

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA

v.

ANNA M. MARTINEZ

No. 13 CR 50021

Judge Philip G. Reinhard

PLEA AGREEMENT

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

Charges in This Case

2. The superseding indictment in this case charges defendant with three counts of tax fraud, in violation of Title 26, United States Code, Section 7206(1).

3. Defendant has read the charges against her contained in the superseding indictment, and those charges have been fully explained to her by her attorney.

4. Defendant fully understands the nature and elements of the crimes 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 the following count of the superseding indictment: Count Two, which charges defendant with tax fraud in connection with the filing of her United States Individual Tax Return (Form 1040) for calendar year 2007, in violation of Title 26, United States Code, Section 7206(1).

Factual Basis

6. Defendant will plead guilty because she is in fact guilty of the charge contained in Count Two of the superseding indictment. In pleading guilty, defendant admits the following facts and that those facts establish her guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline § 1B1.3:

On or about April 15, 2008, in the Northern District of Illinois, Western Division, defendant, a resident of Rockford, Illinois, willfully made and subscribed, and caused to be made and subscribed, a United States Individual Income Tax Return (Form 1040) for the calendar year 2007, which return was verified by written declaration that it was made under penalties of perjury and filed with the Internal Revenue Service, which income tax return she did not believe to be true and correct as to every material matter in that: (1) the return stated on Schedule C, line 1, that her sole proprietorship business had gross receipts or sales of \$46,930, when in fact defendant knew that the gross receipts of her sole proprietorship business were substantially in excess of that amount in that defendant failed to include and disclose approximately \$236,524 in receipts of her sole proprietorship

business; (b) the return stated on Schedule C, line 31, that her sole proprietorship business had a net profit of \$15,974, when in fact defendant knew that the net profit of her sole proprietorship business was substantially greater than that amount; and (c) the return stated on line 12, that defendant had business income of \$15,974, when in fact defendant knew that her business income was substantially greater than that amount.

Specifically, during the calendar years 2006, 2007, and 2008, defendant was the owner and proprietor of Community Tax Service, a tax preparation business, in Rockford, Illinois. The business was operated as a sole proprietorship and defendant had no other source of income. Defendant was required to report the gross receipts and sales from Community Tax Service on Schedule C attached to her federal income tax return (Form 1040) and include the net income from the business in calculating her gross income, taxable income, and income tax.

Through Community Tax Service, defendant provided clients with a range of tax preparation services, including refund anticipation loans, for a fee. The monies received from Community Tax Service's customers (i.e. credit cards, checks and cash receipts) were deposited into several bank accounts that defendant controlled.

Community Tax Service's gross receipts or sales in 2007 were significantly greater than the \$46,903 indicated on Schedule C, line 1, of defendant's individual tax return. Defendant deposited or caused to be deposited business receipts of at least \$283,454 in calendar year 2007. On approximately April 15, 2008, defendant knowingly filed and caused to be filed her federal income tax return with the

Internal Revenue Service, which return defendant knew to be false in that defendant failed to disclose at least \$236,524 in gross receipts or sales received by Community Tax Service, in calendar year 2007. Moreover, by failing to disclose a substantial amount of gross receipts or sales, defendant also knowingly underreported Community Tax Service's net profit and her business income.

For calendar years 2006 and 2008, defendant earned income from her tax preparation business, deposited the business's receipts into bank accounts she controlled, and her individual income tax returns for tax years 2006 and 2008 failed to reflect Community Tax Service's actual gross receipts or sales, its net profit, and defendant's business income.

With respect to her calendar year 2006 tax return, on approximately April 16, 2007, defendant knowingly filed and caused to be filed her federal income tax return with the Internal Revenue Service, which return defendant knew to be false in that defendant failed to disclose at least \$68,026 in gross receipts or sales received by Community Tax Service, in calendar year 2006. Moreover, by failing to disclose a substantial amount of gross receipts or sales, defendant also knowingly underreported Community Tax Service's net profit and her business income.

With respect to her calendar year 2008 tax return, on approximately April 15, 2009, defendant knowingly filed and caused to be filed her federal income tax return with the Internal Revenue Service, which return defendant knew to be false in that defendant failed to disclose at least \$79,594 in gross receipts or sales received by Community Tax Service, in calendar year 2008. Moreover, by failing to disclose a

substantial amount of gross receipts or sales, defendant also knowingly underreported Community Tax Service's net profit and her business income.

In sum, defendant failed to report on her individual income tax return at least \$384,144 in receipts or sales received by Community Tax Service for tax years 2006 – 2008. As a result, for tax years 2006 – 2008, defendant knowingly failed to pay at least \$72,156 in taxes to the Internal Revenue Service.

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 3 years' imprisonment. This offense also carries a maximum fine of \$250,000. Defendant further understands that the Court must order costs of prosecution, estimated not to exceed \$500. Defendant further understands that the judge also may impose a term of supervised release of not more than one year.

b. 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 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 the offense or at sentencing, whichever results in a lesser sentencing range. 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 for the charge in Count Two of the indictment and the relevant conduct is 14, pursuant to Guideline §§ 2T1.1(a)(1) and 2T4.1, because the tax loss (\$72,156) resulting from defendant's conduct for tax years 2006, 2007, and 2008, was greater than \$30,000 and less than \$80,000.

ii. 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 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, results in an anticipated advisory sentencing guidelines range of 10 to 16 months' imprisonment, in addition to any supervised release and fine 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. The government agrees to recommend that the Court impose a sentence of imprisonment within the applicable guideline range and to make no further recommendation concerning what sentence of imprisonment should be imposed.

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.

13. 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.

14. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the superseding indictment.

15. Pursuant to 18 U.S.C. § 3663(a)(3), defendant agrees to pay restitution in the amount of \$72,156 to the Internal Revenue Service.

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 13 CR 50021.

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.

18. Defendant understands that nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from defendant or defendant's partnership or corporations. Defendant understands that the amount of tax as calculated by the IRS may exceed the amount of tax due as calculated for the criminal case.

Waiver of Rights

19. 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 charges 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 and that it was to consider each count of the superseding indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

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, and considering each count separately, 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.

20. 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

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 charges against her, 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 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.

23. For the purpose of monitoring defendant's compliance with her obligations to pay a fine 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 for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

25. Regarding matters relating to the Internal Revenue Service, defendant agrees as follows (nothing in this paragraph, however, precludes defendant or defendant's partnerships or corporations from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS):

a. Defendant agrees to cooperate with the Internal Revenue Service in any tax examination or audit of defendant and defendant's partnerships or corporations which directly or indirectly relates to or arises out of the course of

conduct that defendant has acknowledged in this Agreement, by transmitting to the IRS original records or copies thereof, and any additional books and records that the IRS may request.

b. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the Civil Division of the United States Attorney's Office, or an appropriate federal or state agency (including but not limited to the Internal Revenue Service), for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, defendant or defendant's partnerships or corporations. Nothing in this paragraph or the preceding paragraph precludes defendant or defendant's partnerships or corporations from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

26. Defendant recognizes that pleading guilty may have consequences with respect to her immigration status if she is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense to

which defendant is pleading guilty. Indeed, because defendant is pleading guilty to an offense that is an “aggravated felony” as that term is defined in Title 8, United States Code, Section 1101(a)(43), removal is presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including her attorney or the Court, can predict to a certainty the effect of her conviction on her immigration status. Defendant nevertheless affirms that she wants to plead guilty regardless of any immigration consequences that her guilty plea may entail, even if the consequence is her automatic removal from the United States.

Conclusion

27. 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.

28. 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.

29. 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.

30. 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.

31. 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: _____

GARY S. SHAPIRO
United States Attorney

ANNA M. MARTINEZ
Defendant

SCOTT R. PACCAGNINI
Assistant U.S. Attorney

PABLO DECASTRO
Attorney for Defendant