

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

SOULA APOSTOLOPOULOS

No. 14 CR 50063-2

Judge Philip G. Reinhard

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant SOULA APOSTOLOPOULOS, and her attorney, PAUL E. GAZIANO, 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. Count Two of the indictment in this case charges defendant with knowingly and fraudulently making a material false declaration, under penalty of perjury, in and in relation to a case under Chapter 7 of the Bankruptcy Code (Title 11, United States Code), in violation of Title 18, United States Code, Section 152(3).

3. Defendant has read the charge against her contained in Count Two of the indictment, and that charge has been fully explained to her by her attorney.

4. Defendant fully understands the nature and elements of the crime with which she 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 Count Two of the indictment, which charges defendant with knowingly and fraudulently making a material false declaration, under penalty of perjury, in and in relation to a case under Chapter 7 of the Bankruptcy Code (Title 11, United States Code), in violation of Title 18, United States Code, Section 152(3).

Factual Basis

6. Defendant will plead guilty because she is in fact guilty of the charge contained in Count Two of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish her guilt beyond a reasonable doubt:

(a) In general, the defendant admits that on or about March 13, 2010, she knowingly and fraudulently made material false declarations, verifications, and statements under penalty of perjury, as permitted under section 1746 of Title 28, in and in relation to a case under Title 11, specifically *In re Soula Apostolopoulos*, case number 10 B 71006, in the United States Bankruptcy Court, Northern District of Illinois, Western Division;

(b) In particular, the defendant admits that on March 13, 2010, she caused a Chapter 7 bankruptcy Petition, Schedules of Assets and Liabilities, and Statement of Financial Affairs, to be filed in the United States Bankruptcy Court for the Northern District of Illinois, Western Division. The filings were assigned case no. 10 B 71006 by the Bankruptcy Court.

(c) By signing the Declaration Regarding Electronic Filings, the defendant verified her bankruptcy Petition, Schedules, and Statement of Financial affairs under penalty of perjury, as permitted under section 1746 of Title 28 of the United States Code. The defendant's verification stated that her answers on her bankruptcy Petition, Schedules, and Statement of Financial Affairs were true and correct to the best of her information and belief.

(d) The defendant was required to disclose the following information in her Schedules of Assets and her Statement of Financial Affairs:

(i) property she transferred within the two years immediately prior to the commencement of her bankruptcy case, except property she transferred in the ordinary course of business;

(ii) financial accounts in her name or for her benefit that were closed within the year preceding the filing of her bankruptcy case;

(iii) income she received from employment or operation of a business during the two years immediately preceding the year that she filed her bankruptcy, and during the time between January 1 of the calendar year in which she filed her bankruptcy and the date her bankruptcy was filed;

(e) As of March 13, 2010, defendant owned a one-half interest in lot 220 of Castle Rock Estates, German Town, Wisconsin.

(f) During 2008, 2009, and between January 1, 2010 and March 13, 2010, defendant received income from the Columbus Grill, Inc., a restaurant located at 651 West Washington Boulevard, Chicago, Illinois, that she had purchased in 2006 with her husband.

(g) As of April 18, 2008, defendant owned and controlled Bank of America account numbers **29**47**34 and **29**46**20. She closed account

number **29**46**20 on September 17, 2009, and closed account number **29**47**34 on March 8, 2010.

(h) As of July 6, 2009, defendant owned and controlled Merrill Lynch account numbers 5**-***59 and 5**-***60. She closed both accounts on October 1, 2009.

(i) The defendant made the following false statement when she filed her bankruptcy Petition, and specifically her Statement of Financial Affairs:

(i) In response to Question Number 1 on her Statement of Financial Affairs, regarding disclosure of income received from employment and operation of any businesses in the years preceding her bankruptcy, the defendant falsely claimed that she had received "\$0.00" income during 2009, 2010, and between January 1, 2010 and March 13, 2010, when in fact, she had received income from the Columbus Grill, Inc.;

(ii) In response to Question Number 10 on her Statement of Financial Affairs, requiring her to disclose any transfers of property during the two years preceding her bankruptcy, the defendant falsely claimed she had sold her interest in a vacant lot in Castle Rock Estates, German Town, Wisconsin within the two years preceding her bankruptcy, when she had not. The defendant still owned one-half of the lot at the time she filed for bankruptcy;

(iii) In response to Question Number 11 on her Statement of Financial Affairs, requiring her to disclose any and all financial accounts she owned or controlled during the year preceding the filing of her bankruptcy case, the

defendant falsely concealed Merrill Lynch account number 5**-***60, a financial account she had owned and controlled within the year preceding the filing of her bankruptcy case;

(iv) In response to Question Number 11 on her Statement of Financial Affairs, requiring her to disclose any and all financial accounts she owned or controlled during the year preceding the filing of her bankruptcy case, she falsely concealed Merrill Lynch account number 5**-***59, a financial account she had owned and controlled within the year preceding the filing of her bankruptcy case;

(v) In response to Question Number 11 on her Statement of Financial Affairs, requiring her to disclose any and all financial accounts she owned or controlled during the year preceding the filing of her bankruptcy case, she falsely concealed Bank of America account number **29**46**20, a financial account she had owned and controlled within the year preceding the filing of her bankruptcy case;

(vi) In response to Question Number 11 on her Statement of Financial Affairs, requiring her to disclose any and all financial accounts she owned or controlled during the year preceding the filing of her bankruptcy case, the defendant falsely concealed Bank of America account number **29**47**34, a financial account she had owned and controlled within the year preceding the filing of her bankruptcy case;

(j) At the time she signed her Statement of Financial Affairs under penalty of perjury, the defendant was aware she had provided materially false

answers to the above-listed questions asked therein. Neither the defendant's concealments, nor her false representations, were the result of any mistake or accident, but instead were done for the purpose of deceiving the bankruptcy trustee.

(k) Each of the defendant's false representations and concealments was capable of influencing the administration of the defendant's bankruptcy case and the bankruptcy trustee.

Maximum Statutory Penalties

7. Defendant understands that the charge to which she is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 5 years' imprisonment. This offense also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant understands that the judge may impose a sentence of probation of not less than one nor more than five years. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which she has pled guilty, in addition to any other penalty or restitution imposed.

Sentencing Guidelines Calculations

8. 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.

9. 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 2013 Guidelines Manual.

b. **Offense Level Calculations**

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

ii. The offense level must be increased by 2 levels to level 8, pursuant to Guideline § 2B1.1(b)(1)(C), because the intended loss amount is \$7,716.96;

iii. The offense level must be increased by 2 levels to level 10, pursuant to Guideline § 2B1.1(b)(9)(B), because the offense involved a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding;

iv. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for her criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for her 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 her ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

v. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of her 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 of responsibility, 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, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** The anticipated offense level is 8, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range

of 0-6 months' imprisonment (Zone A), in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and her attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. 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 guideline 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 her plea on the basis of the Court's rejection of these calculations.

10. 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 her plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

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

12. 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 her guilty plea.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

13. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 14 CR 50063-2.

14. 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

15. Defendant understands that by pleading guilty she surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against her, and if she does, she 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 her 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 her unless, after hearing all the evidence, it was persuaded of her 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 her attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in her own behalf. If the witnesses for defendant would not appear voluntarily, she 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 she could decline to testify, and no inference of guilt could be drawn from her refusal to testify. If defendant desired to do so, she could testify in her own behalf.

b. **Appellate rights.** Defendant further understands she is waiving all appellate issues that might have been available if she had exercised her 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.

16. Defendant understands that by pleading guilty she 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 her, and the consequences of her waiver of those rights

Presentence Investigation Report/Post-Sentence Supervision

17. 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 her, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

18. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of her financial circumstances, including her recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of her sentence for

obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

19. For the purpose of monitoring defendant's compliance with her obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

20. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution 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 her compliance with each part of this Agreement extends throughout the period of her sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event she 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 her 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 she has read this Agreement and carefully reviewed each provision with her attorney. Defendant further acknowledges that she understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

ZACHARY T. FARDON
United States Attorney

SOULA APOSTOLOPOULOS
Defendant

MICHAEL D. LOVE
Assistant U.S. Attorney

PAUL E. GAZIANO
Attorney for Defendant