

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 13 CR 559
)
) Magistrate Judge Cox
)
BRIAN MCCARTHY)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, GARY S. SHAPIRO, and defendant BRIAN MCCARTHY, and his attorney, MARIAH MORAN, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(B), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The information in this case charges defendant with theft of property from the Federal Reserve Bank of Chicago, in violation of Title 18, United States Code, Section 2113(b).

3. Defendant has read the charge against him contained in the information, 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 theft of property from the Federal Reserve Bank of Chicago, in violation of Title 18, United States Code, Section 2113(b). In addition, as further provided below, defendant agrees to the entry of a forfeiture judgment.

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 Guideline § 1B1.3, and establish a basis for forfeiture of the property described elsewhere in this Plea Agreement:

On or about October 5, 2011, at Chicago, in the Northern District of Illinois, Eastern Division, defendant BRIAN McCARTHY did take and carry away, with the intent to steal and purloin, property of a value not exceeding \$1,000 belonging to, and in the care, custody, control, management, and possession of the Federal Reserve Bank of Chicago, a banking institution organized and operating under the laws of the United States, in violation of Title 18, United States Code, Section 2113(b).

Specifically, from on or about July 27, 2009 through on or about October 5, 2011, defendant BRIAN McCARTHY was an employee of the Federal Reserve Bank of Chicago. Defendant BRIAN McCARTHY worked as a Senior Credit Analyst in the Statistical and Financial Reporting Department of the Federal Reserve Bank in 2009 and 2010. From in or

about January 1, 2011 through in or about October 5, 2011, defendant BRIAN McCARTHY worked as a supervisor in the Statistical Support Group, where he supervised approximately seven employees. During his employment at the Federal Reserve Bank, defendant BRIAN McCARTHY had access to sensitive, confidential, proprietary, and valuable information belonging to the Federal Reserve Bank. Specifically, defendant BRIAN McCARTHY had access to financial data and information relating to the Bank's responsibility to assess and monitor its credit risk exposure. Defendant BRIAN McCARTHY was entrusted by the Federal Reserve Bank of Chicago with this sensitive information in order to carry out his job responsibilities and duties. Defendant BRIAN McCARTHY was provided training on numerous occasions about the need to maintain the confidentiality of this information, and he executed a Code of Conduct agreement on or about July 8, 2009 where defendant affirmed that he understood that he was required to leave all copies of bank computer files with the Federal Reserve Bank of Chicago when his employment ended.

On or about October 5, 2011, his last day of employment with the Federal Reserve Bank of Chicago, defendant BRIAN McCARTHY attempted to download on to his personal thumbdrive approximately 300 electronic files that were the property of the Federal Reserve Bank and contained sensitive, confidential, proprietary, and valuable information belonging to the Federal Reserve Bank and included financial data and information relating to the Bank's responsibility to assess and monitor its credit risk exposure. Defendant BRIAN McCARTHY knew that this information was confidential and was the property of the Federal Reserve Bank. Defendant BRIAN McCARTHY also knew that he was not permitted to take

these electronic files with him after he left his employment. Defendant BRIAN McCARTHY was successful in downloading to his personal thumbdrive approximately 71 electronic files, 70 of which were compressed into two zip electronic files.

On or about October 5, 2011, defendant BRIAN McCARTHY also undertook certain actions to avoid discovery that he was taking the property of the Federal Reserve Bank. For example, defendant BRIAN McCARTHY conducted internet searches on a search engine for information on declassifying files. Defendant BRIAN McCARTHY also attempted to send a confidential file to his personal electronic mail account in an attempt to circumvent the Federal Reserve Bank's information security systems.

Moreover, between in or about July 2009 and in or about January 2011, defendant BRIAN McCARTHY downloaded confidential, proprietary and valuable electronic files belonging to the Federal Reserve Bank, to which he had been provided access in order to carry out his job responsibilities. Defendant BRIAN McCARTHY stored copies of these files on his personal home computers and external media storage drives. Defendant BRIAN McCARTHY did not return these materials to the Federal Reserve Bank of Chicago prior to leaving his employment on October 5, 2011. Defendant BRIAN McCARTHY knew that this information was the property of the Federal Reserve Bank of Chicago and knew that he could not retain possession of these materials after his employment with the Federal Reserve Bank ended.

The following computer media belonging to defendant contained the sensitive, confidential, proprietary, and valuable information belonging to the Federal Reserve Bank

of Chicago: (1) IBM Thinkpad Laptop, serial number L3-9DL07; (2) IBM Thinkpad Laptop, serial number L3-ABW7G; (3) Sandisk Cruzer thumbdrive; (4) Calvary external hard drive, serial number CA2ABJ72003; and (5) Lacie external hard drive, ID# 1278904280733F2S.

The confidential and proprietary information that defendant BRIAN McCARTHY stole was information that was valuable and important to the Federal Reserve Bank of Chicago in fulfilling its duties and responsibilities.

The Federal Reserve Bank of Chicago incurred approximately \$26,400 worth of employee time from on or about October 15, 2011 through on or about December 26, 2012 to determine how much information defendant BRIAN McCARTHY downloaded and the nature of the information that he downloaded.

The Federal Reserve Bank of Chicago is a banking institution organized and operating under the laws of the United States within the meaning of Title 18, United States Code, Section 2113(f).

Maximum Statutory Penalties

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

a. A maximum sentence of one year's imprisonment. This offense also carries a maximum fine of \$100,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than one year.

b. Defendant further understands that the Court must order restitution to the victim 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 \$25 on the charge to which he 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 2012 Guidelines Manual.

b. **Offense Level Calculations.**

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

ii. The base offense level is increased by 4 levels, pursuant to Guideline §2B1.1(b)(1)(C) because the loss in this case is approximately \$26,400, which is more than \$10,000 but less than \$30,000.

iii. The base offense level is increased by 2 levels, pursuant to Guideline §2B1.1(b)(10)(C), because the offense involved sophisticated means.

iv. The base offense level is increased by 2 levels, pursuant to Guideline §3B1.3, because the offense involved an abuse of private trust.

v. 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 or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

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.** Therefore, based on the facts now known to the government, the anticipated offense level is 12, which, when combined with the anticipated criminal history category of I, and pursuant to Guideline §5G1.1(c), results in an anticipated advisory Sentencing Guidelines range of 10 to 12 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 Guideline 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 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 his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that while none of the Guideline calculations set forth above are binding on the Court or the Probation Office, the parties have agreed pursuant to Fed.R.Crim.P. 11(c)(1)(B) that certain components of those calculations – specifically, those set forth above in subparagraph (b) of this paragraph – are binding on the parties, and it shall be a breach of this Agreement for either party to present or advocate a position inconsistent with the agreed calculations set forth in the identified subparagraphs.

g. Defendant understands that with the exception of the Guideline provisions identified above as binding on the parties, the Guideline calculations set forth above are non-binding predictions, upon which neither party is entitled to rely, and are not governed by Fed. R. Crim. P. 11(c)(1)(B). Errors in applying or interpreting any of the Sentencing Guidelines (other than those identified above as binding) 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

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

11. 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.

12. Defendant agrees to pay restitution to the Federal Reserve Bank of Chicago in the amount of \$26,400, arising from the information and the relevant conduct set forth above, pursuant to Title 18, United States Code, §§ 3663(a)(3) and 3664.

13. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

14. Defendant agrees to pay the special assessment of \$25 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

Forfeiture

15. Defendant has subjected real and personal property to forfeiture, namely: (1) IBM Thinkpad Laptop, serial number L3-9DL07; (2) IBM Thinkpad Laptop, serial number L3-ABW7G; (3) Sandisk Cruzer thumbdrive; (4) Calvary external hard drive, serial number CA2ABJ72003; and (5) Lacie external hard drive, ID# 1278904280733F2S, because that property constitutes or is derived from proceeds of the offense. By entry of a guilty plea to the information, defendant acknowledges that the property identified above is subject to forfeiture.

16. Defendant agrees to the entry of a forfeiture judgment against the property identified above in that this property is subject to forfeiture. Prior to sentencing, defendant agrees to the entry of a preliminary order of forfeiture relinquishing any right of ownership he has in the above-described property and further agrees to the seizure of this property so that this property may be disposed of according to law.

17. Defendant understands that forfeiture of this property shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon defendant in addition to the forfeiture judgment.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

18. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case no. 13 CR 559.

19. 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

20. Defendant understands that by pleading guilty he 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 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.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had

exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture, in exchange for the concessions made by the United States in this Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

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

Presentence Investigation Report/Post-Sentence Supervision

21. 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.

22. 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 his financial circumstances, including his 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 his 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.

23. For the purpose of monitoring defendant's compliance with his 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

24. 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.

25. Defendant understands that pursuant to Title 12, United States Code, Sections 1785(d) and 1829, his conviction in this case will prohibit him from directly or indirectly participating in the affairs of any financial institution insured by the National Credit Union Share Insurance Fund or the Federal Deposit Insurance Corporation, except with the prior written consent of the National Credit Union Administration Board or the FDIC. Defendant further understands that if he knowingly violates this prohibition, he may be punished by imprisonment for up to five years, and a fine of up to \$1,000,000 for each day the prohibition is violated.

Conclusion

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

AGREED THIS DATE: _____

GARY S. SHAPIRO
United States Attorney

BRIAN MCCARTHY
Defendant

SUNIL R. HARJANI
Assistant U.S. Attorney

MARIAH MORAN
Attorney for Defendant