



U.S. Department of Justice

United States Attorney
Western District of Pennsylvania

U.S. Post Office & Courthouse
700 Grant Street
Suite 4000
Pittsburgh, Pennsylvania 15219

412/644-3500

July 23, 2008

Stephen Capone, Esquire
210 Grant Street, Suite 300
Pittsburgh, PA 15219

Re: United States of America v.
Joyce Davern
Criminal No. 08-33

Dear Mr. Capone:

This letter sets forth the agreement by which your client, Joyce Davern, will enter a plea of guilty in the above-captioned case. The letter represents the full and complete agreement between Joyce Davern and the United States Attorney for the Western District of Pennsylvania. The agreement does not apply to or bind any other federal, state, or local prosecuting authority.

Upon entering a plea of guilty, Joyce Davern will be sentenced under the Sentencing Reform Act, 18 U.S.C. §3551, et seq. and 28 U.S.C. §991, et seq. The Sentencing Guidelines promulgated by the United States Sentencing Commission will be considered by the Court in imposing sentence. The facts relevant to sentencing shall be determined initially by the United States Probation Office and finally by the United States District Court by a preponderance of the evidence.

- A. The defendant, Joyce Davern, agrees to the following:
1. She will enter a plea of guilty to Count One of the Indictment at Criminal No. 08-33, charging her with violating 18 U.S.C. § 1349, pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

LIMITED OFFICIAL
USE

2. She will assist law enforcement agencies in investigating violations of federal law related to mortgage fraud during the period from May 2004 to the present allegedly committed by Robert Danenberg, Kevin Kamensky, and others (hereinafter "the investigation").
3. She will be fully debriefed by personnel of the United States Attorney's Office and/or Special Agents of the United States Secret Service and/or representatives of other federal, state or local law enforcement agencies as may be determined by the United States Attorney.
4. She will provide all information and evidence within her knowledge or control concerning the investigation. All such information will be full, complete, accurate, and truthful. The determination of the United States Attorney as to the completeness, accuracy, and truthfulness of the information and evidence provided shall be final and conclusive.
5. She will provide all documents and/or physical evidence within her possession concerning the investigation.
6. She will submit to a polygraph examination administered by an agent of the federal government if requested to do so by the United States Attorney.
7. She will, when requested, testify in grand jury, pretrial, trial, sentencing and post-conviction proceedings in this district and elsewhere.
8. She will pay mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664, to the victims and/or other persons or parties authorized by law in such amounts, at such times, and according to such terms as the Court shall direct.
9. She represents to the United States that as a result of the commission of the violation charged in the Indictment, she and/or her co-conspirators obtained illegal proceeds in the amount of \$500,000 forfeitable to the United States pursuant to 28

U.S.C. §2461(c), which incorporates 18 U.S.C. §981(a)(1)(C). The defendant represents that she and/or her co-conspirators have dissipated the \$500,000 in forfeitable illegal proceeds. She stipulates that pursuant to 28 U.S.C. §2461(c), which incorporates 21 U.S.C. §853(p), and as a result of the dissipation of the \$500,000 in illegal proceeds, the United States is entitled to forfeiture of substitute assets having a value of \$500,000, including an *in personam* forfeiture judgment against her in the amount of \$500,000 and/or a judgment of forfeiture against her interest as beneficiary of the Gerald N. Spear Trust. At the full and complete discretion of the United States, she consents to the forfeiture of any of her assets valued up to \$500,000 as substitute assets, the forfeiture of her interest as beneficiary in the Gerald N. Spear Trust and/or the entry of an *in personam* forfeiture judgment against her in the amount of \$500,000.

10. She shall promptly submit in writing to the United States Attorney a full and complete financial statement, under oath, listing all assets wherever located, either owned individually, jointly, by the entirety, or as a trust beneficiary, in which she, her children and/or third parties acting on her behalf, have an interest, including, without limitation, business interests, real and personal property, bank accounts, brokerage accounts, stocks, bonds, etc. This statement shall also include all property transferred by her, her children and/or third parties acting on her behalf within the last three years. In this regard, she agrees to submit to interviews as to these matters, and, if requested, submit to a polygraph examination.
11. She represents that she transferred \$23,200 in illegal proceeds to a bank account held in the name of the Gerald N. Spear Trust, which in turn used these illegal proceeds to make improvements to the property known as Lot No. 20 in North Shenango Township, recorded in the Recorder of Deeds of Crawford County, PA in Deed Book 403, Page 551 (the North Shenango Township Property). She consents to the forfeiture of all of her right, title and interest in the North Shenango Township Property

pursuant to 28 U.S.C. §2461(c), which incorporates 18 U.S.C. §981(a)(1)(C), since the North Shenango Township Property is traceable to illegal, forfeitable proceeds of the violation charged in the Indictment.

12. Forfeiture of the defendant's property shall not be treated as a satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the District Court may impose upon the defendant in addition to forfeiture. She waives any former jeopardy or double jeopardy claims she may have in or as a result of any criminal and/or civil forfeiture action.
13. If, at any time, subsequent to the submission of her written financial statement, the United States discovers that she failed to disclose any asset in the executed financial statement, it is agreed by the United States Attorney and her that all assets not disclosed to the United States Attorney shall be immediately forfeited to the United States as substitute assets of dissipated proceeds of her violation charged in the Indictment. The district court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that the forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.
14. At the time Joyce Davern enters her plea of guilty, she will deposit a special assessment of \$100.00 in the form of cash, or check or money order payable to "Clerk, U.S. District Court". In the event that sentence is not ultimately imposed, the special assessment deposit will be returned.
15. Joyce Davern waives the right to take a direct appeal from her conviction or sentence under 28 U.S.C. §1291 or 18 U.S.C. §3742, subject to the following exceptions:
 - (a) If the United States appeals from the sentence, Joyce Davern may take a direct appeal from the sentence.
 - (b) If (1) the sentence exceeds the applicable statutory limits set forth in

the United States Code, or (2) the sentence unreasonably exceeds the guideline range determined by the Court under the Sentencing Guidelines, Joyce Davern may take a direct appeal from the sentence.

Joyce Davern further waives the right to file a motion to vacate sentence, under 28 U.S.C. §2255, attacking her conviction or sentence, and the right to file any other collateral proceeding attacking her conviction or sentence.

B. In consideration of and entirely contingent upon the provisions of Parts A and C of this agreement, the United States Attorney for the Western District of Pennsylvania agrees to the following:

1. Pursuant to §1B1.8 of the Sentencing Guidelines, the United States Attorney will not use against Joyce Davern any information or evidence provided by her in the course of her assistance in the investigation.
2. Prior to sentencing, the United States Attorney will orally or in writing advise the Court of her evaluation of the nature, extent, completeness, accuracy, truthfulness and value of the assistance and testimony of Joyce Davern. This evaluation is committed to the sound discretion of the United States Attorney.
3. The United States Attorney retains the right of allocution at the time of sentencing to advise the sentencing Court of the full nature and extent of the involvement of Joyce Davern in the offense charged in the Indictment and of any other matters relevant to the imposition of a fair and just sentence.
4. Prior to sentencing, the United States Attorney will, orally or in writing, move that, pursuant to §3E1.1 of the Sentencing Guidelines, the Court reduce the offense level by 3 levels for acceptance of responsibility, on the grounds that the offense level prior to application of §3E1.1 is 16 or greater, and Joyce Davern timely notified

authorities of her intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

5. At the time of sentencing, if her cooperation has been completed, or within 1 year of the imposition of sentence, the United States Attorney will review the timeliness, nature, extent, completeness, accuracy, and truthfulness of the assistance and testimony of Joyce Davern. If the United States Attorney determines Joyce Davern has provided substantial assistance in the investigation or prosecution of other persons, the United States Attorney may, in her discretion, file a motion pursuant to §5K1.1 of the Sentencing Guidelines or under Rule 35(b), Federal Rules of Criminal Procedure, advising the Court of the assistance to law enforcement authorities. Joyce Davern has no right to compel, require or expect that the United States Attorney will file such a motion, however, and the decision to reduce the sentence of Joyce Davern below the applicable guideline range or any mandatory minimum sentence is solely in the discretion of the Court.
6. The United States Attorney will take any position she deems appropriate in the course of any appeals from the sentence or in response to any post-sentence motions.

C. Joyce Davern and the United States Attorney further understand and agree to the following:

1. The penalty that may be imposed upon Joyce Davern is:
 - (a) A term of imprisonment of not more than twenty (20) years;
 - (b) A fine of \$250,000.00;
 - (c) A term of supervised release of three (3) years;
 - (d) A special assessment under 18 U.S.C. §3013 of \$100.00;
 - (e) Mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664.
2. The Court shall determine the victims and/or other persons or parties who will receive restitution as authorized by law.
3. Because the offense of conviction was part of a conspiracy of criminal activity, restitution is not limited to the offense of conviction. The Court may order that restitution be paid to any victim, person, or party directly harmed by Joyce Davern's criminal conduct in the course of the conspiracy.
4. The parties stipulate that the loss associated with the conduct charged in the Indictment, and all relevant conduct, is between \$400,000.00 and \$1,000,000.00 for the purposes of the Sentencing Guidelines. This stipulation represents the parties' best understanding on the basis of the information available as of the date of this agreement. The stipulation is not binding on the Court and does not preclude the parties from bringing to the attention of the United States Probation Office or the Court any information not within their knowledge at the time this agreement is executed.
5. The parties agree that under § 2B1.1 of the Sentencing Guidelines, the base offense level is 7.

The parties further agree that the base offense level of 7 should be raised by 14 levels under § 2B1.1(b)(1)(H) of Chapter 2 of the Guidelines.

6. The parties also agree that the adjusted base offense level should be lowered by a total of 3 levels under Section 3E1.1 (Acceptance of Responsibility) of the Guidelines and that no other enhancements or reductions apply except a potential downward departure based on substantial assistance to the government.
7. Thus, the parties agree that Joyce Davern's overall offense level under the Sentencing Guidelines is 18 prior to any potential reduction based on substantial assistance to the government.
8. If, at any time, the United States Attorney determines that Joyce Davern has provided any information or evidence that is not full, complete, accurate, and truthful, or that Joyce Davern has not provided assistance or testimony upon request, or that Joyce Davern has subsequently committed any additional federal, state, or local crime, the obligations of the United States Attorney under this agreement are terminated. In that event, the government may prosecute Joyce Davern on charges it has agreed to dismiss or has dismissed, and it may use against Joyce Davern information and/or evidence obtained from her. The government may also prosecute Joyce Davern for perjury or obstruction of justice. Any plea of guilty previously entered will stand, however, and Joyce Davern will not have the right to withdraw the plea of guilty by virtue of her breach of this agreement.
9. This agreement does not preclude the government from pursuing any civil or administrative remedies against Joyce Davern or her property.


This letter sets forth the full and complete terms and conditions of the agreement between Joyce Davern and the United States Attorney for the Western District of Pennsylvania, and there are no other agreements, promises, terms or conditions, express or implied.

Very truly yours,



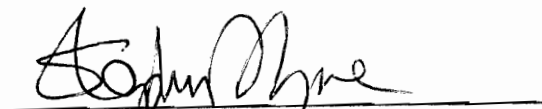
MARY BETH BUCHANAN
United States Attorney

I have received this letter from my attorney, Stephen Capone, Esquire, have read it and discussed it with him, and I hereby accept it and acknowledge that it fully sets forth my agreement with the Office of the United States Attorney for the Western District of Pennsylvania. I affirm that there have been no additional promises or representations made to me by any agents or officials of the United States in connection with this matter.


Joyce Davern

Aug 18, 2008
Date

Witnessed by:


STEPHEN CAPONE, ESQUIRE
Counsel for Joyce Davern