

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

vs.

BENJAMIN SHEETS

No. 17 CR 661

Hon. Charles P. Kocoras

PLEA AGREEMENT

1. This Plea Agreement between the Acting United States Attorney for the Northern District of Illinois, JOEL R. LEVIN, and defendant, BENJAMIN SHEETS and his attorney, WILLIAM ZIEGELMUELLER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The indictment in this case charges defendant with willfully and knowingly falsifying, concealing, and covering up by trick, scheme, and device a material fact in a matter within the jurisdiction of the Executive Branch of the Government of the United States in violation of Title 18, United States Code, Section 1001(a)(1).

3. Defendant has read the charge against him contained in the indictment and that charge has been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crime with which he has been charged.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the information which charges defendant with knowingly and willfully falsifying, concealing and covering up by trick, scheme, and device a material fact in a matter within the jurisdiction of an agency within the executive branch of the government of the United States in violation of Title 18, United States Code, Section 1001(a)(1).

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to U.S.S.G. § 1B1.3 .

Beginning in or about December 2016, and continuing through the beginning of March 2017, at Chicago, in the Northern District of Illinois, Eastern Division, defendant BENJAMIN SHEETS did knowingly and willfully falsify, conceal, and cover up by trick, scheme, and device a material fact in a matter within the jurisdiction of the executive branch of the Government of the United States. Specifically, defendant awarded work to Company B in violation of Amtrak's procurement policies and failed to notify Amtrak of the conflict of interest, as required by Amtrak's Standards of Excellence and Ethical Conduct and Conflict of Interest Policy, and when he learned of Amtrak OIG's investigation into the award of work, he created false records, which he gave to OIG investigators, and he made false statements to OIG investigators.

Since approximately January 2011, the defendant was employed by Amtrak as Superintendent of Transportation at Chicago's Union Station. As an Amtrak employee, defendant understood that he was bound by Amtrak's ethical and procurement policies. Defendant specifically understood that he was obliged to avoid conflicts of interest, and that he was prohibited from conducting any transaction which involved fraud or deception with respect to Amtrak, or any other conduct which he knew to be dishonest or unethical including altering records to falsify, conceal or misrepresent the information in them. Defendant understood that employees were prohibited from using or taking for their personal gain any funds, property or business opportunities that belong to Amtrak. Defendant understood that he was bound by Amtrak's procurement policies which promote free and open competition and require three bids for any contract over \$25,000.

Beginning on or about July 14, 2016, defendant worked to steer work for photography services for an Amtrak event, the Polar Express Train Event, to his wife's photography business, Company B, supplying his wife with the schedule of events, slated for December 2016, directing his wife to put together a proposal and agreement for the event, and directing his wife to research printing and other logistics for the events. Although defendant knew that Amtrak promotes open and free competition in procurement, defendant steered the work to his wife, knowing that no requests for bidding or procurement had taken place. Defendant failed to disclose to Amtrak that he had steered the work to his wife's business, and that he held the position of business manager at Company B.

In early December 2016, defendant was confronted by his superior, Individual B, who encountered defendant and his wife in the Chicago Union Station Grand Hall engaged in doing photography for the Polar Express Event. Individual B was surprised to see that defendant's wife was working on an Amtrak event and queried the defendant. Defendant told Individual B that his wife had contracted with the company organizing the Polar Express event (hereinafter Company A), although defendant knew that was not true, and that he had steered the work to his wife. At no time did defendant file a conflict of interest form with Amtrak stating that he was the business manager of his wife's business.

Defendant directed on November 7, 2016 that the cost of each photograph for the Polar Express event would be \$10, consisting of \$5 for Amtrak and \$5 for the photographer. A total of 3,679 photos were taken during the Polar Express event, generating \$36,790 in revenue. Ten percent of that revenue was designated for royalties to a production company and 7% of the money was paid to Subcontractor A, an Amtrak subcontractor, for processing the payment for the photographs during the Polar Express Event.

In early 2017, defendant learned that the Amtrak Office of Inspector General (OIG) was investigating the award of work to Company B. To conceal the award of work to his wife, defendant asked Company A to issue an invoice for the Polar Express photography services to Subcontractor A, and then to contract with, and pay his wife for the photography services. Thereafter, Company A sent an invoice for the photography services to defendant. Defendant, knowing the invoice to be false because

Company A did not provide photography services during the Polar Express event, caused the invoice to be submitted for payment to Subcontractor A (Invoice Number 113126). Defendant's submission of the fraudulent invoice caused Subcontractor A to mail a check through the United States Mail in the amount of \$34,214.70 to Company A. Company A thereafter issued a check to Company B in the amount of \$30,535.70 (check number 2524). Company B tendered a check to Amtrak in the sum of \$7,358.00

In early March 2017, OIG agents interviewed the defendant about the 2016 Polar Express photography work. During that interview, defendant made a series of misrepresentations to the agents in order to conceal his misconduct. Defendant knew it was unlawful to lie to OIG agents. Defendant stated that his wife contracted with Company A to perform the photography services well in advance of the Polar Express Event, in October or November 2016, even though he knew that statement was false. Defendant also tendered two contracts to the agents, stating that the contract had been signed with Company A on November 21, 2016 when, in fact, the defendant secretly worked with Company A to prepare the contract in January and February 2017, and then backdated the contract to make it appear that Company B was hired by Company A before the Polar Express Event. In fact, Company B was never hired by Company A, and there was no contract signed in November 2016. These were phony documents orchestrated by the defendant in an attempt to hide the award of work to his wife.

7. The foregoing facts are set forth solely to assist the Court in determining whether a factual basis exists for defendant's plea of guilty and are not intended to be a

complete or comprehensive statement of all the facts within defendant's personal knowledge regarding the charged crime and related conduct.

Maximum Statutory Penalties

8. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties: a maximum sentence of five years imprisonment, a \$250,000 fine, and a term of supervised release of not more than three years. In accord with Title 18, United States Code, section 3013, defendant also will be assessed \$100 on the charge to which he has pled guilty in addition to any other penalty imposed.

Sentencing Guidelines Calculations

9. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants

with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

10. Defendant understands that in imposing sentence, the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

11. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2016 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 6 pursuant to Guideline § 2B1.1(a)(2).

ii. Pursuant to Guideline § 2B1.1(b)(1)(C), defendant's offense level is increased by four levels because the loss exceeded \$15,000.

iii. Pursuant to Guideline § 2B1.1b(10)(C), defendant's offense level is increased by two levels because the offense otherwise involved sophisticated means and the defendant intentionally engaged in, or caused the conduct constituting, sophisticated means.

iv. Pursuant to Guideline §3B1.3, defendant's offense level is increased two levels because the defendant violated a position of trust.

v. Pursuant to Guideline §3C1.1, defendant's offense level is increased two levels because the defendant willfully obstructed or impeded, or attempted to obstruct or impede the administration of justice with respect to the investigation of the instant offense of conviction.

vi. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vii. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial, and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, and stipulated below, defendant's criminal history points equal 0 and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.**

Therefore, based on the facts now known to the government, the anticipated offense level is 13, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 12 to 18 months' imprisonment, in addition to any supervised release, and fine the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature and based on facts known to the parties as of the time of this Agreement. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing.

The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

12. Each party is free to recommend whatever sentence it deems appropriate.

13. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

14. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

15. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

16. This Agreement is entirely voluntary and represents the entire

agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 17 CR 661

17. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

18. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Right to be charged by indictment.** Defendant understands that he has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

b. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

viii. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

19. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report, and at sentencing, shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

Other Terms

20. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

21. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

Conclusion

22. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

23. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move

to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

24. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

25. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

26. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

JOEL R. LEVIN
Acting United States Attorney

BENJAMIN SHEETS
Defendant

TERRY M. KINNEY
Assistant U.S. Attorney

WILLIAM ZIEGELMUELLER
Attorney for Defendant