96	943,677.43	1,004,205.87	1,034,433.00	4,003,742.26
Adjustment to Baseball Stadium Taxable Sales	219,443.83	162,340.97	206,258.52	270,141.62	858,184.95
Additional Baseball Stadium Sales Tax	219.44	162.34	206.26	270.14	858.18
Football Stadium Taxable Sales Per Audit	0.00	0.00	0.00	0.00	0.00
Football Stadium Taxable Sales Previously Reported	0.00	0.00	0.00	0.00	0.00
Adjustment to Football Stadium Taxable Sales	0.00	0.00	0.00	0.00	0.00
Additional Football Stadium Sales Tax	0.00	0.00	0.00	0.00	0.00
Additional Sales Tax	12,288.85	9,091.09	11,550.48	15,127.93	48,058.35

INTERVIEW OF DONG

Complainant interviewed Dong on February 14, 2018. Dong informed Complainant that she did all the front of house duties for the business, including tracking and managing the point of sale (POS) system and did all the accounting for the business. She stated she was the only one that had access to all areas within the POS system. Three managers had access that was limited to checking the total sales for the day to ensure it matched the register. Dong stated that they would send reports from the POS system to their accountant, Regina Yang. Dong further stated that she would report all of the sales tax information verbally to their accountant.

Dong admitted in the interview that she created the backup of the POS system for the auditor. Complainant explained to Dong that 3,100 transactions had been deleted from the POS system immediately before a backup was given to the auditor. Dong initially stated that she did not know transactions could be deleted. Later, she stated that she was overwhelmed and accidentally deleted the transactions when trying to generate the backup. Complainant confronted Dong with the fact that all of the transactions were deleted a few hours before the backup was provided to the auditor. Complainant asked Dong if she deleted the transactions on purpose. Dong stated she was very sorry and that she deleted the transactions. Dong stated that, before the audit, the accountant asked to see the sales from the POS system to compare them to the ST-12s. The accountant told Dong the sales figures from the POS do not match the return. Dong stated she then deleted some of the transactions so that the sales figure in the POS system would match the sales tax returns.

INTERVIEW OF YANG

Complainant also interviewed Regina Yang, the accountant for Fushinami. Yang stated that she handled filing taxes for Fushinami. She would receive the necessary income information from Dong. Dong would originally provide reports with the financial information. However, she later would just provide the figures involved. Yang was unaware that Dong was underreporting the amount of total sales and thus underpaying the sales tax owing.

CONCLUSION

Dong collected tax moneys from consumers through her business at Fushinami. As a person who collected sales tax due to her business, Dong had an obligation to remit that sales tax to the State; those moneys were held in trust and were state property. Despite that, Dong intentionally failed to pay over those tax moneys to the State of Wisconsin when they were due. She fraudulently withheld those funds from the State and attempted to hide her behaviors by deleting transactions from the POS system. As a result, the State was defrauded of \$48,058.35 in sales tax.

****End of Complaint****

Electronic Filing Notice:

This case was electronically filed with the Milwaukee County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases. Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov> and may withdraw as an electronic party at any time. There is a \$ 20.00 fee to register as an electronic party. If you are not represented by an attorney and would like to register an electronic party, you will need to contact the Clerk of Circuit Court office at 414-278-4120. Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Criminal Complaint prepared by Matthew Richard Westphal.

Subscribed and sworn to before me on 02/09/22

Electronically Signed By:

Electronically Signed By:

Michael Austin

Matthew Richard Westphal

Complainant

Assistant District Attorney

State Bar #: 1071292