

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v. : Criminal No. 02 CR 106

EARL P.L. APFELBAUM, INC. and : 15 U.S.C. § 1
JOHN APFELBAUM,

1

Defendants.

PLEA AGREEMENT

The United States of America and the defendants Earl P.L. Apfelbaum, Inc. and John Apfelbaum hereby enter into the following plea agreement pursuant to Rule 11 (e) (1) (B) of the Federal Rules of Criminal Procedure.

1. Earl P.L. Apfelbaum, Inc. and John Apfelbaum will waive indictment pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure and will plead guilty to a two-count Information, in the form attached, charging them with violations of Section One of the Sherman Act, 15 U.S.C. § 1, in connection with conspiracies to rig bids for the purchase of stamps at auctions in the United States and elsewhere. The plea will be entered in the United States District Court for the Southern District of New York.

2. Earl P.L. Apfelbaum, Inc. and John Apfelbaum agree to provide full, complete and truthful cooperation to the United States, as follows:

(a) Earl P.L. Apfelbaum, Inc. and John Apfelbaum agree to meet with attorneys and agents of the United States, as requested, and provide full, complete and truthful information concerning any matter about which the Antitrust Division of the United States Department of Justice (“Antitrust Division”), and other government agencies designated by the Antitrust Division, may inquire of them.

(b) John Apfelbaum agrees to testify fully, completely and truthfully at any and all grand jury investigations, trials and other proceedings as to any subject about which he is questioned.

(c) Earl P.L. Apfelbaum, Inc. and John Apfelbaum agree to provide to the United States or aid the United States in acquiring, upon request, all documents, records, or other tangible evidence in their possession, custody or control relating to any matter about which the Antitrust Division inquires of them.

3. John Apfelbaum understands that no provision of this agreement precludes in any way the possible prosecution of him for perjury, false statements or obstruction of justice relating to any testimony or other information provided by him.

4. Subject to the full and continuing cooperation by Earl P.L. Apfelbaum, Inc. and John Apfelbaum called for by this agreement, the United States agrees not to bring any other criminal charges against them under the federal antitrust laws or under 18 U.S.C. § 1341 or § 1343 arising from participation prior to the date of this agreement by Earl P.L. Apfelbaum, Inc. and John Apfelbaum in rigging bids for the purchase of stamps at

auctions. The scope of the protection offered in the preceding sentence is limited to the activities that Earl P.L. Apfelbaum, Inc. and John Apfelbaum have revealed to the Antitrust Division as of the date of this agreement. The non-prosecution term of this paragraph does not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

5. Earl P.L Apfelbaum, Inc. and John Apfelbaum agree and understand that sentencing for the violation of 15 U.S.C. § 1 charged in the attached Information will be under the United States Sentencing Commission Guidelines Manual (2000) (“U.S.S.G.”).

6. John Apfelbaum agrees and understands that the maximum sentence provided by law to which he is subject for each violation of 15 U.S.C. § 1, a Class E felony, is (a) a term of imprisonment of not more than three years; (b) a fine of not more than the greater of: (1) \$350,000 or (2) the greater of twice the gross pecuniary gain from the offense or twice the victims’ gross pecuniary loss from the offense unless the imposition of a fine under such calculations would unduly complicate or prolong the sentencing process, 18 U.S.C. § 3571(d); or (c) both such sentences. The Court also may impose a term of supervised release of one year, pursuant to U.S.S.G. § 5D1.2(a)(3). In addition, he understands that the Court must impose a special assessment of one hundred dollars (\$100), 18 U.S.C. § 3013(a)(2)(A). The Court may also order restitution to the victims of the offense, pursuant to U.S.S.G. §5E1.1.

7. The United States and John Apfelbaum agree and stipulate that, under the

Guidelines Manual, the total adjusted offense level applicable to the offense charged in the attached Information is level 11 with an applicable guideline range of 8-14 months, which is derived from the following calculations:

- (a) The two counts are grouped into a Single Group, pursuant to U.S.S.G. § 3D1.2(d) and § 3D1.3, resulting in one unit, pursuant to § 3D1.4;
- (b) The base offense level is level 10, pursuant to U.S.S.G. § 2R1.1(a);
- (c) The conduct involved participation in an agreement to submit non-competitive bids, thereby increasing the base offense level by one to level 11, pursuant to U.S.S.G. § 2R1.1(b)(1);
- (d) The amount of commerce attributable to John Apfelbaum was approximately \$1,778,000, thereby increasing the base offense level by an additional two levels to level 13, pursuant to U.S.S.G. § 2R1.1(b)(2)(B) (more than \$1,000,000);
- (e) John Apfelbaum has demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct, thereby reducing the adjusted offense level two levels to level 11, pursuant to U.S.S.G. § 3E.1.1(a); and
- (f) The Criminal History Category is Category I.

8. The United States and John Apfelbaum agree and stipulate that the fine range for the offense charged in the attached Information is from one to five percent of the volume of commerce done by him or his principal in goods affected by the conspiracy (between \$17,780 and \$88,900), but not less than twenty thousand dollars (\$20,000), pursuant to

U.S.S.G. § 2R1.1 (c).

9. John Apfelbaum understands that the sentence to be imposed on him is within the sole discretion of the sentencing judge. The United States cannot and does not make any promises or representations as to what sentence John Apfelbaum will receive. The United States reserves the right to make any statements to the Court or the Probation Office concerning the nature of the criminal violations charged in the attached Information, John Apfelbaum's participation therein and any other facts or circumstances that it deems relevant, to comment on or correct any representation made by or on behalf of the defendant and to supply any other information to the Court that it may require. The United States will inform the sentencing judge and Probation Office of this agreement and the nature and extent of the cooperation of John Apfelbaum and the date on which such cooperation commenced.

10. In addition, subject to the conditions specified below, if the United States determines that John Apfelbaum has provided substantial assistance in any investigations or prosecutions, and has otherwise complied with the terms of this agreement, it will recommend a fine of \$20,000, payable within fifteen (15) days of sentencing, and it will file a motion for a downward departure pursuant to U.S.S.G. § 5K1.1 to offense level 8 with an applicable guideline range of 0-6 months, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to sentence John Apfelbaum in light of the factors set forth in § 5K1.1 (a)(1)-(5). The United States agrees

to make no specific recommendation concerning the particular sentence John Apfelbaum should receive within the guideline range applicable to offense level 8. John Apfelbaum agrees that he will, at all times, give complete, truthful and accurate information and testimony, will not withhold information from the government or refuse to testify truthfully and completely, and will not give false information or testimony. John Apfelbaum understands that the decision to make the motion described above is within the sole discretion of the United States, and that the decision to grant such a motion, and the extent of any downward departure, are matters solely within the discretion of the Court.

11. John Apfelbaum agrees not to file any motion or request for a departure from the guideline range applicable to the adjusted offense level determined by the Court unless said adjusted level is greater than an offense level 8, and a fine of \$20,000, and that he will in no event seek a departure from any sentence imposed as long as the sentence is within the guideline range applicable to offense level 8 and a fine of \$20,000. John Apfelbaum 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.

12. Earl P.L. Apfelbaum, Inc. understands and agrees that the maximum sentence provided by law to which it is subject for each violation of 15 U.S.C. § 1, a Class E felony, is a fine which is the largest of (a) \$10 million; (b) twice the gross

pecuniary gain from the offense; or (c) twice the victim's gross pecuniary loss from the offense unless the imposition of a fine under such calculations would unduly complicate or prolong the sentencing process, 18 U.S.C. § 3571(d). In addition, Earl P.L. Apfelbaum, Inc. understands that (a) pursuant to U.S.S.G. § 8B1.1(a)(2) , the Court may order it to pay restitution to the victims of the offense; (b) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a four hundred dollar (\$400) special assessment upon conviction for the charged crime; and (c) a term of probation of at least one year, but not more than five years, may be imposed (18 U.S.C. § 3561(c)(1)).

13. The United States and Earl P. L. Apfelbaum, Inc. agree and stipulate that, under the Guidelines Manual, the total adjusted offense level applicable to the offense charged in the attached Information is level 13 which is derived from the following calculations:

- (a) The two counts are grouped into to a Single Group, pursuant to U.S.S.G. § 3D1.2 and § 3D1.3, resulting in one unit, pursuant to U.S.S.G. § 3D1.4;
- (b) The base offense level is 10, pursuant to U.S.S.G. § 2R1.1(a);
- (c) The conduct involved participation in an agreement to submit non-competitive bids, resulting in an increase of one level to 11 pursuant to U.S.S.G. § 2R1.1(b)(1); and
- (d) The amount of commerce attributable to Earl P.L. Apfelbaum, Inc. was approximately \$1,778,000, thereby increasing the base offense level by two levels to 13, pursuant to U.S.S.G. § 2R1.1(b)(2)(B)(more than \$1,000,000);

(e) The Criminal History Category is Category I.

14. The United States and Earl L.P. Apfelbaum, Inc. agree and stipulate that the fine range for the offense charged in the attached Information is from \$284,480 to \$568,960. The base fine is \$355,600 (U.S.S.G. §8C2.4(b) and §2R1.1(d)(1)) (20 percent of the commerce attributable to the defendant or \$1,778,000). The culpability score is 4 (U.S.S.G. §8C2.5 (a), (b)(5) and (g)(2)). The minimum and maximum multipliers are 0.80 and 1.60 (U.S.S.G. §8C2.6), resulting in a fine range of \$284,480 to \$568,960.

15. The United States and Earl P.L. Apfelbaum, Inc. agree and stipulate that, due to an inability to pay, and pursuant to U.S.S.G. §8C3.3 (a), an appropriate fine is \$130,000 payable in the following installment: \$55,000 within 15 days of sentencing and \$75,000 within one year of sentencing. If any payment is not made within 15 (fifteen) days of sentencing, interest shall accrue pursuant to 18 U.S. C. § 3612(f)(1).

16. John Apfelbaum and Earl P.L. Apfelbaum, Inc. agree that appropriate restitution is payment of not less than \$150,000 which may be satisfied by payment toward resolution of any proceeding that has been or may be brought on behalf of any victim of the charged conspiracies.

17. Earl P.L. Apfelbaum, Inc. understands that the sentence to be imposed on it is within the sole discretion of the sentencing judge. The United States cannot and does not make any promises or representations as to what sentence Earl P.L. Apfelbaum, Inc. will receive. The United States reserves the right to make any statements to the Court or the

Probation Office concerning the nature of the criminal violations charged in the attached Information, Earl P.L. Apfelbaum, Inc.'s participation therein and any other facts or circumstances that it deems relevant, to comment on or correct any representations made by or on behalf of the defendant and to supply any other information to the Court that it may require. The United States will inform the sentencing judge and Probation Office of this agreement and the nature and extent of the cooperation of Earl P.L. Apfelbaum and the date on which such cooperation commenced.

18. Earl P.L. Apfelbaum, Inc. agrees not to file any motion or request for a departure from any sentence imposed by the Court as long as the sentence is no greater than a fine of \$130,000. Earl P.L. Apfelbaum, Inc. 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 modification of sentence.

19. Earl P.L. Apfelbaum, Inc. and John Apfelbaum understand that if they fail to fulfill any of the obligations set out in this agreement, or should it be established that Earl P.L Apfelbaum, Inc. or John Apfelbaum have intentionally given materially false, incomplete or misleading testimony or information or otherwise violated any provision of this agreement, the United States will be released from its obligations to Earl P.L. Apfelbaum, Inc. and John Apfelbaum. All other provisions of this agreement will remain in full force and effect. If the non-prosecution provisions of this agreement become null and void because of Earl P.L. Apfelbaum, Inc.'s or John Apfelbaum's actions or

omissions, Earl P.L. Apfelbaum, Inc. and John Apfelbaum will thereafter be subject to prosecution for any federal criminal violation of which the Department of Justice has knowledge, including, but not limited to, perjury and obstruction of justice. Any such prosecution may be premised upon any information provided by Earl P.L. Apfelbaum, Inc. and John Apfelbaum, and all such information may be used against them. Moreover, in the event that the non-prosecution provisions of this agreement become null and void, any such prosecution that is not time-barred by the applicable statute of limitations on the date this agreement is signed by Earl P.L. Apfelbaum, Inc. and John Apfelbaum may be commenced against them, notwithstanding the expiration of the limitations period after Earl P.L. Apfelbaum, Inc. and John Apfelbaum sign the agreement. With respect to any such prosecution, Earl P.L. Apfelbaum, Inc. and John Apfelbaum further waive their right to claim that statements made by them before or after the execution of this agreement, or any leads derived from Earl P.L. Apfelbaum, Inc.'s and John Apfelbaum's statements, should be suppressed.

20. Earl P.L. Apfelbaum, Inc. and John Apfelbaum understand that the Court has absolute discretion, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, to accept or reject the sentencing stipulations and recommendations of this plea agreement. Should the Court reject these sentencing stipulations and recommendations, Earl P.L. Apfelbaum, Inc. and John Apfelbaum understand that, pursuant to Rule 11(e)(2) of the Federal Rules of Criminal Procedure, they may not withdraw their guilty plea.

21. This agreement constitutes the entire agreement between the United States and Earl P.L. Apfelbaum, Inc. and John Apfelbaum concerning the disposition of the charges contained in the attached Information. The United States has made no other promises to, or agreements with, Earl P.L. Apfelbaum, Inc. or John Apfelbaum.

22. This agreement cannot be modified other than in a writing signed by the parties.

/s/
JOHN APFELBAUM, Executive
Vice President
Earl P.L. Apfelbaum, Inc.
Dated: 1/28/02

/s/
JOHN APFELBAUM
Dated: 1/28/02

/s/
PAUL SHECHTMAN, ESQ.
Counsel for Earl P.L. Apfelbaum, Inc
and John Apfelbaum

Dated: 1/28/02

/s/
CHARLES V. REILLY
Attorney, United States
Department of Justice
Antitrust Division
26 Federal Plaza, Room 3630
New York, New York 10278

Dated: 1/28/02