

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.

JOSEPH R. JACKSON

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Criminal No. RWT-04-126

Filed 03/08/2004

Violation: 18 U.S.C. § 1343

PLEA AGREEMENT

The United States Department of Justice, Antitrust Division (“the United States”), and Joseph R. Jackson (“the defendant”) hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by indictment;
 - (c) to plead not guilty of any criminal charge brought against him;
 - (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
 - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
 - (f) not to be compelled to incriminate himself;
 - (g) to appeal his conviction, if he is found guilty at trial; and
 - (h) to appeal the imposition of sentence against him, including the rights provided under 18 U.S.C. § 3742.

**AGREEMENT TO PLEAD GUILTY
AND WAIVER OF CERTAIN RIGHTS**

2. The defendant waives the rights set out in subparagraphs (c) through (g) of Paragraph 1 above. The defendant also waives the right to appeal the imposition of sentence against him set out in Paragraph 1(h), so long as the sentence imposed is within the applicable range set forth in the U.S. SENTENCING GUIDELINES MANUAL (USSG). Furthermore, pursuant to Fed. R. Crim. P. 7(b), the defendant will waive the right to be charged by indictment set out in Paragraph 1(b) and will plead guilty at arraignment to a one-count information to be filed in the United States District Court for the District of Maryland, charging him with wire fraud in violation of 18 U.S.C. § 1343.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above, and will make a factual admission of guilt before the Court in accordance with Fed. R. Crim. P. 11(b)(3), as set forth in Paragraph 4 below.

FACTUAL BASIS FOR THE OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts:

(a) The defendant is a former employee of the Washington Suburban Sanitary Commission (“WSSC”), a quasi-governmental utility located in Laurel, Maryland that provides water and sewer services to residents of Montgomery and Prince George’s counties, Maryland, where he was a supervisor in the Information Technology Section. From in or about October 1999 to in or about November 2001

the defendant, in his capacity as a supervisor at the WSSC, supervised several contract computer consultants, one of whom was Arvind K. Agarwal (“Agarwal”).

(b) Beginning in or about November 1999 and continuing through in or about October 2001, the defendant solicited money directly from Agarwal, or obtained money due to Agarwal from a third party, to cover a variety of personal expenses. Agarwal would write checks out to “Cash”, cash them at his personal or company bank account, then use the money to purchase money orders and cashier’s checks which he gave to the defendant. The defendant solicited and obtained at least \$30,000 from Agarwal, or from third parties for money due to Agarwal, during this period.

(c) In consideration for the payments referenced in subparagraph (b) above, the defendant exercised his influence as a supervisory official in the WSSC’s Information Technology Section to maintain Agarwal as a WSSC contractor, to recommend additional contracts for him, to recommend increasing Agarwal’s hourly salary under these contracts, and to approve for payment fraudulently inflated invoices submitted by Agarwal to the WSSC for payment. This scheme caused the WSSC to sustain a loss of approximately \$75,000 during the relevant period.

(d) In or about February 2001 the defendant approached Agarwal and asked him for approximately \$2,000. The defendant and Agarwal agreed that Agarwal would give the defendant the money and reimburse himself by fraudulently inflating his invoice to the WSSC for the month of February 2001 by adding thirty (30) additional hours which he would not in fact work, thus causing an overpayment of \$2,400 to be made to Agarwal by the WSSC.

(e) On or about February 26, 2001 Agarwal gave to the defendant four (4) separate money orders, each in the amount of \$500, for a total payment of \$2,000.

(f) On or about March 1, 2001 Agarwal submitted his February 2001 invoice to the defendant. The defendant, knowing the invoice was fraudulently inflated by thirty (30) hours, signed off on the invoice and submitted it for payment, causing a transfer of funds via wire to be made on or about March 7, 2001 by the WSSC's Disbursements Accounting Section. This wire transfer was initiated at the WSSC in Laurel, Maryland, traveled through the WSSC's bank account in Baltimore, MD, and consummated at a bank account in Washington, D.C. controlled by Agarwal.

(g) On or about March 1, 2001 the defendant, Joseph R. Jackson, having devised a scheme to defraud the WSSC, caused to be transmitted by means of wire in interstate commerce a signal for the purpose of executing such scheme, namely the wire transfer of funds referenced in subparagraph (f) above.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the maximum penalty that may be imposed against him upon conviction for a violation of 18 U.S.C. § 1343, is:

(a) a term of imprisonment for not more than five (5) years (18 U.S.C. § 1343¹);

¹18 U.S.C. § 1343 was amended on July 30, 2002 to increase the maximum imprisonment for wire fraud to twenty (20) years. However, because the defendant committed his offense in 2001, application of the 2002 amendment would violate the ex post facto clause of the United States Constitution. ART. I, § 10.

(b) a fine in the amount of the greatest of (1) \$250,000, (2) twice the gross pecuniary gain resulting from the offense, or (3) twice the gross pecuniary loss caused to the victim of the crime (18 U.S.C. § 3571(b)(3), (d)); and

(c) a term of supervised release of three (3) years following any term of imprisonment. 18 U.S.C. § 3583(b)(2). If the defendant violates any condition of his supervised release he may have his term of supervision extended or be incarcerated for the duration of the term. 18 U.S.C. § 3583(e)(2)-(3).

6. In addition, the defendant understands that:

(a) pursuant to 18 U.S.C. §§ 3663A and 3664(h) and § 5E1.1 of the USSG, the Court shall order the defendant to pay restitution to the victim of the offense and may order the defendant to pay restitution in the full amount of the victim's loss; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A) and USSG §5E1.3, the Court is required to impose upon the defendant a \$100 special assessment upon conviction of the charged crime.

SENTENCING GUIDELINES

7. Sentencing for the offense to be charged will be conducted pursuant to the USSG and the United States Code in effect on the day of sentencing, unless doing so would violate the ex post facto clause of the United States Constitution by resulting in a greater punishment.

SENTENCING AGREEMENT

8. Pursuant to Fed R. Crim. P. 11(c)(1)(B), the United States and the defendant agree that the defendant is subject to a criminal fine of between \$3,000 and \$30,000 (USSG § 5E1.2(c)(3)) and restitution to the WSSC in the amount of \$75,000 (18 U.S.C. §§ 3663A,

3664(h) and USSG § 5E1.1), with interest under 18 U.S.C. § 3612(f)(1)-(2) on any fine or restitution amounts not paid in full before the fifteenth day after the date of judgment, consistent with the defendant's ability to pay (18 U.S.C. §§ 3612(f)(3), 3664(f) and USSG § 5E1.2(d)-(e)), and that the defendant be sentenced pursuant to the USSG calculation set forth in subparagraph (a) below, which would result in an offense level of twelve (12) within Zone C of the USSG Sentencing Table, a sentence of between ten (10) and sixteen (16) months, and eligibility for a sentence that includes some form of intermittent commitment for a period of up to one-half of the total term imposed by the Court. At the time of sentencing the United States will seek a sentence at the higher end of level twelve (12) of the USSG Sentencing Table. The United States understands that the defendant will seek a sentence at the lower end of the USSG range for offense level twelve (12). The United States acknowledges that the defendant will request that the Court exercise its discretion under USSG § 5C1.1(d) to order that one-half of whatever sentence the Court imposes be served through home detention, and the United States agrees to remain silent and take no position regarding this request.

(a) The United States and the defendant agree that this sentence is within the range prescribed for this offense through application of the USSG as follows: (i) the defendant has a criminal history category level of one (1); (ii) the amount of loss from the offense is approximately \$75,000; (iii) the base offense level for the subject offense is six (6) (USSG § 2B1.1), with an increase of eight (8) levels for a loss of more than \$70,000 but not more than \$120,000 (USSG § 2B1.1(b)(1)), for an adjusted offense level of fourteen (14); and (iv) the defendant's acceptance of responsibility for his offense provides for a decrease of two (2) levels for an adjusted offense level of twelve (12) (USSG § 3E1.1(a)).

(b) Pursuant to USSG §§ 5E1.1 and 5E1.2 respectively, the Court shall enter a restitution order for the full amount of the WSSC's loss of \$75,000, and impose a criminal fine of between \$3,000 and \$30,000, with interest on any fine or restitution amounts not paid in full before the fifteenth day after the date of judgment, all subject to the defendant's ability to pay. The defendant agrees that he will fully disclose to the United States Probation Officer and to the Court, subject to the penalty of perjury, all information, including but not limited to copies of all relevant bank and financial records, regarding the current location and prior disposition of all funds obtained as a result of the criminal conduct set forth in Paragraph 4 of this Plea Agreement. The defendant further agrees to take all reasonable steps to retrieve or repatriate any such funds and to make them available for restitution. If the defendant does not fulfill this provision, it will be considered a material breach of this Plea Agreement, and the United States may seek to be relieved of its obligations.

(c) The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and USSG §5E1.3 in addition to whatever criminal fine and restitution the Court will impose upon him.

9. Before sentencing in this case, the United States will fully advise the Court and the United States Probation Officer of the fact, manner and extent of the defendant's cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense and all other relevant conduct.

10. The United States and the defendant understand that the Court retains

complete discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the recommendation contained in this Plea Agreement, he nevertheless has no right to withdraw his plea of guilty.

OBSTRUCTION OR OTHER VIOLATIONS OF LAW

11. The defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this Plea Agreement and his sentencing in this case. In the event that the defendant (i) engages in conduct after the date of this Plea Agreement which would justify a finding of obstruction of justice under § 3C1.1 of the USSG, or (ii) commits any offense in violation of federal, state or local law, then the United States will be relieved of its obligations to him as reflected in this Plea Agreement. As with any alleged breach of this Plea Agreement, the United States will bear the burden of convincing the Court of the defendant's obstructive or unlawful behavior by a preponderance of the evidence. The defendant acknowledges that he may not withdraw his guilty plea because the United States is relieved of its obligations under the Plea Agreement pursuant to this paragraph.

GOVERNMENT'S AGREEMENT

12. This Plea Agreement binds only the Antitrust Division of the United States Department of Justice and the United States Attorney's Office for the District of Maryland. Subject to the Court's acceptance of the guilty plea called for by this Plea Agreement, the imposition of the recommended sentence and the defendant's compliance with Paragraph 11, the United States Department of Justice, Antitrust Division and the United States Attorney's Office for the District of Maryland agree not to bring further criminal charges against the defendant for any violations committed before the date of this Plea Agreement relating to or arising out of the facts forming the

basis for this Plea Agreement and/or described in the Information. The non-prosecution terms of this Plea Agreement do not apply to any civil or administrative liability of any kind, to any violation of the federal tax or securities laws, or to any crime of violence. If the defendant's plea is accepted by the Court, the United States agrees not to request that the defendant be remanded into custody after his plea is entered pending his sentencing. The United States further agrees not to oppose the defendant's request that any period of incarceration imposed on him by the Court be served in a minimum-security facility.

REPRESENTATION BY COUNSEL

13. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

14. The defendant's decision to enter into this agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

15. The defendant agrees that, should the United States determine in good

faith that the defendant has violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any offense described in Paragraph 12 above, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

16. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement based on the defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT

17. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

18. The defendant, Joseph R. Jackson, voluntarily enters into this Plea Agreement.

19. The undersigned attorneys for the United States, Peter H. Goldberg on behalf of the Antitrust Division of the United States Department of Justice, and Barbara Sale on behalf of the United States Attorney's Office for the District of Maryland, have been authorized to enter into this Plea Agreement.

Respectfully submitted,

_____/s/_____
PETER H. GOLDBERG
Senior Trial Attorney
U.S. Department of Justice
Antitrust Division
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(202) 307-5784

DATED: 03/25/04

THOMAS M. DIBIAGIO
United States Attorney

BY: _____/s/_____
BARBARA SALE
Assistant United States Attorney
District of Maryland
6625 United States Courthouse
101 West Lombard Street
Baltimore, MD 21201
(410) 209-4800

DATED: 03/25/04

I have read this Plea Agreement and carefully reviewed every part of it with my

attorney. Specifically, I have reviewed Paragraphs 4 and 8 with my attorney, and I do not wish to change any part of it. I understand this Plea Agreement, and I voluntarily agree to it. I am completely satisfied with the representation of my attorney.

_____/s/_____
JOSEPH R. JACKSON
Defendant

DATED: 03/25/04

I am Mr. Jackson's attorney. I have carefully reviewed every part of this Plea Agreement with him. To my knowledge, his decision to enter into this Plea Agreement is an informed and voluntary one.

_____/s/_____
CLARK U. FLECKINGER II
Counsel for JOSEPH R. JACKSON

DATED: 03/25/04