

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA

: CRIMINAL NO.

v.

1104CR00142

: PLEA AGREEMENT

WILLIAM EDWARD WINN

: HONORABLE SANDRA S. BECKWITH

:

The United States Attorney for the Southern District of Ohio and the defendant, **William Edward Winn**, also called "the parties" herein, agree that:

1. **William Edward Winn** will waive Indictment by the Federal Grand Jury and will enter a plea of guilty before the United States District Judge to a two-Count Information charging him with Mail Fraud, in violation of 18 U.S.C. § 1341, and Conspiracy, in violation of 18 U.S.C. § 371. Mail Fraud carries a maximum penalty of up to thirty (30) years imprisonment, a fine of up to \$1,000,000.00, a five (5) year term of supervised release, restitution, and a \$100.00 special assessment. Conspiracy carries a maximum penalty of five (5) years imprisonment, a \$250,000 fine, three years (3) of supervised release, a mandatory \$100 special assessment, and restitution.

2. The defendant understands that this Agreement permitting a guilty plea to the above-listed counts requires that the defendant abide by each term of this Agreement. The defendant understands that if the defendant makes any statement that is materially false in whole or in part or otherwise fails to comply with any term of this Agreement, the United States has the right to declare this Agreement void and to prosecute the defendant to the full extent of the law. If this Plea Agreement or the defendant's conviction upon his guilty plea is voided for any reason, the defendant waives any statute

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JAMES BOHANNAN
CLERK
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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

of limitations with respect to the United States prosecuting him for any offense arising from his conduct in this case.

3. The defendant will give complete cooperation to law enforcement authorities and others regarding his activities and those of others in relation to the offense of conviction and other matters on the following terms and conditions:

(a) **Mr. Winn** shall cooperate fully, truthfully, completely and forthrightly with the United States Attorney's Office for the Southern District of Ohio and other Federal, state and local law enforcement authorities identified by this Office in any and all matters as to which the Government deems the cooperation relevant. **Mr. Winn** acknowledges that his cooperation may include, but will not necessarily be limited to: answering questions; providing sworn written statements; taking government administered polygraph examination(s); and participating in covert law enforcement activities. Any refusal by **Mr. Winn** to cooperate fully, truthfully, completely and forthrightly as directed by this Office and other Federal, state and local law enforcement authorities identified by this Office in any and all matters in which the Government deems his assistance relevant will constitute a breach of this agreement by **Mr. Winn**, and will relieve the Government of its obligations under this agreement or any other agreement (such as an agreement under Section 5K1.1 of the United States Sentencing Guidelines) between the parties whether entered before or after this agreement. **Mr. Winn** agrees, however, that such breach by him will not constitute a basis for withdrawal of his plea of guilty or otherwise relieve him of his obligations under this agreement.

(b) **Mr. Winn** shall promptly turn over to the Government or other law enforcement authorities or direct such law enforcement authorities to any and all evidence of crime; all contraband and proceeds of crime; and all assets traceable to such proceeds of crime. **Mr. Winn** agrees to the

forfeiture of all assets which are proceeds of crime or traceable to such proceeds of crime and all instruments that he used to aid him in committing the crimes.

(c) **Mr. Winn** shall submit a full and complete accounting of all of his financial assets, whether such assets are in his name or in the name of a third party.

(d) **Mr. Winn** shall testify fully, completely and truthfully before any and all Grand Jury(ies) in the Southern District of Ohio, and elsewhere, and at any and all trials of cases or other court proceedings in the Southern District of Ohio and elsewhere, at which his testimony may be deemed relevant by the Government.

(e) **Mr. Winn** understands and acknowledges that nothing in this agreement allows him to commit any criminal violation of local, state or federal law during the period of his cooperation with law enforcement authorities or at any time prior to the sentencing in this case. The commission of a criminal offense during the period of **Mr. Winn's** cooperation or at any time prior to sentencing will constitute a breach of this plea agreement and will relieve the Government of all of its obligations under this agreement or under any other agreement between the parties (including any potential Section 5K1.1 of the Sentencing Guidelines and/or 18 U.S.C. § 3553(e) agreement). **Mr. Winn** acknowledges, however, and agrees that such a breach of this agreement will not entitle him to withdraw his plea of guilty or relieve him of his obligations under this agreement. **Mr. Winn** further understands that, to establish a breach of this agreement, the Government need only prove his commission of a criminal offense by a preponderance of the evidence.

(f) Finally, **Mr. Winn's** cooperation also includes making restitution in this matter in a schedule and amount to be determined by the Court.

4. While no substantial assistance motion has been promised by the United States, the parties have discussed that **Mr. Winn** could qualify for such a motion if he provides the United States with substantial assistance. **Mr. Winn** agrees to and understands the following: That only the United States Attorney, in its sole discretion, may apply for a downward departure from the Guideline sentence pursuant to Sentencing Guideline § 5K1.1 and that only the United States Attorney may, within one year of sentencing and at the sole discretion of the United States Attorney, file a motion for reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, to reflect substantial assistance to the United States subsequent to sentencing. The defendant understands that the determination of whether he has provided substantial assistance pursuant to Section 5K1.1 of the Sentencing Guidelines, Rule 35(b), or 18 U.S.C. § 3553(e), is within the sole discretion of the United States Attorney's Office for the Southern District of Ohio and is not reviewable by the Court. The defendant agrees that in the event the United States files such a motion, he will not contest the recommendation of the government as to the sentencing level and will not seek to go below the sentencing level recommended by the government. The defendant further understands that if the Government does not file a motion for downward departure the Court has no authority to grant a downward departure, under Section 5K1.1 of the Sentencing Guidelines, Rule 35(b) or 18 U.S.C. § 3553(e). In any event, the defendant agrees not to seek a downward departure, without Government motion, based on any assistance provided in the investigation(s) or prosecution(s) of another person(s) who has committed a federal, state, local or any other offense. The defendant agrees and acknowledges that if this Office chooses not to file a substantial assistance departure motion it shall not be grounds for the defendant to move to withdraw his plea of guilty in this case or otherwise relieve his obligations under this agreement.

5. In exchange for the defendant's plea of guilty and complete cooperation, the United States Attorney for the Southern District of Ohio agrees that, after sentence has been imposed on the information, he will not file any additional charges against the defendant based on the defendant's conduct as described in the Information and Statement of Facts. This Agreement does not protect the defendant from prosecution for perjury, false statement, obstruction, or any other such charge for conduct after the date of this Agreement.

6. No promises have been made to the defendant that he will receive probation or that he will receive a lighter sentence on account of his plea of guilty.

7. The defendant understands that sentence will be imposed pursuant to the Sentencing Reform Act and the Sentencing Guidelines.

8. The parties hereby state, pursuant to Sentencing Guideline § 6B1.2(a), that the charge to which the defendant is pleading guilty adequately reflects the seriousness of the readily provable actual offense behavior and that the acceptance of the Agreement by the Court will not undermine the statutory purposes of sentencing.

9. The defendant understands that the matter of sentence is reserved solely to the District Court and that the Court could impose the maximum penalty. No promises or representations have been made to the defendant as to what sentence the Court will impose.

10. The defendant agrees to pay the \$100.00 special assessment to the Clerk of the United States District Court for each count to which he pleads guilty no later than the date of his sentencing.

11. By signing this document, the defendant acknowledges the truth of the attached Statement of Facts.

12. The United States agrees that it will recommend that the defendant be provided credit for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. The United States, however, will not be required to make these sentencing recommendations if any of the following occurs: (1) defendant fails or refuses to make a full, accurate and complete disclosure to this office or the probation office of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) defendant is found to have misrepresented facts to the government prior to entering his plea agreement; (3) defendant commits any misconduct after entering into this plea agreement, including, but not limited to, committing a state or federal offense, violating any term of release, or making a false statement or misrepresentation to any government entity or official; or (4) defendant fails to comply with any of the terms of this plea agreement. If the defendant continues to accept responsibility through the time of sentencing and continues to comply with all the terms of this agreement including the aforementioned provisions of this paragraph, the United States will file a motion pursuant to U.S.S.G. § 3E1.1(b) stating to the District Court that the defendant has timely notified authorities of his intention to plead guilty.

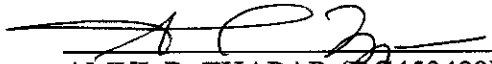
13. The United States and the defendant have not stipulated or agreed as to a particular guidelines calculation. There is no stipulation or recommendation about the defendant's criminal history. The defendant fully understands that, after investigation and review, the Court may determine that the offense factors and recommendations listed anywhere in this plea agreement are not appropriate and is not obligated to accept such. In that event, the defendant fully understands that he shall not have the right to withdraw his guilty plea.

14. In the event that the defendant does not plead guilty, the defendant agrees and understands that he thereby waives any protection afforded by Section 1B1.8(a) of the Sentencing Guidelines and rule 11(f) of the Federal Rules of Criminal Procedure, and that any statements made by him as part of the plea discussions or as part of his cooperation with the government will be admissible against him without any limitation in any civil or criminal proceeding.

15. The defendant is aware that Title 18, United States Code, Section 3742, affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742, to appeal any sentence imposed, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. The defendant understands that, although the defendant will be sentenced in conformity with the Sentencing Guidelines, by this agreement the defendant waives the right to appeal the sentence on the basis that the sentence is the result of an incorrect applications of the Sentencing Guidelines.

16. This written Agreement embodies all of the agreements and understandings between the United States Attorney for the Southern District of Ohio and the defendant. No conversations, discussions, understandings, or other documents extraneous to the Agreement shall be considered part of this Agreement.

GREGORY G. LOCKHART
United States Attorney


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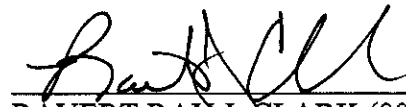
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DATE


WILLIAM EDWARD WINN
Defendant

6-24-04

DATE


RAVERT RAY J. CLARK (0042027)
114 E. Eighth Street
Suite 400
Cincinnati, Ohio 45202
Attorney for Defendant

6-24-04

DATE

STATEMENT OF FACTS

UNITED STATES v. WILLIAM EDWARD WINN

Between January 14, 2002, and November 4, 2003, William Edward Winn, along with Jay Sullivan, Troy Clements, and others, conspired to defraud various federally insured financial institutions by, among other things, knowingly submitting false documents to those financial institutions in support of a loan application. Mr. Winn, and his co-conspirators, also submitted false Housing and Urban Development forms in furtherance of this conspiracy. Finally, as part of the conspiracy, Mr. Winn, and his co-conspirators, utilized the United States mail, commercial carriers, and wire services to carry out their scheme.

Edward Winn was a loan officer at Airline Union's Mortgage Company, which was located at 1313 East Kemper Road. Jay Sullivan is the President of Airline Union's Mortgage and oversaw the loan officers. Troy Clements, operating under the trade name American Funding, also operated at 1313 East Kemper Road. Troy Clements and Jay Sullivan oversaw the fraud and instructed and trained the loan officers how to perpetuate the fraud.

A brief summary of their fraudulent scheme is as follows: (1) Airline Union's Mortgage and American Funding would mail out fliers seeking buyers of real estate and promising the buyers that they could obtain real estate with no money down and no other out-of-pocket expenses; (2) once they located a buyer, the loan officers and processor would determine the amount of loan for which a borrower could legitimately qualify; (3) the loan officers in conjunction with the processor would then create false documents, including, but not limited to, verifications of employment, 401(k)s, gift letters, verifications of mortgage and/or rent, lease agreements; (4) in some instances the loan officers would obtain money from Troy Clements for the purpose of depositing it into the buyer's

bank account and then obtaining a false verification of deposit; (5) The buyer would then find a property, which Troy Clements had to approve as viable in the “program”; (6) Troy Clements would purchase the property for cash within days of the proposed date of sale to the buyer; (7) Troy Clements or Jay Sullivan would then obtain a significantly inflated appraisal to ensure the buyer could obtain an 80% loan-to-value ratio; (8) next the buyer would purchase the property from Troy Clements – generally for \$5,000 more than Troy Clements had just paid for the property – and the buyer would sign a mortgage with American Funding; and (9) the co-conspirators would then submit a fraudulent loan package to the lender in order to obtain a “re-finance” loan that would be used in significant part to pay Troy Clements. Mr. Winn furthered this scheme by serving as a loan officer at Airline Union’s Mortgage.

During many of these loan transactions, Mr. Winn was aware that (1) false documents were used in support of the loan, (2) the properties were submitted to the lending institutions with artificially inflated values; (3) Troy Clements and/or Jay Sullivan would obtain appraisals that were used to support the artificially inflated values; and (4) that the loan application often included fraudulent information. Thus, Mr. Winn aided and furthered the conspiracy to defraud financial institutions.

In furtherance of this conspiracy, William Edward Winn, assisted Jonah Holbrook, in “refinancing” a loan as part of an American Funding purchase. On November 20, 2002, Mr. Winn and Mr. Holbrook began the process of obtaining a “refinance” loan to pay off a mortgage from American Funding. In actuality, at the time this process began there was no underlying loan to refinance. The plan was for Mr. Holbrook first to obtain approval for a “refinance” loan by representing that he had an underlying loan and property. After approval was received, Troy

Clements would purchase the property, provide an initial "loan" to Mr. Holbrook, which would immediately be refinanced. Thus, as of November 20, 2002, the mortgage from American Funding did not yet exist and Mr. Holbrook had yet to purchase the property from Mr. Clements, who himself, had yet to purchase the property to sell to Mr. Holbrook. On November 27, 2002, Mr. Clements purchased 7421 Bernard Avenue, Cincinnati, Ohio, for \$85,000. Then, on December 18, 2002, Mr. Clements sold the property to Mr. Holbrook for \$96,200 and Mr. Holbrook entered into a mortgage with American Funding for \$89,263.52. A loan application for the refinance of the property and the payoff of the American Funding loan, completed by Mr. Winn and Mr. Holbrook on December 18, 2002, includes a schedule of real estate owned by Mr. Holbrook. Included on this list is 7421 Bernard Avenue, which reflects a present market value of \$132,000. Also included in this loan application is a schedule of bank account balances depicting an "inflated" \$6,000 balance in Mr. Holbrook's cash accounts. In order to obtain this "inflated" balance, and in turn approval for the loan, Troy Clements provided Mr. Holbrook with \$4,000 bound in a rubber band to deposit into his bank account. After depositing the \$4,000, they obtained a Request for Verification of Deposit. A few days after this, Mr. Holbrook withdrew and returned the \$4,000 to Mr. Clements. Mr. Winn assisted in this fraudulent loan package by instructing Mr. Holbrook and assisting him in obtaining the funds from Mr. Clements. The loan package was submitted via United States mail and/or commercial carrier to Southstar Funding.

In addition, on February 11, 2002, Mr. Winn assisted Jennifer and Scott Hardoerfer in obtaining mortgage loans for the "refinance" of four investment properties she was purchasing as part of the American Funding program. Again, at the time they sought a "refinance" loan the properties had not yet been purchased. The properties involved in this transaction were 4027

Edwards Road in Cincinnati, Ohio; 312 Township Avenue, Cincinnati, Ohio; 819 Central Avenue, Newport, Kentucky; and 4423 Erie Avenue, Cincinnati, Ohio. Mr. Winn financed each property with a different financial institution in order to avoid having any single financial institution have knowledge of the degree to which Mr. and Mrs. Hardoerfer were going into debt on the multiple purchases. Each financial institution believed that Mr. and Mrs. Hardoerfer were only purchasing a single property. Mr. Clements convinced Mr. and Mrs. Hardoerfer that the financial transactions were legitimate. Each property involved in this transaction was sold by Gary Hardoerfer, Mr. Hardoerfer's brother, to Mr. Clements. Mr. Clements would then sell the properties to Mr. and Mrs. Hardoerfer. The Form 1003, Uniform Residential Loan Application for 4027 Edwards Avenue, contained in Airline Union's Mortgage Company's file lists on its schedule of real estate owned: 4027 Edwards Avenue, 819 Central Avenue, and 312 Township. In order to cover-up the fact that they were purchasing multiple properties, they would use "white-out" or a similar substance to remove the other addresses before sending the package to the lender. Thus, the lender believed that they only owned a single property at the time it approved financing. In addition, some of the loan forms submitted indicated that the property they were refinancing was their residence, when in fact it was not. Mr. Winn signed these forms on February 25, 2002, knowing they were false. One of the applications was sent to U.S. Bank, whose deposits are insured by the Federal Deposit Insurance Corporation. For his cooperation and facilitation of this fraudulent scheme, Troy Clements received \$9,000.

Finally, when Mr. Winn conducted each of these transactions he was aware that the United States mail and/or commercial carriers would be used in furtherance of these transactions. For example, the United States mail was used to send out fliers that attracted the buyers to the specific

scheme. And, ultimately, the loan packages were sent to the lenders via either commercial carrier or United States mail. All of these mailings were done in furtherance of the scheme to defraud financial institutions.

The United States and Mr. Winn agree that as a result of his fraud he caused an actual and/or intended loss of \$ 184,550.

All of the aforementioned conduct occurred in the Southern District of Ohio.

I have reviewed the above statement of facts with my attorney. I agree to the accuracy of the statement of facts and acknowledge the truth of the statement of facts as detailed above.

William Edward Winn
William Edward Winn
Defendant

6. 24. 04
DATE