

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :
 :
 v. : **CRIMINAL NO. 07-154**
 :
MARGARET CAROLE FISHER :

GUILTY PLEA MEMORANDUM

The defendant was charged in a one count information with aiding and abetting mail fraud, in violation of 18 U.S.C. §§1341 and 2. This charge results from a scheme to defraud home owners, lending institutions and title companies, in which Fisher participated from at least Spring, 2002 through December, 2004.

I. PLEA AGREEMENT

The defendant entered into a plea agreement with the government that contains the following terms:

1. The defendant agrees to waive indictment and plead guilty to count one of the information.
2. The defendant agrees to pay the special victims/witness assessment in the amount of \$100 before the time of sentencing and shall provide a receipt from the Clerk to the government before sentencing as proof of this payment.
3. The defendant further agrees that restitution, fine, assessment, tax, interest or other payments in this case do not constitute extraordinary acceptance of responsibility or provide any basis to seek a downward departure from the applicable Sentencing Guidelines range.
4. Defendant waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A (Statutory Note), for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.
5. The defendant agrees to make restitution of \$459,864.66 as directed by the Court.

6. The defendant agrees to cooperate fully with the government, and if the government, in its sole discretion determines that the defendant has fulfilled those obligations, the government will move the Court to depart from the Sentencing Guidelines pursuant to Sentencing Guideline §5K1.1.

7. At the time of sentencing, the government will:

- a. Make whatever sentencing recommendation as to imprisonment, fines, forfeiture, restitution and other matters which the government deems appropriate.
- b. Comment on the evidence and circumstances of the case; bring to the Court's attention all facts relevant to sentencing including evidence relating to dismissed counts, if any, and to the character and any criminal conduct of the defendant; address the Court regarding the nature and seriousness of the offense; respond factually to questions raised by the Court; correct factual inaccuracies in the presentence report or sentencing record; and rebut any statement of facts made by or on behalf of the defendant at sentencing.
- c. Nothing in this agreement shall limit the government in its comments in, and responses to, any post-sentencing matters.

8. The defendant may not withdraw her plea because the Court declines to follow any recommendation, motion or stipulation by the parties to this agreement. No one has promised or guaranteed to the defendant what sentence the Court will impose.

9. Pursuant to USSG § 6B1.4, the parties enter into the following stipulations under the Sentencing Guidelines Manual effective November 1, 2002. It is understood and agreed that: (1) the parties are free to argue the applicability of any other provision of the Sentencing Guidelines, including offense conduct, offense characteristics, criminal history, adjustments and departures; (2) these stipulations are not binding upon either the Probation Department or the Court; and (3) the Court may make factual and legal determinations that differ from these stipulations and that may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed:

(a) \$459,864.66 was the fraud loss caused in furtherance of the criminal activity jointly undertaken by the defendant and co-schemers; this amount was within the scope of the defendant's agreement; this amount was reasonably foreseeable to the defendant in connection with the scheme; and the defendant's Guideline range should be calculated based on this amount pursuant to USSG §§ 1B1.3 and 2B1.1(a)(1) and (b)(1)(H).

(b) The defendant abused a position of private trust in a manner that significantly facilitated the commission of the offense, and therefore the defendant's Guideline range should be increased 2-levels pursuant to USSG §3B1.3.

(c) As of the date of this agreement, the defendant has demonstrated acceptance of responsibility for her offense making the defendant eligible for a 2-level downward adjustment under USSG § 3E1.1(a).

(d) As of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of her own misconduct by timely notifying the government of her intent to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, resulting in a 1-level downward adjustment under USSG § 3E1.1(b).

10. In exchange for the undertakings made by the government in entering this plea agreement, the defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law. This waiver is not intended to bar the assertion of constitutional claims that the relevant case law holds cannot be waived.

- a. Notwithstanding the waiver provision above, if the government appeals from the sentence, then the defendant may file a direct appeal of his sentence.
- b. If the government does not appeal, then notwithstanding the waiver provision set forth in this paragraph, the defendant may file a direct appeal but may raise only claims that:
 1. the defendant's sentence on any count of conviction exceeds the statutory maximum for that count;
 2. the sentencing judge unreasonably departed upward pursuant to the Sentencing Guidelines;
 3. the sentencing judge, exercising the Court's discretion pursuant to United States v. Booker, 125 S. Ct. 738 (2005), imposed an unreasonable sentence above the final Sentencing Guideline range determined by the Court; and/or

If the defendant does appeal pursuant to this paragraph, no issue may be presented by the defendant on appeal other than those described in this paragraph.

The defendant also 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, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

11. The defendant is satisfied with the legal representation provided by the defendant's lawyer; the defendant and this lawyer have fully discussed this plea agreement; and the defendant is agreeing to plead guilty because the defendant admits that he is guilty.

12. It is agreed that the parties' guilty plea agreement contains no additional promises, agreements or understandings other than those set forth in this written guilty plea agreement, and that no additional promises, agreements or understandings will be entered into unless in writing and signed by all parties.

II. ELEMENTS OF THE OFFENSE

The mail fraud statute, 18 U.S.C. § 1341, reads in pertinent part as follows:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises...for the purpose of executing such scheme or artifice or attempting so to do...knowingly causes to be delivered by mail according to the directions thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be [guilty of a crime against the United States]

The elements of this offense are that the defendant:

1. Knowingly devised or participated in a scheme or artifice to defraud.
2. Did so with intent to defraud.
3. Used the mails in furtherance of the scheme.

United States v. Burks, 867 F.2d 795 (3d Cir. 1989).

A defendant who aids and abets a crime is punishable as a principal. 18 U.S.C. §2.

III. FACTUAL BASIS FOR THE PLEA

If the defendant proceeded to trial, the government would present testimony and documents to prove the following facts:

In approximately 1999, Fisher started HLF, a company which located and processed mortgages for clients. For several years before, she had operated a similar business out of Jay Berger's Bala Cynwyd office. During the time she was working with Berger, she was in a position to observe how Berger, who had triple roles as settlement agent, mortgage broker and agent for the title companies, handled or supervised the handling of closings on home refinancings. While most of Berger's operations were legitimate, in several instances Berger did not pay off the first mortgage, as the homeowner, the first mortgage company, the new mortgage company and the title insurance company expected. Instead, Berger would keep the money for himself. When Berger was retaining the money at a closing, rather than sending a check to pay off the first mortgage, Berger would pretend to be the home owner, and send a change of address form to the first mortgage company, switching the billing address from the homeowner to either a post office box Berger controlled or to Berger's office. Berger would then make mortgage payments on the first mortgage, while keeping the bulk of the money for himself. Thus, the homeowners were unknowingly liable on two mortgages instead of one, and some homeowners ended up in foreclosure when Berger stopped paying on their first mortgages. The finance companies or financial institutions which held the existing mortgages were not paid off when the homeowner refinanced. The finance companies and financial institutions which held the new mortgages became the second lien holder rather than the primary one, which jeopardized their

security interest. Finally, the title companies were subject to losses when homeowners were not in a position to pay on more than one mortgage for the same property.

Fisher assisted in at least three fraudulent home mortgage refinancings, in which the homeowners, and Wendover Financial Services (Wendover), Fairbanks Capital Corp. (Fairbanks), Countrywide Home Loans (Countrywide) and GMAC, and title insurance companies Fidelity National Title Insurance Company of New York (Fidelity) and Stewart Title Guarantee Corporation (Stewart) were defrauded.:

Homeowner A.D.

On April 11, 2002, homeowner A.D. refinanced his property in Abington, Pennsylvania. Settlement for the refinancing occurred at Fisher's home in Rydal, Pennsylvania, and only Fisher and A.D. were present. Wendover Financial Services, which held the existing mortgage, never received its check for \$108,656.44. Berger submitted a change of address request form to Wendover, directing it to send statements pertaining to the A.D. loan to Berger's post office box P.O. Box 344, Bala Cynwyd, PA 19004. Berger continued to make payments on the A.D. loan until at least September 15, 2003. These payments were made either by checks drawn on Jefferson Bank and signed by Berger, or by bank draft on the United Settlement Services account controlled by Berger. Many of the drafts indicate that the payor was A.D., but the address listed on the draft was Berger's office, although some have A.D.'s home address or personal post office box.

A.D. received nine or ten statements from Wendover requesting payment of his mortgage, which surprised him since he believed it had been paid off. A.D. received these statements sporadically during the first years after his refinancing. When A.D. called Wendover,

he was told that his loan was active. A.D. would then call Fisher, who would tell him that she would take care of his problem. Each time A.D. called Fisher, he would not get another statement for several months. Each time A.D. received a statement, the process started over again.

When the scheme collapsed, after considerable litigation, Fidelity was required to make a payment of \$103,932.75 to satisfy the original A.D. mortgage.

The mailing in furtherance of the scheme charged in the information is a loan statement addressed to homeowner A. D., mailed on or about July 15, 2004, from Wendover Financial Services, Charlotte, North Carolina, to P.O. Box 344, Bala Cynwyd, Pennsylvania 19004-0344, a post office box rented by Berger. A representative of Wendover Financial would testify that all of their loan statements were sent through the United States mail, and that Berger's post office box was the address they had in their records at that time as homeowner A.D.'s address.

Homeowner M.A.M.

On or about February 6, 2004, homeowner M..A.M. refinanced her property in Glenside, PA. The closing took place at HLF's office, and only Fisher and M.A.M. were present. M.A.M. began to make payments to Countrywide Home Loans, the new mortgage holder, assuming that the first mortgage to Fairbanks Capital Corp. had been paid.

Fairbanks never received the \$202,293.98 check made payable to them. Berger made payments on M.A.M.'s loans for a period of time, but then stopped making payments. In March, 2005, M.A.M. received a foreclosure notice stating that Wells Fargo Bank, which was now servicing the Fairbanks mortgage, had obtained a judgement against her for \$206,421.91, as

her mortgage was in arrears. M.A.M. called Fisher, who sarcastically responded, “Well, I guess we’ll have to write a check for \$200,000.” Fisher told M.A.M. that she would handle the situation. Fisher did not seem either surprised or upset about the situation.

After a few days, M.A.M. had not heard from Fisher, and Fisher would not return M.A.M.’s calls. M.A.M. went to Fisher’s home, and asked that Fisher explain the situation. Fisher told M.A.M. that all of M.A.M.’s loan papers were destroyed in a flood, and told M.A.M. that the problem was the fault of Allied Mortgage. Fisher promised M.A.M. that Fisher would produce papers which would document that M.A.M. had paid off her first mortgage. Fisher then drafted a letter to the law firm handling the foreclosure for M.A.M. to sign and promised to fax it to the law firm. The law firm has no record of having received this letter.

M.A.M. then went to Berger, who blamed Fisher for mishandling the funds, and told M.A.M. that he would fix the problem by submitting a claim with the title insurance company to pay off her mortgage with Fairbanks. The problem was not resolved, and a sheriff’s sale notice was placed on M.A.M.’s home in April, 2005.

As a result of these actions by Berger and Fisher, Fidelity took a loss of \$259,710.84.

Homeowner P. S.

On or about April 29, 2004, homeowner P.S. refinanced her property in Abington, PA. The settlement occurred in Fisher’s office. Only Fisher and P.S. were present. As part of the settlement, P.S. received a check for \$37,000 drawn on a United Services bank account. P.S. then began making payments on her new mortgage. In June, 2004, GMAC, which had never received the \$96,221.07 which had been obligated for payment of P.S.’s original

mortgage, contacted P.S. to tell her the original mortgage was in arrears. P.S. called Fisher, who told her that the loan had not closed because of some credit card debt on P.S.'s record, but that Fisher would clear the issue up. In reality, Fisher had made one mortgage payment on P.S.'s GMAC mortgage out of one of Fisher's own accounts.

P.S. then contacted Berger, who blamed Fisher for the problem. Later, in September, 2004, Berger told P.S. that he was going to get a home equity loan to pay off the GMAC mortgage. P.S. told Berger she was going to the press about her problem, and Berger told P.S. that if she told the press, Berger would go out of business and would not be able to pay off her mortgage. He also told her that he did not want to submit a claim through his insurance company, because they would drop his coverage and put him out of business. Then, starting in September, 2004, Berger made some payments on P.S.'s GMAC mortgage.

In December, 2004, GMAC notified P.S. that Berger had submitted a check to pay off her mortgage, but it had bounced. P.S. notified Berger, who told her it was impossible that the check had bounced, and that he would get the mortgage up to date. Until May, 2005, Berger made some additional payments on P.S.'s mortgage, but these were not sufficient to prevent foreclosure. P.S. then filed a complaint with the police.

P.S.'s property remains in litigation. The loss is expected to be approximately \$96,221.07.

Loans from Berger to Fisher

Between March 1, 2004 and June 2, 2004, Berger made at least \$77,050.00 in "loans" to Fisher. Fisher did not make any payments on these "loans."

IV. MAXIMUM SENTENCE

_____ The total maximum sentence is 20 years imprisonment, a three year period of supervised release, \$250,000 fine and a \$100 special assessment. Full restitution of as much as \$459,864.96 also shall be ordered.

Also, supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased by up to 2 years per count of conviction in the case of Class C and D felonies. Thus, a violation of supervised release increases the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release.

_____ Respectfully submitted,

PATRICK L. MEEHAN
United States Attorney

_____ JUDY GOLDSTEIN SMITH
Assistant United States Attorneys

CERTIFICATE OF SERVICE

_____ I certify that, by U.S. Mail and facsimile, I have served or caused to be served a copy of the foregoing upon:

H. David Spirt
Weiss & Spirt
790 Penllyn Pike
Blue Bell, PA 19422
FAX: (215) 542-7647

Judy Goldstein Smith
Assistant United States Attorney

Date: March 27, 2007