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BY D. MARK JONES, CLERK
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, : Case No. 2:07-CR-00895-TS
Plaintiff, :
vs. : STATEMENT BY DEFENDANT IN
ADVANCE OF PLEA OF GUILTY
BRADLEY GRANT KITCHEN, :
Defendant. : Judge Ted Stewart

I hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights, and that I have had the assistance of counsel in reviewing, explaining, and completing this form:

1. As part of this agreement with the United States, I intend to plead guilty to Count 1 of the Superseding Indictment. My attorney has explained the nature of the charges against me, and I have had an opportunity to discuss the nature of the charges with my attorney. I understand the charge and what the government is required to prove in order to convict me.

The elements of Count 1 are:

First, the defendant agreed with at least one other person to commit mail fraud and wire fraud;

Second, the defendant knew the essential objective of the conspiracy;

Third, the defendant knowingly and voluntarily participated in the conspiracy;

Fourth, one of the conspirators engaged in an overt act furthering the objective of the conspiracy; and

Fifth, there was interdependence among the members of the conspiracy; that is, the members, in some way or manner, intended to act together for their shared mutual benefit.

2. I know that the maximum possible penalty provided by law for Count 1 of the Superseding Indictment, a violation of 18 U.S.C. § 1349 (Attempt and Conspiracy), is a term of imprisonment of twenty (20) years, a fine of \$250,000.00, and a term of supervised release of five (5) years. I understand that if the supervised release term is violated, I can be returned to prison for the length of time provided in 18 U.S.C. § 3583(e)(3).

Additionally, I know the Court is required to impose an assessment in the amount of \$100.00 for the offense of conviction pursuant to 18 U.S.C. § 3013. Furthermore, restitution to the victim of my offense shall be ordered pursuant to 18 U.S.C. § 3663A.

3. I know that the sentencing procedures in this case and the ultimate sentence will be determined pursuant to 18 U.S.C. § 3553(a), and that the Court must consider, but is not bound by, the United States Sentencing Guidelines, in determining my sentence. I have discussed these procedures with my attorney. I also know that the final calculation of my sentence by the Court may differ from any calculation the United States, my attorney, or I may have made, and I will not be able to withdraw my plea if this occurs.

4. I know that I can be represented by an attorney at every stage of the proceeding, and I know that if I cannot afford an attorney, one will be appointed to represent me.

5. I know that I have a right to plead "Not Guilty," and I know that if I do plead "Not Guilty", I can have a trial.

6. I know that I have a right to a trial by jury, and I know that if I stand trial by a jury:

- (a) I have a right to the assistance of counsel at every stage of the proceeding.
- (b) I have a right to see and observe the witnesses who testify against me.
- (c) My attorney can cross-examine all witnesses who testify against me.
- (d) I can call witnesses to testify at trial, and I can obtain subpoenas to require the attendance and testimony of those witnesses. If I cannot afford to pay for the appearance of a witness and mileage fees, the government will pay them.
- (e) I cannot be forced to incriminate myself, and I do not have to testify at any trial.

- (f) If I do not want to testify, the jury will be told that no inference adverse to me may be drawn from my election not to testify.
- (g) The government must prove each and every element of the offense charged against me beyond a reasonable doubt.
- (h) It requires a unanimous verdict of a jury to convict me.
- (i) If I were to be convicted, I could appeal, and if I could not afford to appeal, the government would pay the costs of the appeal, including the services of appointed counsel.

7. If I plead guilty, I will not have a trial of any kind.

8. I know that 18 U.S.C. § 3742(a) sets forth the circumstances under which I may appeal my sentence.

9. I know that 18 U.S.C. § 3742(b) sets forth the circumstances under which the United States may appeal my sentence.

10. I know that under a plea of guilty the judge may ask me questions under oath about the offense. The questions, if asked on the record and in the presence of counsel, must be answered truthfully and, if I give false answers, I can be prosecuted for perjury.

11. I stipulate and agree that the following facts accurately describe my conduct. These facts provide a basis for the Court to accept my guilty plea and for calculating the sentence in my case:

Around October 2005, Ron Clarke told me there was an opportunity to make a lot of money in the "River Bottoms" area of Provo, Utah. Clarke said he had recently closed a series of sales in the River Bottoms area at prices much higher than the listing prices of many other properties in the same area. Clarke said the real estate market was spectacular and identified several of these properties, including 4272 North Stone Crossing, 259 West Stone Brook Lane, 3282 North Cottonwood Drive, 4311 North Vintage Drive, and 515 Sheffield (collectively, the "River Bottoms properties") which I could put under contract and resell at higher prices. Clarke told me that we could use "investment buyers" to purchase the house and "dislodge" the equity. The proceeds from these transactions would be used to buy income-producing assets. Clarke proposed that his commissions be converted to a share in Paragon Investment Group, L.P.'s ("P.I.G.") future assets. Clarke said we would not need to even fund the first purchase because we could use the proceeds from the sale to the "investment buyers" to pay the original seller.

I discussed the above opportunity and plan with David Bolick and we agreed to use Home Owners Group, L.L.C. ("H.O.G.") to place various

properties under contract. H.O.G. would then be used to sell the properties at higher prices. P.I.G. was used to invest the proceeds. In connection with these transactions, Cloward agreed to prepare appraisals reflecting these higher prices Clarke had obtained through the above prior sales. In addition, Clarke agreed to input each of these transactions into the Wasatch Front Multiple Listing Service ("MLS").

Bolick, Cloward, and I recruited straw buyers to buy the River Bottoms properties from H.O.G. for approximately double the price contracted by H.O.G. The purchase money loans obtained by straw buyers involved the use of false and deceptive statements to lenders concerning their qualifications (e.g., occupancy, income, and assets). The final loan packages were submitted (via mail or courier) by Precision Title (in Orem, Utah) to the loan underwriters for America's Wholesale Lender, America's Broker Conduit, and later to SunTrust Mortgage (collectively, "the lenders"). The three of us also participated in supplementing straw buyer loan applications with false and misleading verifications of deposits into straw buyer bank accounts, false leases on other homes owned by the straw buyers, and false documents pertaining to assets.

Appraisals needed to support loan applications for the River Bottoms properties were obtained through the combined efforts of Clarke and Cloward. Clarke made false MLS entries reflecting transactions which had not or did not occur, transactions in which he had no involvement but represented that he did, and transactions involving purchases by straw buyers at artificially inflated values. Cloward, in turn, used these MLS entries as comparisons purportedly reflecting arms-length real estate transactions at fair market value prices, resulting in an appraisal report for a River Bottoms property at a falsely inflated estimated value. Once completed, these appraisal reports were submitted by Cloward to the lenders. Clarke told me that when we closed the loans with the straw buyers at the higher price we would be "resetting" the market and that the "perception" we created that the River Bottoms' properties were worth more would "become reality."

Bolick, Cloward, Jeff Garrett (escrow officer, Precision Title), and I falsely reflected down payments of hundreds of thousands of dollars at the loan closings for the River Bottoms properties. The closings also were structured to delay the original H.O.G. purchase of the property to allow the subsequent purchase by the straw buyers to fund first. By doing so, the loan proceeds of the second transaction were used to close both the original and second transactions. The lenders were unaware that they were providing 100% financing for the second transaction and had also funded the purchase of a property that H.O.G. did not yet own.

The above transactions yielded excess loan proceeds which were diverted to H.O.G. and P.I.G. These proceeds were used to pay salaries, commissions, and fees to participants in the above scheme. In addition, these proceeds were used to make mortgage payments on the River Bottoms properties, fund other property acquisitions, and fund other business ventures. Over time, mortgage payments on the River Bottoms properties ceased completely, resulting in foreclosure efforts on each property.

On or about February 21, 2006, in execution of the above scheme, I caused the loan application package for 4311 North Vintage Drive to be sent via United Parcel

Service from the Precision Title office in Orem, Utah to AWL's offices in Jacksonville, Florida.

The above acts occurred in the District of Utah.

12. The only terms and conditions pertaining to this plea agreement between the defendant and the United States are as follows:

- (a) The defendant agrees as follows:
 - (1) I will plead guilty to Count 1 of the Superseding Indictment.
 - (2) If the Court finds that I failed to fulfill my obligations under this plea agreement, or if I withdraw my plea of guilty, I shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that my statements pursuant to this agreement, or any leads derived therefrom, should be suppressed or are inadmissible at any trial, hearing, or other proceeding.
 - (3) I agree to truthfully and completely execute a Financial Statement of Debtor Form (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office, regarding all details of my financial circumstances. I understand that knowingly providing materially false or incomplete information, or refusing to provide this information, may be used as a basis for the denial of a reduction for acceptance of responsibility pursuant to Sentencing Guideline § 3E1.1, and as a basis for an enhancement of my sentence for obstruction of justice under Sentencing Guideline § 3C1.1.
 - (4) I agree that, pursuant to the provisions of 18 U.S.C. § 3663A(a)(1) and (c)(1)(A)(ii), I am obligated to make restitution and the Court is obligated to order that I pay it. I understand and agree that the Court will determine at sentencing the final amount of restitution I must pay. In addition:
 - (a) I understand that the amount of restitution will be determined as a part of the sentencing proceedings in accordance with the provisions of 18 U.S.C. § 3664, and that under 18 U.S.C. § 3664(h), the Court can make me liable for the full amount of

restitution owed. I agree to pay all restitution as ordered by the Court. I understand the payment of restitution is governed by 18 U.S.C. § 3664, and my lawyer has explained the consequences of an order of restitution.

- (b) I agree to pay restitution during any period of incarceration imposed on me as determined by the Court. I understand and agree that payment of any restitution owed should be a condition of any term of probation or supervised release imposed upon me. I know that if I fail to pay, the failure can be considered a violation of probation or supervised release and, pursuant to 18 U.S.C. § 3614, the Court can resentence me to any sentence which might originally have been imposed in my case.

(b) The United States agrees as follows:

- (1) To recommend that the defendant's offense level under the Sentencing Guidelines be decreased by two levels for acceptance of responsibility pursuant to Sentencing Guideline § 3E1.1(a) if, in the opinion of the United States, the defendant clearly demonstrates acceptance of responsibility for his offenses, up to and including at the time of sentencing, as set forth in § 3E1.1 of the Sentencing Guidelines and paragraph 12(a)(3) above. In addition, the United States agrees:
 - (a) To move for an additional one-level reduction in the defendant's offense level, in accordance with Sentencing Guideline § 3E1.1(b), if the defendant qualifies for a two-level reduction under § Section 3E1.1(a) and the defendant's offense level is 16 or greater prior to receiving the two-level reduction.
- (2) To recommend at sentencing that the defendant be sentenced at the low-end of the final advisory guideline range under the U.S. Sentencing Guidelines as determined by the Court. The United States' agreement is based on the present facts and circumstances, and if the facts change, the United States shall not be bound by this provision.

* * * *

I make the following representations to the Court:

1. I am 41 years of age. My education consists of 17th grade
I can read and understand English.
2. This Statement in Advance contains all terms of the agreements between me and the government; if there are exceptions, the Court will be specifically advised, on the record, at the time of my guilty plea of the additional terms. I understand the government and I cannot have terms of this plea agreement that are not disclosed to the Court.
3. No one has made threats, promises, or representations to me that have caused me to plead guilty.
4. Neither my attorney nor the government has represented to me that I would receive probation or any other form of leniency because of my plea.
5. I have discussed this case and this plea with my lawyer as much as I wish, and I have no additional questions.
6. I am satisfied with my lawyer.
7. My decision to enter this plea was made after full and careful thought; with the advice of counsel; and with a full understanding of my rights, the facts and circumstances of the case, and the consequences of the plea. I was not under the influence of any drugs, medication, or intoxicants when the decision to enter my plea was made, and I am not now under the influence of any drugs, medication, or intoxicants.
8. I have no mental reservations concerning the plea.
9. I understand and agree to all of the above. I know that I am free to change or delete anything contained in this Statement in Advance. I do not wish to make changes to this agreement because I agree with the terms and all of the statements are correct.

DATED this 22 day of July, 2008.


BRADLEY GRANT KITCHEN
Defendant

Attorney Certification

I certify that I have discussed this Statement in Advance with the defendant, that I have fully explained his rights to him, and I have assisted him in completing this form. I believe that he is knowingly and voluntarily entering the plea with full knowledge of his legal rights and that there is a factual basis for the plea.

DATED this 22 day of July, 2008.



REBECCA C. HYDE
Attorney for Defendant

I represent that all terms of the plea agreement between the defendant and the government have been, or will be at the plea hearing, disclosed to the Court, and there are no off-the-record agreements between the defendant and the United States.

DATED this 22nd day of July, 2008.

BRETT L. TOLMAN
United States Attorney



SCOTT J. THORLEY
MARK Y. HIRATA
Assistant United States Attorneys