

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:12-CR-340-14

FILED IN OPEN COURT
ON 11/8/12
Julie A. Richards, Clerk
US District Court
Eastern District of NC

UNITED STATES OF AMERICA)	
)	Filed:
v.)	
)	Violation: 18 U.S.C. § 1349
DARREN K. PHILLIPS,)	(Conspiracy to Commit Mail Fraud
)	Affecting a Financial Institution)
Defendant.)	
)	

PLEA AGREEMENT

The United States of America, by the undersigned counsel, and Darren K. Phillips (“defendant”), with the concurrence of the defendant’s Attorney, Kieran J. Shanahan, 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 recommended sentence in Paragraph 12 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, 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 to a one-count Information to be filed in the United States District Court for the Eastern District of North Carolina. The Information will charge the defendant with participating in a conspiracy to commit mail fraud affecting a financial institution in relation to real estate foreclosure auctions in Raleigh, North Carolina and surrounding areas, beginning at least as early as February 2001, and continuing until at least May 2004, in violation of 18 U.S.C. § 1349.

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 initial appearance or 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 the purposes of this Plea Agreement, the “relevant period” is that period beginning at least as early as February 2001, and continuing until at least May 2004, the exact dates being unknown to the United States. During the relevant period, certain real estate speculators agreed to suppress and restrain competition by rigging bids to obtain selected properties offered at public auctions in the Eastern District of North Carolina (“selected properties”).

(b) During the relevant period, the defendant was engaged in the business of buying foreclosure properties at public real estate foreclosure auctions (“public auctions”) in the Eastern District of North Carolina and rehabilitating, selling, or renting the foreclosure properties for an economic benefit.

(c) During the relevant period, the defendant and his co-conspirators willfully and knowingly conspired, combined, and agreed with each other to devise and participate in a scheme to defraud financial institutions, homeowners, and others with a legal interest in selected properties, and to obtain money and property from financial institutions, homeowners, and others with a legal interest in selected properties by means of materially false and fraudulent pretenses or representations. The conspirators executed the scheme to defraud by, among other things: 1) purchasing selected properties through public auctions at artificially suppressed prices; 2)

negotiating payoffs with one or more co-conspirators in exchange for agreements not to compete during the public auction process; 3) in some cases, transferring title to selected properties into the names of co-conspirators who issued payoffs in exchange for agreements not to compete; 4) distributing payoffs to co-conspirators that otherwise would have gone to financial institutions, homeowners, and others with a legal interest in the selected properties, in an amount based on a predetermined formula agreed upon by members of the conspiracy or through direct negotiations between co-conspirators; 5) receiving payoffs in exchange for not bidding to allow title to selected properties to be obtained at artificially suppressed prices; 6) making and causing to be made materially false and misleading pretenses or representations to trustees and others involved in the auction and sale of the selected properties; and 7) causing artificially suppressed prices to be reported and paid to financial institutions and others with a legal interest in selected properties.

(d) During the relevant period, for the purpose of executing the scheme and artifice to defraud and attempting to do so, the defendant and co-conspirators knowingly used and caused to be used the United States Postal Service and private or commercial interstate carriers, in violation of Title 18, United States code, Section 1349. For example, the defendant and co-conspirators did, among other things, cause checks for the artificially suppressed auction price to be mailed to financial institutions and also caused payoffs to be mailed by and to co-conspirators. The defendant and co-conspirators further caused foreclosure deeds and other documents granting title to selected properties to be sent and delivered by the United States Postal Service or private or commercial interstate carriers.

(e) During the relevant period, selected properties subject to this conspiracy were located in the Eastern District of North Carolina. Moreover, acts in furtherance of this conspiracy were carried out within the Eastern District of North Carolina.

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. § 1349 is:

(a) a term of imprisonment for thirty (30) years (18 U.S.C. § 1349);

(b) a fine of not more than \$1 million; and

(c) a term of supervised release of not more than five years following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be required to serve up to an additional three years in prison (18 U.S.C. § 3559(a)(2); 18 U.S.C. § 3583(b)(1) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(1)).

6. In addition, the defendant understands that:

(a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3), 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

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, 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 to increase the loss 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).

8. Pursuant to U.S.S.G. §6B1.4, the United States calculates the applicable Sentencing Guidelines as follows:

(a)	Base Offense Level, U.S.S.G. §2B1.1(a)(1)	7
(b)	Loss > \$30,000, U.S.S.G. §2B1.1(b)(1)(D)	+6
(c)	10 or more victims, U.S.S.G. §2B1.1(b)(2)(A)(i)	+2
(d)	Fine, U.S.S.G. §5E1.2(c)(3): \$4,000 to \$40,000	
	Offense Level Total:	15

9. The United States agrees that it will make a motion, pursuant to U.S.S.G. §3E1.1, for a downward adjustment of two levels for acceptance of responsibility. 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 stipulation, then the United States shall no longer be bound by this stipulation.

10. 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.

11. Based on the foregoing, defendant's adjusted Offense Level for the offense to which he is pleading guilty is 13. The Guidelines imprisonment range for Offense Level 13 is 12 to 18 months imprisonment. The defendant's appropriate Guidelines fine range within the meaning of U.S.S.G. §5E1.2(c)(3) is \$3,000 to \$30,000.

SENTENCING AGREEMENT

12. The United States and the defendant agree that the applicable Guidelines imprisonment range exceeds the term of imprisonment contained in the recommended sentence set out in Paragraph 13 below. Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 16 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 imprisonment range in this case and will request that the Court impose a term of imprisonment within the advisory guidelines range of Offense Level 10, as contained in the recommended sentence set out in Paragraph 13 of this Plea Agreement because of the defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law involving the purchase of selected properties public auctions in North Carolina, and any other federal investigation resulting therefrom.

13. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), and subject to the continuing, full, and truthful cooperation of the defendant, as described in Paragraph 16 of this Plea Agreement, the United States agrees that it will recommend as the appropriate disposition of this case, that the Court impose a sentence requiring the defendant to pay restitution in an amount to be determined by the court, pursuant to U.S.S.G. §5E1.1 and 18 U.S.C. § 3663(a)(3), payable in full before the

fifteenth (15th) day after the date of judgment; require the defendant to pay to the United States a criminal fine of \$10,000, payable in full before the fifteenth (15th) day after the date of judgment; and that the Court impose a period of imprisonment of six months with no period of supervised release (“the recommended sentence”). The defendant is free to recommend any sentence based on 18 U.S.C. §3553(a). The defendant understands that the United States may oppose any recommendation that does not include a fine or a sentence of imprisonment within the Guidelines range for Offense Level 10. 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. 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. 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 or support any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. 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.

14. Subject to the full, truthful, and continuing cooperation of the defendant as defined in Paragraph 16 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 offense, 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.

15. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 13 of this Plea Agreement. 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 either party's sentencing recommendation contained in this Agreement, 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 conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the purchase of selected properties at public auctions in North Carolina, 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 full, truthful, and continuing 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

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 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 a conspiracy involving the purchase of selected properties at public auctions in North Carolina ("Relevant Offense"). The non-prosecution 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.

REPRESENTATION BY COUNSEL

18. 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

19. 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

20. 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 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 shall 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.

21. 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 the 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

22. This Plea Agreement constitutes 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.

23. 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.

Respectfully submitted,

THOMAS G. WALKER
UNITED STATES ATTORNEY

Date: 10/3/2012

BY: /S/ Nezida S. Davis
NEZIDA S. DAVIS
Chief, Atlanta Field Office
Georgia Bar No. 642083

Date: 10/3/2012

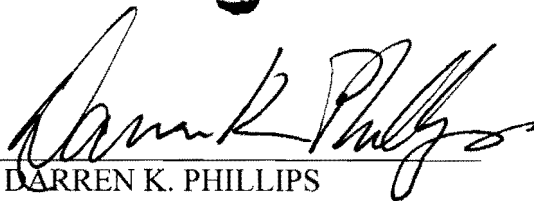
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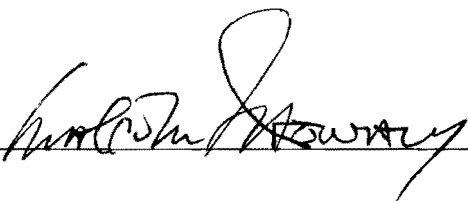
Date: 9/13/2012

/s/ 
DARREN K. PHILLIPS
Defendant

Date: 9/13/2012

/s/ 
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APPROVED, this 8th day of Nov, 2012

/s/ 

UNITED STATES DISTRICT COURT JUDGE