Plea

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 8:08-cr- 441-T-17MAP

PHILIP WILLIAM COON

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Robert E. O'Neill, United States Attorney for the Middle District of Florida, and the defendant, PHILIP WILLIAM COON, and the attorneys for the defendant, Marcelino J. Huerta, III, and James E. Felman, mutually agree as follows:

A. **Particularized Terms**

1. Count Pleading To

The defendant shall enter a plea of guilty to Count One of the Information. Count One charges the defendant with conspiracy to commit wire fraud and money laundering, in violation of 18 U.S.C. § 371.

2. Maximum Penalties

Count One carries a maximum sentence of five years of imprisonment, a fine of $250,000 or the greater of twice the amount of gross pecuniary gain to the defendant or twice the amount of gross loss to the victim, a term of supervised release of not more than three years, and a special assessment of $100, said special assessment to be due on the date of sentencing. With respect to certain offenses, the

Court shall order the defendant to make restitution to any victim of the offense, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense, or to the community, as set forth below.

3. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the Information;

Second: That the defendant, knowing the unlawful purpose of the plan, willfully joined in it;

Third: That one of the conspirators during the existence of the conspiracy knowing committed at least one of the methods (or "overt acts") described in the Information; and

Fourth: That such "overt act" was knowingly committed at or about the time alleged in an effort to carry out or accomplish some object of the conspiracy.

4. Indictment Waiver

Defendant will waive the right to be charged by way of indictment before a federal grand jury.

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the

time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant complies with the provisions of USSG §3E1.1(b), the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

7. Low End

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a sentence at the low end of the

applicable guideline range, as calculated by the Court. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

8. Adjusted Offense Level - Joint Recommendation

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the parties will recommend to the Court that the defendant's adjusted offense level be calculated at 21, as determined below:

Guideline	Description	Levels
§ 2B1.1(a)(2)	Base Offense	6
§ 2B1.1(b)(1)(I)	Specific Offense Characteristic: Loss Amount	16
§ 2B1.1(b)(2)	Specific Offense Characteristic: Number of Victims/Mass Marketing	0
§ 2B1.1(b)(9)(C)	Specific Offense Characteristic: Sophisticated Means	0
§ 2B1.1(b)(13)	Specific Offense Characteristic: Impact on Financial Institution	0
§ 3B1.3	Abuse of Position of Trust	2
§ 3E1.1	Acceptance of Responsibility	(3)
Total Adjusted Offense Level		21

The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Defendant's Initials _____

9. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related

thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

10. Use of Information - Section 1B1.8

Pursuant to USSG §1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of defendant's cooperation and pursuant to this agreement shall be used in determining the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

11. Cooperation - Responsibilities of Parties

a. The government will make known to the Court and other relevant authorities the nature and extent of defendant's cooperation and any other mitigating circumstances indicative of the defendant's rehabilitative intent by assuming the fundamental civic duty of reporting crime. However, the defendant understands that the government can make no representation that the Court will impose a lesser sentence solely on account of, or in consideration of, such cooperation.

b. It is understood that should the defendant knowingly provide incomplete or untruthful testimony, statements, or information pursuant to this agreement, or should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and unreservedly disclose and provide full, complete, truthful, and honest knowledge, information, and cooperation regarding any of the matters noted herein, the following conditions shall apply:

(1) The defendant may be prosecuted for any perjury or false declarations, if any, committed while testifying pursuant to this agreement, or for obstruction of justice.

(2) The United States may prosecute the defendant for the charges which are to be dismissed pursuant to this agreement, if any, and may either seek reinstatement of or refile such charges and prosecute the defendant thereon in the event such charges have been dismissed pursuant to this agreement. With regard to such charges, if any, which have been dismissed, the defendant, being fully aware of the nature of all such charges now pending in the instant case, and being further aware of defendant's rights, as to all felony charges pending in such cases (those offenses punishable by imprisonment for a term of over one year), to not be held to answer to said felony charges unless on a presentment or indictment of a grand jury, and further being aware that all such felony charges in the instant case have heretofore properly been returned by the indictment of a grand jury, does hereby agree to reinstatement of such charges by recision of any order dismissing them or, alternatively, does hereby waive, in open court, prosecution by indictment and consents that the United States may proceed by information instead of by indictment with regard to any felony charges which may be dismissed in the instant case, pursuant to this plea agreement, and the defendant further agrees to waive the statute of limitations and any speedy trial claims on such charges.

(3) The United States may prosecute the defendant for any offenses set forth herein, if any, the prosecution of which in accordance with this agreement, the United States agrees to forego, and the defendant agrees to waive the statute of limitations and any speedy trial claims as to any such offenses.

(4) The government may use against the defendant its own admissions and statements and the information and books, papers, documents, and objects that the defendant has furnished in the course of the defendant's cooperation with the government.

(5) The defendant will not be permitted to withdraw the guilty pleas to those counts to which defendant hereby agrees to plead in the instant case but, in that event, defendant will be entitled to the sentencing limitations, if any, set forth in this plea agreement, with regard to those counts to which the defendant has pled; or in the alternative, at the option of the United States, the United States may move the Court to declare this entire plea agreement null and void.

12. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees. Specifically, on the basis of the conspiracy to commit wire fraud charged in Count One of the Information, the assets to be forfeited include, but are not limited to, the following:

a. A forfeiture money judgment in the amount of $1,528,616.46, representing the amount of proceeds obtained as a result of the conspiracy to commit wire fraud, for which the defendant is jointly and severally liable with any convicted coconspirator;

b. All funds and securities on deposit with Raymond James Financial Services as well as all accounts for which Raymond James acts as custodian, agent, or broker of record, including, but not limited to, the following:

(1) Account number 48492808 for Isabella Coon;

(2) Account number 48492771 for Sophia Coon;

(3) Account number 40001480LK2;

(4) Account number 46505049;

(5) Lincoln Financial Account number 953035607;

c. Real property located at 316 51st Street N.W., Bradenton, Florida 34209;

d. Cash proceeds from the 2007 sale of the real property located at 2106 20th Street West, Bradenton, Florida, in the amount of $144,967.07;

e. Yamaha piano, purchased on or about May 4, 2005, from Piano Distributors of Florida, Inc., for $21,293.90;

f. Jewelry purchased on May 17, 2006, from Diamond Creations in St. Maarten in the amount of $10,000.00;

g. Jewelry purchased on April 28, 2005, from American Pearl Company in the amount of $15,500.00;

h. 2 pearl pendants;

(1) Princess Black Tahitian Cultured Pearl, valued at $1,350.00;

(2) Siona Black Tahitian South Sea Pearl, valued at $1,600.00;

i. 4 pairs of earrings;

(1) 1 pair, platinum stud earrings with princess cut diamonds, valued at $2,200.00;

(2) 1 pair, electra white Australian South Sea pearls, valued at $3,150.00;

(3) 1 pair, Phallaina black Tahitian South Sea pearls, valued at $3,100.00; and

(4) 1 pair, black Tahitian South Sea Pearl 9mm earrings, valued at $425.00.

The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have that the forfeiture constitutes an excessive fine.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the money judgment sought by the government. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the Court make a determination that the government has established the amount of the proceeds is $1,528,616.46 and enter an order of

forfeiture. Pursuant to Rule 32.2(b)(3), the defendant agrees that the order of forfeiture shall be final as to the defendant at the time it is entered, notwithstanding the requirement that it be made a part of the sentence and be included in the judgment.

The defendant agrees that the United States shall, at its option, be entitled to forfeiture of any property (substitute assets) of the defendant up to the value of $1,528,616.46 in order to satisfy the money judgment. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

The defendant agrees to take whatever steps are necessary to pass clear title to the United States of any assets sought to satisfy the money judgment. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Defendant further agrees to take all steps necessary to locate property which could be used to satisfy the money judgment and to pass title to the United States before the defendant's sentencing. To that end, defendant agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above wherever located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

13. Order of Prohibition from Further Participation

Defendant agrees that he will consent to an Order of Prohibition From Further Participation pursuant to section 8(e) of the Federal Deposit Insurance Act, Title 12, United States Code, Section 1818(e), by entering into a Stipulation and Consent to the Issuance of an Order of Prohibition From Further Participation.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987) or § 3579, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense to which the defendant is pleading provides for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office or any victim named in an order of restitution, or any other source, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial

information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

4. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

5. Appeal of Sentence-Waiver

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the

ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by Title 18, United States Code, Section 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by Title 18, United States Code, Section 3742(a).

6. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and

defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

Defendant's Initials _____

9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below as to the defendant are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

At times material to the Information, Coast Bank of Florida ("Coast"), a Florida corporation, headquartered in Bradenton, Florida, was a full service bank, the deposits of which were insured by the Federal Deposit Insurance Corporation. American Mortgage Link ("AML"), a Florida corporation, headquartered in Tampa, Florida, was engaged in the business of originating mortgage loans. Solutions Processing, Inc. ("Solutions"), a Florida corporation, headquartered in Tampa, Florida, was not engaged in any business activity.

The defendant was the Executive Vice-President, Mortgage Lending Department of Coast. As such, the defendant owed a fiduciary duty to act honestly and faithfully in all of his dealings with Coast and to transact business in the best interest of Coast, including a duty to make full and fair disclosure to Coast of any personal interest or profit or kickback he expected to derive or did derive from any transaction in which he participated in the course of his employment.

In late 2004, the defendant used his position with Coast to request that a coconspirator, who was president of both AML and Solutions, charge AML's clients, who wanted residential home loans from Coast, a mortgage brokerage fee that was one percent more than AML would otherwise have charged, and to pay three-quarters of the

additional one percent to the defendant. The coconspirator agreed. The additional one percent charged as a result of the conspiracy did not affect the amount paid by the borrower as the builder/seller was responsible for the payment of all closing costs.

The coconspirator used an existing bank account in the name of Solutions to receive proceeds of the additional percentage point charged by AML and to facilitate the transmission of said proceeds to the defendant and to various individuals and entities designated by the defendant. Later, the coconspirator moved the Solutions bank account to another financial institution and used that account in the same manner.

The defendant and the coconspirator split the proceeds of the additional percentage point. The defendant received three-quarters, and the coconspirator received one-quarter, of each additional percentage point paid. The coconspirator transferred, via various means, the defendant's share of the proceeds of the additional percentage point from AML's checking account into checking accounts in the name of Solutions.

The defendant prepared and transmitted, via e-mail and other means, instructions to the coconspirator to make checks drawn on the accounts in the name of Solutions payable to, among others, various of the defendant's creditors, charities, and family members. The coconspirator prepared and caused an employee to prepare the checks requested by the defendant and delivered said checks to the defendant via private commercial carriers and other means. In addition, the coconspirator gave the defendant a debit/ATM card, along with the accompanying personal identification

number ("PIN"), for the accounts in the name of Solutions, and the defendant used the debit/ATM card and PIN to make purchases of goods and services and to withdraw funds from the Solutions accounts.

In total, the coconspirator transferred to the defendant $1,146,462.35 in proceeds from the additional percentage point. The defendant used the proceeds to, among other things, finance domestic and international travel, purchase real estate, a piano, jewelry, clothing and wine, make significant charitable contributions to a church and its food pantry, pay down mortgages, and provide financial support to family members.

The scheme gave the defendant incentive to deal with AML, which resulted in Coast having a higher concentration of loans in one particular area with one particular builder than was prudent. The scheme also exposed Coast Bank to the risk of litigation brought by one or more of the participants in the residential development/home loan program from which the defendant procured the illicit proceeds. The defendant reasonably should have foreseen that Coast might suffer an economic harm as a result of his breach of fiduciary duty.

In particular, on December 1, 2005, the coconspirator charged the builder/seller of AML client Janis Stewart a mortgage brokerage fee amounting to two percent, rather than the standard one percent that would otherwise have been charged by AML, of the $333,000 loan made by Coast to enable Stewart to purchase real property and build a home in Rotonda West, Florida. On December 6, 2005, the coconspirator transferred $3,330 from AML's checking account at AmSouth Bank, 260 First Avenue South, St. Petersburg, Florida, into Solutions's checking account at the same location. On

December 31, 2005, the defendant e-mailed the coconspirator a list of payees, dollar amounts, and instructions to prepare checks to the payees in the dollar amounts indicated, drawn on the account in the name of Solutions, and to deliver said checks to the defendant via a private commercial carrier. The coconspirator's internet service provider was America Online ("AOL"); therefore, the defendant's email was transmitted electronically through AOL's servers in Virginia before reaching the coconspirator's email account in Florida.

On August 19, 2005, the defendant caused check # 2026 in the amount of $75,000.00, drawn on the account in the name of Solutions, to be made payable and delivered to Signature Title. The defendant used the check to purchase a home located at 2106 20th Street West, Bradenton, Florida, which home was occupied by the defendant's brother-in-law.

10. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

11. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 8 day of Oct, 2008.

ROBERT E. O'NEILL
United States Attorney

By: Rachelle DesVaux Bedke
RACHELLE DESVAUX BEDKE
Assistant United States Attorney

PHILIP WILLIAM COON
Defendant

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