

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 13 CR 560
) Judge Elaine E. Bucklo
)
)
STEVEN M. BRAZILE)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, GARY S. SHAPIRO, and defendant STEVEN M. BRAZILE, and his attorney, SANFORD J. BOXERMAN, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), 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 interstate transport of securities obtained by fraud, in violation of Title 18, United States Code, Section 2314.
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 interstate transportation of a security

obtained by fraud, in violation of Title 18, United States Code, Section 2314. In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment.

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 and constitute relevant conduct pursuant to Guideline § 1B1.3, and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

Beginning in or about December 2006, and continuing until in or about February 2010, at Chicago, in the Northern District of Illinois, and elsewhere, defendant STEVEN M. BRAZILE did knowingly devise and participate in a scheme to take securities and money in excess of \$5,000 in value by fraud, and caused such securities and money to be transported from Missouri to Illinois.

Specifically, Victim Corporation was headquartered in Downers Grove, Illinois. Defendant was employed by Victim Corporation as a Vice President and worked at the Victim Corporation's office in St. Louis, Missouri. Defendant's job responsibilities included oversight and management of the information technology functions at the Victim Corporation's St. Louis office. In his capacity as a Vice President, defendant had the authority to approve payments to vendors on behalf of Victim Corporation in amounts up to approximately \$100,000 per invoice. In addition, defendant had the authority to select and approve vendors for Victim Corporation.

From in or about December 2006 through in or about December 2009, defendant knowingly approved false and fraudulent invoices purporting to be from vendors for goods and services that were never provided to Victim Corporation. Without the knowledge or approval of any of these purported vendors, defendant submitted false and fraudulent documentation to the Victim Corporation's accounts payable department purporting to contain the identifying information, including name, address, and tax identification number, for the vendors.

From approximately in or about December 2006 through approximately in or about December 2009, defendant submitted the fraudulent invoices and fraudulent vendor documentation to the Victim Corporation's accounts payable department in order to cause Victim Corporation to issue checks in satisfaction of the fraudulent invoices. In total, defendant fraudulently caused Victim Corporation to issue approximately 104 checks totaling approximately \$3,902,880.85.

Although the approximately 104 checks issued by Victim Corporation were issued in the name of a vendor, defendant took those checks and stole the proceeds by depositing them into a bank account that he controlled. From approximately in or about December 2006 through approximately in or about February 2010, defendant deposited all approximately 104 fraudulently obtained checks into a bank account over which he had sole control. Defendant's account was held at Bank A in the name of Steve's Classic Cars, LLC. Defendant owns Steve's Classic Cars, LLC, and he was and is the only signatory on the bank account.

As a result of defendant's scheme to defraud, defendant caused Victim Corporation to suffer losses totaling approximately \$3,902,880.85. Defendant deposited proceeds of the fraud into bank and investment accounts, including the investment account listed in paragraph 17 of this Agreement.

By depositing the fraudulently obtained checks issued by Victim Corporation into the bank account that he controlled, defendant caused Bank A to transport the checks to Bank A's processing facility in Chicago, Illinois, where the checks were processed for payment and sent to the bank on which they were drawn. As one example, on or about February 9, 2010, at Chicago, in the Northern District of Illinois, and elsewhere, defendant knowingly caused to be transported in interstate commerce, from Missouri to Illinois, a security, namely a check issued by Victim Corporation dated December 29, 2009, and made payable to a vendor in the amount of \$36,198.13, knowing that the security had been stolen, converted, and taken by fraud. Defendant knew that the vendor had not really provided any goods or services to Victim Corporation, and caused the check to be created, transported, and deposited into the bank account he controlled so that he could steal and use the funds.

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 10 years' imprisonment. This offense also carries a maximum fine of \$250,000, 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 three years.

b. Defendant further understands that the Court must order restitution to the victim 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 otherwise noted:

a. **Applicable Guidelines.** 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 2012 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 6, pursuant to Guideline § 2B1.1(a)(2).

ii. Pursuant to Guideline § 2B1.1(b)(1)(J), the offense level is increased by 18 levels because the loss amount of approximately \$3,902,880.85 is greater than \$2,500,000 but less than \$7,000,000.

iii. The government's position is that the offense level should be increased by two levels pursuant to Guideline § 2B1.1(b)(10)(C) because the offense involved sophisticated means. Defendant reserves the right to contest whether this enhancement applies.

iv. The government's position is that the offense level should be increased by two levels pursuant to Guideline § 3B1.3 because the offense involved an abuse of position of private trust, which significantly facilitated the commission and concealment of the offense. Defendant reserves the right to contest whether this enhancement applies.

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, the government's position is that the anticipated offense level is 25, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 57 to 71 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 are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. 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 this Agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines 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 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 Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. Each party is free to recommend whatever sentence it deems appropriate.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this 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 the total amount of restitution owed to Victim Corporation is \$3,902,880.85, minus any credit for funds repaid prior to sentencing. Defendant understands that this amount is mandatory, pursuant to Title 18, United States Code, Section 3663A. In addition, defendant agrees to pay this amount of restitution to Victim Corporation, pursuant to Title 18, United States Code, Sections 3663(a)(3) and 3664. Defendant further acknowledges that the Court will order defendant to make full restitution in the amount outstanding at the time of 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. Prior to the time of sentencing, the defendant shall cause all funds from the sale of defendant's 1965 Ford Tudor, VIN #5F09C393044 (approximately \$79,545.00), which are held in bank account XXXX8031 at Fifth Third Bank, to be directed to the Clerk of the U.S. District Court for purposes of restitution as described in paragraph 12 above.

15. 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.

16. 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.

Forfeiture

17. The information alleges that defendant is liable to the United States for approximately \$3,902,880.85, which funds are subject to forfeiture because those funds constitute proceeds of the violation alleged in the information. Further, defendant has subjected personal property to forfeiture, including:

- a. funds in the amount of \$250,000 contained in Oppenheimer & Company investment account number XXXXX1278;

because that property constitutes proceeds traceable to the violation alleged in the information.

18. By entry of a guilty plea to the information, defendant acknowledges that the property identified above is subject to forfeiture, and agrees to the entry of a forfeiture judgment in the amount of \$3,902,880.85, and against the property identified above. Prior to sentencing, defendant agrees to the entry of a preliminary order of forfeiture relinquishing any right of ownership he has in the above-described property and further agrees to the seizure of this property so that this property may be disposed of according to law.

Defendant further agrees to waive and abandon all right, title, or interest in the property described above in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal.

19. Defendant is aware that third parties may have claims to the property described above, but defendant acknowledges that his ownership interest in the property described above precedes those claims because his right, title, or ownership interest arose at the time of the offense alleged in the information was committed in that defendant obtained his interest in the forfeited assets with proceeds of the crime. Defendant will cooperate with the United States during ancillary stages of any forfeiture proceedings to defeat the claim of a third party in the event a third party files a claim.

20. Defendant understands that the government may satisfy this forfeiture judgment with substitute assets pursuant to 21 U.S.C. 853(p) as incorporated by 28 U.S.C. 2461(c). Any attempt on the part of the defendant to transfer, convey, or otherwise conceal property prior to the satisfaction of this judgement shall be deemed to violate this Agreement and subject him potentially to further criminal prosecution. If such conveyances are discovered prior to the imposition of sentence, the defendant understands that there will be no two-level reduction in the base offense level for acceptance of responsibility.

21. Defendant further acknowledges that on or about February 21, 2012, administrative forfeiture proceedings were commenced by the Federal Bureau of Investigation against certain property, including: (1) funds in the amount of approximately \$126,674.18, which were seized from PNC account numbers xxxxxx0956, xxxxxx7755, xxxxxx7182; and xxxxxx9295; and (2) a 1959 Ford F100 pickup truck, VIN #F10J9K19632, Missouri antique license tag number 59F100. Defendant admits that he received notice of these administrative forfeiture proceedings and understands that declarations of forfeiture have been or will be entered, extinguishing any claim he may have had in the seized property.

22. Defendant agrees to take all steps requested by the government to pass clear title to forfeitable assets to the United States, including but not limited to, surrender of title and execution of any documents necessary to transfer his interest in any forfeited property.

23. Defendant understands that forfeiture is part of the sentence that will be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted. Defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment.

24. Defendant understands that forfeiture of property is not typically treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose. In this case, however, the United States Attorney's Office will recommend to the

Attorney General that any net proceeds derived from any forfeited assets be remitted and restored to eligible victims of the offense pursuant to Title 18, United States Code, Section 981(e), Title 28, Code of Federal Regulations, Part 9, and other applicable law.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

25. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 13 CR 560.

26. This 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

27. 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 charges 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 charges 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. 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 and that it was to consider each count of the information separately. The jury would have to agree

unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

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, and considering each count separately, 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.

viii. With respect to forfeiture, defendant understands that if the case were tried before a jury, he would have a right to retain the jury to determine whether the government had established the requisite nexus between defendant's offense and any specific property alleged to be subject to forfeiture.

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.

28. Defendant understands that he has the right to be prosecuted for any criminal offense in the district or districts where the offense was committed. By signing this Agreement, defendant knowingly consents to prosecution of the charges against him in the Northern District of Illinois and waives any objection to the venue of this prosecution.

Presentence Investigation Report/Post-Sentence Supervision

29. 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.

30. Defendant shall deliver to the United States Attorney within 30 days after entry of this plea agreement a sworn financial statement (with supporting documentation), 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.

31. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation 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 or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this 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

32. 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.

Conclusion

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

34. Defendant understands that his compliance with each part of this 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.

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

36. 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.

37. 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: _____

GARY S. SHAPIRO
United States Attorney

STEVEN M. BRAZILE
Defendant

SARAH STREICKER
Assistant U.S. Attorney

SANFORD J. BOXERMAN
Attorney for Defendant