



U.S. Department of Justice

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April 10, 2009

Joseph Gigliotti, Esq.
5707 East West Highway
Riverdale, MD 20737

Re: United States of America v. Cheryl Brooke
Crim. No. DKC-08-0289

Dear Mr. Gigliotti:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have her execute it in the spaces provided below. If this offer has not been accepted by 5 p.m. on April 10, 2009 it will be deemed withdrawn. The terms of the agreement are as follows:

Offenses of Conviction

1. The Defendant agrees to plead guilty to Counts One and Twelve of the Indictment now pending against her, which charge her with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349, and bankruptcy fraud, in violation of 18 U.S.C. § 157. The Defendant admits that she is, in fact, guilty of these offenses and will so advise the Court.

Elements of the Offenses

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows:

Count One: (1) two or more persons entered the unlawful agreement charged in the Indictment; and (2) the defendant knowingly and willfully became a member of the conspiracy.

Count Twelve: (1) the defendant devised a scheme or artifice to defraud, as alleged in the Indictment; (2) as part of that scheme to defraud the defendant filed a petition for bankruptcy as alleged in the Indictment; and (3) the defendant knowingly and willfully participated in the scheme or artifice to defraud, with knowledge of its fraudulent nature and with specific intent to defraud.

Penalties

3. The maximum sentence provided by statute for the offense to which the Defendant is pleading guilty is as follows:

Count One: 30 years imprisonment, a fine of \$1,000,000 or twice the gain or loss associated with the offense, whichever is greater, and five years supervised release.

Count Twelve: 5 years imprisonment, a fine of \$250,000, and three years of supervised release.

In addition, the Defendant must pay \$200 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order her to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.¹ If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if she serves a term of imprisonment, is released on supervised release, and then violates the conditions of her supervised release, her supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The Defendant understands that by entering into this agreement, she surrenders certain rights as outlined below:

a. If the Defendant had persisted in her plea of not guilty, she would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All

¹ Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of \$2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in her defense, however, she would have the subpoena power of the Court to compel the witnesses to attend.

d. The Defendant would have the right to testify in her own defense if she so chose, and she would have the right to refuse to testify. If she chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from her decision not to testify.

e. If the Defendant were found guilty after a trial, she would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against her. By pleading guilty, the Defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that she may have to answer the Court's questions both about the rights she is giving up and about the facts of her case. Any statements the Defendant makes during such a hearing would not be admissible against her during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find her guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status.

Advisory Sentencing Guidelines Apply

5. The Defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the "advisory guidelines range") pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

6. The Government and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A which would be proved beyond a reasonable doubt and set forth the following agreed-upon and disputed applicable sentencing guidelines factors:

Count One

(a) The base offense level is **7**, pursuant to U.S.S.G. § 2B1.1(a)(1), because the offense of conviction has a statutory maximum term of imprisonment of twenty years or more.

(b) A **14**-level upward adjustment applies, pursuant to U.S.S.G. § 2B1.1(b)(1)(H), because the loss amount associated with relevant conduct was more than \$400,000 but less than \$1,000,000.

(c) A **2**-level upward adjustment applies, pursuant to U.S.S.G. § 2B1.1(b)(2)(A), because the offense was committed through mass-marketing.

(d) A **2**-level upward adjustment applies, pursuant to U.S.S.G. § 2B1.1(b)(9)(C), because the offense involved sophisticated means.

(e) A **2**-level upward adjustment applies, pursuant to U.S.S.G. § 3A1.1(b)(1), because the defendant knew that a victim of the offense was a vulnerable victim.

(f) The defendant will argue that a **2**-level downward adjustment applies pursuant to U.S.S.G. § 3B1.2(b), because the defendant was a minor participant in criminal activity. The Government will oppose this adjustment.

Count Twelve

(a) The base offense level is **6**, pursuant to U.S.S.G. § 2B1.1(a)(2).

(b) A **14**-level upward adjustment applies, pursuant to U.S.S.G. § 2B1.1(b)(1)(H), because the loss amount associated with relevant conduct was more than \$400,000 but less than \$1,000,000.

Counts One and Twelve are closely related offenses, pursuant to U.S.S.G. § 3D1.2. The adjusted offense level is **27** (the Government's position) or **25** (the Defendant's position).

This Office does not oppose a two-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for her criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the Defendant's timely notification of her intention to plead guilty. This Office may oppose *any* adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b)

denies involvement in the offense; (c) gives conflicting statements about her involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw her plea of guilty. Incorporating these reductions, the adjusted offense level is **24** (the Government's position) or **22** (the Defendant's position).

7. The Defendant understands that there is no agreement as to her criminal history or criminal history category, and that her criminal history could alter her offense level if she is a career offender or if the instant offense was a part of a pattern of criminal conduct from which she derived a substantial portion of his income

8. This Office and the Defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines will be raised or are in dispute.

Forfeiture

9. The Defendant agrees to forfeit to the United States all of her right, title, and interest in any and all money, property, or assets of any kind, derived from or acquired as a result of, or used to facilitate the commission of, the defendant's illegal activities, including:

(a) The funds and property contained in Bank of America Account No. *****6706, in the name of "In the House Technologies, Inc."

The Defendant also agrees to forfeit to the United States all of her right, title, and interest the funds and property contained in the following accounts as substitute assets:

(b) NASA Federal Credit Union Account No. **4547, in the name of Cheryl Brooke;

(c) All accounts owned by or accessible to the defendant in the name of "Bankruptcy Today."

The defendant further agrees to forfeit all of her rights, title, and interest in \$2,228,878.06. The government agrees not to seek forfeiture, based upon the statement of facts set forth in Attachment A, of any other property owned by your client (other than that set forth above) that is known to the government as of the date of this agreement. If the defendant should conceal the existence or location of any asset from the United States, such action shall constitute a violation of this agreement. The defendant hereby consents to a civil forfeiture of any concealed asset.

The defendant agrees that the Court may enter an order of criminal forfeiture in the amount of \$2,228,878.06 at the time of sentencing, and further agrees that at least this amount was generated as proceeds of the conspiracy to commit wire fraud set forth in the statement of facts.

10. The Defendant agrees to assist fully the United States in the forfeiture of the foregoing assets. The Defendant agrees to take all steps necessary to pass to the United States clear title to these assets, including but not limited to executing any and all documents necessary to transfer his interest in any of the above property to the United States, assisting in bringing any assets located outside the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. The Defendant further agrees that she will not assist a third party in asserting a claim to the foregoing assets in an ancillary proceeding.

11. The Defendant knowingly waives all constitutional, legal, and equitable defenses to the forfeiture of the foregoing assets. It is further understood that, in the event that the United States files a civil action pursuant to 21 U.S.C. § 881, or any law enforcement agency initiates a forfeiture proceeding seeking to forfeit these assets, the Defendant will not file a claim with the Court or agency or otherwise contest such a forfeiture action and will not assist a third party in asserting any such claim. It is further understood that the Defendant will not file or assist anyone in filing a petition for remission or mitigation with the Department of Justice concerning the forfeited assets.

12. The Defendant agrees to identify all other assets and identify the sources of income used to obtain all other assets, including identifying all assets derived from or acquired as a result of, or used to facilitate the commission of, any crime charged in the Indictment. The United States reserves the right to proceed against any remaining assets not identified in this agreement, including any property in which the Defendant has any interest or control.

Obligations of the United States Attorney's Office

13. At the time of sentencing, this Office will recommend a sentence within the guidelines range as determined by the Court. At the time of sentencing, this Office will move to dismiss any open counts against the Defendant.

14. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the counts of the Indictment that this Office has agreed to dismiss at sentencing.

Waiver of Appeal

15. The Defendant and this Office knowingly and expressly waive all rights conferred by 18 U.S.C. § 3742 to appeal whatever sentence is imposed, including any fine, term of supervised release, or order of restitution and any issues that relate to the establishment of the advisory guidelines range, as follows: the Defendant waives any right to appeal from any sentence within or below the advisory guidelines range resulting from an adjusted base offense level of **22**, and this Office waives any right to appeal from any sentence within or above the advisory guidelines range resulting from an adjusted base offense level of **24**. Nothing in this agreement shall be construed to prevent either the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), and appealing from any decision thereunder, should a sentence

be imposed that is illegal or that exceeds the statutory maximum allowed under the law or that is less than any applicable statutory mandatory minimum provision. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Restitution

16. The Defendant agrees to the entry of a Restitution Order for the full amount of the victim's losses as determined by the Court. The Defendant agrees that, pursuant to 18 U.S.C. §§ 3663 and 3663A and §§ 3563(b)(2) and 3583(d), the Court may order restitution of the full amount of the actual, total loss caused by the offense conduct set forth in the factual stipulation. The Defendant further agrees that she will fully disclose to the probation officer and to the Court, subject to the penalty of perjury, all information, including but not limited to copies of all relevant bank and financial records, regarding the current location and prior disposition of all funds obtained as a result of the criminal conduct set forth in the factual stipulation. The Defendant further agrees to take all reasonable steps to retrieve or repatriate any such funds and to make them available for restitution. If the Defendant does not fulfill this provision, it will be considered a material breach of this plea agreement, and the Government may seek to be relieved of its obligations under this agreement.

Obstruction or Other Violations of Law

17. The Defendant agrees that she will not commit any offense in violation of federal, state or local law between the date of this agreement and her sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for her conduct by failing to acknowledge her guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that she may not withdraw her guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

18. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will

consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw her guilty plea, and will remain bound to fulfill all of her obligations under this agreement. The Defendant understands that neither the prosecutor, her counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

Entire Agreement

18. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The Defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this agreement, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By: _____

Gina L. Simms
Jonathan C. Su
Assistant United States Attorneys

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

Date

Cheryl Brooke

I am Cheryl Brooke's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement with her. She advises me that she understands and accepts its

terms. To my knowledge, her decision to enter into this agreement is an informed and voluntary one.

Date

Joseph Gigliotti, Esq.

ATTACHMENT A

Had the case of United States v. Cheryl Brooke gone to trial, the following facts would have been established beyond a reasonable doubt. The facts set forth below do not constitute all of the evidence which would have been presented at trial or all of the circumstances involved in the defendant's criminal activity:

The Defendant and the Lease/Buy-Back Program

Beginning in at least 2004 and continuing until at least May 2008, co-defendant Michael K. Lewis ("LEWIS") aired television advertisements that targeted financially-vulnerable individuals. Lewis represented that he could assist persons with credit problems to improve their credit and generate income to erase debt. He offered to help persons who were in default on their mortgages to save their homes from foreclosure and offered assistance with bankruptcy. Viewers who called the toll-free number referenced in the advertisements spoke with a member or an "MKL Associate" and/or Lewis. After providing financial information, callers were scheduled to meet with Lewis, for a fee, during meetings of the Michael K. Lewis Group. At the meetings, Lewis solicited individuals to become MKL Associates and to purchase a variety of for-fee services, such as the Michael K. Lewis Financial Diet ("the MKL financial diet") for reducing debt, as well as a pre-paid legal plan, income tax return preparation services, and bankruptcy petition preparation.

The Bankruptcy Process

Bankruptcy is a process governed by the Bankruptcy Code (Title 11 of the U.S. Code) through which debtors (those in bankruptcy) obtain relief from creditors. Chapter 13 of the Bankruptcy Code governs individuals who wish to reorganize their finances by restructuring debt repayment. When a debtor files a bankruptcy petition with the Bankruptcy Court, he or she is required at or near the time of filing to file Schedules, which list a debtor's assets, liabilities, creditors, income and expenses, and a Statement of Financial Affairs. A Chapter 13 debtor retains possession of his or her property while attempting to develop a reorganization plan to repay creditors.

The filing of a bankruptcy petition invokes an "automatic stay" of federal and state lawsuits against the debtor which prohibits creditors (including mortgage lenders) from pursuing collection of debts (including foreclosure) without permission of the Bankruptcy Court. A motion to dismiss a bankruptcy case, if granted by the court, terminates the automatic stay.

The Conspiracy

Beginning in or about the Fall of 2005 continuing until in or about May of 2008, in the District of Maryland and elsewhere, **BROOKE** and co-defendants Lewis, Earnest Lewis ("E.Lewis"), and Winston Thomas ("Thomas") did unlawfully, knowingly and willfully conspire, combine, confederate and agree with each other and other persons known and unknown to the Grand Jury to knowingly devise a scheme and artifice to defraud homeowners and lenders, and to obtain money and property from the homeowners and lenders, by means of materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing

and attempting to execute the scheme and artifice to defraud, did transmit and cause to be transmitted by means of wire and radio communication in interstate commerce, certain writings, signs, signals, pictures and sounds, in violation of 18 U.S.C. § 1343. It was the goal of the conspiracy and the scheme and artifice to defraud to steal the homeowners' equity out of their property by inducing the homeowners to sell their property to E.Lewis and converting sale proceeds to the use of the conspirators.

Specifically, **BROOKE** and the co-conspirators specifically targeted homeowners who owned and had equity in their homes but were facing foreclosure because of their inability to make monthly mortgage payments to mortgage lenders. The defendants fraudulently represented that they had a method to help the homeowners keep their homes and avoid foreclosure ("the lease/buy-back program"). Lewis, E. Lewis, and Thomas told the homeowners that E. Lewis' "good credit" would be used to refinance their homes. The homeowners were told that they had to sign their homes over to E. Lewis. Lewis, E. Lewis, and Thomas promised the homeowners that they could repurchase the homes in roughly one year, or once they regained their financial footing, and that during the interim they could remain in their homes by paying "rent" and by following the MKL financial diet. Under the program, the homeowners would pay fees to Lewis, including the "rents," by having their bank accounts directly debited by an account belonging to **BROOKE**'s company "In the House Technologies" ("IHT").

In addition, Lewis, Thomas, and E. Lewis, failed to provide material information to the homeowners about the particulars of how the lease/buy-back program worked, and made affirmative misrepresentations and omitted details about the program, including the amount of money that the homeowners would receive at settlement, what would be done with any equity in the homes, and the need to file for bankruptcy protection.

In furtherance of the conspiracy, and to effect the objects, designs, and purposes thereof, **BROOKE** and/ or the coconspirators committed at least one of the following overt acts:

- A. In or about the Spring of 2006, Lewis met with homeowner C.T. at an MKL Associates meeting.
- B. In or about August 2006, E. Lewis and Thomas met with C.T. to discuss the lease / buy-back program.
- C. On or about August 8, 2006, E. Lewis and C.T. executed the "Contract for the Sale and Purchase of Real Estate," "Contract for the Lease and Mandatory Purchase of Real Estate," and "Ammendments [sic]."
- D. On or about October 20, 2006, **BROOKE** filed a motion to dismiss in Case No. 06-16125 in the Bankruptcy Court.
- E. On or about November 2, 2006, **BROOKE** and Thomas caused check 029730 for \$26,227.77, payable to C.T. and representing C.T.'s equity in the property, to be signed over to IHT and deposited into the IHT BOA Account.

F. During the life of the conspiracy, **BROOKE** had signatory authority over the IHT account, caused checks to be issued to the homeowners, and allowed the IHT account to be used to deposit the proceeds of the equity-stripping scheme.

G. During the life of the conspiracy, **BROOKE** caused the mortgage companies to be paid on the loans that E. Lewis had obtained by issuing checks to those companies.

Bankruptcy Fraud

On or about October 20, 2006, in the District of Maryland and elsewhere, **BROOKE** for the purpose of executing and concealing and attempting to execute and conceal the scheme to defraud discussed above, did file and cause to be filed a document in a proceeding under Title 11 in the U.S. Bankruptcy Court for the District of Maryland, to wit: a motion to dismiss in the name of homeowner C.T. in Case No. 06-16125.

Date

Cheryl Brooke