

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

FILED

AUG 25 2006

UNITED STATES OF AMERICA)

vs.)

NANCY C. RODRIGUEZ)

JUDGE PHILIP G. REINHARD
UNITED STATES DISTRICT COURT
No. 06 CR 50049-03
Judge Philip G. Reinhard

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, NANCY C. RODRIGUEZ, and her attorney, PAUL E. GAZIANO, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure, and is governed in part by Rules 11(c)(1)(A), as more fully set forth in Paragraph 19 below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the present case.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, NANCY C. RODRIGUEZ, and her attorney, PAUL E. GAZIANO, have agreed upon the following:

1. Defendant acknowledges that she has been charged in the indictment in this case with conspiring to defraud the United States and to commit offenses against the United States, in violation

of Title 18, United States Code, Section 371, mail fraud, in violation of Title 18, United States Code, Section 1341, making material false statements in a matter within the jurisdiction of a federal agency, in violation of Title 18, United States Code, Section 1001, and making materially false statements for the purpose of obtaining loans insured by the Department of Housing and Urban Development (“HUD”), in violation of Title 18, United States Code, Section 1010.

2. Defendant has read the charges against her contained in the indictment, and those charges have been fully explained to her by her attorney.

3. Defendant fully understands the nature and elements of the crimes with which she has been charged.

4. Defendant will enter a voluntary plea of guilty to the charge contained Count One (conspiracy to defraud the United States) of the indictment in this case.

5. Defendant will plead guilty because she is in fact guilty of the charge contained in Count One of the indictment to which she is pleading guilty. In pleading guilty, defendant admits the following facts and that those facts establish her guilt and relevant sentencing facts beyond a reasonable doubt. These facts are not all the facts known to defendant, but are set forth solely to provide a factual foundation for this guilty plea:

(a) In general, defendant admits that from approximately May 2001, and continuing to approximately February 2003, at Rockford, Illinois, and elsewhere, she conspired with the defendants named in the indictment and other individuals to defraud the United States by causing HUD to insure loans through the Federal Housing Administration (“FHA”) for unqualified applicants, to commit mail fraud, to make material false statements in matters within the jurisdiction

of a federal agency, and to make material false statements for the purpose of obtaining loans insured by FHA.

(b) Specifically, defendant admits that from approximately May 2001, through approximately February 2003, she was employed at Prism Mortgage/RBC Mortgage Company (“Prism/RBC”), located at 4960 East State Street in Rockford, Illinois. Prism/RBC was a mortgage lender and mortgage brokerage company owned by RBC Financial Group.

While she was employed at Prism/RBC, defendant primarily worked as an assistant to defendant Rhonda E. Torossian. Torossian was a loan officer for Prism/RBC. Torossian frequently obtained loan customers who were referred to her by defendant Cesar O. Arenas. Arenas was a real estate agent who worked for a realty company in Rockford. Torossian obtained financing for the customers referred by Arenas. Usually, Torossian obtained FHA-insured loans for Arenas’ customers.

Under federal law, an applicant must possess a valid social security number in order to qualify for an FHA-insured loan. Most of the customers referred to Torossian by Arenas did not possess valid social security numbers. In order to evade the FHA regulations, Arenas instructed his customers to obtain a valid social security number from a relative or another person, and then provide that valid social security number to Torossian. Torossian then instructed defendant to alter the customers’ social security cards, pay-stubs, and W-2s by inserting the valid social security number that belonged to the other person. Defendant altered these documents by “whiting out” the social security number shown on the social security cards, pay-stubs, and W-2s, typing in the valid social security number belonging to the other person, and then photo-copying the documents.

Defendant created false social security cards, pay-stubs, and W-2s repeatedly during her employment at Prism/RBC.

Federal law also required that applicants for FHA-insured loans establish that they had made a minimum equity investment of at least 3% of the cost of the home. Most of the customers referred to Torossian by Arenas did not have the funds necessary to make the minimum 3% equity investment in homes they were seeking to purchase. For these customers, Torossian directed defendant to create fraudulent official bank checks. Copies of these fraudulent checks were then placed in the customers' loan files. These fraudulent checks were intended to create the false impression that the customers had the necessary funds to invest 3% in equity into their home purchases. Defendant created these fraudulent checks by "whiting out" the payees and amounts on real official checks, typing in false payees and amounts, and then photo-copying these checks. Defendant created false official bank checks repeatedly during her employment at Prism/RBC.

Federal law also required that applicants for FHA insured loans have income that was sufficient to meet their mortgage payments. Many of the customers referred to Torossian by Arenas did not have sufficient income to qualify for FHA insured loans. Defendant was aware that Arenas often solicited small business owners and other individuals he knew, including defendants Raul Raygoza and Israel Quintero, to sign and provide fraudulent "Verification of Employment" forms and other fake documents which falsely stated that the customers were employed at the businesses.

On September 9, 2001, at Rockford, in the Northern District of Illinois, Western Division, in furtherance of the conspiracy and to accomplish its objectives, defendant created and caused to be submitted to HUD a materially false document, namely official check number 534428647, drawn

on National City Bank, payable to [an individual referred to herein as Buyer B"], in the amount of \$2,500.

6. For purposes of applying the guidelines promulgated by the United States Sentencing Commission, pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

(a) Pursuant to Guideline 1B1.1(a), the Sentencing Guidelines Manual in effect as of November 1, 2005, is the appropriate Guidelines Manual to use in this case;

(b) Pursuant to Guideline 2B1.1(a)(2), the base offense level is 6;

(c) Pursuant to Guideline 2B1.1(b)(1)(G), the offense level must be increased by 12 levels to 18, because the estimated anticipated loss caused to HUD by defendant's offense exceeds \$200,000;

(d) Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for her criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for her actions, within the meaning of Guideline 3E1.1, a two-level reduction in the offense level, is appropriate. Defendant acknowledges that if she falsely denies or frivolously contests any of the facts underlying this offense or any relevant conduct that the court determines to be true, such a denial would be inconsistent with acceptance of responsibility, and the government's position as to acceptance of responsibility may change;

(e) Defendant has timely notified the government 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, within the meaning of Guideline 3E1.1(b). In the event that the court

determines that the defendant's offense level is 16 or greater, and if the court reduces the defendant's offense level by two levels pursuant to Guideline 3E1.1(a), the government agrees to make a motion pursuant to Guideline 3E1.1(b) seeking the further reduction of defendant's offense level by one additional level;

(f) Defendant and her attorney represent that defendant has no prior criminal convictions which result in criminal history points under the Sentencing Guidelines. Based upon defendant's representation, the parties agree that defendant's criminal history points will equal 0 and the defendant's criminal history category will be I;

(g) If the court accepts the parties' Guidelines calculations, defendant's adjusted offense level will be 15, her criminal history category will be I, and the guideline range from the sentencing table will be 18 - 24 months of imprisonment;

(h) Defendant and her attorney and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Plea Agreement. Defendant understands that the United States Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Plea Agreement is not contingent upon the United States Probation Officer's or the Court's concurrence with the above calculations; and

(i) Defendant understands that, in imposing the sentence, the court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are advisory, not mandatory, but that the court must consider the Guidelines in determining a reasonable sentence.

Further, defendant understands that the court, while guided by the applicable Sentencing Guidelines, may depart from those Guidelines under some circumstances.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the United States Probation Office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such supplements or corrections, and the defendant shall not have a right to withdraw her plea on the basis of such corrections.

8. Defendant understands that the charge to which she will plead guilty carries a maximum penalty of 5 years of imprisonment, a maximum fine of \$250,000 or the greater of twice the gross gain to the defendant or twice the gross loss caused by defendant's offense, and any restitution ordered by the court. The defendant also understands that the charge to which she will plead guilty carries a term of supervised release of at least 2 years, but not more than 3 years.

9. The defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on the charge to which she has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order made payable to the Clerk of the United States District Court.

10. Defendant understands that by pleading guilty she surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges against her, she would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge

sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and her attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict her unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt and that it was to consider each count separately.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and her attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in her own behalf. If the witnesses for defendant would not appear voluntarily, she could require their attendance through the subpoena power of the court.

(e) At a trial, defendant would have a privilege against self-incrimination so that she could decline to testify, and no inference of guilt could be drawn from her refusal to testify. If defendant desired to do so, she could testify in her own behalf.

11. Defendant understands that by pleading guilty she is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to her, and the consequences of her waiver of those rights. Defendant further understands she is waiving all appellate issues that might have been available if she had exercised her right to trial. Defendant also is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal or contest, under 18 U.S.C. § 3742 or 28 U.S.C. § 2255, or otherwise, her conviction and the resulting sentence, in exchange for the concessions made by the United States in this plea agreement. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or its negotiation.

12. Defendant agrees that she will fully and truthfully cooperate with the government in any matter which is related to the charges contained in the indictment in this case, including the criminal trials of her co-defendants, and any civil or administrative proceedings that are related to the facts alleged in the indictment. Defendant further agrees to provide complete and truthful information in any investigation and pre-trial preparation, and complete and truthful testimony, if called upon to testify, before any grand jury and United States District Court, and in any related civil or administrative proceeding. Defendant further agrees to postpone her sentencing until after the conclusion of the prosecution of her co-defendants.

13. Nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from the defendant.

14. Defendant understands that this Plea Agreement shall be filed and become a part of the public record and may be disclosed to anyone.

15. Defendant understands that the United States Attorney reserves the right to notify any local government, state, or federal agency, including any local government, state, or federal agency by whom defendant is licensed or with whom defendant does business, of defendant's conviction.

16. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against her, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

17. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, assuming the defendant's full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline 5K1.1, to depart downward from the applicable sentencing guidelines range. The United States will recommend that the court depart downward to a sentence of imprisonment of fifty percent of the low-end of the applicable Guidelines range. The defendant shall be free to recommend any level of departure she deems appropriate, including any departure pursuant to *United States v. Booker*, 125 S. Ct. 738 (2005), and the sentencing factors listed in Title 18, United States Code, Section 3553(a). The parties agree that the level of departure, if any, shall be determined by the court.

18. Regarding restitution, defendant understands that the amount of restitution which the United States will argue that the defendant must be ordered to pay to the United States is \$347,159.79. Defendant understands that Title 18, United States Code, Sections 3663, 3663A, and 3664, and the Sentencing Guidelines Sections 5E1.1 and 5E1.2, set forth the factors to be used in setting a fine and imposing any additional restitution in this case. Defendant agrees to provide full and truthful information to the court and United States Probation Officer regarding all details of her

economic circumstances in order to determine the proper restitution which the defendant shall be ordered to pay. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court. The parties agree that the restitution amount ordered shall be joint and several with restitution ordered against any other defendants convicted in this case. The parties further agree that the restitution amount ordered shall be credited in the amount of any civil or administrative recoveries made by the United States in any related cases.

19. After sentence has been imposed on Count One, to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment as to this defendant.

20. Defendant understands that her compliance with each part of this Plea Agreement extends throughout and beyond the period of her sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. She further understands that in the event she violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to re-sentence the defendant. The defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this agreement and the commencement of such prosecutions.

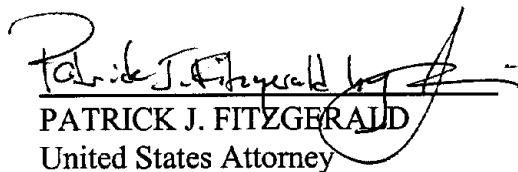
21. It is understood by the parties that the sentencing judge is neither a party to, nor bound by, this Plea Agreement and may impose up to the maximum penalties as set forth in paragraph 8 above. However, the sentencing court is obligated to consult and take into account the Sentencing Guidelines in imposing a reasonable sentence. The defendant further acknowledges that if the court does not accept the sentencing recommendation of the parties, the defendant will have no right to withdraw her guilty plea.

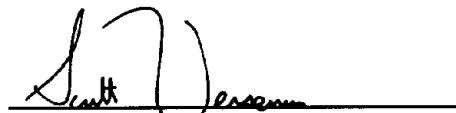
22. Defendant and her attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

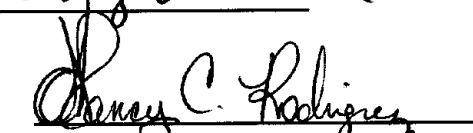
23. Should the judge refuse to accept the defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.


24. Defendant acknowledges that she has read this Agreement and carefully reviewed each provision with her attorney. Defendant further acknowledges that she understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 25 August 2006


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