

U.S. Department of Justice



United States Attorney  
Western District of Pennsylvania

U.S. Post Office & Courthouse  
700 Grant Street  
Suite 4000  
Pittsburgh, Pennsylvania 15219

412/644-3500

December 10, 2009

Steven Begler, Esquire  
100 Ross Street, Floor 3  
Pittsburgh, PA 15219

Re: United States of America v.  
Randy Berger  
Criminal No. 09-335

Dear Mr. Begler:

This letter sets forth the agreement by which your client, Randy Berger, will enter a plea of guilty in the above-captioned case. The letter represents the full and complete agreement between Randy Berger and the United States Attorney for the Western District of Pennsylvania. The agreement does not apply to or bind any other federal, state, or local prosecuting authority.

Upon entering a plea of guilty, Randy Berger will be sentenced under the Sentencing Reform Act, 18 U.S.C. §3551, et seq. and 28 U.S.C. §991, et seq. The Sentencing Guidelines promulgated by the United States Sentencing Commission will be considered by the Court in imposing sentence. The facts relevant to sentencing shall be determined initially by the United States Probation Office and finally by the United States District Court by a preponderance of the evidence.

- A. The defendant, Randy Berger, agrees to the following:
1. He will waive prosecution by indictment and enter a plea of guilty to Count One of the Information at Criminal No. 09-335, charging him with violating 18 U.S.C. § 1349, pursuant to Rule 11 of the Federal Rules of Criminal Procedure. A draft copy of the Information is attached hereto as Exhibit A.

GOVERNMENT  
EXHIBIT

No. 1

LIMITED OFFICIAL  
USE

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2. He will pay mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664, to the victims and/or other persons or parties authorized by law in such amounts, at such times, and according to such terms as the Court shall direct.
3. At the time Randy Berger enters his plea of guilty, he will deposit a special assessment of \$100 in the form of cash, or check or money order payable to "Clerk, U.S. District Court". In the event that sentence is not ultimately imposed, the special assessment deposit will be returned.
4. Randy Berger waives the right to take a direct appeal from his conviction or sentence under 28 U.S.C. §1291 or 18 U.S.C. §3742, subject to the following exceptions:
  - (a) If the United States appeals from the sentence, Randy Berger may take a direct appeal from the sentence.
  - (b) If (1) the sentence exceeds the applicable statutory limits set forth in the United States Code, or (2) the sentence unreasonably exceeds the guideline range determined by the Court under the Sentencing Guidelines, Randy Berger may take a direct appeal from the sentence.

Randy Berger further waives the right to file a motion to vacate sentence, under 28 U.S.C. §2255, attacking his conviction or sentence, and the right to file any other collateral proceeding attacking his conviction or sentence.

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B. In consideration of and entirely contingent upon the provisions of Parts A and C of this agreement, the United States Attorney for the Western District of Pennsylvania agrees to the following:

1. The United States Attorney retains the right of allocation at the time of sentencing to advise the sentencing Court of the full nature and extent of the involvement of Randy Berger in the offense charged in the Information and of any other matters relevant to the imposition of a fair and just sentence.
2. Prior to sentencing, the United States Attorney will, orally or in writing, move that, pursuant to §3E1.1 of the Sentencing Guidelines, the Court reduce the offense level by 3 levels for acceptance of responsibility, on the grounds that the offense level prior to application of §3E1.1 is 16 or greater, and Randy Berger timely notified authorities of his 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.
3. The United States Attorney will take any position he deems appropriate in the course of any appeals from the sentence or in response to any post-sentence motions.

C. Randy Berger and the United States Attorney further understand and agree to the following:

1. The penalty that may be imposed upon Randy Berger is:
  - (a) A term of imprisonment of not more than 20 years;
  - (b) A fine of \$250,000;
  - (c) A term of supervised release of 3 years;
  - (d) A special assessment under 18 U.S.C. §3013 of \$100;

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- (e) Mandatory restitution under the Victim-Witness Protection Act, 18 U.S.C. §§3663, 3663A and 3664.
2. The Court shall determine the victims and/or other persons or parties who will receive restitution as authorized by law.
3. The parties stipulate that the loss associated with the conduct charged in the Information, and all relevant conduct, is between \$1,000,000 and \$2,500,000 for the purpose of the Sentencing Guidelines. This stipulation represents the parties' best understanding on the basis of the information available as of the date of this agreement. The stipulation is not binding on the Court and does not preclude the parties from bringing to the attention of the United States Probation Office or the Court any information not within their knowledge at the time this agreement is executed.
4. The parties agree that the attached stipulation is a complete and accurate account of the offense conduct, including all relevant conduct, and therefore that under § 2B1.1 of the Sentencing Guidelines, the base offense level is 7. The parties further agree that the base offense level of 7 should be raised by 16 levels under § 2B1.1(b)(1)(I) of the Guidelines.
5. The parties further agree that the adjusted base offense level should be raised by a total of 2 levels under section 3B1.3 (Abuse of Position of Trust or Special Skill) of the Guidelines.
6. The parties also agree that the adjusted base offense level should be lowered by a total of 3 levels under section 3E1.1 (Acceptance of Responsibility) of the Guidelines.
7. Thus, the parties agree that Randy Berger's overall offense level under the Sentencing Guidelines is 22.

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8. This agreement does not preclude the government from pursuing any civil or administrative remedies against Randy Berger or his property.

This letter sets forth the full and complete terms and conditions of the agreement between Randy Berger and the United States Attorney for the Western District of Pennsylvania, and there are no other agreements, promises, terms or conditions, express or implied.

Very truly yours,




ROBERT S. CESSAR  
Acting United States Attorney

I have received this letter from my attorney, Steven Begler, Esquire, have read it and discussed it with him, and I hereby accept it and acknowledge that it fully sets forth my agreement with the Office of the United States Attorney for the Western District of Pennsylvania. I affirm that there have been no additional promises or representations made to me by any agents or officials of the United States in connection with this matter.

  
\_\_\_\_\_  
RANDY BERGER

2-11-10  
\_\_\_\_\_  
Date

Witnessed by:

  
\_\_\_\_\_  
STEVEN BEGLER, ESQUIRE  
Counsel for Randy Berger

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA            )     Criminal No.  
  )     )  
  )     (18 U.S.C. § 1349)  
  )     )  
v.   )     )  
  )     )  
RANDY BERGER                         )     )

INFORMATION

The United States Attorney charges:

INTRODUCTION

1. At all material times to the information, the defendant, RANDY BERGER, and an individual known to the United States Attorney as EB, operated a mortgage business called All Credit Finance that assisted individuals to obtain financing collateralized by real estate.

COUNT ONE

THE CONSPIRACY AND ITS OBJECTS

2. From in and around September 2000, and continuing thereafter until in and around May 2005, in the Western District of Pennsylvania and elsewhere, the defendant, RANDY BERGER, knowingly and willfully did conspire, combine, confederate and agree with other persons known to the United States Attorney, to commit an offense against the United States, that is, Wire Fraud, in violation of Title 18, United States Code, Section 1343.

MANNER AND MEANS OF THE CONSPIRACY

3. It was a part of the conspiracy that the defendant, RANDY BERGER, with the assistance of other members of the conspiracy, submitted loan applications that, as the defendant, RANDY BERGER,

then well knew, contained material misrepresentations about the borrowers' financial condition.

4. It was further a part of the conspiracy that the defendant, RANDY BERGER, with the assistance of other members of the conspiracy, submitted false documents in connection with the loan applications, including but not limited to, appraisals that inflated the true value of the properties, appraisals that represented that they were prepared by licensed appraisers when they were really prepared by unlicensed appraisers, and employment and income verification documents that misrepresented the borrowers' employment status and overstated the borrowers' income.

5. It was further a part of the conspiracy that the defendant, RANDY BERGER, with the assistance of other members of the conspiracy, directed and caused payments associated with the loan transactions to be distributed contrary to the representations to the lender about how the loan proceeds would be distributed.

6. It was further a part of the conspiracy that the defendant, RANDY BERGER, and other members of the conspiracy submitted and caused the submission of fraudulent loan applications and other fraudulent documents through the use of the interstate wires, in furtherance of the Wire Fraud scheme.

7. It was further a part of the conspiracy that the defendant, RANDY BERGER, caused wire transfers from the accounts of the lending institutions located outside the Commonwealth of Pennsylvania, to the account of the closing agent located in the

Commonwealth of Pennsylvania, in furtherance of the Wire Fraud scheme.

All in violation of Title 18, United States Code, Section 1349.

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ROBERT S. CESSAR  
Acting United States Attorney  
PA ID No. 47736