

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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CLERK OF COURT

UNITED STATES OF AMERICA)	Filed:
)	
v.)	Criminal No.: 1:07 CR 373
)	
TODD M. MARKEY,)	Judge: Kathleen M. O'Malley
)	
Defendant.)	Violation: 18 U.S.C. §371

PLEA AGREEMENT

The United States of America and TODD M. MARKEY (“defendant”) hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) 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 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)-(c). 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 in the form attached to be filed in the United States District Court for the Northern District of Ohio, Eastern Division. The Information will charge that, in the Eastern Division of the Northern District of Ohio and elsewhere, the defendant and co-conspirators knowingly participated in a conspiracy to commit an offense against the United States in violation of Title 18, United States Code, Section 371 by using interstate and foreign wire communications to further a scheme to defraud customers by selling slats for window blinds to them at noncompetitive and collusive

prices, in violation of Title 18, United States Code, Section 1343. The Information will charge that the conspiracy ran from April 2002 to on or about July 9, 2002, the exact dates being unknown.

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. 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 April 2002 to on or about July 9, 2002. During the relevant period, the defendant was the chief operating officer of a company in the business of manufacturing and selling slats for window blinds.

(b) Slats are the louvers of window blinds that can be adjusted to let in more or less light. The defendant’s employer sold slats to fabricators and others. A fabricator makes slats into complete window blind units.

(c) During the relevant period, defendant and co-conspirators would and did knowingly devise and intend to devise a scheme and artifice to defraud slats customers of money and the right to free and open competition in the pricing of slats by secretly fixing at noncompetitive and collusive levels the prices charged for slats (hereinafter “price-fixing scheme”).

(d) It was further a part of the conspiracy that the defendant and co-conspirators would and did participate in an international telephone conference call during which there was discussion of the need to increase prices for slats and the need to obtain the agreement of the slats manufacturers that were their competitors to raise their prices.

(e) It was further a part of the conspiracy that the defendant and co-conspirators would and did make and agree on assignments to contact specific competitors.

(f) It was further a part of the conspiracy that the defendant and co-conspirators would and did cause the placing of, and would and did participate in, interstate telephone calls with competitors to convince them to take part in the price-fixing scheme.

(g) The conspiracy was carried out, in part, within the Northern District of Ohio. In furtherance of the conspiracy, interstate calls were made between a location in Houston, Texas and a location within this district within the five years preceding the filing of the Information, excluding the period during which the statute of limitations has been suspended pursuant to the two agreements with the defendant, each titled "Agreement Between The United States of America and Todd M. Markey Regarding Statute of Limitations" (Attachments 1 and 2 of the Information).

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. § 371 is:

(a) a term of imprisonment for five (5) years (18 U.S.C. § 371);

(b) a fine in an amount equal to the greatest of (1) \$250,000 ((18 U.S.C.

§ 3571(b)(3)), (2) twice any gross pecuniary gain the conspirators derived from the crime (18 U.S.C.

§ 3571(b) and § 3571(d)), or (3) twice the gross pecuniary loss caused to victims of the crime by the conspirators (18 U.S.C. § 3571(b) and § 3571(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 imprisoned for up to two years (18 U.S.C. § 3559(a)(4); 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. In addition, the defendant understands that:

(a) pursuant to U.S.S.G. § 5E1.1, or 18 U.S.C. § 3663(a) or 3583(d), the Court may order him to pay restitution to any 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

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, pursuant to U.S.S.G. §1B1.11(b)(1), the Guidelines in effect at the time of the offense, 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). 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 in determining the applicable Guideline range, except to the extent provided in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

8. The United States agrees it will make no specific recommendation in this case as to the amount of incarceration or fine that should be imposed, other than that, pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and defendant agree to recommend jointly to the Court that any sentence imposed shall be: no higher than a Guidelines offense level of twelve (12) and a fine of no more than \$30,000 payable in full before the fifteenth (15th) day after the date of judgment (“the recommended 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 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.

9. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 12 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 downward departure from the Guidelines fine and incarceration ranges in this case because of the defendant’s substantial assistance in the government’s investigation and prosecutions of violations of federal criminal law in the window blinds industry. The United States and defendant agree that the appropriate offense level for calculating the incarceration range in this case, prior to any downward departure for substantial assistance pursuant to U.S.S.G. § 5K1.1, is an offense level of twelve (12). Defendant may argue for the extent of the departure that the Court should grant pursuant to the United States’ motion under U.S.S.G. § 5K1.1. If the defendant argues any factor in mitigation or if the Court or Probation

Office makes any inquiry, the United States is free to respond fully. Nothing in this Plea Agreement shall prevent the United States from disclosing to the Court any conduct of the defendant that the Court deems relevant to sentencing.

10. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 12 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, nature, value, 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 offense, and all other relevant conduct. 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 Plea Agreement. 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.

11. 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.

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 11(b) below, shall be rendered void.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If

the defendant withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if he withdraws his guilty plea pursuant to this subparagraph of this Plea Agreement, the statute of limitations period for any Relevant Offense, as defined in Paragraph 13 below, will be tolled for the period between the date of the signing of this Plea Agreement and the date the defendant withdrew his guilty plea or for a period of sixty (60) days after the date of the signing of this Plea Agreement, whichever period is greater.

DEFENDANT'S COOPERATION

12. The defendant 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 antitrust and related criminal laws involving the manufacture or sale of window blinds and slats, 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 ("Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

- (a) producing all non-privileged documents, including claimed personal documents, and other materials, wherever located, in the possession, custody, or control of the defendant, requested by attorneys and agents of the United States;
- (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;
- (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 false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(d) otherwise voluntarily providing the United States with any non-privileged material or information, not requested in (a) - (c) of this paragraph, 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 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.*).

GOVERNMENT'S AGREEMENT

13. Subject to the full, truthful, and continuing cooperation of the defendant, as described in Paragraph 12 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and imposition of sentence, the United States will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of any attempted or completed antitrust conspiracy involving the manufacture or sale of window blinds or slats ("Relevant Offense"). The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

14. 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. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, nature, value, and extent of the cooperation of the defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

15. 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

16. 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

17. 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 and truthful cooperation, as described in Paragraph 12 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his 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 shall 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 the signing 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.

18. 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 based on 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 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. 410.

ENTIRETY OF AGREEMENT


19. This Plea Agreement, together with the agreements tolling the statute of limitations (Attachments 1 and 2 to the Information), constitute 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.

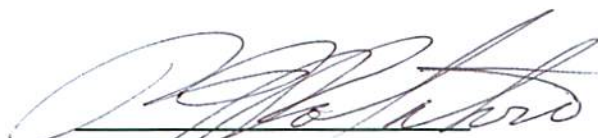
20. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

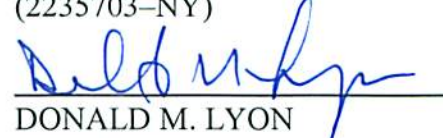
DATED: 26 June 2007


Respectfully submitted,

BY: 
TODD M. MARKEY
Defendant

BY: 
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(2235703-NY)


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