

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
NOV 25 2002
JUDGE JOAN B. GOTTSCHALL
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA)
)
 v.)
)
KENNETH WASHINGTON)

No. 02 CR 752-4

Judge Joan B. Gottschall

RECORDED

PLEA AGREEMENT

NOV 29 2002

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, KENNETH WASHINGTON, and his attorney, LEWIS MYERS, JR., is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(e)(1)(C), as more fully set forth in paragraph 18 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 752-4.

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, KENNETH WASHINGTON, and his attorney, LEWIS MYERS, JR., have agreed upon the following:

1. Defendant acknowledges that he has been charged in the indictment in this case with wire fraud, in violation of Title 18, United States Code, Section 1343.
2. Defendant has read the charge against him contained in the indictment, and that charge has been fully explained to him by his attorney.
3. Defendant fully understands the nature and elements of the crime with which he has been charged.
4. Defendant will enter a voluntary plea of guilty to Count Two of the indictment in this case.
5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count Two 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:

Defendant was a licensed real estate appraiser. Defendant provided appraisal services to various mortgage brokers, including co-defendant Julian Bishop of Illinois Capital Corporation in Chicago, Illinois. Through Bishop, defendant met co-defendant Demetrius Barren, who was engaged in the business of buying and selling residential properties in the City of Chicago.

Beginning no later than in or about May 1997, and continuing through at least August 1997, in the Northern District of Illinois, Eastern Division, defendant, together with co-defendants Barren and Bishop, and others, devised and participated in a scheme to defraud and to obtain money and property, specifically, funds from various residential mortgage lending institutions, by means of materially false and fraudulent pretenses, representations, promises, and material omissions, as described in part below.

In 1997, Barren contacted defendant and asked him to perform appraisals for three residential properties that Barren was attempting to sell. The properties were located at 4735 West Huron, Chicago, Illinois; 211 North LeClaire, Chicago, Illinois; and 647 North Laramie, Chicago, Illinois.

At Barren's request, defendant agreed to prepare appraisal reports which inflated the true value of the above properties. Barren told defendant that he was in the process of rehabilitating the properties, but that he wanted the properties to be appraised as if they were fully rehabbed and not subject to repairs. Barren provided defendant with addresses of properties to be listed on the appraisal reports as comparable properties, which in fact were not comparable and were greater in value than the above properties. Barren further provided defendant with the prices at which he wanted the above properties to be appraised.

Defendant then prepared written appraisal reports for each of the properties, knowing that Barren had not rehabbed the properties and that the values at which he wanted them appraised were inflated. As requested by Barren, defendant appraised the properties as

follows:

<u>Property</u>	<u>Appraised Value</u>	<u>Date</u>
647 North Laramie	\$110,000	As of May 27, 1997
211 North LeClaire	\$120,000	As of May 27, 1997
4735 West Huron	\$115,000	As of May 30, 1997

As defendant well knew, those properties did not have those values as of those dates, and in fact were worth less than the amounts at which he had appraised them. In the appraisal report for the Laramie property, defendant also falsely stated that the property had a two-car garage and an enclosed porch, when in fact it did not. In support of this false statement, defendant placed a photograph in the appraisal report from a different property which had an attached garage.

Barren paid defendant approximately \$500 in cash for each false and fraudulent appraisal. Defendant knew, at the time that he agreed to provide these appraisals to Barren and when he in fact provided the appraisals to Barren, that Barren intended to use the appraisals to support fraudulent applications to mortgage lenders for loans for the purchase of the above properties from Barren, and that the mortgage lenders would rely on the appraisals in evaluating the loan applications.

Based on the inflated appraisals which had been prepared by defendant, Barren sought to sell the properties to an individual ("Buyer A") at inflated prices. Bishop, a mortgage loan broker who was a close friend of Barren, helped Barren sell the properties to Buyer A by procuring mortgage loans for Buyer A from Mortgage Lenders Network USA, Inc. (for the property at 647 North Laramie), The Money Store (for the property at 211 North LeClaire),

and NationsCredit Home Equity Services Corporation (for the property at 4735 West Huron). At no time did Bishop, Barren, or defendant disclose to the mortgage lenders that the appraisals were inflated.

As a result of the fraudulent acts and omissions of Barren, Bishop, and defendant, the mortgage lenders issued loans to Buyer A in amounts which exceeded the true values of the properties, in a total amount of approximately \$299,250. Buyer A, who was financially unable to pay the mortgage loans, subsequently defaulted on the loans, resulting in a total loss to the lenders in the amount of approximately \$206,395.

For the purpose of executing the scheme described above, on or about August 8, 1997, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant knowingly caused to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, a funds transfer of approximately \$95,138 from the account of Mortgage Lenders Network USA, Inc., at BankBoston, Boston, Massachusetts, to American National Bank & Trust Company of Chicago, Chicago, Illinois, for credit to the account of Attorneys' Title Guaranty Fund, Inc., in connection with a mortgage loan issued to Buyer A for the purchase of the property located at 647 North Laramie, Chicago, Illinois.

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 March 2001, defendant conducted numerous real estate appraisals for co-defendant Carl Miller and another individual ("Seller A") who were operating businesses through which they bought and sold residential properties in the Chicago area. During that time period, defendant prepared between about five and ten fraudulent appraisal reports for Miller and approximately ten fraudulent appraisal reports for Seller A, at their request. The appraisal reports were fraudulent in that they valued 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, defendant compared the subject properties with properties which were not comparable, but were of greater value than the subject properties. Defendant prepared the fraudulent appraisal reports knowing that they would be relied on by mortgage lending institutions in issuing mortgage loans.

On about September 5, 1999, defendant prepared a fraudulent appraisal report for Seller A in connection with Seller A's sale of the property at 4324 West Jackson, Chicago, Illinois. At Seller A's request, defendant prepared an appraisal report which falsely valued the property as if it was not subject to rehabilitation and repair, when in fact, the property required rehabilitation. Defendant gave the property an appraised value of \$135,000, when in fact, as defendant well knew, the property was not worth \$135,000. Based in part on that fraudulent appraisal, a mortgage lending institution, namely, NationsCredit Home Equity

Services Corporation, issued a loan in the amount of approximately \$125,859 to an individual who purchased the property from Seller A. That individual subsequently defaulted on the loan, resulting in a loss to the lender in the amount of approximately \$89,324.

Defendant typically charged co-defendant Miller and Seller A one-and-a-half times his normal appraisal fee of \$300-\$450 to prepare a fraudulent appraisal report. For example, if defendant 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 was paid \$450-\$600, instead of \$300-\$450. Defendant received up to \$750 for a false appraisal of a multi-unit property.

7. 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 and disagree 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 8 levels under Guideline § 2F1.1(b)(1)(I) because the total amount of the loss from the offenses summarized in paragraphs 5 and 6 above is at least \$295,719.
- (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) It is the government's position that 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. Defendant reserves the right to argue that this Guideline provision does not apply.

(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 I.

(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.

8. 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.

9. 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.

10. 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."

11. 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 charge 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.

(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, 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.

12. 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.

13. 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 18 below (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement. 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.

14. Defendant agrees that he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate. 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 grand jury and United States District Court proceeding, and any related civil administrative or court proceeding.

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

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

17. 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 charge against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

18. 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(e)(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 two-thirds (2/3) 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(e)(2) and (4). 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.

19. 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 paragraph 6 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.

20. 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.

21. 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.

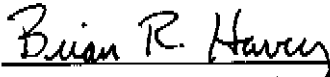
22. Defendant agrees that this Plea Agreement shall be filed and become a part of the record in this case.

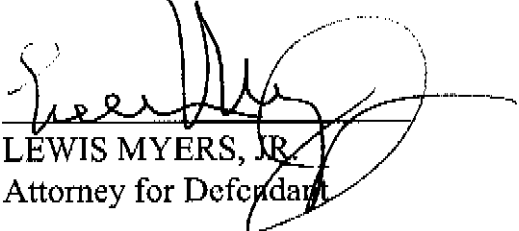
23. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: November 25, 2002


PATRICK J. FITZGERALD
United States Attorney


KENNETH WASHINGTON
Defendant


BRIAN R. HAVEY
Assistant United States Attorney


LEWIS MYERS, JR.
Attorney for Defendant