

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
JUN 24 2003
JUDGE JOAN B. GOTTSCHALL
United States District Court

UNITED STATES OF AMERICA)
)
 v.)
)
 CARL MILLER)

DOCKETED
JUN 26 2003

No. 02 CR 752-2
Judge Joan B. Gottschall

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, CARL MILLER, and his attorney, WILLIAM F. MARUTZKY, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C), 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 the defendant regarding the defendant's criminal liability in case no. 02 CR 752-2.

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

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Northern District of Illinois, and the defendant, CARL MILLER, and his attorney, WILLIAM F. MARUTZKY, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the indictment in this case with mail fraud, in violation of Title 18, United States Code, Section 1341, and wire fraud, in violation of Title 18, United States Code, Section 1343.

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

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

4. Defendant will enter a voluntary plea of guilty to Count One of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count One of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt. The following is only a summary of facts and is not intended to be a detailed account of everything that defendant knows about the individuals and events described below:

During 1997, defendant was employed as a mortgage loan officer by Oxford Financial Services, 175 West Jackson Boulevard, Chicago, Illinois. In connection with this employment, defendant procured mortgage loans for individuals seeking to purchase residential properties, including individuals seeking to purchase properties from co-defendant

Demetrius Barren.

Demetrius Barren was a real estate investor, buying and selling residential properties for a profit. Barren did business under the name of Allegria Realty Consultants, 104 South Michigan Avenue, Chicago, Illinois.

Between at least February 1997 and at least October 1997, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant, together with Barren and others, devised and participated in a scheme to defraud and to obtain money and property, specifically, funds from various residential mortgage lending institutions (hereinafter referred to as "lenders"), by means of materially false and fraudulent pretenses, representations, promises, and material omissions, as described in part below.

During the course of the scheme, Barren purchased numerous residential properties, many of which were dilapidated and in need of rehabilitation and repair. Barren purchased such properties with the intent of immediately reselling them for a profit. Barren enticed potential buyers by promising to pay for the rehabilitation of the properties and to pay the first few mortgage payments or assist them with mortgage payments until the properties began generating rental income. Barren also promised the buyers that they would not have to make a down payment or pay any closing costs. Based on these promises, Barren persuaded numerous individuals to buy properties from him, often persuading them to buy two or three properties at a time.

Barren referred buyers to certain mortgage loan brokers, including defendant, to

procure mortgage loans for the buyers. Barren and defendant put together loan application packages on behalf of the buyers. Defendant then sought out and located mortgage lending companies to finance the buyers' purchases of the properties at the prices at which Barren was seeking to sell the properties. Defendant, and Oxford Financial employees acting at his direction, submitted loan application packages to various mortgage lending companies.

Defendant submitted, and caused to be submitted, what he knew to be false and fraudulent documents to the mortgage lending companies, including, but not limited to, the following: inflated property appraisal reports; false verifications of deposit; fabricated employment records, such as fabricated earnings statements and W-2 Wage and Tax Statements which inflated the buyers' true earnings; and fraudulent loan applications. The loan applications falsely stated, among other things, that the buyers intended to use the properties as their "primary residence," when in fact, as defendant knew, they did not intend to do so; and that the buyers had made payments toward the purchase of the properties, when in fact, as defendant knew, they had not done so. Some loan applications also overstated the buyers' gross monthly income. In addition, defendant intentionally concealed from lenders the fact that certain buyers were purchasing multiple properties from Barren and were seeking multiple mortgage loans from different lenders. These false statements and omissions were material to the lenders' decisions to issue mortgage loans to the buyers, and were made for the purpose of inducing the lenders to issue loans in amounts greater than the true values of the properties and to individuals who were not qualified for the loans. As

defendant well knew, the lenders would rely on the false statements contained in the loan documents which he had submitted and caused to be submitted to the lenders.

As a result of the fraudulent acts and omissions of defendant, Barren, and others, various lenders issued mortgage loans in amounts which exceeded the true values of the properties, and issued those loans to individuals who were not financially qualified for the loans and could not afford to make payments on the loans. Many of the buyers defaulted on the loans, resulting in a total loss to the lenders in the amount of at least \$582,939.

For the purpose of executing and attempting to execute the scheme described above, on August 4, 1997, at Oakbrook Terrace, in the Northern District of Illinois, Eastern Division, defendant knowingly caused to be deposited, a package, to be sent and delivered according to the directions thereon, by Federal Express, a commercial interstate carrier, such package being sent from Attorneys' Title Guaranty Fund, Inc., 17W200 22nd Street, Oakbrook Terrace, Illinois 60181, to The Money Store, 1625 North Market Boulevard, Suite 230, Sacramento, California 95834. That package contained loan documents, including a note and a mortgage, pertaining to an individual's purchase of the property located at 1011 North Karlov, Chicago, Illinois, from Barren.

6. Defendant also acknowledges that for the purpose of computing his sentence under the Sentencing Guidelines, the following conduct, to which he stipulates, constitutes relevant conduct under Section 1B1.3 of the Guidelines. The following is only a summary of facts and is not intended to be a detailed account of everything that defendant knows about

the individuals and events described below:

During the period between about 1998 and 2001, co-defendant Kenneth Washington and another individual ("Appraiser A") conducted numerous real estate appraisals for defendant, who was buying and selling residential properties in the Chicago area as an investor. During that time period, Washington prepared between about five and ten fraudulent appraisal reports for defendant, at his request. Appraiser A also prepared fraudulent appraisal reports for defendant at defendant's request. The appraisal reports were fraudulent in that they inflated the true value of the properties by valuing the properties as if the properties were not in need of rehabilitation and repair, when in fact, the properties were in need of rehabilitation and repair. In those fraudulent appraisal reports, Washington and Appraiser A compared the subject properties with properties which were not comparable, but were of greater value than the subject properties. Defendant knew that these fraudulent appraisal reports would be relied on by mortgage lending institutions in issuing mortgage loans.

Defendant typically paid Washington one-and-a-half times his normal appraisal fee of \$300-\$450 to prepare a fraudulent appraisal report. For example, if Washington was asked to appraise a single family home as being in "normal" or "average" condition, when in fact the property was in "poor" condition and in need of rehabilitation, defendant paid Washington \$450-\$600, instead of \$300-\$450. Washington received up to \$750 for a false appraisal of a multi-unit property.

Defendant usually paid Appraiser A \$1,000, or twice the amount of Appraiser A's usual appraisal fee of \$500, in exchange for a fraudulent appraisal.

7. Defendant further acknowledges that he participated in the criminal conduct described below. Defendant provided the following self-incriminating information to the government pursuant to the terms of a proffer letter. Under the terms of that proffer letter, and Guideline § 1B1.8(a), the information set forth below shall not be used in determining the applicable sentencing guideline range. The following is only a summary of facts and is not intended to be a detailed account of everything that defendant knows about the individuals and events described below:

In about 1999, defendant and two of his associates formed a business known as "Funding Network," which they held out as a mortgage finance company. Under the name of Funding Network, defendant and his associates acquired money, by fraudulent means, from title insurance companies at real estate closings. Defendant and his associates caused the title insurance companies to issue checks to them based on false representations that Funding Network was the actual mortgage holder, or was in the process of assuming the mortgage, on various pieces of property. More specifically, defendant and his associates would represent to a particular title insurance company that Funding Network had purchased (or was about to purchase) the outstanding mortgage on the subject property – when in fact, Funding Network had not purchased the mortgage and had no intention of doing so – and that Funding Network therefore should receive the payoff check which would have been

otherwise due to the actual mortgage lender at the closing. At times, defendant or associates of his would file with the county recorder's office a fabricated release of lien indicating that the mortgage on a particular piece of property had been paid, and would also file a fraudulent mortgage indicating that Funding Network, or another entity with which defendant and his associates were affiliated, was the new mortgage holder. Defendant or one of his associates would then submit a fraudulent letter to the title insurance company, at or prior to the closing, setting forth the amount of money required to pay off the mortgage. As a result of the false documents and representations indicating that Funding Network had already paid off the original mortgage lender and assumed the mortgage (or was in the process of so doing), title insurance companies issued checks to defendant and his associates, which checks they converted to their own use, without the full knowledge and consent of the true mortgage holders. Defendant himself fraudulently obtained checks in this manner, in the total amount of at least \$200,000, in connection with about three different transactions related to the properties located at 9957 South Yale, 9426 South Wentworth, and 6625 South Drexel in Chicago.

In or about the late 1990s, defendant also conducted fraudulent real estate transactions through a business known as 3Com Properties, which he owned by himself, and a business known as Greater Olimpyk, which he owned with the same two business partners who were involved with Funding Network. Through Greater Olimpyk, defendant assisted property buyers in obtaining mortgage loans. Through 3Com Properties, defendant bought and sold

property himself. Various real estate transactions which defendant and his associates arranged through Greater Olimpyk and 3Com Properties were fraudulent in that defendant and his associates had paid an individual to manufacture financial documents on behalf of the property buyers, such as false earnings statements and W-2s, which false documents were then used to mislead mortgage lenders into believing that the property buyers were financially qualified for mortgage loans, when in fact they were not. In some instances, defendant and his associates used straw buyers to purchase the properties. Defendant and his associates also paid kickbacks to a loan officer to facilitate the approval of fraudulent mortgage loan applications.

8. 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) The parties agree that the Court shall apply the Sentencing Guidelines in effect as of November 1, 1996.

(b) Under Guideline § 2F1.1(a), the base offense level is 6.

(c) The base offense level should be increased by at least ten levels under Guideline § 2F1.1(b)(1)(K) because the total amount of the loss from the offenses summarized in paragraphs 5 and 6 above is at least \$582,939.

(d) The offense level should be increased by an additional two levels under Guideline § 2F1.1(b)(2) because the offense involved more than minimal planning and a

scheme to defraud more than one victim.

(e) The offense level should be increased by an additional two levels under Guideline § 3B1.3 because defendant abused a position of trust and used a special skill in a manner that significantly facilitated the commission and concealment of the offense.

(f) Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions, within the meaning of Guideline § 3E1.1(a), a two-level reduction in the offense level will be appropriate.

(g) Defendant has timely provided complete information concerning his own involvement in the offense and timely notified the government of his 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). Therefore, an additional one-level reduction in the offense level is appropriate, provided that the Court determines the offense level to be 16 or greater prior to the operation of Guideline § 3E1.1(a).

(h) Based on the facts known to the government, defendant's criminal history category is 1.

(i) Defendant and his 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 Agreement. Defendant understands that the 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 guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the Probation Officer's or the Court's concurrence with the above calculations.

9. 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 Probation Office and/or the Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea on the basis of such corrections.

10. Defendant understands that the count to which he will plead guilty carries a maximum term of imprisonment of five years; a maximum fine of \$250,000, twice the gross gain from the offense, or twice the gross loss, whichever is greater; together with any restitution ordered by the Court. Defendant understands that this count also carries a term of supervised release of at least two years but not more than three years.

11. Defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, he will be assessed \$100 on the count to which he has pleaded guilty, in addition to any other penalty imposed. 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 "Clerk, U.S. District Court."

12. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges against him, he 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. 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 his 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 him 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 of the indictment 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 his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he 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 he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

13. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands that he is waiving all appellate issues that might have been available if he had exercised his right to trial.

14. Defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal any sentence that is in accord with paragraph 19 below (or the manner in which that sentence was determined). Defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under Title 28, United States Code, Section

2255. 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 to its negotiation.

15. Defendant agrees that he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate, including any investigation or prosecution in which he is called upon to cooperate by the Office of the State's Attorney of Cook County, Illinois. In particular, defendant 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 federal or state grand jury and court proceeding, and any related civil administrative or court proceeding.

16. Defendant agrees to postpone his sentencing until after the conclusion of the prosecution of his co-defendants.

17. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to any party.

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

19. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation and, assuming defendant's full and truthful cooperation, shall move the Court, pursuant to Guideline § 5K1.1, to depart from the

applicable sentencing guideline range, and to impose the specific sentence agreed to by the parties as outlined below. Defendant understands that the decision to depart from the applicable guideline range rests solely with the Court. However, this Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that the sentence imposed by the Court shall include a term of imprisonment in the custody of the Bureau of Prisons equal to sixty percent (60%) of the low end of the applicable guideline range. Other than the agreed term of imprisonment, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the agreed term of imprisonment set forth above, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(c)(3)(A) and (c)(5). If, however, the Court refuses to impose the agreed term of imprisonment set forth above, thereby rejecting the Plea Agreement, or otherwise refuses to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

20. Regarding restitution, defendant acknowledges that, pursuant to Title 18, United States Code, Sections 3663A and 3664(f)(1)(A), the Court must order him to make restitution to the victims of the offense summarized in paragraph 5 above. Defendant further agrees to make restitution to the victims of the offenses summarized in paragraphs 6 and 7 above pursuant to Title 18, United States Code, Sections 3663(a)(3) and 3663A(a)(3). Defendant agrees to provide complete and truthful information to the Court and the Probation

Office regarding all details of his economic circumstances, including all tax returns and related information which may be requested, in order to determine the manner in which and the schedule by which restitution is to be paid. Furthermore, defendant understands that he is required to notify the Court and the government of any material change in his economic circumstances that might affect his ability to pay restitution. 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 court. All restitution payments shall be made by cashier's check or money order, payable to "Clerk, U.S. District Court," and shall be mailed or delivered to: U.S. District Court, Clerk's Office, Attn: Fiscal, 219 South Dearborn Street, 20th Floor, Chicago, Illinois 60604.

21. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining count of the indictment as to him.

22. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or to resentence defendant. Defendant understands and agrees that in the event that this Plea Agreement is breached by him, and the government elects to void the Plea Agreement and prosecute him,

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 him 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.

23. Defendant and his 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.

24. Defendant agrees that this Plea Agreement shall be filed and become a part of the record in this case.

25. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 6-24-03

Patrick J. Fitzgerald
PATRICK J. FITZGERALD
United States Attorney

Carl Miller
CARL MILLER
Defendant

Brian R. Havey
BRIAN R. HAVEY
Assistant United States Attorney

William F. Marutzky
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