

VA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

3-8-2016
FILED

MAR 08 2016
JUDGE JOHN J. THARP, JR.
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA)

)

v.)

)

Criminal No. 16 cr 25

)

)

RICHARD A. BLAKE, JR.,)

)

The Honorable John J. Tharp, Jr

Defendant.)

)

PLEA AGREEMENT

The United States of America and Richard A. Blake, Jr. ("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 does not exceed the top of the Guidelines — incarceration range and a criminal fine of \$685,485.16, 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 prosecutorial misconduct. Consistent with Fed. R. Crim. P. 11(b)(1)(O), the defendant recognizes that if he is not a citizen of the United States pleading guilty may have consequences with respect to his immigration status, including removal from the United States, denial of citizenship, and denial of admission to the United States in the future. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty to a one-count Information to be filed in the United States District Court for the Northern District of Illinois. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by agreeing to allocate customers of heir location services sold in the United States from as early as September 1999 through January 29, 2014 in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant will plead guilty to the criminal charge 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, 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 as early as September 1999 through January 29, 2014. During the relevant period, the defendant was sole owner, President, Secretary, and Treasurer of the major heir location services provider identified in Paragraph 1 of Attachment A filed under seal (hereinafter referred to as “Company A”). During the relevant period, Company A was a provider of heir location services, had fewer than ten employees, and was engaged in the sale of heir location services in the United States. Heir location service providers identify heirs to estates of intestate decedents and, in exchange for a contingency fee, develop evidence and prove-up heirs’ claims to an inheritance in probate court. During the relevant period, Company A’s sales of heir location services affecting U.S. customers totaled at least \$3,671,121.30

(b) During the relevant period, the defendant participated in a conspiracy on behalf of Company A with other persons and another major heir location services provider identified in Paragraph 2 of Attachment A filed under seal (hereinafter referred to as “Company B”), the primary purpose of which was to allocate customers and raise the prices of heir location services sold in the United States. In furtherance of the conspiracy, the defendant engaged in discussions and correspondence with

representatives of Company B. During these discussions and correspondence, agreements were reached to allocate customers of heir location services sold in the United States. The defendant was an organizer or leader in the conspiracy, as defined by U.S.S.G. § 3B1.1, and the conspiracy involved at least five participants.

(c) During the relevant period, records and documents necessary for the sale and provision of heir location services that were secured by one or more of the co-conspirators, as well as payments and solicitations for those services, traveled in interstate commerce. The business activities of Company A and co-conspirators in connection with the sale and provision of heir location services that were the subject of 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 Northern District of Illinois, Eastern Division. The conspiratorial discussions and correspondence described above took place in the United States, and heir location services that were the subject of this conspiracy were sold by one or more of the conspirators to at least one customer in this District.

ELEMENTS OF THE OFFENSE

5. The elements of the charged offense are that:

- (a) the conspiracy described in the Information existed at or about the time alleged;
- (b) the defendant knowingly became a member of the conspiracy; and
- (c) the conspiracy described in the Information either substantially affected interstate commerce in goods or services or occurred within the flow of interstate commerce in goods and services.

POSSIBLE MAXIMUM SENTENCE

6. 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 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)).

7. 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

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 Manual 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, 2015, 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 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

9. 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 16 of this Plea Agreement, the United States and the defendant agree that the following sentencing guidelines apply:

(a) The base offense level for the offense to which the defendant is pleading guilty, as established by U.S.S.G. § 2R1.1(a), is 12.

12

(b) The volume of commerce attributable to the defendant within the meaning of U.S.S.G. § 2R1.1(b)(2) is stipulated to be at least \$3,671,121.30, which increases the offense level by 2.

2

(c) Because the defendant served as an organizer or leader with respect to the criminal activity charged, which involved five or more participants, pursuant to § 3B1.1(a) the defendant's offense level is increased by 4 levels.

4

(d) For purposes of U.S.S.G. § 3E1.1, a 3-level reduction of the offense level for 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

12
- 2
- 4

15

sole discretion, it determines to be credible and materially in conflict with § 3E1.1, then the United States shall no longer be bound by this provision.

(e) Based on the foregoing, the defendant's adjusted offense level for the offense to which he is pleading guilty is 15. The Guidelines incarceration range for offense level 15, Criminal History Category I, is 18 to 24 months imprisonment.

(f) The defendant's Guidelines fine range pursuant to U.S.S.G. § 2R1.1(c) is \$36,711.21 - \$183,556.07.

10. In recognition of the United States' agreement in Paragraph 17 not to charge Company A, of which the defendant is the sole owner and operator, the parties agree to recommend jointly that the defendant be fined an amount equal to a fine to which Company A would have been subject had it pleaded guilty, as provided below. The parties stipulate that had Company A pleaded guilty, the appropriate organizational fine range pursuant to U.S.S.G. § 2R1.1(d) and Chapter Eight of the Guidelines would have been \$550,668.20 - \$881,069.11. The parties further stipulate that based on the unique characteristics of the charged conspiracy, had Company A pleaded guilty, the appropriate corporate Guidelines fine, prior to any adjustment based on the defendant's provision of cooperation in the government's investigation and prosecution of other persons for violations of federal antitrust and related criminal laws involving the sale of heir location services in the United States, would have been \$685,485.16.

(a) The parties agree that the United States' agreement to not charge Company A constitutes an aggravating circumstance in this case of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines. Accordingly, the parties agree that an upward departure from the defendant's individual Guidelines fine range is appropriate pursuant to U.S.S.G. §§ 5K2.0(a)(1)-(2)(A) and 5K2.21 in order to advance the objectives set forth in 18 U.S.C. § 3553(a)(2). The parties agree that the upward departure should be to the fine appropriate for Company A, that is, \$685,485.16 less any adjustment based on defendant's provision of cooperation in the government's investigation and prosecution

of other persons for violations of federal antitrust and related criminal laws involving the sale of heir location services in the United States. If the defendant continues to provide full and truthful cooperation, the government agrees to make known to the court the extent of that cooperation, and the parties agree to recommend that the upward departure be adjusted for that cooperation.

(b) The parties also agree that each party is free to request that the Court sentence the defendant in light of the factors set forth in 18 U.S.C. § 3553(a). Either party also is free to oppose the other party's sentencing recommendation based on those factors.

(c) The defendant agrees to pay any fine imposed by the Court to the United States in full before the fifteenth (15th) day after the date of judgment. Company A will act as a guarantor of this payment as set forth in Attachment B filed under seal. The parties agree to recommend that the defendant's sentence not include an order of restitution.

11. The United States and the defendant are free to recommend any specific sentence to the Court, provided that the parties' arguments are not inconsistent with Paragraphs 9 and 10, above and Paragraph 13, below.

12. The defendant 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 he will receive. However, 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 criminal

violation 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. 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.

13. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 16 of this Plea Agreement, the United States agrees that prior to sentencing it will make a motion pursuant to U.S.S.G. § 5K1.1 for a downward departure from the applicable Guidelines imprisonment range because of the defendant's substantial assistance in the government's investigation and prosecution of violations of federal antitrust and related criminal laws involving the sale of heir location services in the United States. The defendant acknowledges that the decision whether he has complied with the terms of this Plea Agreement is within the sole discretion of the United States. It is understood that, should the United States determine that the defendant has violated any provision of this Plea Agreement, such a determination will release the United States from any obligation to file a motion pursuant to U.S.S.G. § 5K1.1, but will not entitle the defendant to withdraw his guilty plea once it has been entered.

14. 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.

15. 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

16. 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 Company B and involving the sale of heir location services in the United States, 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 documents of Company A, 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 or of Company A, 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

17. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 16 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 or Company A for any act or offense committed before the date of signature of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving Company B and involving the sale of heir location services in the United States ("Relevant Offense"). The nonprosecution terms of this paragraph do not apply to (a) any antitrust conspiracy involving the sale of heir location services in the United States that does not involve Company B; (b) 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; (c) civil matters of any kind; (d) any violation of the federal tax or securities laws or conspiracy to commit such offenses; or (e) any crime of violence.

18. The defendant understands that he may be subject to suspension or debarment action by state or federal 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 what action, if any, other agencies may take. However, the Antitrust Division agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such action of the fact, manner, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what action, if any, to take. The defendant nevertheless affirms that he wants to plead guilty regardless of any suspension or debarment consequences of his plea.

REPRESENTATION BY COUNSEL

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

VOLUNTARY PLEA

20. 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, Attachment A, and Attachment B. 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

21. 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 16 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 and Company A 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 or against Company A for any Relevant Offense, the statute of limitations period for such offense as to both the defendant and, as set forth in Attachment B filed under seal, Company A, 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.

22. The defendant understands and agrees that in any further prosecution of him and Company A 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 and Company A. 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

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

24. 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.

25. A facsimile or PDF signature will 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: 1-11-16

Respectfully submitted,



RICHARD A. BLAKE, JR.
Defendant



FRANK A. LIBBY, JR.
LibbyHoopes, P.C.
399 Boylston St., Suite 200
Boston, Massachusetts 02116
Tel: (617) 338-9300
Fax: (617) 338-9911

JULIAN SOLOTOROVSKY
Kelley Dye & Warren LLP
333 West Wacker Drive, 26th Floor
Chicago, Illinois 60606
Tel: (312) 857-7083
Fax: (312) 857-7095

Counsel for Richard A. Blake, Jr.



ROBERT M. JACOBS
RUBEN MARTINEZ, JR.
MOLLY A. KELLEY
Trial Attorneys, Chicago Office
Antitrust Division
U.S. Department of Justice
209 S. LaSalle Street, Suite 600
Chicago, Illinois 60604
Tel: (312) 984-7200
Fax: (312) 984-7299