

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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SOUTHERN DISTRICT OF INDIANA
LAURA A. BRIGGS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 BEVERLY ROSS,)
)
 Defendant.)

Cause No. 1:08-cr-00017
1:08-cr-00018

GUILTY PLEA AGREEMENT UNDER RULE 11(c)(1)(C)

The United States of America, by counsel, Timothy M. Morrison, United States Attorney for the Southern District of Indiana, Gayle L. Helart and Bradley P. Shepard, Assistant United States Attorneys, and the defendant, BEVERLY ROSS, in person and by counsel, William H. Dazey, Jr., hereby inform the Court that a Guilty Plea Agreement has been reached in this cause pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). The following are its terms and conditions:

Plea of Guilty to Certain Counts of the Indictments

1. The defendant agrees to plead guilty to Count 6 of 1:08-cr-00017 (hereinafter "Bankruptcy Fraud Indictment").

A. Count 6 charges that the defendant filed or caused to be filed one or more voluntary petitions under Title 11 of the United States Code in furtherance of a scheme or artifice to defraud, in violation of 18 U.S.C. § 157.

1) **Potential Maximum Penalty:** This offense may be punished by a term of imprisonment of 5 years, a fine of up to \$250,000, and a term of supervised release following any term of imprisonment for up to three

years.

- 2) **Elements:** To sustain this charge, the government must prove the following propositions beyond a reasonable doubt: (1) the defendant knowingly created a scheme to defraud; (2) the defendant filed, or caused to be filed, a bankruptcy petition; and (3) the filing was for the purpose of executing, concealing, or attempting to execute and/or conceal the scheme to defraud.

2. The defendant agrees to plead guilty to Count 2 of 1:08-cr-00018 (hereinafter "Wire Fraud Indictment") which charges a violation of Title 18, United States Code, Section 1343, wire fraud.

- A). **Potential Maximum Penalty.** A violation of Title 18, United States Code, Section 1343 is punishable by a maximum sentence of twenty (20) years imprisonment, a \$250,000 fine, and three (3) years supervised release.
- B) **Elements:** To sustain this charge, the government must prove the following propositions beyond a reasonable doubt: (1) the defendant knowingly devised or participated in the scheme to defraud; (2) the defendant did so knowingly and with the intent to defraud; and (3) that for the purpose of carrying out the scheme to defraud, the defendant caused interstate wire communications to take place.

GENERAL PROVISIONS

3. The defendant understands that this Plea Agreement is governed by Federal Rule of Criminal Procedure 11(c)(1)(C) and that the parties have agreed upon the specific sentencing

range set forth in this Plea Agreement. The parties understand that the Court must accept or reject the sentencing range specified in this Plea Agreement and impose a sentence within this range. If the Court rejects this Plea Agreement, then either party may withdraw from this Plea Agreement.

4. The defendant understands that this plea agreement is based upon the information presently known to the United States Attorney for the Southern District of Indiana.

SPECIFIC PROVISIONS

5. **Sentencing Recommendation Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C):** The parties agree as follows:

- A. The Court should sentence the defendant to a term of imprisonment that falls within a range of 0 to 63 months. Both parties are free to recommend a specific sentence within this range and the Court may impose a sentence anywhere within this range.
- B. The Court should place the defendant on supervised release following her release from imprisonment for three years. The defendant acknowledges that the term of supervised release shall be three years on the Bankruptcy Fraud Indictment and three years on the Wire Fraud Indictment which will run concurrently to one another.
- C. The Court should not impose a fine, and the parties shall not request one in light of the restitution that will be ordered at sentencing.

6. **Restitution:** The parties understand that 18 U.S.C. § 3663A requires mandatory restitution for the offenses charged in the Indictments. The amount owed in restitution is set forth below:

Party	Amount ¹
GN Mortgage/Guaranty Bank	\$58,289
Argent Mortgage	\$42,977
Money Station	\$314,208
First Franklin	\$153,827
Accredited Home Lenders	\$267,540
Southstar Mortgage	\$135,198
Lime Financial	\$634,484
First Magnus Liquidating Trust	\$470,328
Irwin Mortgage	\$508,483
HLB Mortgage	\$440,737
Novastar	\$265,834
Mortgage IT	\$979,317
Freedom Home Mortgage	\$1,349,186
Total	\$5,620,408

7. **Special Assessment:** The defendant agrees to pay a mandatory special assessment of \$200 in the manner directed by the Court, pursuant to Title 18, United States Code, Section 3013.

8. **Waiver of Appeal:** The defendant understands that she has a statutory right to appeal the conviction and sentence imposed and the manner in which the sentence was determined. Acknowledging this right and in exchange for the concessions made by the United States in this Plea Agreement, the defendant expressly waives her right to appeal her conviction

¹ Amount does not include Sheriff's sale costs on properties that are the subject of the Bankruptcy Fraud Indictment and the Wire Fraud Indictment which are to be determined.

on any ground. The defendant also waives her right to appeal the sentence imposed, including the right to appeal conferred by Title 18, United States Code, Section 3742, on any ground, so long as the Court sentences her to a term of imprisonment of 63 months or lower. The defendant also waives the right to contest the sentence imposed and the manner in which it was determined in any collateral attack, including an action brought under Title 28, United States Code, Section 2255 on any ground so long as the Court sentences her to a term of imprisonment of 63 months or lower. This waiver of appeal specifically includes all provisions of the guilty plea and sentence imposed in this case, including the term of supervised release and the amount of any restitution, fine, or forfeiture.

9. The defendant will provide all requested financial information to the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Indiana for use in the collection of any fines imposed by the Court.

10. The defendant understands that the obligations of the government in this Plea Agreement are expressly contingent upon her abiding by federal and state laws.

11. The defendant acknowledges and agrees that nothing in this agreement shall protect her in any way from prosecution for any offense not specifically covered by this agreement, or not known to the government at this time.

12. Nothing in this agreement shall protect the defendant in any way from prosecution for any offense committed after the date of this agreement.

SENTENCING GUIDELINES STIPULATIONS

13. Pursuant to § 6B1.4 of the Sentencing Guidelines, the parties agree to the Stipulations below. The parties understand and agree that these Stipulations are binding on the parties, but are only a recommendation to the Court and that the Court will determine the

sentencing guidelines applicable in this case. The parties agree that no stipulation regarding any factors in Chapter 4, Criminal History Category, of the Sentencing Guidelines has been made, and that such determination will be made by the Court.

Count Six of the Bankruptcy Fraud Indictment

14 The parties stipulate that U.S.S.G. § 2B1.1 covers violations of 18 U.S.C. § 157 and that the base offense level is six (6).

- (A). The parties stipulate that a two (2) level increase applies because the offense involved a fraudulent action during the course of a bankruptcy proceeding. U.S.S.G. § 2B1.1(b)(8)(B)

Count Two of the Wire Fraud Indictment

15. The parties stipulate that U.S.S.G. § 2B1.1 covers violations of 18 U.S.C. § 1343 and that the base offense level is seven (7).

- (A). The parties stipulate that an 18 level increase applies because the offense involved a loss exceeding \$2,500,000. U.S.S.G. § 2B1.1(b)(1)(J).
- (B). The parties stipulate that a two (2) level increase applies because the offense involved 10 or more victims. U.S.S.G. § 2B1.1(b)(2)(A).
- (C). The parties disagree as to whether a two (2) level increase applies because the offense involved a fraudulent action during the course of a bankruptcy proceeding. U.S.S.G. § 2B1.1(b)(8)(B).

Total Offense Level for Both Indictments

16. The parties stipulate that Count 6 of the Bankruptcy Fraud Indictment and Count 2 of the Wire Fraud Indictment are to be grouped pursuant to U.S.S.G. § 3D1.2(d).

17. The government believes the offense level for both Indictments is 29, while the

defense believes the offense level for both Indictments is 27.

18. **Acceptance of Responsibility.** Two (2) levels are subtracted pursuant to U.S.S.G. § 3E1.1(a) because the defendant has timely accepted responsibility for her conduct. In addition, one (1) level is subtracted pursuant to U.S.S.G. § 3E1.1(b) because the defendant has assisted the government in the investigation or prosecution of her own conduct by timely notifying the government of her intention to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently.

FINAL PROVISION

19. The defendant acknowledges that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this document, to induce the defendant to plead guilty. This document is the complete and only plea agreement between the defendant and the United States Attorney for the Southern District of Indiana and supersedes any and all other agreements. This plea agreement may be modified only by the parties either in writing signed by all parties, or on the record in open court.

Respectfully submitted,

TIMOTHY M. MORRISON
United States Attorney

8-11-09
DATE

Gayle L. Helart
Gayle L. Helart
Assistant United States Attorney

8-11-09
DATE

Bradley P. Shepard
Bradley P. Shepard
Assistant United States Attorney

8/11/09
DATE

Christina McKee
Christina McKee
Chief, Criminal Division

8-11-09
DATE

BEVERLY ROSS
BEVERLY ROSS
Defendant

8-11-09
DATE

William H. Dazey, Jr.
William H. Dazey, Jr.
Attorney for Defendant

STATEMENT OF THE DEFENDANT

I have read the entire Plea Agreement and discussed it with my attorney.

I understand all the terms of the Plea Agreement and those terms correctly reflect the results of plea negotiations.

I am fully satisfied with my attorney's representation during all phases of this case.

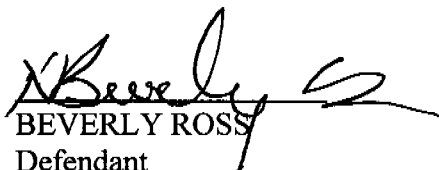
I am freely and voluntarily pleading guilty in this case.

I am pleading guilty as set forth in this Plea Agreement because I am guilty of the crime to which I am entering my plea.

My attorney has informed me, and I understand, that I have the right to appeal any conviction and sentence that I receive, unless I have waived my right to appeal as part of this Plea Agreement. If I have not waived my right to appeal, I understand that I must file a Notice of Appeal within 10 days of the entry of the judgment in this case; I further understand that the Clerk of the Court will prepare and file a Notice of Appeal on my behalf if I ask that to be done. I also understand that the United States has the right to appeal any sentence that I receive under this Plea Agreement.

Finally, my attorney has informed me, and I understand, that if I provide or cause to be provided materially false information to a judge, magistrate judge, or probation officer, then Section 3C1.1 of the Sentencing Guidelines allows the Court to impose a two (2) level increase in the offense level.

8-11-09
DATE


BEVERLY ROSS
Defendant