

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA        )  
  )  
  )        No. 10 CR 606  
  )        Judge Elaine E. Bucklo  
  )  
  )  
JEFFREY GONSIEWSKI                )

**PLEA AGREEMENT**

1.       This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant JEFFREY GONSIEWSKI, and his attorney, TERRENCE P. LE FEVOUR, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(B), as more fully set forth below. The parties to this Agreement have agreed upon the following:

**Charge in This Case**

2.       The information in this case charges defendant with bank fraud, in violation of Title 18, United States Code, Section 1344.

3.       Defendant has read the charge against him contained in the information, and that charge has been fully explained to him by his attorney.

4.       Defendant fully understands the nature and elements of the crime with which he has been charged.

**Charge to Which Defendant is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the information, which charges defendant with bank fraud, in violation of Title 18, United States Code, Section 1344.

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Defendant JEFFREY GONSIEWSKI ("Gonsiewski") was the Vice President of the Loan Department at First Security Trust and Savings Bank ("First Security"), located in Elmwood Park, Illinois. The Bank was a financial institution whose deposits were insured by the FDIC.

From approximately September 2004 through February 2009, Gonsiewski knowingly devised, intended to devise, and participated in a scheme to defraud, and to obtain money, funds, assets, and other property owned by and under the custody and control of the Bank, a financial institution, by means of materially false and fraudulent pretenses, representations, and promises, and material omissions, as further described below.

Gonsiewski caused First Security to issue unsecured and undersecured loans by falsely representing that the loans were secured by adequate collateral even though Gonsiewski knew that there was no collateral or insufficient collateral to secure the loans; Gonsiewski also changed the terms and conditions of loans to conceal that loan payments

were overdue; he fraudulently caused First Security to cover checks written on overdrawn accounts; and he created documents containing false information relating to loans issued by First Security, and the loans issued as part of this scheme resulted in a loss to First Security of at least approximately \$5,500,000.

Gonsiewski intentionally caused First Security to issue loans by falsely representing that there was sufficient collateral to secure the loans, including the loans specifically identified below. He prepared and submitted documents to First Security that contained false information and material misrepresentations, which included material false information relating to collateral, forged and photocopied signatures, false information concerning the identities of borrowers and third party guarantors, and misrepresentations concerning other material facts. In furtherance of this aspect of the fraud:

a. On or about June 2, 2005, Gonsiewski prepared and submitted a document to First Security in which he falsely represented that a \$320,000 loan to Customer A was secured by a first mortgage on property located on West Addison Avenue in Chicago, owned by Customer A, when, in fact, Gonsiewski knew that another bank already had a first mortgage on that property for the full value of the property, so that the loan had no collateral.

b. On or about November 5, 2005, Gonsiewski prepared and submitted a document to First Security which the defendant falsely represented that a \$500,000 loan to Customer A was secured by a first mortgage on property located on North Sheridan Avenue in Chicago, purportedly owned by Customer A, when, in fact, Gonsiewski knew that Customer A did not own that property and could not have posted it as collateral.

c. On or about October 13, 2006, Gonsiewski prepared and submitted a document to First Security which the defendant falsely represented that a \$25,000 loan to Customer B and his company was secured by a first mortgage on property located on Commerce Street in Franklin Park, Illinois, when, in fact, Gonsiewski knew that the lender had no equity in the property, and the property could not be posted as collateral for this loan.

d. On or about May 29, 2007, Gonsiewski prepared and submitted documents to First Security in which the defendant falsely represented that a \$140,000 loan to one of Customer A's companies was secured by a first mortgage on property located on Brandy Court in Des Plaines, Illinois (Unit 10), when, in fact, Gonsiewski knew that Unit 10 had already been pledged as collateral for another mortgage from First Security, so that Unit 10 was being double pledged as security.

e. On or about August 10, 2007, Gonsiewski prepared and submitted a document falsely representing that a Certificate of Deposit ("CD") had been posted as collateral for a \$130,000 loan that First Security issued to Customers D and E, and Gonsiewski forged the CD owners' signatures on that document and on the CD, even though Gonsiewski knew that the CD had not been posted to secure the loan.

f. On or about December 31, 2008, Gonsiewski withdrew approximately \$699,930 from the account of Customer F, without authorization from Customer F, with the intention of using that money to make payments on 27 overdue loans belonging to Customer A and companies that Customer A owned or operated. Gonsiewski reversed that withdrawal on January 1, 2009.

g. On or about January 1, 2009, Gonsiewski prepared and submitted a document to First Security in which the defendant falsely represented that a \$700,000 loan to Customer A was secured by equity on various properties, when, in fact, Gonsiewski knew that there were no properties available for security, and, the document contained a photocopied signature. Gonsiewski caused the bank to issue that fraudulent loan in order to make payments on the 27 overdue loans belonging to Customer A and his companies.

h. Between in or about November 2004 and in or about February 2006, Gonsiewski prepared and submitted documents to First Security in which the defendant falsely represented that loans totaling \$415,000 issued to Customer G were secured by a Treasury Note, and Gonsiewski forged the signature of the owner of the Treasury Note on those documents, knowing that the loans were not secured by that Treasury Note.

i. Between approximately June 2005 and January 2007, Gonsiewski prepared and submitted documents to First Security in which he falsely represented that 11 loans totaling approximately \$2,000,000 were being issued to Customer H and his company, when, in fact, Gonsiewski knew that the loans were being issued to Customer A and one of his companies, and that the signatures of Customer H on the loan documents were forged.

j. Between approximately July 2005 and March 2007, Gonsiewski prepared and submitted documents to First Security containing false information concerning collateral and, in some instances containing photocopied signatures, which caused First

Security to issue unsecured or undersecured loans totaling approximately \$1,500,000 to Customer I and his company.

Gonsiewski fraudulently changed the terms of at least 100 loans, for at least 50 customers, falsely representing that loan payments were current, although he knew that payments were overdue on those loans, thereby preventing First Security from taking timely action to collect delinquent loans payments and to protect its interests concerning those loans, and causing First Security to make additional loans to certain customers who had not been making timely payments on existing loans.

Gonsiewski changed the terms of certain loans without having authorization to do so, which included changing due dates to a later time period, changing monthly payments to quarterly payments, renewing loans without obtaining payments from customers, changing payments to interest only payments, lowering interest rates, and writing off interest owed to First Security on certain loans, including \$100,000 of interest owed by Customer A.

Gonsiewski fraudulently approved First Security's payment of checks totaling more than \$2,000,000 written on accounts that did not have sufficient funds to cover the checks, knowing the accounts had been overdrawn, and without having authorization to do so.

Gonsiewski intentionally failed to obtain or file appropriate documentation relating to certain collateral, which included failing to obtain signed guarantees, title reports, and updated reports for accounts receivables, and failing to file mortgages and liens.

On or about January 2, 2009, at Elmwood Park, Illinois, Gonsiewski knowingly executed and attempted to execute the above-described scheme to defraud First Security

Trust and Savings Bank by fraudulently creating and submitting a document containing material false information which caused the Bank to issue an unsecured loan to Bank Customer A in the amount of \$700,000, as described above, without having authority, permission, or consent from the Bank to issue that loan, in violation of 18 U.S.C. § 1344.

### **Maximum Statutory Penalties**

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 30 years' imprisonment. Pursuant to Title 18, United States Code, Section 3561, defendant may not be sentenced to a term of probation for this offense. This offense also carries a maximum fine of \$1,000,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than five years.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

### **Sentencing Guidelines Calculations**

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing

Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as specifically set forth below:

a. **Applicable Guidelines.** The parties agree that the Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2009 Guidelines Manual.

b. **Offense Level Calculations.**

i. The parties agree that the base offense level for the offense of conviction is 7, pursuant to Guideline § 2B1.1(a)(1).

ii. The parties agree that pursuant to Guideline § 2B1.1(b)(1)(J), the base offense level should be increased by 18 levels because the loss was between \$2,500,000 and \$7,000,000; specifically, based on the information currently available to the government, the bank lost at least approximately \$5,500,000.

iii. It is the government's position that pursuant to Guideline §2B1.1(b)(9)(C), the base offense level should be increased by 2 levels, because the defendant used sophisticated means in the commission of the offense, in that, the overall scheme involved a greater level of planning and concealment than a typical fraud of that kind. The defendant is free to make his position known at sentencing.

iv. The parties agree that pursuant to Guideline § 3B1.3, the base offense level should be increased by 2 levels, because the defendant, as Vice President of the Loan Department of First Security Trust and Savings Bank, abused a position of trust in a manner that significantly facilitated the commission and concealment of the offense.

v. 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), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vi. In accord with Guideline §3E1.1(b), defendant has 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. Therefore, as provided by Guideline §3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the

government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, and depending upon the Court's ruling, the anticipated offense level is either **24** or **26**, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of **51 to 63**, or **63 to 78** months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature and based on facts known to the parties as of the time of this Plea 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 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, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that while none of the Guideline calculations set forth above are binding on the Court or the Probation Office, the parties have agreed pursuant to Fed.R.Crim.P. 11(c)(1)(B) that certain components of those calculations – specifically, those set forth above in subparagraphs (a) and (b)(i), (ii), and (iv) of this

paragraph – are binding on the parties, and it shall be a breach of this Plea Agreement for either party to present or advocate a position inconsistent with the agreed calculations set forth in the identified subparagraphs.

g. Defendant understands that with the exception of the Guideline provisions identified above as binding on the parties, the Guideline calculations set forth above are non-binding predictions, upon which neither party is entitled to rely, and are not governed by Fed.R.Crim.P. 11(c)(1)(B). Errors in applying or interpreting any of the Sentencing Guidelines (other than those identified above as binding) may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

### **Agreements Relating to Sentencing**

10. The government is free to recommend whatever sentence it deems appropriate within the applicable guidelines range. The defendant is free to recommend whatever sentence he deems appropriate.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the

sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

12. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant to make full restitution to First Security Trust and Savings Bank in an amount to be determined by the Court at sentencing, which amount shall reflect credit for any funds repaid prior to sentencing.

13. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k) he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

14. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

15. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

**Acknowledgments and Waivers Regarding Plea of Guilty**

**Nature of Plea Agreement**

16. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in this case.

17. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are 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.

### **Waiver of Rights**

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

a. Right to be charged by indictment. Defendant understands that he has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising

from the information, the information process, or the fact that he has been prosecuted by way of information.

b. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. 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, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. 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 that the government had established defendant's guilt beyond a reasonable doubt.

v. 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.

vi. At a trial, 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. A defendant is not required to present any evidence.

vii. 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.

c. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

d. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

**Presentence Investigation Report/Post-Sentence Supervision**

19. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

20. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline §3E1.1 and enhancement of his sentence for obstruction of justice under Guideline §3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

21. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

### **Other Terms**

22. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

23. Defendant understands that pursuant to Title 12, United States Code, Section 1829, his conviction in this case will prohibit him from directly or indirectly participating in the affairs of any financial institution insured by the Federal Deposit Insurance Corporation (FDIC) except with the prior written consent of the FDIC and, during the ten years following his conviction, with the additional approval of this Court. Defendant further understands that if he violates this prohibition, he may be punished by imprisonment for up to five years and a fine of up to \$1,000,000.

### **Conclusion**

24. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

25. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the 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 Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that

in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, 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 defendant 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.

26. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

27. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.

28. Defendant acknowledges that he has read this Plea 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: \_\_\_\_\_

\_\_\_\_\_  
PATRICK J. FITZGERALD  
United States Attorney

\_\_\_\_\_  
JEFFREY GONSIEWSKI  
Defendant

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JACQUELINE STERN  
Assistant U.S. Attorney

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TERRENCE P. LE FEVOUR  
Attorney for Defendant