

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

FILED
U.S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
05-CR- 6131 L

UNITED STATES OF AMERICA :
 :
-v- :
 :
WILLIAM O'KEEFE, :
 :
Defendant. :
_____ :

PLEA AGREEMENT

The defendant, WILLIAM O'KEEFE, 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 to plead guilty to a one count Information charging a violation of Title 18, United States Code, Section 1344 (bank fraud), which carries a maximum possible sentence of a term of imprisonment of 30 years, a fine of \$1,000,000, or both, a mandatory \$100 special assessment and a term of supervised release of at least 3 years and up to 5 years. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands that the Court must require restitution in the amount of \$243,181 to be paid 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 or conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to 5 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 maximum set forth in Paragraph 1 of this agreement.

II. SENTENCING GUIDELINES

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

ELEMENTS OF THE CRIME

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 there was a scheme obtain money or funds owned or under the custody or control of a bank by means of materially false or fraudulent pretenses, representations or promises;

Second, that the defendant executed or attempted to execute the scheme with the intent to defraud the bank; and

Third, that at the time of the execution of the scheme, the bank had its deposits insured by the Federal Deposit Insurance Corporation.

FACTUAL BASIS

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

a) On or about February 9, 1999, the defendant, WILLIAM O'KEEFE ("O'KEEFE"), purchased a home for \$58,000. Standard Federal Bank provided a mortgage of \$57,525.

b) When applying for the mortgage loan, O'KEEFE submitted or caused to be submitted the following false documents to the bank: a loan application and supporting documents, including earning statements, tax returns, verification of employment documents, and credit letters.

c) Standard Federal Bank relied on the false statements and representations made by O'KEEFE in connection with his application for a mortgage. O'KEEFE subsequently defaulted on the mortgage and the property was foreclosed upon causing a loss to Standard Federal Bank of \$50,425.

d) At all times relevant, Standard Federal Bank was a bank whose deposits were insured by the Federal Deposit Insurance Corporation.

BASE OFFENSE LEVEL

7. The government and the defendant agree that § 2F1.1 of the Guidelines Manual effective November 1, 1998 applies to the offense of conviction 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) §2F1.1(b)(1)(I): the total loss (including relevant conduct) was in excess of \$200,000 (namely, \$243,181) and thus there is a 8 offense level increase.

(b) §2F1.1(b)(2): the offense involved more than minimal planning and a scheme to defraud more than one victim and thus there is a 2 offense level increase.

ADJUSTED OFFENSE LEVEL

9. 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 16.

ACCEPTANCE OF RESPONSIBILITY

10. At sentencing, the government agrees not to oppose the recommendation that the Court apply the three (3) level downward adjustment of Guidelines §§ 3E1.1(a) and (b) (acceptance of responsibility), which would result in a total offense level of 13.

CRIMINAL HISTORY CATEGORY

11. It is the understanding of the government and the defendant that the defendant's criminal history category is III. 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

12. It is the understanding of the government and the defendant that, with a total offense level of 13 and criminal history category of III, the defendant's sentencing range would be a term of imprisonment of 18 to 24 months, a fine of \$3,000 to \$30,000, 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.

13. 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.

14. The government and the defendant reserve the right to recommend a sentence outside the Sentencing Guidelines range set forth above. This paragraph reserves the right to the government

and the defendant to bring to the attention of the Court all information deemed relevant to a determination of the proper sentence in this action.

III. STATUTE OF LIMITATIONS

15. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees that any charges dismissed pursuant to this agreement shall be automatically reinstated upon motion of the government and further agrees not to assert the statute of limitations as a defense to any other criminal offense involving or related to bank fraud 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 plea or vacating of the conviction 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 [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;

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

17. At sentencing, the government will move to dismiss the complaint pending against the defendant under Magistrate's No. 05-M-553.

18. 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 financial obligation.

V. APPEAL RIGHTS

19. 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 component of a sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section II, Paragraph 12 above, notwithstanding the manner in which the Court determines the sentence. The defendant further agrees not to appeal a restitution order which does not exceed the amount set forth in Section I of this agreement.

20. The defendant understands that by agreeing to not collaterally attack the sentence, the defendant is waiving the right to challenge the sentence in the event that in the future the defendant becomes aware of previously unknown facts or a change in the law which the defendant believes would justify a decrease in the defendant's sentence.

21. The government waives its right to appeal any component of a sentence imposed by the Court which falls within or is greater

than the sentencing range for imprisonment, a fine and supervised release set forth in Section II, Paragraph 12 above, notwithstanding the manner in which the Court determines the sentence. 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.

VI. TOTAL AGREEMENT AND AFFIRMATIONS

22. This plea agreement represents the total agreement between the defendant, WILLIAM O'KEEFE, 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.

KATHLEEN M. MEHLTRETTER
Acting United States Attorney
Western District of New York

BY:



RICHARD A. RESNICK
Assistant U. S. Attorney

Dated: September 23, 2005

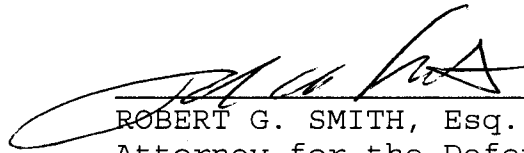
I have read this agreement, which consists of 11 pages. I have had a full opportunity to discuss this agreement with my

attorney, Robert G. Smith, 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.



WILLIAM O'KEEFE
Defendant

Dated: September 23, 2005



ROBERT G. SMITH, Esq.
Attorney for the Defendant

Dated: September 23, 2005