

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED IN
OPEN COURT

2/16/2010

UNITED STATES OF AMERICA

CRIMINAL NO.

v.

VIOLATION:

RONALD BOYARSKY,

18 U.S.C. § 371 (Conspiracy)

Defendant.

PLEA AGREEMENT

The Antitrust Division of the United States Department of Justice ("United States") and defendant, Ronald Boyarsky ("Boyarsky") hereby enter into the following Plea Agreement ("Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.").

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

1. Boyarsky will waive indictment pursuant to Fed. R. Crim. P. 7(b) and plead guilty in the United States District Court of Massachusetts to a one-count Information, in the form attached, in which he is charged with violating 18 U.S.C. § 371 in connection with a conspiracy to defraud the IRS, and also to violate 26 U.S.C. §§ 7201 and 7206(1), involving payment of a sales broker's sales commissions by a direct mail advertising printing company ("PC") to third party nominees, for the purpose of concealing taxable income to the sales broker and his brokerage companies, from approximately 1999 until approximately April 2005.

DEFENDANT'S COOPERATION

2. Boyarsky 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 criminal laws

concerning the sale of direct mail advertising printing, as well as 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 (collectively referred to herein as "Federal Proceeding"). The ongoing, full, and truthful cooperation of Boyarsky shall include, but not be limited to:

(a) producing to the United States all documents, information, and other materials, including claimed personal documents, in the possession, custody, or control of Boyarsky that may be requested by the United States in connection with any Federal Proceeding;

(b) making himself available for interviews with the attorneys and agents of the United States, not at the expense of the United States, at the New York Office of the Antitrust Division, or at other mutually-agreed upon locations, upon the request of attorneys and/or agents of the United States;

(c) bringing to the attention of the United States all crimes which he has committed, and all administrative, civil, and/or criminal proceedings, investigations, or prosecutions in which he, to his knowledge, is or has been a subject, target, party, or witness;

(d) 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.*);

(e) otherwise voluntarily providing to the United States any materials or information, not requested in (a)-(c) of this paragraph, that is related to any Federal Proceeding;

(f) 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.*); and

(g) committing no further crimes whatsoever.

GOVERNMENT'S AGREEMENT

3. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 2 of this Agreement and upon the Court's acceptance of the guilty plea called for by this Plea Agreement, the Antitrust Division and Tax Division of the United States Department of Justice will not bring further criminal charges against Boyarsky for any act or offense committed prior to the date of this Agreement that was in furtherance of an agreement to pay commissions earned by a printing sales broker to third party nominees, as described in the attached Information, or to inflate invoices to increase commission payments to the printing sales broker. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal securities laws, or to any crime of violence.

4. It is understood that this Agreement does not bind any other federal agency or local prosecuting authority or administrative agency other than the Antitrust Division of the United States Department of Justice and, to the extent set forth above, the Tax Division of the Department of Justice. However, if requested, the United States will bring the fact, manner and extent of the cooperation of Boyarsky to the attention of other prosecuting, administrative, and other agencies as a matter for such agencies to consider as appropriate.

POSSIBLE MAXIMUM PENALTIES

5. Boyarsky understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 371 is:

(a) a term of imprisonment of not more than five (5) years;

(b) a fine of not more than the greater of \$250,000, or the greater of twice his gross pecuniary gain from the offense or twice the victim's gross pecuniary loss from the offense; or

(c) both such sentences; and

(d) a term of supervised release of no more than three (3) years following any term of imprisonment pursuant to 18 U.S.C. § 3583(b)(2) and U.S.S.G. § 5D1.2(a)(2). Pursuant to 18 U.S.C. § 3583(e)(3), if the defendant violates any condition of supervised release, he could be imprisoned up to two (2) years.

6. Boyarsky also understands that:

(a) the Court shall impose an order of restitution, pursuant to 18 U.S.C. § 3663A and U.S.S.G. § 5E1.1; 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. Boyarsky understands that the United States Sentencing Guidelines ("Sentencing Guidelines") are advisory, not mandatory, but that the Court must consider the Sentencing Guidelines, along with the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing a sentence. Boyarsky understands that the Sentencing Guidelines determinations will be made by the Court by a preponderance of the evidence standard. Boyarsky understands that

although the Court is not ultimately bound to impose a sentence within the applicable Sentencing Guidelines range, its sentence must be reasonable based upon considerations 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 Boyarsky provides to the United States pursuant to this Agreement will not be used in determining Boyarsky's applicable Sentencing Guidelines range, except to the extent provided in U.S.S.G. §1B1.8(b).

SENTENCING AGREEMENT

8. Boyarsky understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge. It is understood that the Sentencing Guidelines are not binding on the Court. The defendant acknowledges that the entry of his guilty plea to the charged offenses authorizes the sentencing court to impose any sentence up to and including the statutory maximum sentence. The United States cannot and does not make any promises or representations as to what sentence the defendant will receive. 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 sentencing recommendation of any party, the defendant nevertheless has no right to withdraw his plea of guilty. The United States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of the defendant's activities with respect to this case, and all other activities of the defendant which the United States deems relevant to sentencing; and (c) the timeliness, nature, extent and significance of the defendant's cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by the defendant both prior and subsequent to the signing of this Agreement. The United States reserves the right to make any statement to the Court or the Probation Office concerning the

nature of the offenses charged in the attached Information, the participation of the defendant therein, and any other facts or circumstances that it deems relevant. The United States also reserves the right to comment on or to correct any representation made by or on behalf of the defendant, and to supply any other information that the Court may require.

9. If the United States determines that Boyarsky has provided substantial assistance in the investigation or prosecution of another person in a Federal Proceeding, and has otherwise fully complied with all of the terms of this Agreement, it will file a motion, pursuant to U.S.S.G. § 5K1.1, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to sentence Boyarsky in light of the factors set forth in U.S.S.G. § 5K1.1(a)(1)-(5), and thus impose, in the Court's discretion, a sentence below the applicable Sentencing Guidelines ranges for incarceration and fine. The United States and Boyarsky are free to recommend or argue for any specific sentence to the Court.

10. Boyarsky understands that this Agreement does not in any way affect or limit the right of the United States to respond to and take positions on post-sentencing motions or requests for information that relate to reduction or modification of sentence.

11. Boyarsky acknowledges that the decision whether he has provided substantial assistance in the investigation or prosecution of another person in a Federal Proceeding is within the sole discretion of the United States. It is understood that should the United States determine that Boyarsky has not provided substantial assistance in the investigation or prosecution of another person in a Federal Proceeding, such a determination will release the United States from any obligation to file a motion pursuant to U.S.S.G. §§ 8C4.1 and 5K1.1, but will not entitle Boyarsky to withdraw his guilty plea once it has been entered. Boyarsky further understands that

whether or not the United States files its motion pursuant to U.S.S.G. § 5K1.1, the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

REPRESENTATION BY COUNSEL

12. Boyarsky has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. Boyarsky has thoroughly reviewed this Agreement with his attorney, and has received satisfactory explanations from his attorney concerning each paragraph of this Agreement and alternatives available to him other than entering into this Agreement. After conferring with his attorney and considering all available alternatives, Boyarsky has made a knowing and voluntary decision to enter into this Agreement.

VOLUNTARY PLEA

13. Boyarsky's decisions to enter into this 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 Agreement. The United States has made no promises or representations to Boyarsky as to whether the Court will accept or reject the recommendations contained within this Agreement.

VIOLATION OF PLEA AGREEMENT

14. Boyarsky agrees that should the United States determine in good faith that Boyarsky has given false, misleading, or incomplete information or testimony, or that Boyarsky has otherwise failed to fulfill any of the obligations set out in this Agreement, the United States shall notify counsel for Boyarsky in writing by personal or overnight delivery or facsimile transmission of its intention to void any of its obligations under this Agreement (except its obligations under this paragraph), and Boyarsky will be subject to prosecution for any federal

criminal violation of which the United States has knowledge, including but not limited to the substantive offenses relating to the investigation resulting in this Agreement. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

15. Boyarsky understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Agreement based on the defendant's violation of the 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.

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ENTIRETY OF AGREEMENT

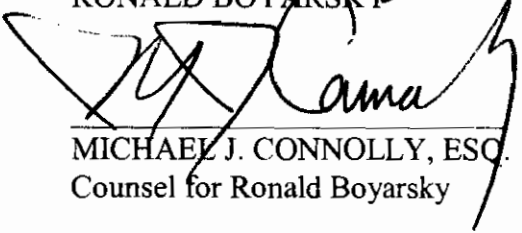
16. This Agreement constitutes the entire agreement between the United States and Boyarsky concerning the disposition of the criminal charges contained in this case. This Plea

Agreement cannot be modified except in writing, signed by the United States and Boyarsky.


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

Dated: *2/16/10*


RONALD BOYARSKY


MICHAEL J. CONNOLLY, ESQ.
Counsel for Ronald Boyarsky


ELIZABETH PREWITT


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