

FILED ENTERED
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JUN 10 2008
AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND
DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
Baltimore Division

UNITED STATES OF AMERICA)
)
 v.) Criminal No. JFM-08-0266
)
 STEVEN L. BERMAN,) Filed: June 10, 2008
)
 Defendant.) Violation: 15 U.S.C. §1 (Sherman Act)
)
 _____)

PLEA AGREEMENT

The United States of America and Steven L. Berman (“defendant”) hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against him;
 - (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
 - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
 - (f) not to be compelled to incriminate himself;
 - (g) to appeal his conviction, if he is found guilty; and

(h) to appeal the imposition of sentence against him.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence in Paragraph 10 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the District of Maryland. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by rigging bids for certain tax lien auctions in the District of Maryland from at least Spring 2004 to August 2007 in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below. The United States agrees that at the arraignment, it will stipulate to the release of the defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For purposes of this Plea Agreement, the “relevant period” is that period from at least Spring 2004 to August 2007. During the relevant period, the defendant was a principal or agent of various limited liability corporations, each of which is an entity organized and existing under the laws of the State of Maryland with its principal place of business in Cockeysville, Maryland. During the relevant period, the defendant as an individual and through various limited liability corporations bid on and won tax liens in auctions within the State of Maryland and elsewhere.

(b) During the relevant period, the defendant participated in a conspiracy with other persons and entities engaged in bidding during tax lien auctions, the primary purpose of which was to suppress competition for tax liens by refraining from full competitive bidding at certain public auctions for tax liens conducted by a municipality and counties within the State of Maryland. In furtherance of the conspiracy, the defendant engaged in conversations and attended meetings with representatives of other major tax lien auction bidding firms. During such meetings and conversations, agreements were reached on which properties or groups of properties each group would bid or refrain from bidding on, and in some instances what prices would be bid, for tax liens during public auctions within the State of Maryland.

(c) During the relevant period, funds from outside the State of Maryland were used by one or more of the conspirators to pay for tax liens that were rigged pursuant to

the agreement. Conspirators also submitted bids electronically from outside the State of Maryland for certain auctions. Out-of-state bidders participated in multiple auctions for tax liens in Maryland including the Baltimore City Auction which allowed bidders to log in and submit bids from any location connected to the Internet. Additionally, owners of properties subject to tax liens won in the rigged auctions were sometimes located out-of-state and paid off their indebtedness to the winner of the tax lien with out-of-state funds. The business activities of defendant and co-conspirators in connection with the tax lien auctions affected by this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

(d) Acts in furtherance of this conspiracy were carried out within the District of Maryland. Conspiratorial meetings and conversations described in Paragraph 4(b) took place in the District of Maryland.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

- (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);
- (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and

(c) a term of supervised release of three (3) years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be imprisoned for up to two (2) years (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(2)).

6. In addition, the defendant understands that:

(a) pursuant to U.S.S.G. § 5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the Court may order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the

defendant or in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

SENTENCING AGREEMENT

8. The United States and the defendant understand, agree and stipulate to the following applicable Sentencing Guidelines considerations and factors:

- (a) The November 1, 2007 edition of the Guidelines applies;
- (b) The controlling Guideline applicable is U.S.S.G. § 2R1.1;
- (c) Pursuant to the Guidelines § 2R1.1(a), the base offense level is 12;
- (d) The conduct involved participation in an agreement to submit non-competitive bids, and therefore a 1 level increase is appropriate pursuant to U.S.S.G. § 2R1.1(b)(1);
- (e) The United States and the defendant agree that the affected volume of commerce attributable to the defendant relating to tax liens obtained during auctions that were the subject of the conspiracy, adjusted to reflect information provided to the United States pursuant to U.S.S.G. § 1B1.8, is \$38.3 million, and therefore a 4 level increase is appropriate pursuant to U.S.S.G. § 2R1.1(b)(2)(B);
- (f) The resulting Total Offense Level is 17.
- (g) The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the United States Sentencing Commission in formulating the Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The defendant is free, however, to ask the Court to consider the factors set forth in 18 U.S.C. 3553(a) in determining and imposing

sentence; the defendant understands that the United States may oppose the defendant's sentencing recommendation based on those factors.

9. The United States does not oppose a two-level reduction in the defendant's adjusted offense level, based upon the defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. The United States agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the defendant's timely notification of his intention to plead guilty. The United States may oppose any adjustment for acceptance of responsibility if the defendant (a) denies involvement in the offense; (b) gives conflicting statements about his involvement in the offense; (c) is untruthful with the Court, this Office, or the United States Probation Office; (d) obstructs or attempts to obstruct justice prior to sentencing; (e) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (f) attempts to withdraw his plea of guilty.

10. Pursuant to Fed. R. Crim. P. 11(c)(1)(B) the United States and defendant agree to jointly recommend that the Court impose a sentence within the applicable Guidelines fine range requiring the defendant to pay to the United States a criminal fine of \$750,000.00 payable in full before the fifteenth (15th) day after the date of judgment, and the United States agrees that it will recommend (after any offense level adjustment pursuant to U.S.S.G. § 5K1.1 discussed below) a period of incarceration at the bottom of the Guidelines incarceration range ("the recommended sentence"). The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

11. The United States and defendant agree that he has no criminal record and has a criminal history category of one.

12. If the United States determines that the defendant has provided substantial assistance in an investigation or prosecution of others, and if he has fully complied with all of his obligations under this agreement, the United States will make a motion, pursuant to U.S.S.G. § 5K1.1, requesting the Court to sentence the defendant in light of the advisory factors set forth in § 5K1.1(a)(1)-(5) and requesting a downward departure of up to four levels. The United States shall have sole discretion in determining whether the defendant has provided such substantial assistance and, therefore, whether any motion pursuant to § 5K1.1 should be made. The United States' determination of whether the defendant has provided substantial assistance will not depend in any way on the outcome of any trial or other proceeding at which the defendant testifies. If the United States makes such a motion, the defendant is bound by the departure level recommended by the United States. It is understood that should the United States determine that the defendant has not provided substantial assistance in an investigation or prosecution, such a determination will release the United States from any obligation to make a motion pursuant to § 5K1.1, but will not entitle the defendant to withdraw his guilty plea once it has been entered. It is understood that, even if such a motion is made, the sentence to be imposed on the defendant remains within the sole discretion of the Court.

13. The United States and the defendant agree that with respect to the calculation of the advisory Guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments as set forth in Chapters 2, 3, 4, or 5 of the Sentencing Guidelines will be raised, argued, or are in dispute.

14. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 17 of this Plea Agreement, and before sentencing in the case, the United States will

fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and his commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct. To enable the Court to have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until his cooperation is complete.

15. The United States and the defendant understand that the Court retains complete discretion to accept or reject the Guidelines calculations and recommended sentence provided for in Paragraphs 8-10 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the recommended Guidelines calculations and recommended sentence contained in this Agreement, he nevertheless has no right to withdraw his guilty plea.

16. In light of the availability of civil causes of actions, which potentially provide for a recovery of a multiple of actual damages, the United States agrees that it will not seek a restitution order for the offense charged in the Information.

DEFENDANT'S COOPERATION

17. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving tax lien auctions in the State of Maryland and elsewhere, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party

("Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

(a) producing all non-privileged documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of the defendant, requested by attorneys and agents of the United States;

(b) making himself available for interviews, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(d) otherwise voluntarily providing the United States with any non-privileged material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*).

GOVERNMENT'S AGREEMENT

18. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 17 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the sentence, the United States will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving tax lien auctions in the State of Maryland ("Relevant Offense"). The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

19. The defendant understands that he may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

20. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and

alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

21. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

22. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full and truthful cooperation, as described in Paragraph 17 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period

between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

23. The defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement based on the defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, the defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT


24. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

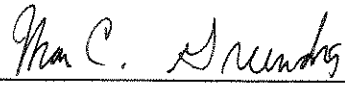
25. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

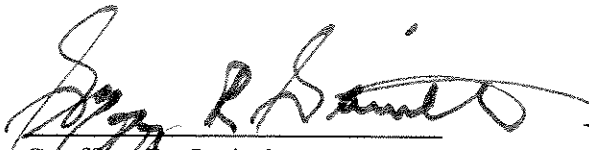
26. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

DATED: 30 May 07

Respectfully submitted,

BY: 
Steven L. Berman
Defendant

BY: 
Nancy H. McMillen
Mark C. Grundvig
Matthew Bester


Geoffrey R. Garinther
Counsel for Steven L. Berman

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