

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No.: 08-364(2) (RHK/AJB)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
2. PETTERS COMPANY, INC.,)
)
 Defendant.)

)
)
 PLEA AGREEMENT AND
 SENTENCING STIPULATIONS

The United States of America and Petters Company, Inc. ("PCI") (hereinafter referred to as the "defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

1. Charges. The defendant agrees to plead guilty to Counts 1, 14 and 15 of the Superseding Indictment, which charge the defendant with (i) mail fraud, Title 18, United States Code, Section 1341, (ii) conspiring to commit mail fraud and wire fraud, in violation of Title 18, United States Code, Sections 371, 1341 and 1343, and (iii) conspiracy to commit money laundering, in violation of Title 18, United States Code, Section 1956(h).

2. Factual Basis.

The defendant admits, and does not contest that the government could prove at trial, the following facts:

Defendant PETERS COMPANY, INC. ("PCI") is a Minnesota Corporation with its headquarters and operations located in Minnesota.

Thomas J. Petters served as the Chief Executive Officer of PCI and Petters Group Worldwide, LLC ("PGW"), Inc. In those capacities, Thomas Petters served as an agent of both PGW and PCI, ratified the actions of PGW and PCI employees on behalf of both companies and furthered a scheme to defraud and to obtain billions of dollars in money and property by means of materially fraudulent and false pretenses, representations and promises. In general, the PCI and PGW scheme used false statements, false representations and material omissions to fraudulently induce investors to provide PCI and PGW with billions of dollars. In fact, the funds then were used (1) to make lulling payments to investors, (2) to make large payments to individuals who assisted the scheme, (3) to acquire and fund businesses owned or controlled by Thomas J. Petters, including PGW, and (4) to fund the extravagant lifestyle of Thomas J. Petters.

To further the fraudulent scheme, Petters, PCI and PGW were required to generate fraudulently obtained proceeds in larger and

larger amounts based upon fraudulent and materially false representations and promises. In that respect, James Wehmhoff served as Executive Vice-President of Finance, Tax and Treasury for PGW. Acting in that capacity, and at all times as an agent of PGW and within the course and scope of his employment relationship with PGW, Wehmhoff prepared materially false financial statements pertaining to PCI's and PGW's financial status which were used to defraud investors regarding the true financial status of such entities, thereby obtaining funds that were used to lull previous investors into a false sense of security and that were used for other illicit purposes. Monies were paid to previous investors that were fraudulently obtained by both PCI and PGW. The mails and the interstate wires were used by PCI and PGW to generate the fraudulently obtained proceeds and subsequently PCI and PGW conducted financial transactions with the proceeds in interstate commerce by way of payments to previous investors to promote the scheme to defraud, in violation of 18 U.S.C. §§ 1956(h) and 1956(a)(1)(A) (promotion of money laundering).

Mail Fraud Scheme

From sometime during the 1990s and continuing through in or about September 2008, in the State and District of Minnesota and elsewhere, the defendant, through certain agents and officers, including its owner Thomas J. Petters, did knowingly and unlawfully devise and participate in a scheme and artifice to defraud and to obtain billions of dollars in money and property by means of materially false and fraudulent pretenses, representations, and promises. In general, the scheme used numerous false statements, false representations and material omissions to fraudulently induce investors to provide PCI and others with billions of dollars. In fact, the funds then were used (i) to make lulling payments to investors, (ii) to make large payments, sometimes exceeding millions of dollars, to individuals who assisted in the scheme, (iii) to acquire and fund businesses owned or controlled by Thomas J. Petters, and (iv) to fund the extravagant lifestyle of Thomas J. Petters.

On or about January 28, 2008, in the State and District of Minnesota and elsewhere, and for the purpose of executing and attempting to execute the scheme and artifice, the defendant, through certain agents and officers, did knowingly cause to be sent, delivered, and moved by the United States Postal Service and interstate commercial carrier various mailings, namely a wire

transfer confirmation of a \$6,000,000 investment by D.V. that was mailed from M&I Bank, Milwaukee, Wisconsin to PCI in Minnetonka, Minnesota.

Conspiracy to Commit Mail Fraud and Wire Fraud

From sometime during the 1990s and continuing through in or about September 2008, in the State and District of Minnesota and elsewhere, the defendant, through certain agents and officers, did knowingly and willfully combine, conspire, and agree with others to commit offenses against the United States, that is, mail fraud and wire fraud, as set forth above. The defendant, through its agents and officers, including its owner Thomas J. Petters, took overt actions to execute the scheme, and it was reasonably foreseeable that mail and interstate wires would be used to further the scheme.

Money Laundering Conspiracy

From sometime during the 1990s and continuing through in or about September 2008, in the State and District of Minnesota and elsewhere, the defendant, through certain agents and officers, did knowingly and willfully combine, conspire and agree with others to conduct and attempt to conduct financial transactions affecting interstate commerce, namely, transfers of the proceeds of specified unlawful activity to themselves or for their benefit, which transactions involved proceeds of a specified unlawful activity, that is, mail fraud and wire fraud, knowing that the property

involved in the financial transactions represented the proceeds of some form of unlawful activity and knowing that the transactions were designed in whole and in part to conceal or disguise the nature, source, ownership and control of the proceeds of the specified unlawful activity.

Specific Corporate Acts in Furtherance of the Fraud

The defendant acknowledges the following conduct:

Use of Fraud Proceeds to Purchase Polaroid for PGW

On April 27, 2005, Polaroid Corporation, along with its subsidiaries ("Polaroid"), was purchased for \$425 million. Prior to the purchase, Petters established Petters Capital LLC, a wholly-owned PGW subsidiary, to accumulate some of the funds necessary to buy Polaroid. From December 2004 through April 2005, PCI and PCI investors transferred at least \$241 million to Petters Capital, which transferred the funds into two escrow accounts that Petters established to hold the acquisition funds. In addition, PCI investors' funds were sent directly to the escrow accounts. On April 27, Petters completed the purchase of Polaroid, and Polaroid became a wholly-owned subsidiary of Polaroid Holding Company, a wholly-owned subsidiary of PGW.

PGW Executed Loan Documents to Obtain Lulling Payments

On or about February 1, 2008, Petters or PGW employees contacted T.R., or persons at companies owned or controlled by

T.R., to solicit funds. The very same day, T.R. entities wired \$31 million to a PCI bank account. Between February 1, 2008 and February 15, 2008, T.R.-controlled entities wired a total of \$146 million to PCI's M&I bank account. These funds were then used to further the fraud by lulling victims with payments, thereby concealing the fraud. In order to entice the T.R.-controlled entities to provide the funds to PCI, PGW executed notes in favor of various T.R.-controlled entities in the amount of \$146 million, as co-borrowers and co-obligors with Petters, despite PGW having received none of the funds.

PGW Assets Used to Lull PCI Creditors

On or about December 17, 2001, O.F. entered into a Credit Agreement with PC Funding, a single-purpose entity and subsidiary of PCI used in the Ponzi scheme. Pursuant to the Credit Agreement, PCI, through PC Funding, obtained financing from O.F. in excess of \$2 billion.

In June 2008, PC Funding was in default on its repayment of notes to O.F., and on June 19, 2008, O.F. entered into a Forbearance Agreement with PC Funding and Petters. Also on June 19, 2008, and despite having no obligation to O.F. or any prior involvement with O.F., PGW executed agreements pledging all rights to proceeds of the shares of stock held by PGW in Fingerhut to O.F., an investor in the Petters' Ponzi scheme. At the time PGW

acquired the Fingerhut Stock, it had an approximate cost basis of \$30 million and the value of the Fingerhut Stock is believed to exceed its cost basis at the time of the transfer to O.F. On July 11, 2008, O.F. filed a UCC-1 financing statement with the Delaware Department of State in an attempt to perfect its interest in PGW's Fingerhut stock.

Additionally, on August 1, 2008, PGW's wholly-owned subsidiary Polaroid Consumer Electronics, LLC wired \$5 million to PCI's M&I bank account. On that same day, PCI wired \$4,238,419.00 of those funds to a PC Funding, LLC account to repay O.F.

The grant of a lien in proceeds of the Fingerhut stock and the \$5 million transfer on August 1, 2008 were lulling payments to avoid or delay disclosure or detection of the Ponzi scheme.

On June 3, 2008, a different PCI creditor wired \$6 million and \$4 million directly to PCI's M&I bank account. That same day, PCI and Petters executed a promissory note in favor of this creditor in the amount of \$10 million, with the balance due in 60 days, or approximately August 3, 2008. PGW was neither a maker nor obligor on the note. PCI used the \$10 million, in part, to repay prior investors.

After continued collection efforts by the creditor, on September 23, 2008, a day prior to execution of search warrants by the FBI, and despite having no obligation, PGW wired \$2.6 million

of its funds to the creditor as a lulling payment to avoid or delay discovery or disclosure of the fraud.

3. Waiver of Pretrial Motions. The defendant understands and agrees that it has certain rights to file pre-trial motions in this case. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, the defendant knowingly, willingly, and voluntarily gives up the right to file pre-trial motions in this case.

4. Statutory Penalties.

The parties agree that Counts 1, 14 & 15 of the Superseding Indictment each carry statutory penalties of:

- a. a term of probation of up to 5 years;
- b. a criminal fine of up to the greater of \$250,000.00 or twice the amount of gain or loss;
- c. a special assessment of \$400.00, which is payable to the Clerk of Court prior to sentencing; and
- d. the costs of prosecution (as defined in 28 U.S.C. §§ 1918(b) and 1920).

5. Guideline Calculations. The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. § 3551, et seq. The parties also acknowledge that the Court will utilize the United States Sentencing Guidelines to determine the appropriate sentence and stipulate to the following guideline calculations:

- a. Base Offense Level: Chapter Two Calculation. The parties agree that the base offense level for Count 1 is 7. (U.S.S.G. § 2B1.1). The government contends that the loss amount will exceed \$400 million. Accordingly, the government believes the offense level will be increased by 30 levels. (U.S.S.G. § 2B1.1(b)(1)). The government contends that the offense level should be increased by 6 levels, because there were more than 250 victims involved. (U.S.S.G. § 2B1.1(b)(2)(A)). The government contends that the offense level should be increased by 2 levels, because the safety and soundness of a financial institution were jeopardized. (U.S.S.G. § 2B1.1(b)(14)(B) & (C)). The parties agree that the offense level should be increased by 2 levels, because the defendant was convicted under 18 U.S.C. § 1956. (U.S.S.G. § 2S1.1(a) and (b)(2)(B)). Accordingly, the government contends that Chapter Two offense level calculation could be 47.
- b. Culpability Score. The government contends that the defendant's culpability score is a base of 5 less 2 points because it has cooperated in the investigation and demonstrated affirmative acceptance of responsibility (U.S.S.G. § 8C2.5(g)(3)), resulting in a culpability score of 3.
- c. Fine Range. The government contends that the base fine is at least \$72.5 million and potentially in excess of \$3 billion (based on the pecuniary loss or pecuniary gain from the fraud). (U.S.S.G. § 8C2.4.) Accordingly, the fine range is at least \$43.5 million to \$87 million (and potentially \$3.6 billion). (U.S.S.G. § 8C2.6).
- d. Sentencing Recommendation. In exchange for the guilty plea, and in recognition of the need to make assets available to victims of the fraud in the parallel bankruptcy proceedings, the government agrees to recommend no fine so that all appropriate corporate assets may be used to satisfy creditor claims.

e. Rule 11(c)(1)(C). The parties agree that the Court should not impose a criminal fine given the facts and circumstances of this case and the need to make assets available to victim/creditors. If the Court rejects this recommendation, the defendant may withdraw from the guilty plea and the plea agreement pursuant to Rule 11(c)(5).

6. Discretion of the Court. The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable guideline factors. The Court may also depart from the applicable guidelines.

7. Special Assessments. The Guidelines require payment of a special assessment in the amount of \$400.00 for each felony count of which the defendant is convicted. U.S.S.G. § 5E1.3. The defendant agrees to pay the special assessment prior to sentencing.

8. Restitution. The defendant understands and agrees that the Mandatory Victim Restitution Act, 18 U.S.C. §3663A, applies.

9. Forfeiture.

By pleading guilty, the defendant does not agree to the forfeiture of any particular asset.

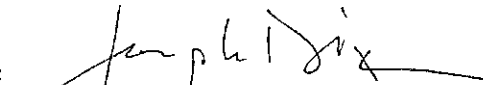
The government affirms its commitment that assets should be used for the victims of the fraud scheme. With regard to PCI's and PGW's assets, the government affirms its commitments under the

Coordination Agreement dated August 16, 2010 and its stated goal of providing maximum assets to victims of the fraud.

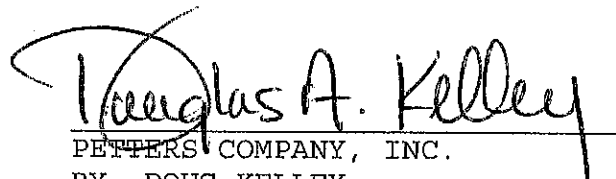
10. Complete Agreement. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Date: Sept. 9, 2010

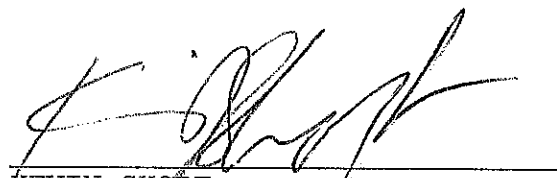
B. TODD JONES
United States Attorney

BY: 
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Assistant U.S. Attorneys

Date: Sept 9, 2010


PETTERS COMPANY, INC.
BY: DOUG KELLEY,
Chapter 11 Trustee
Defendant

Date: 9/9/10


KEVIN SHORT
Counsel for Defendant