

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA)
) No. 10 CR 50052
) Judge Philip G. Reinhard
)
vs.)
)
MARIO CARRILLO)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant MARIO CARRILLO, and his attorney, PAUL E. GAZIANO, 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:

Charges in This Case

2. The indictment in this case charges defendant with eight counts of wire fraud, in violation of Title 18, United States Code, Section 1343, nine counts of mail fraud, in violation of Title 18, United States Code, Section 1341, and three counts of submitting false claims for federal income tax refunds, in violation of Title 18, United States Code, Section 287.

3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

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

Charges to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following counts of the indictment: Count One, which charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343; and Count Twenty, which charges defendant with making a false claim for a federal income tax refund, in violation of Title 18, United States Code, Section 287.

Factual Basis

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

a. In general, with respect to Count One of the indictment, defendant admits that from at least as early as 2004, through March of 2009, at Belvidere, Illinois, he knowingly devised and participated in a scheme to defraud the United State of America and clients of a business defendant operated known as “You and Me Tax Service,” and to obtain money belonging to the United States by means of materially false and fraudulent pretenses, representations, and promises, and that he caused interstate wire communications to be used in furtherance of this scheme.

Specifically, defendant admits that during the time period covered by the indictment, he owned and operated a business known as “You and Me Tax Service.” You and Me Tax Service was located at 128 N. State Street in Belvidere, Illinois. Acting through You and Me Tax Service, defendant prepared federal and state income tax returns for his clients.

Defendant further admits that he routinely prepared and provided to his clients copies of federal income tax returns which were significantly different than the returns defendant filed with the Internal Revenue Service (“IRS”) on behalf of those clients. The refund amounts shown on the copies of the returns defendant provided to his clients were substantially smaller than the refund amounts defendant claimed of the returns he filed with the IRS.

Defendant further admits that he arranged for his clients’ tax refunds to be sent directly to him. When he received his clients’ tax refunds, defendant typically only paid his clients the smaller refund amount shown on the copies of the returns he had provided to his clients. Defendant kept the difference between the actual refund amount he received and the amounts he paid to his clients. Defendant used these funds for his own personal expenses.

Defendant further admits that he often materially falsified information on the federal income tax returns he filed with the IRS on behalf of his clients. For example, defendant often falsely inflated the number of his clients’ dependents. Defendant also falsely claimed child care credits to which his clients were not entitled. These falsifications caused the refund amounts on the returns defendant filed with the IRS to be much higher than the refund amounts on the copies of the returns defendant provided to his clients.

Defendant further admits that he often materially falsified information on the copies of the federal income tax returns he provided to his clients. For example, on the copies of the returns he gave to his clients, defendant often falsely under-reported the amount of federal withholding taxes that had actually been paid by the clients. Then, on the returns that

he filed with the IRS, defendant reported the correct amount of taxes that had been withheld from his clients' paychecks. These falsifications caused the refund amounts on the returns defendant filed with the IRS to be much higher than the refund amounts defendant calculated on the copies of the returns he provided to his clients.

Defendant further admits that he routinely listed the address of You and Me Tax Service as the address of his clients on the federal income tax returns he filed with the IRS. This caused the IRS to mail the clients' tax refund checks to defendant's business address. When the federal income tax refund checks were delivered to You and Me Tax Service, defendant forged the clients' endorsements on the backs of these checks and deposited the checks into his bank accounts.

Defendant further admits that he frequently listed his own bank accounts on the tax returns he filed on behalf of some of his clients. This caused the IRS to direct deposit these clients' tax refunds directly into defendant's bank accounts via interstate wire transfers.

Defendant further admits that, towards the end of his scheme, he did not pay to certain clients any of the tax refund amounts he received from the IRS on these clients' behalf. Instead, defendant kept the entire amounts of these refunds and used those funds for his own personal expenses.

Defendant further admits that on December 1, 2006, at Chicago, in the Northern District of Illinois, for the purpose of executing his scheme to defraud, he knowingly caused to be transmitted by means of a wire communication in interstate commerce from Austin,

Texas, to Chicago, certain signals, namely a bank transfer in the amount of \$2,682 which was a federal income tax refund for “Client A.”

b. With respect to Count Twenty of the indictment, defendant admits that on February 3, 2009, at Belvidere, in the Northern District of Illinois, Western Division, he made and presented to the Internal Revenue Service, an agency of the United States, a claim upon the United States, namely a claim for an income tax refund of \$11,118, payable to “Client T.” Defendant further admits that he knew that this claim was false, fictitious, and fraudulent, because on the Individual Income Tax Return, Form 1040A, he filed on behalf of “Client T,” defendant falsely represented that “Client T” had six dependents. In fact, as defendant well knew, this representation was false, because “Client T” did not have six dependents and was not entitled to a federal tax refund of \$11,118.

Maximum Statutory Penalties

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

a. Count One carries a maximum sentence of 20 years’ imprisonment. Count One 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 with respect to Count One the judge also may impose a term of supervised release of not more than three years.

b. Count Twenty carries a maximum sentence of 5 years’ imprisonment. Count Twenty 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 with respect to Count Twenty, the judge also may impose a term of supervised release of not more than three years.

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

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

e. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is 25 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$500,000, or twice the gross gain or gross loss resulting from the offenses of conviction, whichever is greater, a period of supervised release, and special assessments totaling \$200, in addition to any restitution ordered by the Court.

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:

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 2011 Guidelines Manual.

b. **Offense Level Calculations.**

i. The parties agree that Counts One and Twenty should be grouped, pursuant to Guideline §3D1.2(d).

ii. The parties further agree that the base offense level for the charge in the indictment is 7, pursuant to Guideline §2B1.1(a)(1).

iii. The parties further agree that the offense level must be increased by 14 levels, pursuant to Guideline §2B1.1(b)(1)(H), because the loss caused by defendant's offense was more than \$400,000.

iv. The parties further agree that the offense level must be increased by an additional 2 levels, pursuant to Guideline §2B1.1(b)(2)(A)(i), because defendant's offense involved 10 or more victims.

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, it is the United States' position that defendant's criminal history points equal 3 and defendant's criminal history category is II. Defendant acknowledges that his criminal history category is II, but reserves the right to argue that he only has 2 criminal history points:

i. The parties agree that on or about April 17, 2003, defendant was convicted of driving on a suspended or revoked license in the Circuit Court of Boone County, Illinois, and sentenced to 60 days of imprisonment. Pursuant to Guidelines 4A1.1(b) and 4A1.2(c)(1), defendant receives 2 criminal history points for this conviction.

ii. It is the position of the United States that on or about May 25, 2005, defendant was convicted of theft of labor/services in the Circuit Court of Cook County,

Illinois, and sentenced to forfeiture of bond. It is further the position of the United States that, pursuant to Guidelines 4A1.1(c), defendant receives 1 criminal history point for this conviction. Defendant reserves the right to challenge this conviction and any criminal history points assigned based upon this conviction.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 20, which, when combined with the anticipated criminal history category of II, results in an anticipated advisory Sentencing Guidelines range of 33 to 41 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 plea 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 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 agrees to recommend that the Court impose a sentence of imprisonment within the applicable guidelines range and to make no further recommendation concerning what sentence of imprisonment should be imposed.

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 the total amount of restitution owed to the victims of his fraud scheme is \$422,768.53, minus any credit for funds repaid prior to sentencing, and that pursuant to Title 18, United States Code, § 3663A, the Court must 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. Defendant agrees to pay the special assessment of \$200 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.

16. After sentence has been imposed on the counts to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

17. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 10 CR 50052.

18. 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.

19. Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from defendant and his spouse or defendant's partnership or corporations.

Waiver of Rights

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

a. **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 indictment 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.

b. **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.

c. 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

21. 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 charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

22. 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.

23. 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 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

24. 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.

25. Defendant agrees to cooperate with the Internal Revenue Service in any tax examination or audit of defendant and his spouse and defendant's partnerships or corporations which directly or indirectly relates to or arises out of the course of conduct which defendant has acknowledged in this Plea Agreement, by transmitting to the IRS original records or copies thereof, and any additional books and records which the IRS may request.

26. 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 and his spouse or defendant's partnerships or corporations. Nothing in this paragraph or the preceding paragraph precludes defendant and his spouse or defendant's partnerships or corporations from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

27. Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including one or more offenses to which defendant is pleading guilty. Indeed, because defendant is pleading guilty to an offense that is an “aggravated felony” as that term is defined in Title 8, United States Code, Section 1101(a)(43), removal is presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the Court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his guilty plea may entail, even if the consequence is his automatic removal from the United States.

Conclusion

28. 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.

29. 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.

30. 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.

31. 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.

32. 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

MARIO CARRILLO
Defendant

SCOTT A. VERSEMAN
Assistant United States Attorney
308 West State Street – Room 300
Rockford, Illinois 61101
815-987-4444

PAUL E. GAZIANO
Attorney for Defendant
202 West State Street – Suite 600
Rockford, Illinois 61101
815-961-0800