

COMMERCIAL BRIBE RECEIVING SECOND DEGREE
Penal Law § 180.05
(Committed on or after Sept. 1, 1983)

The (*specify*) count is Commercial Bribe Receiving in the Second Degree.

Under our law, an employee [agent or fiduciary] is guilty of Commercial Bribe Receiving in the Second Degree when, without the consent of his or her employer [or principal], he or she solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that such benefit will influence such employee's, [agent's or fiduciary's] conduct in relation to his or her employer's [or principal's] affairs.

The following terms used in that definition have a special meaning:

BENEFIT means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.¹

AGREEMENT means a mutual agreement between an employee, [agent or fiduciary,] and a person from whom he or she solicits, accepts or agrees to accept any benefit that such employee's, [agent's or fiduciary's] conduct in relation to his or her employer's [or principal's] affairs will thereby be influenced.²

UNDERSTANDING means at least a unilateral perception or belief by an employee, [agent or fiduciary] who solicits, accepts

¹Penal Law §10.00(17). See *People v Feerick*, 93 N.Y.2d 433, 446-447 (1999).

²The definition provided has been drawn from *People v Tran*, 80 N.Y.2d 170 (1992), which defined the term "understanding" in the context of a bribe giving rather than a bribe receiving case. The Court of Appeals has not specifically adopted a definition of the term "understanding" in the context of a bribe receiving case.

or agrees to accept any benefit from another person that such benefit will influence the employee's, [agent's or fiduciary's] conduct in relation to his or her employer's [or principal's] affairs.³

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following four elements:

1. That on or about (date), the defendant (defendant's name), was an employee [agent or fiduciary] of (specify employer or principal);
2. That on or about that date, in the county of (county), the defendant solicited, accepted or agreed to accept a benefit from (specify);
3. That the defendant did so upon an agreement or understanding that such benefit would influence his/her conduct in relation to his/her employer's [or principal's] affairs; and
4. That the defendant did so without the consent of his/her employer [or principal].

Therefore, if you find that the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of the crime of Commercial Bribe Receiving in the Second Degree as charged in the _____ count.

On the other hand, if you find that the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of the crime of Commercial Bribe Receiving in the Second Degree as charged in the _____ count.

³ *Id.*