

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 08-03134-02-CR-S-GAF
)
 CHERYL JOAN KASSEBAUM,)
)
 Defendant.)

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. The Parties. The parties to this agreement are the United States Attorney’s Office for the Western District of Missouri (otherwise referred to as “the Government” or “the United States”), represented by Matt J. Whitworth, Acting United States Attorney, and Douglas C. Bunch, Assistant United States Attorney, and the defendant, Cheryl Joan Kassebaum (“the defendant”), represented by Christopher J. Angles.

The defendant understands and agrees that this plea agreement is only between her and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal, state, or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant’s Guilty Plea. The defendant is charged in Counts Two and Thirty through Forty-three of a fifty-five-count indictment that was filed in this case on November 20, 2008. Count Two of the indictment charges the defendant with conspiring to commit offenses against the United States in violation of 18 U.S.C. § 371, and Counts Thirty through Forty-three

charge the defendant with substantive offenses that were the object of the conspiracy charged in Count Two, that is, wire fraud in violation of 18 U.S.C. § 3143, and spending a portion of the proceeds obtained through the wire fraud in violation of 18 U.S.C. § 1957. The defendant agrees promptly to enter a plea of guilty to Counts Two, Thirty-eight and Thirty-nine of the indictment. By entering into this plea agreement, the defendant admits that she knowingly committed these offenses, and is in fact guilty of these offenses.

3. Factual Basis for Guilty Plea. The parties agree that the following facts are true:

Each fact alleged in Count Two, The Scheme for Counts Thirty through Forty-three, and Counts Thirty through Forty-three of the indictment.

The defendant voluntarily, intentionally and knowingly participated in a conspiracy to obtain mortgage loans for the purchase of a home based on false loan applications, and to return a significant portion of the loan proceeds so obtained to the purchasers of the homes (who also were the borrowers) without the lender's knowledge and outside the closing of the home purchase. The members of the conspiracy also included the defendant's husband, Scott Allen Kassebaum, Ricky Dean Unruh, and Charles M. Davis. The defendant's role in the conspiracy was to prepare and submit, or cause others to prepare and submit, and, on occasion, to execute loan applications to lenders that she knew were false, and to facilitate the return of a significant portion of the loan proceeds to herself and other purchasers/borrowers without the lender's knowledge and outside the closing of the home purchase by routing the returned proceeds through Master Marketing Consultants and then through Metro Consulting Group. The defendant knew that the loan applications she prepared and submitted, or caused to be prepared and submitted, and, on occasion, executed were false in that the loan applications included overstatements of income and understatements or omissions of liabilities, and falsely represented that the purchaser/borrower intended to reside in the home to be purchased. Also, the defendant and each of the purchasers/borrowers involved in the conspiracy knew the amount of the loan proceeds that would be returned to them without the lender's knowledge and outside of closing before they obligated themselves to purchase the home and apply for a home mortgage loan.

In the course of the conspiracy, the defendant and other members of the conspiracy caused loan proceeds obtained from First Magnus, Homecomings Financial and Countrywide Financial through false loan applications the defendant caused to be prepared and submitted and, on two occasions, executed to

be transmitted electronically over telephone lines from locations outside Missouri to locations in the Southern Division of the Western District of Missouri as described in Counts Thirty, Thirty-two and Thirty-eight, and then caused a significant portion of those proceeds to be deposited into and then withdrawn from accounts at FDIC-insured financial institutions in the process of returning a portion of the loan proceeds to the defendant and her husband as described in Counts Thirty-one, Thirty-three and Thirty-nine without the lender's knowledge and outside the closing of the home purchase.

The readily provable economic loss attributable to the defendant's criminal conduct described above is more than \$400,000 but less than or equal to \$1,000,000 (the aggregate loan proceeds obtained through false loan applications involving the defendant, and returned to the defendant and other purchasers/borrowers without the lender's knowledge and outside the closing of the home purchase is \$497,200).

4. Use of Factual Admissions. The defendant acknowledges, understands and agrees that the admissions contained in Paragraph 3 and other portions of this plea agreement will be used for the purpose of determining her guilt and advisory sentencing range under the United States Sentencing Guidelines ("U.S.S.G."), including the calculation of the defendant's offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the indictment as well as all other uncharged related criminal activity may be considered as "relevant conduct" pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charges to which she is pleading guilty.

5. Statutory Penalties. The defendant understands that upon her plea of guilty to Counts Two, Thirty-eight and Thirty-nine of the indictment, the maximum sentence for these offenses is as follows.

On Count Two, the Court may impose a statutory maximum term of imprisonment of not more than 5 years followed by a term of not more than 3 years supervised release, and a fine of not more than \$250,000.

On Count Thirty Eight, the Court may impose a statutory maximum term of imprisonment of not more than 30 years followed by a term of not more than 5 years supervised release, and a fine of not more than \$1,000,000.

On Count Thirty-nine, the Court may impose a statutory maximum term of imprisonment of not more than 10 years followed by a term of not more than 3 years supervised release, and a fine of not more than the greater of \$250,000 or twice the amount of the criminally derived property.

On each count, the Court must impose restitution for the offense of conviction, and must impose a special assessment in the amount of \$100. The defendant agrees to pay the special assessment to the Clerk of the Court in full at the time of sentencing.

The defendant further understands that Count Two is a Class D felony, Count Thirty-eight is a Class B felony, and Count Thirty-nine is a Class C felony. The defendant also understands the following. The Court may order the term of imprisonment imposed on a count to run consecutively to any term of imprisonment imposed on another count. Terms of supervised release run concurrently.

6. Sentencing Procedures. The defendant acknowledges, understands and agrees to the following:

- a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are advisory in nature, and the Court may impose a sentence either less than or greater than the

defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";

b. the Court will determine the defendant's applicable Sentencing Guidelines range at the time of sentencing;

c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of up to 5 years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one year is imposed;

d. if the defendant violates a condition of her supervised release, the Court may revoke her supervised release and impose an additional period of imprisonment of up to 3 years (2 years on each of Counts Two and Thirty-nine) without credit for time previously spent on supervised release (additional terms of imprisonment imposed on revocation of supervised release may be imposed to run consecutively to one another). In addition to a new term of imprisonment, the Court also may impose a new period of supervised release, the length of which cannot exceed 5 years (3 years for Counts Two and Thirty-nine), less the term of imprisonment imposed upon revocation of the defendant's first supervised release;

e. the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range;

f. any sentence of imprisonment imposed by the Court will not allow for parole;

g. the Court must order restitution to be paid to victims of the offenses of conviction, and may order restitution to be paid to victims of the conduct charged in any dismissed counts of the indictment, and all other uncharged related criminal activity;

h. the Court is not bound by any recommendation regarding the sentence to be imposed or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Office; and

i. the defendant may not withdraw her guilty plea solely because of the nature or length of the sentence imposed by the Court.

7. Government's Agreements. Based upon the evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea

agreement, (i) agrees to recommend a sentence of imprisonment near or, if the low end of the imprisonment guideline range is greater than zero, at the low end of the imprisonment guideline range the Court determines is applicable to the offenses of conviction, (ii) agrees not to bring any additional charges against the defendant for any federal criminal offenses related to the crimes charged in the indictment for which it has venue and which arose out of the defendant's conduct that is presently disclosed by the evidence in the case, and (iii) agrees, following the defendant's sentencing on the offenses of conviction, to dismiss Counts Thirty through Thirty-seven and Forty through Forty-three of the indictment as to the defendant.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives her right to challenge the initiation of the dismissed or additional charges against her if she breaches this agreement. The defendant expressly waives her right to assert a statute of limitations defense if the dismissed or additional charges are initiated against her following a breach of this agreement. The defendant further understands and agrees that if the Government elects to file additional

charges against her following her breach of this plea agreement, she will not be allowed to withdraw her guilty pleas.

8. Preparation of Presentence Report. The defendant understands the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character, and conduct of the defendant, including the entirety of her criminal activities. The defendant understands these disclosures are not limited to the counts to which she has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. Withdrawal of Plea. Either party reserves the right to withdraw from this plea agreement for any or no reason at any time prior to the entry of the defendant's plea of guilty and its formal acceptance by the Court. In the event of such withdrawal, the parties will be restored to their pre-plea agreement positions to the fullest extent possible. However, after the plea has been formally accepted by the Court, the defendant may withdraw her pleas of guilty only if the Court rejects the plea agreement or if the defendant can show a fair and just reason for requesting the withdrawal. The defendant understands that if the Court accepts her pleas of guilty and this plea agreement but subsequently imposes a sentence that is outside the

defendant's applicable Sentencing Guidelines range, or imposes a sentence that the defendant does not expect, like or agree with, she will not be permitted to withdraw her pleas of guilty.

10. Agreed Guidelines Applications. With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. The Sentencing Guidelines do not bind the Court and are advisory in nature. The Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable";

b. The applicable Chapter Two Guidelines section for Count Two is U.S.S.G. § 2X1.1, for Count Thirty-eight is U.S.S.G. § 2B1.1, and for Count Thirty-nine is U.S.S.G. § 2S1.1;

c. The defendant has admitted her guilt and clearly accepted responsibility for her actions, and has assisted authorities in the investigation or prosecution of her own misconduct by timely notifying authorities of her intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. Therefore, the Government presently anticipates she will be entitled to a three-level reduction pursuant to § 3E1.1(b) of the Sentencing Guidelines if her offense level before adjustment for acceptance of responsibility is 16 or greater, and a two-level reduction otherwise. The Government presently anticipates that, at the time of sentencing, it will file a written motion with the Court to that effect, unless the defendant (1) fails to abide by all of the terms and conditions of this plea agreement and her pretrial release; or (2) attempts to withdraw her guilty plea, violates the law, or otherwise engages in conduct inconsistent with her acceptance of responsibility;

d. There is no agreement between the parties regarding the defendant's criminal history category and other Chapter Four adjustments. The parties agree that the Court will determine the defendant's applicable criminal history category and other Chapter Four adjustments after receipt of the presentence investigation report prepared by the United States Probation Office;

e. The defendant understands that the estimate of the parties with respect to the Guidelines computation set forth in the subsections of this paragraph does not bind the Court or the United States Probation Office with respect to the appropriate Guidelines levels. Additionally, the failure of the Court to accept these stipulations will not, as outlined in Paragraph 9 of this plea agreement, provide the defendant with a basis to withdraw her pleas of guilty;

f. The United States agrees not to seek an upward departure from the Guidelines or a sentence outside the Guidelines range, and the defendant agrees to not seek a downward departure from the Guidelines or a sentence outside the Guidelines range. The agreement by the parties to not seek a departure from or sentence outside the Guidelines is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law, including any sentence outside the applicable Guidelines range that is not “unreasonable”;

g. The defendant consents to judicial fact-finding by a preponderance of the evidence for all issues pertaining to the determination of the defendant’s sentence, including the determination of any mandatory minimum sentence (including the facts that support any specific offense characteristic or other enhancement or adjustment), and any legally authorized increase above the normal statutory maximum. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to have those facts alleged in the indictment. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence, may consider any reliable information, including hearsay; and

h. The defendant understands and agrees that the factual admissions contained in Paragraphs 3 and 4 of this plea agreement, and any admissions that she will make during her plea colloquy, support the imposition of the agreed Guidelines calculations contained in this agreement.

11. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in Paragraph 10, and its subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. Change in Guidelines Prior to Sentencing. The defendant agrees that if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by the defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the United States at its option. If the Government exercises its option to

void the plea agreement, the United States may charge, reinstate, or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. Government's Reservation of Rights. The defendant understands that the United States expressly reserves the right in this case to:

- a. oppose or take issue with any position advanced by the defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;
- b. comment on the evidence supporting the charges in the indictment;
- c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentence imposed and that the United States remains free on appeal or collateral proceedings to defend the legality and propriety of the sentence actually imposed, even if the Court chooses not to follow any recommendation made by the United States; and
- d. oppose any post-conviction motions for reduction of sentence, or other relief.

14. Waiver of Constitutional Rights. The defendant, by pleading guilty, acknowledges that she has been advised of, understands, and knowingly and voluntarily waives the following rights:

- a. the right to plead not guilty and to persist in a plea of not guilty;
- b. the right to be presumed innocent until her guilt has been established beyond a reasonable doubt at trial;
- c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;
- d. the right to confront and cross-examine the witnesses who testify against her;
- e. the right to compel or subpoena witnesses to appear on her behalf; and
- f. the right to remain silent at trial, in which case her silence may not be used against her.

The defendant understands that by pleading guilty, she waives or gives up those rights and that there will be no trial. The defendant further understands that if she pleads guilty, the Court may ask her questions about the offense or offenses to which she pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, her answers may later be used against her in a prosecution for perjury or making a false statement. The defendant also understands she has pleaded guilty to a felony offense and, as a result, will lose her right to possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury.

15. Waiver of Appellate and Post-Conviction Rights.

a. The defendant acknowledges, understands and agrees that by pleading guilty pursuant to this plea agreement she waives her right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement.

b. The defendant retains her right to appeal any Sentencing Guidelines issues that have not been agreed upon by the parties. However, the defendant otherwise expressly waives her right to appeal her sentence, directly or collaterally, on any ground except claims of (1) ineffective assistance of counsel; (2) prosecutorial misconduct; (3) a sentence imposed in excess of the statutory maximum; or (4) an illegal sentence. An illegal sentence is a sentencing error more serious than a misapplication of the Sentencing Guidelines, an abuse of discretion, or the imposition of an unreasonable sentence. However, if the United States exercises its right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government's appeal, cross-appeal her sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

16. Waiver of FOIA Request. The defendant waives all of her rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including,

without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

17. Waiver of Claim for Attorney's Fees. The defendant waives all of her claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

18. Defendant's Agreement to Destruction of Biological Evidence. In accordance with 18 U.S.C. § 3600A(c)(2), the defendant knowingly and voluntarily waives her right to request DNA testing of any biological evidence which may have been obtained or seized by law enforcement in her case. Defendant agrees that all biological evidence which may have been obtained or seized may be destroyed by law enforcement authorities.

19. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the Probation Office or the Court that is intentionally misleading, incomplete, or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw her pleas of guilty.

The defendant also understands and agrees that in the event she violates this plea agreement, all statements made by her to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by her before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against her in any and all criminal

proceedings. The defendant waives any rights that she might assert under the United States Constitution, any statute, Federal Rule of Criminal Procedure 11(f), Federal Rule of Evidence 410, or any other federal rule that pertains to the admissibility of any statements made by her subsequent to this plea agreement.

20. Defendant's Representations. The defendant acknowledges that she has entered into this plea agreement freely and voluntarily after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that she is satisfied with the assistance of counsel, and that counsel has fully advised her of her rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement and any written supplemental agreement that might be presented to the Court in camera, have been made by the United States, the Court, her attorney or any other party to induce her to enter her plea of guilty.

21. No Undisclosed Terms. The United States and the defendant acknowledge and agree that the above-stated terms and conditions, together with any written supplemental agreement that might be presented to the Court in camera, constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement or any written supplemental agreement do not constitute any part of the parties' agreement and will not be enforceable against either party.

22. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement and any written supplemental agreement should be interpreted according to general contract principles and the words employed are to be given their normal and ordinary meanings. The parties further agree

that, in interpreting this agreement and any written supplemental agreement, any drafting errors or ambiguities are not to be automatically construed against either party, whether or not that party was involved in drafting or modifying this agreement.

Matt J. Whitworth
Acting United States Attorney

7/21/2009
Dated _____

/s/ Douglas C. Bunch
By _____
Douglas C. Bunch
Assistant United States Attorney

I have consulted with my attorney and fully understand all of my rights with respect to the offenses charged in Counts Two, Thirty-eight and Thirty-nine of the indictment. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this plea agreement and I voluntarily agree to it.

7-21-09
Dated _____

/s/ Cheryl Joan Kassebaum

Cheryl Joan Kassebaum
Defendant

I am the defendant's attorney. I have fully explained to the defendant her rights with respect to the offenses charged in Counts Two, Thirty-eight and Thirty-nine of the indictment. Further, I have reviewed with her the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with her. To my knowledge, the defendant's decision to enter into this plea agreement is an informed and voluntary one.

7-21-09
Dated _____

/s/ Christopher J. Angles

Christopher J. Angles
Attorney for Defendant