FILED IN OPEN COURT
U.S.D.C. Atlanta

JAN 29 2015

JAMES N. HATTEN, Clerk
By: Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	Criminal No. 14-cr-452
v.	)	
	)	Violations: 15 U.S.C. § 1
	)	18 U.S.C. § 1349
KEVIN SHIN,	)	
	)	
Defendant.	)	

PLEA AGREEMENT

The United States of America and Kevin Shin ("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 Sentencing Guidelines range stipulated by the parties in Paragraph 9 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, will 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. Consistent with Fed. R. Crim. P. 11(b)(1)(O), the 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 the offense(s) to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the district 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 plea may entail, even if the consequence is his automatic removal from the United States. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty to a two-count Information to be filed in the United States District Court for the Northern District of Georgia. Count One of the Information charges the defendant with participating in a conspiracy to suppress and eliminate competition by rigging bids for the purchase of real estate at public foreclosure auctions in Gwinnett County, in the Northern District of Georgia,

beginning at least as early as March 2009 and continuing until at least March 2012, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. Count Two of the Information charges the defendant with participating in a conspiracy to commit mail fraud in relation to real estate foreclosure auctions in Gwinnett County, in the Northern District of Georgia, beginning at least as early as March 2009 and continuing until at least March 2012, in violation of 18 U.S.C. § 1349.

3. The defendant will plead guilty to the criminal charges described in Paragraph 2 above pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11.

ELEMENTS OF THE OFFENSE

4. The defendant understands that the United States must prove the following elements:

(a) For Count One, charging a violation of 15 U.S.C. § 1:

(1) There was a combination or conspiracy to restrain trade during the time alleged in the Information;

(2) The defendant knowingly joined the conspiracy; and

(3) The activity was in the flow of or substantially affected interstate or foreign commerce.

(b) For Count Two, charging a violation of 18 U.S.C. § 1349:

(1) Two or more persons, in some way or manner, agreed to try to accomplish a common and unlawful plan to commit mail fraud; and

(2) The defendant knew the unlawful purpose of the plan and willfully joined in it.

The elements of the underlying offense of mail fraud, Title 18, United States Code, Section 1341, are as follows:

(1) The defendant knowingly devised or participated in a scheme to defraud someone, or obtain money or property, using false and fraudulent pretenses, representations, or promises;

(2) The false and fraudulent pretenses, representations, or promises were about a material fact;

(3) The defendant intended to defraud someone; and

(4) The defendant used the United States Postal Service by mailing or by causing to be mailed something meant to help carry out the scheme to defraud.

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, in Count One, 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 required to serve up to two (2) years in prison (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. The defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of 18 U.S.C. § 1349, in Count Two, is:

(a) a term of imprisonment for twenty (20) years (18 U.S.C. § 1341);

(b) a fine in an amount equal to the greatest of (1) $250,000, (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 (18 U.S.C. § 3571(b) and (d));

(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 required to serve up to two (2) years in prison (18 U.S.C. § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and U.S.S.G. § 5D1.2(a)(2)); and

(d) forfeiture of any property constituting or derived from proceeds obtained as the result of the violation (18 U.S.C. § 981(a)(l)(C) and 28 U.S.C. § 246l(c)).

7. In addition, the defendant understands that:

(a) pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii), the Court is required to 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 each charged crime, totaling $200.00.

SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines in effect on the last date that the offense of conviction was committed. The parties agree there is *no ex post facto* issue under the November 1, 2014 Guidelines Manual. The Court must also consider 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 has provided to date to the United States pursuant to a proffer letter or provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce or fraud loss attributable to the defendant in determining the defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

9. The United States and the defendant agree to recommend that the following sentencing guidelines apply:

(a) For Count One, the total volume of commerce attributable to the defendant under U.S.S.G. §§ 2R1.1 is $457,579;

(b) For Count One (15 U.S.C. § 1)

(i)	Base Offense Level, U.S.S.G. § 2R1.1(a)	12
(ii)	Conduct involved agreement to submit non-competitive bids, U.S.S.G. § 2R1.1(b)(1)	+1
(iii)	Volume of commerce adjustment, U.S.S.G. § 2R1.1(b)(2)(A)	+0
(iv)	Offense Level Total	13
(v)	Fine calculated as one to five percent of the volume of commerce, but not less than $20,000,	

U.S.S.G. § 2R1.1(c)(1) $20,000 - $22,879

(c) For Count Two, the fraud loss attributable to the defendant under U.S.S.G. § 2B1.1 is $34,300;

(d) For Count Two (18 U.S.C. § 1349)

(i) Base Offense Level, U.S.S.G. §§ 2X1.1(a), 2B1.1(a)(1) 7

(ii) Loss > $30,000, U.S.S.G. § 2B1.1(b)(1)(D) +6

(iii) Offense Level Total 13

(v) Fine, U.S.S.G. § 5E1.2(c)(3) $3,000 to $30,000

(e) Pursuant to U.S.S.G. §§ 3D1.2 and 3D1.3, Count One and Count Two involved offenses of the same general type to which different Guidelines apply; therefore the offense Guideline to be applied is the highest offense level;

(f) For the purposes of U.S.S.G. § 3E1.1, a 2-level reduction of the offense level for the defendant's acceptance of responsibility is appropriate. However, should the United States obtain or receive additional evidence or information prior to sentencing that, in its sole discretion, it determines to be credible and materially in conflict with this provision, then the United States will no longer be bound by this provision;

(g) The United States and the defendant are not aware of any information that would affect the defendant's Criminal History Category. If no other information were discovered, the defendant's Criminal History Category would be I. The parties understand that the defendant's Criminal History Category is determined by the Court; and

(h) Based on the foregoing, the defendant's adjusted offense level for the offenses to which he is pleading guilty is 11. The applicable Guidelines imprisonment range for offense level 11 is 8 to 14 months. The defendant's applicable Guidelines fine range is $2,000 to $20,000.

10. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), and subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 19 of this Plea Agreement, the United States agrees to recommend, as the appropriate disposition of this case, that the Court impose a sentence within the adjusted Guidelines range. The United States and the defendant agree to recommend jointly that the Court require the defendant to pay a criminal fine within the adjusted Guidelines range. The Defendant is free to recommend any sentence based on 18 U.S.C. § 3553(a). The Defendant understands that the United States will oppose any recommendation that does not include restitution, or a fine and a sentence of

imprisonment within the Guidelines range. 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.

11. The Mandatory Victim Restitution Act requires the Court to order restitution in this case. The government and the defendant agree that the defendant will pay restitution in an amount to be determined by the court, but not less than $31,650.

12. The defendant understands that this Plea Agreement is voidable by the United States if he fails to pay the restitution as ordered by the Court. The defendant further agrees that he will not seek to discharge any restitution obligation or any part of such obligation in any bankruptcy proceeding. The defendant agrees to pay any fine and/or restitution imposed by the Court to the Clerk of Court for eventual disbursement to the appropriate account and/or victim(s). The defendant agrees that the full fine and/or restitution amount shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in the custody or under the supervision of the Probation Office at any time, he agrees that the custodial

agency and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution unless required to be approved by the court. The defendant understands that this payment schedule represents a minimum obligation and that, should the defendant's financial situation establish that he is able to pay more toward the fine and/or restitution, the government is entitled to pursue other sources of recovery of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect the fine and/or restitution obligation by set-off or program payments, execution on non-except property, and any other means the government deems appropriate.

13. The United States will not object to the defendant's request that the Court make a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that the defendant be assigned to a Federal Minimum Security Camp to serve his sentence and that the defendant be released following the imposition of sentence to allow him to self-surrender to the assigned prison facility on a specified date.

14. 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 U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0.

The parties agree not to seek at the sentencing hearing any sentence outside of the recommended Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement.

15. The defendant understands that the Court will order him to pay a $200.00 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

16. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 19 of this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 5K1.1, for a 3-level downward departure from the applicable Guidelines imprisonment ranges in this case because of the defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law involving the purchase of real estate at public foreclosure auctions in the county of Gwinnett, and any other federal investigations resulting therefrom. The Defendant understands that, in a motion pursuant to this paragraph, the Government may recommend any specific sentence, and the final decision as to what credit, if any, the Defendant should receive for Defendant's cooperation will be determined by the Court.

17. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 19 of this Plea Agreement, and prior to sentencing in this 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 offenses, 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.

18. The United States and the defendant understand that the Court retains complete discretion to accept or reject either party's sentencing recommendation. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose either party's sentencing recommendation, he nevertheless has no right to withdraw his plea of guilty.

DEFENDANT'S COOPERATION

19. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the current federal investigation of violations of federal antitrust and related criminal laws involving the purchase of real estate at public foreclosure auctions in the metro-Atlanta

area, any 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 "Federal Proceeding"). Federal Proceeding includes, but is not limited to, an investigation, prosecution, litigation, or other proceeding regarding obstruction of, the making of a false statement or declaration in, the commission of perjury or subornation of perjury in, the commission of contempt in, or conspiracy to commit such offenses in, a Federal Proceeding. The full, truthful, and continuing cooperation of the defendant will include, but not be limited to:

(a) producing all documents, including claimed personal documents, and other materials, wherever located, not protected under the attorney-client privilege or the work-product doctrine, in the possession, custody, or control of the defendant, that are requested by attorneys and agents of the United States in connection with any Federal Proceeding;

(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 in connection with any Federal Proceeding;

(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 a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or conspiracy to commit such offenses;

(d) otherwise voluntarily providing the United States with any material or information, not requested in (a) - (c) of this paragraph and not protected under the attorney-client privilege or work-product doctrine, 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 a false statement or declaration 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

20. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 19 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and

the imposition of sentence, the United States agrees that it will not bring further criminal charges against the defendant for any act or offense committed before the date of signature of this Plea Agreement that was undertaken in furtherance of an antitrust or mail fraud conspiracy involving the purchase of real estate at public foreclosure auctions in Gwinnett County, Georgia ("Relevant Offense"). The nonprosecution terms of this paragraph do not apply to (a) any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses; (b) civil matters of any kind; (c) any violation of the federal tax or securities laws, or conspiracy to commit such offenses; or (d) any crime of violence.

REPRESENTATION BY COUNSEL

21. 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

22. 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

23. 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, truthful, and continuing cooperation, as defined in Paragraph 19 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery, email, or facsimile transmission and may also notify 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 will 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 signature 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.

24. 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 because of the defendant's violation of this 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 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

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

26. 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.

DATED: 1/29/15

Respectfully submitted,

BY: _____
KEVIN SHIN
Defendant

BY: _____
ERIC M. MEIRING
Ohio Bar #83589

ANN O'BRIEN
District of Columbia Bar # 469594

_____
MICHAEL L. BROWN
Georgia Bar #088875

ADAM J. BIEGEL
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I have read the Criminal Information against me and have discussed it with my attorney. I understand the charges and the elements of each charge that the United States would have to prove to convict me at a trial. I have read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I also have discussed with my attorney the rights I may have to appeal or challenge my sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my sentence or challenging my sentence in any post-conviction proceeding. No one has threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the United States toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.

Kevin Shin

KEVIN SHIN
Defendant

1-29-2015

DATE

I am Kevin Shin's lawyer. I have carefully reviewed the charges and the Plea Agreement with my client. To my knowledge, my client is making an informed and voluntary decision to plead guilty and to enter into the Plea Agreement.



MICHAEL L. BROWN
Georgia Bar #088875

1/29/14
DATE

ADAM J. BIEGEL
Georgia Bar #056898

Counsel for Kevin Shin

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