

FILED
At Albuquerque NM

MAY 01 2014 *ed*

MATTHEW J. DYKMAN
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
EDWARD ALBERT MARQUEZ,)
)
Defendant.)

Cr. No. 14-1444 JB

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, **EDWARD ALBERT MARQUEZ**, and the Defendant's counsel, Douglas E. Couleur:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

- 2. The Defendant further understands the Defendant's rights:
 - a. to be prosecuted by indictment;
 - b. to plead not guilty, or having already so pleaded, to persist in that plea;
 - c. to have a trial by jury; and
 - d. at a trial:
 - 1) to confront and cross-examine adverse witnesses,

- 2) to be protected from compelled self-incrimination,
- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to Counts One and Two of an information, charging a violation of 26 U.S.C. § 7206(1), that being making and subscribing a false tax return and a violation of 26 U.S.C. § 7206(2), that being aiding and assisting the presentation of a false tax return.

SENTENCING

4. The Defendant understands that the maximum penalty provided by law for each offense is:
- a. imprisonment for a period of not more than three years;
 - b. a fine not to exceed the greater of \$250,000 or twice the pecuniary gain to the Defendant or pecuniary loss to the victim;
 - c. a term of supervised release of not more than three years to follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked — even on the last day of the term — and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
 - d. the costs of prosecution;
 - e. a mandatory special penalty assessment of \$100.00; and
 - f. restitution as may be ordered by the Court.

5. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

DEFENDANT'S ADMISSION OF FACTS

6. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offenses to which I am pleading guilty beyond a reasonable doubt, including any facts alleged in the information that increase the statutory minimum or maximum penalties. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

- a. I, Edward A. Marquez, wilfully made and subscribed false tax returns and aided and assisted the presentation of false tax returns to evade and defeat the assessment of income tax liabilities by the Internal Revenue Service. Beginning in 2007 and continuing into 2009, I “skimmed” funds from the Club Tropicana bar and package liquor store in Espanola, New Mexico. Although Club Tropicana is owned by my aunt, Toni Quintana, I operated and managed the business.
- b. I caused the income generated by Club Tropicana to be reported on Schedule C to Toni Quintana’s tax returns for 2007, 2008, and 2009 by providing false income amounts to H&R Block. I knew that the Schedule Cs falsely underreported the gross income generated by the Club.

Quintana did not consent or know about the reporting of club income on her tax returns.

- c. During 2007, 2008, and 2009, I took cash from the gross receipts generated by Club Tropicana and deposited it into my personal checking account. I did not provide any information regarding the diverted income to my accountant causing my returns to be prepared with understated income. On my 2007 tax return, I reported wages totaling \$15,157. I did not report any income from Club Tropicana on my 2008 and 2009 tax returns. I knew that three tax returns falsely underreported my income from Club Tropicana.
- d. The following chart sets forth the tax loss caused by the false returns I filed and caused to be presented to the Internal Revenue Service:

<u>Year</u>	<u>Edward Marquez</u>	<u>Toni Quintana</u>
2007	\$26,475	\$75,544
2008	\$31,239	\$50,843
<u>2009</u>	<u>\$32,701</u>	<u>\$81,040</u>
Total	\$90,415	\$207,427

7. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime(s) to which the Defendant will plead guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

RECOMMENDATIONS

8. Pursuant to Rule 11(c)(1)(B), the United States and the Defendant recommend as follows:

- a. As of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Consequently, pursuant to U.S.S.G. § 3E1.1(a), so long as the Defendant continues to accept responsibility for the Defendant's criminal conduct, the Defendant is entitled to a reduction of two levels from the base offense level as calculated under the sentencing guidelines, and if applicable, a reduction of an additional offense level pursuant to U.S.S.G. § 3E1.1(b).
- b. The tax loss caused by Defendant's criminal conduct is more than \$200,000 but less than \$400,000, resulting in a base offense level of 18 pursuant to U.S.S.G. §§ 2T1.1(a)(1) and 2T4.1(G).
- c. With respect to restitution, the defendant acknowledges and agrees that, pursuant to 18 U.S.C. § 3663A, the Court must enter an order requiring the defendant to pay restitution to the Internal Revenue Service in the amount of \$297,842.00, such amount representing the tax loss which the United States can prove, beyond a reasonable doubt, through competent and admissible evidence. The restitution in the amount of \$297,842.00 shall be applied by the Internal Revenue Service to reduce the outstanding balance of taxes, penalties, and

interest owed by the defendant and Club Tropicana for the years 2007, 2008, and 2009.

- d. The Defendant understands that the above recommendations are not binding on the Court and that whether the Court accepts these recommendations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Further, the Defendant understands that the Court may choose to vary from the advisory guideline sentence. If the Court does not accept any one or more of the above recommendations and reaches an advisory guideline sentence different than expected by the Defendant, or if the Court varies from the advisory guideline range, the Defendant will not seek to withdraw the Defendant's plea of guilty. In other words, regardless of any of the parties' recommendations, the Defendant's final sentence is solely within the discretion of the Court.

9. Apart from the recommendations set forth in this plea agreement, the United States and the Defendant reserve their rights to assert any position or argument with respect to the sentence to be imposed, including but not limited to the applicability of particular sentencing guidelines, adjustments under the guidelines, departures or variances from the guidelines, and the application of factors in 18 U.S.C. § 3553(a).

10. Regardless of any other provision in this agreement, the United States reserves the right to provide to the United States Pretrial Services and Probation Office and to the Court any information the United States believes may be helpful to the Court, including but not limited to information about the recommendations contained in this agreement and any relevant conduct under U.S.S.G. § 1B1.3.

DEFENDANT'S ADDITIONAL AGREEMENT

11. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

12. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

RESTITUTION

13. The Defendant agrees and acknowledges that, as part of the Defendant's sentence, the Court is not limited to ordering restitution only for the amount involved in the particular offense or offenses to which the Defendant is entering a plea of guilty, but may and should order restitution resulting from all of the Defendant's criminal conduct related to this case.

14. In this case, the Defendant agrees to pay restitution in the total principal amount of \$297,842.

WAIVER OF APPEAL RIGHTS

15. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a defendant the right to appeal a conviction and the sentence imposed. Acknowledging that, the

Defendant knowingly waives the right to appeal the Defendant's conviction(s) and any sentence, including any fine, within or below the applicable advisory guideline range as determined by the Court, as well as any order of restitution entered by the Court. The Defendant specifically agrees not to appeal the Court's resolution of any contested sentencing factor in determining the advisory sentencing guideline range. In other words, the Defendant waives the right to appeal both the Defendant's conviction(s) and the right to appeal any sentence imposed in this case except to appeal the sentence to the extent, if any, that the Court may depart or vary upward from the advisory sentencing guideline range as determined by the Court. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) and any sentence, including any fine, pursuant to 28 U.S.C. §§ 2241 or 2255, or any other extraordinary writ, except on the issue of counsel's ineffective assistance in negotiating or entering this plea or this waiver. The appellate waiver in this plea agreement does not bar the defendant from seeking a sentence reduction pursuant to 18 U.S.C. § 3582(c), should the Sentencing Commission so authorize.

GOVERNMENT'S ADDITIONAL AGREEMENT

16. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

- a. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present information.

17. This agreement is limited to the United States Department of Justice, Tax Division, with respect to any criminal tax issues, and to the United States Attorney's Office for the District of New Mexico, with respect to any other criminal issues. This agreement does not bind any other federal, state, or local agencies or prosecuting authorities, and specifically does not bind the

Internal Revenue Service with respect to any administrative and civil proceedings it may institute. The defendant understands and acknowledges that this agreement does not prohibit, or in any way limit, the Internal Revenue Service from pursuing any administrative or civil proceeding to recover from the defendant any tax losses, fines, penalties and interest above and beyond the restitution defendant makes pursuant to this agreement.

SPECIAL ASSESSMENT

18. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$200 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

19. This document and any addenda are a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties. This agreement is effective upon signature by the Defendant and an Assistant United States Attorney.

AGREED TO AND SIGNED this 1 day of May, 2014.

DAMON P. MARTINEZ
Acting United States Attorney

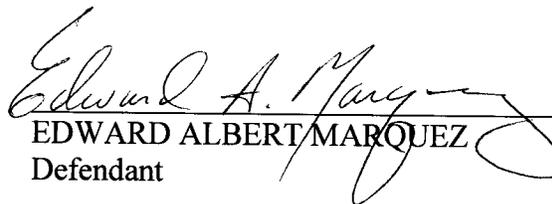


STEPHEN R. KOTZ
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I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of my client's rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.


DOUGLAS E. COULEUR
Attorney for the Defendant

I have carefully discussed every part of this agreement with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of the relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement.


EDWARD ALBERT MARQUEZ
Defendant