

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

MARTIN E. SCHMIDT, JR.

No. 14CR601

Judge Charles P. Kocoras

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant MARTIN E. SCHMIDT, JR., and his attorney, JACK FRIEDLANDER, 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 making false entries in the reports of a financial institution with intent to defraud and deceive, in violation of Title 18, United States Code, Section 1005.

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 making false entries in the reports of a financial institution with intent to defraud and deceive, in violation of Title 18, United States Code, Section 1005.

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: On October 1, 2009, at Beecher, in the Northern District of Illinois, Eastern Division, defendant MARTIN E. SCHMIDT, JR., together with Donna M. Barber, knowingly made and caused to be made false entries in the books, reports, and statements of First Community Bank, with intent to injure and defraud the Bank and to deceive the Board of Directors, the Federal Reserve, and the FDIC, namely, a Past Due Accounts report for September 2009 which falsely represented the past due accounts by intentionally omitting to disclose as past due approximately nine of Customer K's loans and advances in the total principal amount of approximately \$367,000, and approximately 39 of Customer M's loans in the total principal amount of approximately \$2.5 million.

First Community Bank and Trust in Beecher, Illinois, was a state chartered bank, a member of the Federal Reserve System, and had its deposits insured by the FDIC. SCHMIDT was Senior Vice President for Lending, and responsible for

overseeing past due loans, including the preparation of the Note Extension and Past Due Accounts reports. SCHMIDT was also a member of the Board of Directors of First Community Bank. Co-defendant Barber was Vice President for mortgage lending. As part of her duties as Vice-President, Barber had authority to access and make entries on customer loan account files. As a result of his position, SCHMIDT owed First Community Bank a fiduciary duty of care, good faith, and loyalty in management.

SCHMIDT was aware that First Community Bank had certain lending policies. These policies included: (i) a policy allowing borrowers to skip one loan payment per year provided the borrower paid the interest due on the skipped payment; (ii) allowing extension of loan due dates provided certain conditions, including interest payments being current, were met; (iii) identifying and monitoring loans with due dates that had been extended on a Note Extension report or were past due 30 days or more on a Past Due Accounts report; and (iv) providing the Note Extension and Past Due Accounts reports to the Board of Directors of the Bank on a monthly basis for the Board's review and approval.

As a member of the Board of Directors, SCHMIDT reviewed and approved reports, including the Note Extension and the Past Due Accounts reports that were submitted to the Board. The Board of Directors provided the approved Note Extension and Past Due Accounts reports to the Federal Reserve and the FDIC.

SCHMIDT was the point of contact for certain loan customers, including Customer K. By about September 2008, SCHMIDT was aware that Customer K was unable to make payments to the Bank on his various loans when due. By about

September 2008, SCHMIDT was aware that Customer M, for whom Barber was the point of contact, was unable to make timely payments to the Bank on his various loans. SCHMIDT's compensation was based, in part, on the performance of the Bank's loan portfolio as measured by factors including overall level of delinquency and net charge-offs. SCHMIDT and Barber agreed that they needed to take action to prevent the delinquent accounts of Customers K and M from appearing on First Community Bank's reports. SCHMIDT was aware that Barber could alter bank records with simple data entries. With SCHMIDT's knowledge and approval, Barber began making false entries in the loan account files of Customers K and M in order to conceal that these accounts were past due.

From about September 2008, until October 2009, SCHMIDT knowingly caused false entries to be made in the books, reports and statements of First Community Bank. By these false entries, SCHMIDT knowingly caused the Note Extension and Past Due Account reports of First Community Bank for June 2009 through September 2009 to falsely represent that the Bank's loan portfolio was performing materially better than it was, in fact, performing by falsely representing the status of certain loans of Customers K and M as current, when, in fact, these loans were past due and beyond term.

SCHMIDT knowingly caused entries to be made in loan records allowing Customers K and M to skip payments without paying the interest due on the skipped payments and extending the notes of Customers K and M without interest payments being current. SCHMIDT knowingly caused entries to be made in loan account files of

Customers K and M on a retroactive basis so that the actual condition of the loans of Customers K and M would not be represented on the then current monthly records. SCHMIDT knowingly caused another employee of First Community Bank to make entries in the loan account files of Customers K and M which would cause the monthly reports of the Bank to falsely represent the status of these loans.

SCHMIDT knowingly caused funds to be approved and disbursed to Customers K and M in excess of an authorized principal amount or as an additional ABI loan. SCHMIDT did this not for the purpose of protecting First Community Bank's interests by maintaining, improving and protecting collateral, but instead so that the funds could be used to make payments on other delinquent loans in order to make it appear that these delinquent loans were performing. In particular, SCHMIDT approved and caused to be disbursed to Customer K approximately \$105,562 in unauthorized undocumented advances of funds.

SCHMIDT, in his capacity as a member of the Board of Directors of First Community Bank, considered and approved Note Extension and Past Due Accounts reports which SCHMIDT knew were false in that the reports intentionally did not disclose the actual status of the loans of Customers K and M. SCHMIDT knowingly deceived the Board of Directors of First Community Bank by leading them to believe that SCHMIDT and Barber were managing the Bank's loans according to the Bank's policies, when SCHMIDT and Barber were actually fraudulently creating reports which falsely made it appear that the loan portfolio was in better shape than it in fact was.

SCHMIDT approved and caused the Board of Directors to approve additional loans to Customers K and M when SCHMIDT knew that the respective financial conditions of Customers K and M did not support extending the additional loans. In particular, SCHMIDT approved approximately \$269,038 in loans to Customer K at a time when SCHMIDT knew that Customer K was unable to repay these loans. SCHMIDT and Barber, by concealing the true financial conditions of Customers K and M, knowingly caused the Bank to delay calling the loans of Customers K and M in default and realizing on collateral securing those loans. SCHMIDT also fraudulently made it appear that Customer K had funds necessary to pay outstanding obligations by improperly guaranteeing approximately \$22,500 in insufficient funds checks written by Customer K and by issuing an unauthorized \$80,000 letter of credit to Customer K.

As of September 29, 2009, Customer M had approximately 39 loans in the total principal amount of approximately \$2.5 million which were past due accounts, while Customer K and entities Customer K controlled had approximately nine loans and advances in the total principal amount of approximately \$367,000 which were past due accounts.

The loss attributable to SCHMIDT with respect to Customer K resulting from delinquent loans that would not have been extended, delinquent loans that would have been called in default at an earlier time, the unauthorized letter of credit, and the improper guarantee of insufficient funds checks is approximately \$475,100.

It is the government's position that the loss attributable to SCHMIDT with respect to Customer M resulting from delinquent loans which would not have been

extended or would have been called in default at an earlier time is approximately \$708,274.

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. The Court also may order restitution to any persons as agreed by the parties.

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 specified below:

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 2013 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 7, pursuant to Guideline § 2B1.1(a)(1).

ii. The loss attributable to the offense and relevant conduct for which SCHMIDT is responsible is approximately \$1,183,374, which is more than \$1,000,000, but less than \$2,500,000, and therefore results in a 16 level increase in the offense level, pursuant to Guideline § 2B1.1(b)(1)(I).

iii. SCHMIDT abused a position of private trust in the commission of the offense and relevant conduct by among other things, submitting false Past Due Accounts reports to the Board of Directors and concealing from his fellow board members the actual status of the loans of Customers K and M in a manner that significantly facilitated the commission and concealment of the offense and relevant conduct, which therefore results in a 2 level increase in offense level, pursuant Guideline § 3B1.3.

iv. 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.

v. 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 anticipated offense level is 22, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 41 to 51 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 guidelines calculations are preliminary in nature and based on facts known to the parties as of the time of this Agreement. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guidelines 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.

10. Defendant understands that the guidelines 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 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

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

12. 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.

13. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant, together with any jointly liable co-defendants, to make full restitution to First Community Bank in an amount to be determined by the Court at sentencing, which amount shall reflect credit for any funds repaid prior to sentencing.

14. Defendant also agrees to pay additional restitution, arising from the relevant conduct set forth above, in an amount to be determined by the Court at sentencing, pursuant to Title 18, United States Code, Sections 3663(a)(3) and 3664. Such restitution shall include the repayment of any bonus to the extent that the bonus was based on defendant's misrepresentation of the performance of the loan portfolio.

15. 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.

16. 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.

17. 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 Agreement

18. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 14CR601

19. 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

20. 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. 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.

21. 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

22. 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.

23. 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.

24. 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 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

25. 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. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the

grand jury pursuant to grand jury subpoenas, to turn those materials over to the Civil Division of the United States Attorney's Office, or an appropriate federal or state agency (including but not limited to the Internal Revenue Service), for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, defendant. Nothing in this paragraph or the preceding paragraph precludes defendant from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

27. Defendant understands that pursuant to Title 12, United States Code, Sections 1785(d) and 1829, his conviction in this case will prohibit him from directly or indirectly participating in the affairs of any financial institution insured by the National Credit Union Share Insurance Fund or the Federal Deposit Insurance Corporation, except with the prior written consent of the National Credit Union Administration Board or the FDIC and, during the ten years following his conviction, the additional approval of this Court. Defendant further understands that if he knowingly violates this prohibition, he may be punished by imprisonment for up to five years, and a fine of up to \$1,000,000 for each day the prohibition is violated.

28. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

Conclusion

29. 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.

30. 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.

31. 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.

32. 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.

33. 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: _____

ZACHARY T. FARDON
United States Attorney

MARTIN E. SCHMIDT, JR.
Defendant

BRIAN P. NETOLS
Assistant U.S. Attorney

JACK FRIEDLANDER
Attorney for Defendant