

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

v.

ANDREW BODNAR,

Defendant.

:
:
:
:
:
:
:

Criminal No. 1:08-00115 (RMU)

FILED

Apr. 6 - 2009

PLEA AGREEMENT

Clerk, U.S. District and
Bankruptcy Courts

The United States of America and Andrew Bodnar ("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)-(h) 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 8 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). Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. 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 Columbia. The Information will charge the defendant with one count of violating Title 18, United States Code, Section 1018, False Certificates or Writings. At sentencing, the United States will move to dismiss with prejudice the one count charge contained in the Indictment filed on April 23, 2008, which charges the defendant with making a false statement in violation of Title 18, United States Code, Section 1001.

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.

FACTUAL BASIS FOR OFFENSE CHARGED

4. The defendant knowingly, voluntarily, and truthfully admits as fact the allegations contained in the Information of April 6, 2009, which are incorporated herein by reference. The defendant agrees that those facts establish his guilt beyond a reasonable doubt. The defendant will also provide an allocution in support of his plea in open court.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 1018 is:

- (a) a term of imprisonment of one year (18 U.S.C. § 1018);
- (b) a fine in an amount equal to the greatest of (1) \$100,000,
(2) twice the gross pecuniary gain derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime (18 U.S.C. § 3571(b) and (d)); and
- (c) a term of supervised release of one (1) year following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve the entire term of supervised release in prison (18 U.S.C. § 3559(a)(6); 18 U.S.C. § 3583(b)(3) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(3)).

6. In addition, the defendant understands that:

- (a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(1)(A) 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)(1)(A)(iii), the Court is required to order the defendant to pay a \$25.00 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).

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States and the defendant agree the Court should sentence the defendant using the following Guidelines calculation (“recommended sentence”):

- (a) The November 1, 2008 edition of the Guidelines applies.
- (b) The controlling Guideline applicable to the sole count charged is U.S.S.G. §2B1.1.
- (c) Pursuant to U.S.S.G. §2B1.1(a)(2), the base offense level is 6.
- (d) The United States does not oppose a two-level reduction in the defendant’s offense level, based upon the defendant’s apparent prompt recognition and affirmative

acceptance of personal responsibility for his criminal conduct pursuant to U.S.S.G.

§3E1.1. The United States may oppose any adjustment for acceptance of responsibility if the defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. If a two-level reduction for acceptance of responsibility is appropriate, defendant's adjusted offense level is 4.

9. 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 parties agree not to seek or support any sentence outside of the Guidelines range established in paragraph 8 nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The United States agrees to recommend that the defendant be sentenced within the Guidelines range established in paragraph 8, but not to recommend a specific sentence within that range. The parties agree that the agreed-upon Guidelines calculations set forth in paragraph 8 are reasonable.

10. The defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history or criminal history category could alter his adjusted offense level, if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

11. The defendant understands that the Court will order him to pay a \$25 special assessment pursuant to 18 U.S.C. § 3013(a)(1)(A)(iii) in addition to any fine imposed.

12. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 8 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 sentence contained in this Agreement, he nevertheless has no right to withdraw his plea of guilty.

13. 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.

REPRESENTATION BY COUNSEL

14. 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

15. 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.

ENTIRETY OF AGREEMENT

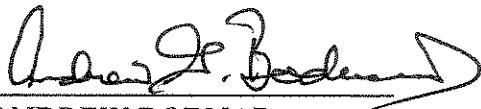
16. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

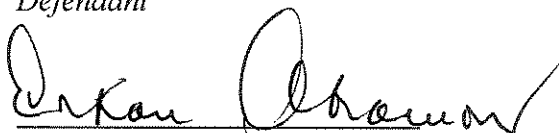
17. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.


18. 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.

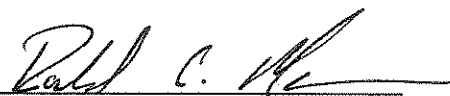
DATED: April 6, 2009

Respectfully submitted,

BY: 
ANDREW BODNAR
Defendant


ELKAN ABRAMOWITZ
Morvillo, Abramowitz, Grand,
Iason, Anello & Bohrer, P.C.
565 Fifth Avenue
New York, NY 10017
Counsel for Defendant

BY: 
JOHN F. TERZAKEN III
BRENT SNYDER
PORTIA R. BROWN
SHANE N. CRALLE
Trial Attorneys, Antitrust Division
U.S. Department of Justice
450 Fifth Street, N.W., Suite 11300
Washington, D.C. 20530


HOWARD M. SHAPIRO
RONALD C. MACHEN
Wilmer Cutler Pickering Hale & Door LLP
1875 Pennsylvania Ave., N.W.
Washington, DC 20006
Counsel for Defendant