

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

-v- :

JOSEPH MAGGIO, :

Defendant. :

05-CR-60727(P)

RECEIVED
 DISTRICT CLERK
 WESTERN DISTRICT OF NEW YORK
 MAY 10 2005

PLEA AGREEMENT

The defendant, Joseph Maggio, and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a plea agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to waive indictment and plead guilty to a one count felony information which charges a violation of Title 18, United States Code, Sections 371 (conspiracy to commit bank fraud), which carries a maximum possible sentence of a term of imprisonment of 5 years, a fine of \$250,000, or both, a mandatory \$100 special assessment and a term of supervised release of at least 2 years and up to 3 years. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the

Court on these counts at sentencing.

2. The defendant understands that the Court must require restitution in the amount determined to be owing to the victims in this case as part of the sentence pursuant to Sentencing Guidelines §5E1.1 and Title 18, United States Code, Section 3663A.

3. The defendant understands that, if it is determined that the defendant has violated any of the terms and conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 3 years, without credit for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximums set forth in Paragraph 1.

II. SENTENCING GUIDELINES

4. The defendant and government understand that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

ELEMENTS OF THE OFFENSE

5. The defendant understands the nature of the offense set forth in Paragraph 1 of this agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime:

First, that two or more persons entered the unlawful agreement starting on or about August 1, 2000;

Second, that the defendant knowingly and willfully became a member of the conspiracy;

Third, that one of the members of the conspiracy knowingly committed at least one of the overt acts; and

Fourth, that the overt act was committed to further some object of the conspiracy.

FACTUAL BASIS

6. The defendant and the government agree to the following facts, which form the basis for the entry of the pleas of guilty including relevant conduct:

(a) From on or about and between August 1, 2000 and October 5, 2000, the defendant did execute and attempt to execute a scheme and artifice to obtain money under the custody and control of The Provident Bank, a federally insured bank, by means of false and fraudulent pretenses, representations and promises.

(b) It was part of the scheme and artifice that the defendant purchased party located at 318-320 Brooks Avenue, Rochester, New York from Theodore Antonucci. The defendant then obtained a mortgage loan in the amount of \$63,000 from Provident Bank. When obtaining the mortgage loan, the defendant submitting false documents to the bank so that he would qualify for the loan. Specifically, the false documents submitted to the bank included (1) an application which contained false information regarding the defendant's employment and monthly income, (2) a false employment verification, (3) false earnings statements, (4) false investment statements, and (5) a false Form W-2.

(c) As a result of the false financial information submitted to the bank, the defendant received the mortgage loan in the amount of \$63,000. After receiving the mortgage loan, the defendant quickly defaulted on the loan payments and the bank foreclosed on the property and suffered a loss.

BASE OFFENSE LEVEL

7. The government and the defendant agree that Guidelines §2B1.1(a) applies to the offense of conviction (Guideline Manual effective November 1, 2004) and provides for a base offense level of 6.

SPECIFIC OFFENSE CHARACTERISTICS

USSG CHAPTER 2 ADJUSTMENTS

8. The government and the defendant agree that the following specific offense characteristic does apply:

(a) §2B1.1(b)(1)(D): the total loss (including relevant conduct) was in excess of \$30,000 and thus there is an 6 offense level increase.

ADJUSTED OFFENSE LEVEL

10. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 12.

ACCEPTANCE OF RESPONSIBILITY

11. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two (2) level downward adjustment of Guidelines §§ 3E1.1(a) and (b) (acceptance of responsibility), which would result in a total offense level of 10.

CRIMINAL HISTORY CATEGORY

12. It is the understanding of the government and the defendant that the defendant's criminal history category is I. The defendant understands that if the defendant is sentenced for, or convicted of, any other charges prior to sentencing in this action the defendant's criminal history category may increase. The defendant understands that the defendant has no right to withdraw the plea of guilty based on the Court's determination of the defendant's criminal history category.

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

13. It is the understanding of the government and the defendant that, with a total offense level of 10 and criminal history category of I, the defendant's sentencing range would be a term of imprisonment of 6 to 12 months, a fine of \$2,000 to \$20,000, and a period of supervised release of 3 to 5 years. Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the maximum penalties set forth in Paragraph 1 of this agreement.

14. The defendant understands that the Probation Office will make an independent determination of the defendant's total offense level and criminal history category and that the Court will ultimately determine the appropriate total offense level and criminal history category. The defendant will not be entitled to withdraw the pleas of guilty because of the Court's failure to adopt any Sentencing Guidelines calculations set forth in this agreement or because of the imposition of a sentence above the advisory range.

III. STATUTE OF LIMITATIONS

15. In the event the defendant's pleas of guilty are withdrawn, or convictions vacated, either pre- or post-sentence,

by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees not to assert the statute of limitations as a defense to any criminal offense involving or related to the charges set forth in the Indictment which is not time barred as of the date of this agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty pleas or vacating of the convictions becomes final.

IV. GOVERNMENT RIGHTS AND RESERVATIONS

16. The defendant understands that the government has reserved the right to:

- a. provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;
- b. respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;
- c. advocate for a specific sentence within the Guidelines range [including the amount of restitution and/or fine and the method of payment];
- d. modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including

criminal history category, in the event that subsequent to this agreement the government receives previously unknown information regarding the recommendation or factor; and

e. oppose any application for a sentence below the advisory range.

17. The defendant agrees that any financial records and information provided by the defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid fine, restitution or special assessment.

V. APPEAL RIGHTS

18. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal, modify pursuant to Title 18, United States Code, Section 3582(c)(2) and collaterally attack any sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release advocated by the defendant as set forth in Section II, above, notwithstanding the fact that the Court may reach the sentence by a Guidelines analysis different from that set forth in this agreement.

19. The government waives its right to appeal any sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release advocated by the government as set forth in Section II, above, notwithstanding the fact that the Court may reach the sentence by a Guidelines analysis different from that set forth in this agreement. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence. Further, the government otherwise reserves all of its rights of appeal as provided for in the Sentencing Reform Act of 1984.

VI. TOTAL AGREEMENT AND AFFIRMATIONS

20. This plea agreement represents the total agreement between the defendant, JOSEPH MAGGIO, and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant.

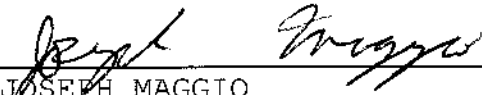
MICHAEL A. BATTLE
United States Attorney
Western District of New York

BY: 

RICHARD A. RESNICK
Assistant U. S. Attorney


Dated: May 10, 2005

I have read this agreement, which consists of 10 pages. I have had a full opportunity to discuss this agreement with my attorney, Roxanne Mendez-Johnson, Esq. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will.



JOSEPH MAGGIO
Defendant

Dated: May 10, 2005



ROXANNE MENDEZ-JOHNSON, Esq.
Attorney for the Defendant

Dated: May 10, 2005