

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

AT OPEN COURT
6/23/08
M. O'BRIEN
CLERK
DEPUTY CLERK

UNITED STATES OF AMERICA, }

Plaintiff, }

v. }

TERENCE L. COLE, }

Defendant. }

No. 07-20154-06-JWL

PLEA AGREEMENT

The United States of America, by and through Assistant United States Attorney, Marietta Parker, and Terence L. Cole, the defendant, personally and by and through defendant's counsel, P.J. O'Connor, hereby enter into the following plea agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure:

1. **Defendant's Guilty Plea.** The defendant agrees to plead guilty to Counts One and Ten of the Superseding Indictment charging in Count One a violation of Title 18, United States Code, §371, conspiracy to commit wire fraud and money laundering; and in Count Ten a violation of Title 18, United States Code, § 1956(a), money laundering . By entering into this plea agreement, the defendant admits to knowingly committing this offense, and to being guilty of the offenses. The defendant understands that the maximum sentence which may be imposed as to Count One is not more than five (5) years imprisonment, a fine of \$250,000, three (3) years of supervised release and a mandatory \$100 special assessment. The defendant further understands that the maximum sentence that may be imposed as to Count Ten is not more than twenty (20) years of imprisonment, a fine of \$500,000 or twice the value of the property

involved in the transaction, whichever is greater, three (3) years of supervised release, and a \$100 mandatory special assessment.

2. **Factual Basis for the Guilty Plea.** The parties agree the facts constituting the offense to which the defendant is pleading guilty are as follows:

Between on or about October 2, 2003, and in or about January, 2004 , in the District of Kansas and elsewhere, the defendant, Terence L. Cole, knowingly and willfully conspired and agreed with other persons to execute a scheme and artifice to defraud and to launder money.

During the period of the conspiracy, Wildor Washington, Jr., owned or controlled various business entities including but not limited to Heritage Financial Investments [Heritage Financial], Legacy Enterprises, Atlantic Mortgage, Inc., The Real Estate Group, J.T.F. Enterprises, Liberty Escrow and AMSTAR Mortgage. The defendant, Terence L. Cole , was the Chief Financial Officer of Heritage Mortgage.

Through Washington's various business entities, he and his conspirators, including the defendant, Terence L. Cole, knowingly submitted and caused the submission of false and fraudulent property appraisal reports to various lenders including Hamilton Mortgage. Many of the appraisal reports submitted to Hamilton Mortgage by Washington, Jr.'s companies contained what the conspirators knew to be inflated property values and the forged signatures of licensed appraisers whose identities had been stolen. The conspirators obtained the identity of legitimate appraisers by searching internet web sites for appraisers and appropriating their identifying information and legitimate state license numbers found on those sites. The conspirators, using a "cut and paste" method, appropriated the names, real estate license numbers and signatures of legitimate appraisers who had previously prepared legitimate appraisals for the conspirators and then transferred the stolen signatures and identifying information to false appraisal reports which were submitted to lenders. The conspirators also created fictitious appraisers and license numbers and used those false identifiers on fraudulent appraisal reports that they knew would be submitted to various lenders. Additionally, several of the conspirators would use the identities of their co-conspirators on the fraudulent appraisal forms and would allow their identities to be used on the appraisal forms to disguise the nature and extent of their and the other conspirators' involvement in the scheme and artifice to defraud.

The fraudulent appraisal reports and loan applications were submitted by the conspirators to the lenders via wire transmissions or through the U.S. mails or

private commercial carriers. After the fraudulent loans were closed, the loan proceeds were transported across state lines via wire transfers or by mail carriers and some of those proceeds were disbursed to the conspirators.

Count One

It was part of the conspiracy alleged in Count One and in furtherance of it that one or more of the conspirators knowingly and intentionally committed the following overt acts:

46XX W. 146 Street Leawood, Kansas

- * On or about October 24, 2003, the defendant, aided and abetted other persons including Wildor Washington, Jr., Kara Robinson-Franks, and Victoria Bennett, who prepared and submitted to Wells Fargo a Uniform Residential Loan Application and a Form W-2 Wage and Tax Statement for the purchase by Robinson-Franks of property located at 46XX W. 146th Street, Leawood, KS, knowing that each document contained false and fraudulent representations including representations that Robinson-Franks earned \$21,500 per month/\$258,000 during tax year 2002 working for Heritage Financial Investments as its Vice-President of Human Resources and further submitted and caused the submission of false and fraudulent pay stubs purportedly verifying the stated income, when in truth and fact each of the conspirators knew that Robinson-Franks did not work for Heritage and did not earn the amount of income stated on the false W-2 form;
- * On or about October 27, 2003, the defendant, aided and abetted other persons including Washington, Robinson-Franks and Bennett who prepared and submitted to Mortgage Solutions a Uniform Residential Loan Application and a Form W-2 Wage and Tax statement which falsely and fraudulently represented that ROBINSON-FRANKS earned \$256,500 during tax year 2001 working for Heritage Financial Investments as its Vice-President of Operations, when in truth and fact each of the conspirators knew that she did not work for Heritage and did not earn the amount of income stated on the false loan application and W-2 Form;
- * On or about November 20, 2003, the defendant aided and abetted Robinson-Franks, Bennett, Washington and Scott Alexander and Leslie Saunders who prepared and submitted to First Magnus a Uniform Residential Loan Application which falsely and fraudulently represented that Robinson-Franks earned \$21,958 per month working for Legacy

Enterprises as a real estate agent, when in truth and fact each of the conspirators knew that she did not work for Legacy and did not earn the amount of income stated on the false loan application;

- * On or about December 16, 2003, the defendant aided and abetted Robinson-Franks, Bennett, Washington and Saunders who prepared and submitted to Countrywide Home Loans a Uniform Residential Loan Application which falsely and fraudulently represented that Robinson-Franks had income amounting to \$24,403 per month (\$292,836 per year), when in truth and fact each of the conspirators knew Robinson-Franks did not have income in that amount in 2003;

**124XX E. 58th Street
Kansas City, Missouri**

- * On or about November 12, 2003, Eryc Reese, aided and abetted by the defendant, prepared and submitted to The Real Estate Group, a business entity owned by Washington, Jr., an appraisal on a residence owned by a co-conspirator, Leslie Saunders II, located in the 12400 block of East 58th Street in Kansas City, Missouri, knowing that the value of the residence had been inflated and that the signature of the supervisory appraiser had been forged on the document and knowing that the appraisal would be sent to Hamilton Mortgage as part of a packet of loan documents needed to secure a mortgage loan on the property;
- * On or about November 26, 2003, the defendant caused and aided and abetted the interstate transfer by wire communication of the proceeds of the fraudulent loan obtained from Heritage Mortgage on the property located in the 12400 block of East 58th Street, that is: the wire communication from the Federal Reserve Bank in Kansas City, Missouri to the Liberty Escrow Services, Inc., wire account at UMB bank in Overland Park, Kansas, directing the transfer of \$199,620.65 from the Hamilton Mortgage bank account at Bank One into the Liberty Escrow account at UMB Bank;
- * On or about December 1, 2003, with the intent to promote the carrying on of specified unlawful activity, the defendant caused and aided and abetted a monetary transaction involving the proceeds of a specified unlawful activity, that is; wire fraud, in violation of Title 18 United States Code, Section 1343 and mail fraud in violation of Title 18 United States Code, Section 1341, that monetary transaction being the transfer by wire of proceeds fraudulently obtained from a loan by Heritage Mortgage on property located in the 12400 block of East 58th Street in Kansas City, Missouri, that is the transfer of \$198,266.39 from the bank account of

Liberty Escrow Services Inc., at UMB Bank in Overland Park, Kansas, to an account belonging to Scott Alexander at US Bank in Shawnee, Kansas, for the purpose of covering the check that had been provided to Scott Alexander by on or about November 24, 2003.

Count Ten

On or about November 25, 2003 the defendant, Terrence Cole, aided and abetted Washington, Alexander and Robinson-Franks who conducted and caused to be conducted a financial transaction which affected interstate commerce and which involved the proceeds of a specified unlawful activity, wire fraud in violation of Title 18, United States Code, Section 1343 that was designed to conceal and disguise the nature, location, source ownership and control of the proceeds of the wire fraud scheme knowing that the funds and money represented the proceeds of the unlawful activity, that is: on or about that date, Terrence L. Cole aided and abetted the wire transfer from the Liberty Escrow bank account at UMB Bank, in Olathe, Kansas, to the to the bank account of Atlantic Mortgage of loan proceeds in the amount of \$198,266.39, those funds representing proceeds from the purchase by Leslie Saunders of a residence located at 124XXX E. 58th Street, Kansas City, Missouri.

The parties stipulate and agree that the amount of actual loss attributable to the defendant's and his co-conspirators' illegal activities during the period of the conspiracy was more than \$1,000,000.

3. **Application of the Sentencing Guidelines.** The parties request that the United States Sentencing Guidelines (Guidelines) be applied by the Court to calculate the applicable sentence in this case and that a sentence consistent with the Guidelines be imposed by the Court. The defendant further waives any right to have facts that determine the offense level under the Guidelines alleged in an indictment and found by a jury beyond a reasonable doubt; agrees that facts that determine the offense level will be found by the Court at sentencing by a preponderance of the evidence and agrees that the Court may consider any reliable evidence, including hearsay; and the defendant agrees to waive all constitutional challenges to the validity of the Guidelines. The parties further agree to request a sentence within the guideline range

determined to be appropriate by the Court. In other words, the United States will not request a sentence in excess of the high end of the guideline range and the defendant will not request a sentence below the low end of the guideline range. The parties understand this agreement binds the parties only and does not bind the Court.

4. **Relevant Conduct.** The parties have agreed to the application of the Guidelines and therefore both the United States and the defendant understand that the conduct charged in any dismissed counts of the indictment is to be considered as well as all other uncharged related criminal activity as relevant conduct for purposes of calculating the offense level for Counts One and Two, in accordance with United States Sentencing Guidelines (U.S.S.G.) § 1B1.3. The parties stipulate and agree that for purposes of calculating the defendant's sentence and restitution, the losses attributable to the actions of the conspirators was more than \$1,000,000.

5. **Government's Agreements.** In return for the defendant's plea of guilty as set forth herein, the United States Attorney for the District of Kansas agrees:

- a. To not file any additional charges against the defendant arising out of the facts forming the basis for the present indictment;
- b. To recommend a sentence at the low end of the applicable guideline range;
- c. To recommend that the defendant receive a two (2) level reduction in the applicable offense level under U.S.S.G. § 3B1.2(b) for minor participant; and
- d. To recommend the defendant receive a two (2) level reduction in the applicable offense level under U.S.S.G. § 3E1.1 for acceptance of responsibility. In addition, if the defendant's offense level is 16 or greater, the United States will move at the time of sentencing for the defendant to receive an additional one (1) level reduction for acceptance of

responsibility because the defendant timely notified the government of his intention to enter a plea of guilty.

The government's obligation concerning its agreements listed in ¶ 5 are contingent upon the defendant's continuing manifestation of acceptance of responsibility as determined by the United States. If the defendant denies or gives conflicting statements as to his involvement, falsely denies or frivolously contests relevant conduct that the court determines to be true, willfully obstructs or impedes the administration of justice as defined in U.S.S.G. § 3C1.1 (or willfully attempts to do so), or engages in additional criminal conduct, the United States reserves the right to withdraw all of its recommendations without breaching this agreement.

In the event the defendant breaches or violates this plea agreement or otherwise fails to adhere to its terms, the United States shall not be bound by this paragraph and may pursue any additional charges arising from the criminal activity under investigation as well as any perjury, false statement, or obstruction of justice charges which may have occurred. The defendant understands and agrees that in the event the defendant violates this plea agreement, all statements made by the defendant subsequent to the execution of this plea agreement, any testimony given by defendant before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against the defendant in any and all criminal proceedings. The defendant waives any rights which might be asserted under the United States Constitution, any statute, Federal Rule of Criminal Procedure 11(f), Federal Rule of Evidence 410, or any other federal rule that pertains to the admissibility of any statements made by the defendant subsequent to this plea agreement.

6. **Defendant's Agreements.** The defendant agrees to cooperate fully and truthfully with the United States as follows:

- a. Defendant agrees to provide truthful, complete, and accurate information and testimony in the trial of this matter, before any grand jury proceeding, or in any related hearing;
- b. Defendant agrees to provide all information concerning the defendant's knowledge of, and participation in, the offenses charged in the indictment and all related conduct;
- c. Defendant agrees that if the United States determines the defendant has not provided full and truthful cooperation, or has committed any local, state, or federal crime between the date of this plea agreement and his sentencing, or has otherwise violated any other provision of this plea agreement, [or has violated the terms and conditions of his release while on bond as required by the Court,] the plea agreement may be voided and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury, obstruction of justice, and any substantive offenses arising from this investigation. Such prosecution may be based upon any information provided by the defendant during the course of the defendant's cooperation, or upon leads derived therefrom, and this information may be used as evidence against the defendant. In addition, the defendant's previously entered plea of guilty will remain in effect and cannot be withdrawn; and
- d. Defendant agrees to fully and completely assist the United States in the identification and recovery of forfeitable assets, either domestic or foreign, which have been acquired directly or indirectly through the unlawful activities of the defendant, co-defendants, and/or co-conspirators and further agrees to not contest any forfeiture proceedings.

7. **Substantial Assistance.** The defendant acknowledges that substantial assistance has not yet been provided by the defendant within the meaning of U.S.S.G. § 5K1.1 and Title 18, United States Code § 3553(e). The defendant also acknowledges and understands that the determination as to whether the defendant has provided substantial assistance and whether a motion pursuant to U.S.S.G. § 5K1.1 will be filed are left entirely and exclusively within the discretion of the United States. If a determination is made by the United States the defendant has provided substantial assistance, the United States shall request that the Court

consider reducing the sentence the defendant would otherwise receive under the applicable statutes and/or sentencing guidelines pursuant to Title 18, U.S.C. § 3553(e), Title 28, U.S.C. § 994(n), and U.S.S.G. § 5K1.1.

8. **Sentence to be Determined by the Court.** The defendant understands that the sentence to be imposed will be determined solely by the United States District Judge. The United States cannot and has not made any promise or representation as to what sentence the defendant will receive.

9. **Information Provided by Defendant.** The United States agrees not to use new information the defendant provides about the defendant's own criminal conduct except as specifically authorized by U.S.S.G. § 1B1.8. As such, this information may be revealed to the Court but may not be used against the defendant in determining the defendant's applicable guideline range or departing above his guideline range. Defendant understands and agrees, however, that under U.S.S.G. § 1B1.8, there shall be no such restrictions on the use of the information: (1) previously known to the United States; (2) revealed to the United States by, or discoverable through, an independent source; (3) in a prosecution for perjury or giving a false statement; (4) in the event there is a breach of this agreement; or (5) in determining whether and to what extent a downward departure as a result of a government motion pursuant to Title 18, U.S.C. § 3553(e) and U.S.S.G. § 5K1.1 is warranted.

10. **Identification of Assets.** The defendant agrees to disclose to law enforcement officials the existence and status of all monies, property or assets, of any kind, derived from or acquired as a result of, or used to facilitate the commission of the crimes charged. The defendant agrees to deliver to the United States of America, prior to sentencing, a completed financial

statement identifying all of the defendant's assets. The defendant further agrees to prevent the disbursement of any monies, property or assets derived from the crimes charged. If the defendant fails to comply with this provision the United States is relieved of its obligation to recommend a sentencing reduction for Acceptance of Responsibility pursuant to § 3E1.1 or any other sentencing recommendations contained in this agreement.

11. Withdrawal of Plea Not Permitted. The defendant understands that if the court accepts this plea agreement but imposes a sentence with which the defendant does not agree, the defendant will not be permitted to withdraw this plea of guilty.

12. Payment of Special Assessment. The defendant understands that a mandatory special assessment of \$100 per count of conviction will be entered against the defendant at the time of sentencing. The defendant agrees to deliver to the clerk of the court payment in the appropriate amount no later than the day of plea. If the defendant fails to make full payment of the special assessment the United States will no longer be bound by the provisions contained in Section 5(b) of this agreement. The burden of establishing an inability to pay the required special assessment lies with the defendant.

13. Waiver of Appeal and Collateral Attack. Defendant knowingly and voluntarily waives any right to appeal or collaterally attack any matter in connection with this prosecution, conviction and sentence. The defendant is aware that Title 18, U.S.C. § 3742 affords a defendant the right to appeal the conviction and sentence imposed. By entering into this agreement, the defendant knowingly waives any right to appeal a sentence imposed which is within the guideline range determined appropriate by the court. The defendant also waives any right to challenge a sentence or otherwise attempt to modify or change his sentence or manner in

which it was determined in any collateral attack, including, but not limited to, a motion brought under Title 28, U.S.C. § 2255 [except as limited by *United States v. Cockerham*, 237 F.3d 1179, 1187 (10th Cir. 2001)], a motion brought under Title 18, U.S.C. § 3582(c)(2) and a motion brought under Fed. Rule of Civ. Pro 60(b). In other words, the defendant waives the right to appeal the sentence imposed in this case except to the extent, if any, the court departs upwards from the applicable sentencing guideline range determined by the court. However, if the United States exercises its right to appeal the sentence imposed as authorized by Title 18, U.S.C. § 3742(b), the defendant is released from this waiver and may appeal the sentence received as authorized by Title 18, U.S.C. § 3742(a).

14. Waiver of FOIA Request. The defendant waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, Title 5, U.S.C. § 552, or the Privacy Act of 1974, Title 5, U.S.C. § 552a.

15. Waiver of Claim for Attorney's Fees. The defendant waives all claims under the Hyde Amendment, Title 18, U.S.C. § 3006A, for attorneys fees and other litigation expenses arising out of the investigation or prosecution of this matter.

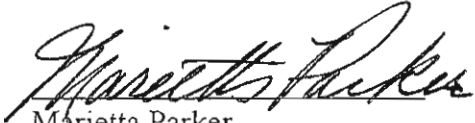
16. Full Disclosure by United States. The defendant understands the United States will provide to the court and the United States Probation Office all information it deems relevant to determining the appropriate sentence in this case. This may include information concerning the background, character, and conduct of the defendant including the entirety of the defendant's criminal activities. The defendant understands these disclosures are not limited to the count to

which the defendant has pled guilty. The United States may respond to comments made or positions taken by the defendant or defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The defendant also has the right to provide information concerning the offense and to make recommendations to the court and the United States Probation Office.

17. **Parties to the Agreement.** The defendant understands this plea agreement binds only the defendant and the United States Attorney for the District of Kansas, and that it does not bind any other federal, state, or local prosecution authority.

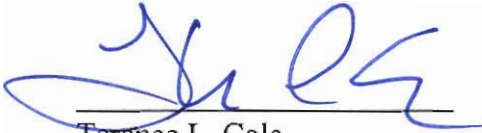
18. **No Other Agreements.** The defendant has had sufficient time to discuss this case, the evidence, and this agreement with the defendant's attorney and defendant is fully satisfied with the advice and representation provided by defendant's counsel. Further, the defendant acknowledges that he has read the plea agreement, understands it and agrees it is true and accurate and not the result of any threats, duress or coercion. The defendant further understands that this plea agreement supersedes any and all other agreements or negotiations between the parties, and that this agreement embodies each and every term of the agreement between the parties. The defendant acknowledges that the defendant is entering into this

agreement and is pleading guilty because the defendant is guilty and is doing so freely and voluntarily.




Marietta Parker
Assistant U.S. Attorney
500 State Avenue; Room 360
Kansas City, Kansas 66101
Tel: 913-551-6674
Fax: 913-551-6541
Ks.Dist..Ct. #77807

Date: June 23, 2008



Terence L. Cole,
Defendant

Date: 6.23.08



P.J. O'Connor
Wagstaff & Cartmell, L.L.P.
4740 Grand Avenue
Kansas City, Missouri 64112-2255
Kansas City, Missouri 64112-2255
Attorney for Defendant Cole

Date: June 23, 2008