

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION

09 APR 30 PM 12:14

SOUTHERN DISTRICT
OF INDIANA
LAURA A. BERGGS
CLERK

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

MARK ROTH,)

Defendant.)

1:09-cr-0069 SEB -KPF
Cause No. 1:09-CR- -01- /KPF

PLEA AGREEMENT

The United States of America, by counsel, Timothy M. Morrison, United States Attorney for the Southern District of Indiana, and Susan H. Dowd, Assistant United States Attorney, and the Defendant, MARK ROTH (hereinafter ROTH), in person and by counsel, Bruce D. Brattain, hereby inform the Court that a Plea Agreement has been reached in this cause, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(b), and the following are its terms and conditions:

1. ROTH will waive indictment and plead guilty to a two-count Information, which alleges that he committed the following offenses: Wire Fraud, in violation of Title 18, United States Code, Section 1343, a felony offense which may be punished by a prison term of not more than twenty (20) years, a fine of not more than \$250,000.00, and a term of supervised release of not more than three years following any term of imprisonment (Count 1); and Money Laundering, in violation of Title 18, United States Code, Section 1957, a felony offense which may be punished by a prison term of not more than ten (10) years, a fine of not more than \$250,000.00, and a term of supervised release of not more than three years following any term of

imprisonment (Count 2).

2. Title 18, United States Code, Section 1343 (Wire Fraud) consists of the following elements:

- A. The defendant knowingly devised or participated in the scheme to defraud or to obtain money or property by means of false pretenses, representations or promises as described in Count 1 of the Information;
- B. The defendant did so knowingly and with the intent to defraud;
- C. For the purposes of carrying out the scheme or attempting to do so, the defendant used or caused interstate wire communications to take place in the manner charged in Count 1 of the Information.

Title 18, United States Code, Section 1957 (Money Laundering) consists of the following elements:

- A. The defendant engaged or attempted to engage in a monetary transaction;
- B. The defendant knew that the transaction involved criminally derived property;
- C. The property had a value greater than \$10,000;
- D. The property was derived from wire fraud;
- E. The transaction occurred in the United States.

3. ROTH agrees and understands that the Court will use its discretion to fashion a sentence within the statutory range set forth in Paragraph 1. ROTH agrees and understands that the Court will consider the factors set forth in Title 18, United States Code, Section 3553(a) in determining the appropriate sentence within the statutory range. ROTH agrees and understands that the Court will also consult and take into account the United States Sentencing Guidelines ("Sentencing Guidelines" or "U.S.S.G.") in determining the appropriate sentence within the

statutory range. ROTH agrees and understands that the Sentencing Guidelines are not mandatory or binding on the Court, but are advisory in nature. ROTH agrees and understands that the final determination of the sentence, including the applicable advisory guidelines calculation, criminal history category, and advisory sentencing guidelines range will be made by the Court.

4. ROTH acknowledges that this plea agreement is governed by Federal Rule of Criminal Procedure 11(c)(1)(B) and that the determination of his sentence is within the discretion of the Court. ROTH understands that if the Court decides to impose a sentence higher or lower than any recommendation of either party, or determines a different advisory sentencing guideline range applies in this case, then ROTH will not be permitted to withdraw his plea of guilty for that reason and will be bound by his plea of guilty. ROTH agrees and understands that the Court will use its discretion to fashion a sentence within the statutory range set forth in Paragraph 1. ROTH agrees and understands that the Court will consider the factors set forth in Title 18, United States Code, Section 3553(a) in determining the appropriate sentence within the statutory range. ROTH agrees and understands that the Court will also consult and take into account the United States Sentencing Guidelines ("Sentencing Guidelines" or "U.S.S.G.") in determining the appropriate sentence within the statutory range. ROTH agrees and understands that the Sentencing Guidelines are not mandatory or binding on the Court, but are advisory in nature. ROTH agrees and understands that the final determination of the sentence, including the applicable advisory guidelines calculation, criminal history category, and advisory sentencing guidelines range will be made by the Court.

5. ROTH agrees to pay a total of \$200.00 on the date of the sentencing to the Clerk, United States District Court, which amount represents the mandatory special assessment fee

imposed, pursuant to Title 18, United States Code, Section 3013.

6. ROTH agrees to 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 or restitution imposed by the Court.

7. ROTH acknowledges and agrees that nothing in this agreement shall protect him in any way from prosecution for any offense not specifically covered by this agreement. The government agrees not to bring any other charges against ROTH regarding the facts and circumstances set forth in the two counts of the Information.

8. At the time of sentencing, the government will recommend to the Court that the Court impose a sentence within the advisory sentencing guidelines range which the Court finds applicable to ROTH. ROTH is free to argue for any sentence he deems appropriate, including a sentence below the advisory sentencing guidelines range.

9. The government agrees not to oppose any request made by ROTH for a Court recommendation that ROTH serve any period of imprisonment in a specific facility. ROTH acknowledges and understands that any Court recommendation does not bind the United States Bureau of Prisons.

10. ROTH understands and agrees that, at the time of sentencing for this offense, the government will ask the Court for an order of restitution. ROTH understands and agrees that Title 18, United States Code, Section 3663A provides for mandatory restitution in this case.

11. ROTH understands that he 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,

ROTH agrees that in the event the Court sentences ROTH to a sentence within or below the advisory sentencing guidelines range the Court finds applicable to him, ROTH expressly waives his right to appeal the conviction and sentence imposed on any ground, including the right to appeal conferred by Title 18, United States Code, Section 3742. Additionally, ROTH also expressly agrees not to contest his sentence or the manner in which it was determined in any collateral attack, including but not limited to, an action brought under Title 28, United States Code, Section 2255.

SENTENCING GUIDELINES STIPULATIONS

12. Pursuant to Section 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 advisory sentencing guidelines applicable in this case. ROTH understands that he may not revoke his plea of guilty merely because the Court fails to follow the stipulations of the parties. 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.

A. The government and ROTH agree that the grouping rules under Sentencing Guidelines Section 3D1.2 and 3D1.3(a) apply as follows: Counts 1 and 2 group pursuant to Section 3D1.2(b), and the total offense level is the highest offense level of the counts in the Group (here, the money laundering offense guideline governing Count 2).

Count 1

B. The government and ROTH agree that the base offense level is seven (7), pursuant to Section 2B1.1(a)(1).

C. The government and ROTH agree that the base offense level should be increased by sixteen (16) levels, pursuant to Section 2B1.1(b)(1)(I), because the amount of the loss is more than \$1,000,000.00, but less than \$2,500,000.00.

D. The government and ROTH agree that the adjusted offense level for Count 1 is twenty-three (23).

Count 2

E. The government and ROTH agree that the base offense level is twenty-three (23), pursuant to Section 2S1.1(a)(1), the offense level for the underlying offense from which the laundered funds were derived.

F. The government and ROTH agree that the base offense level should be increased by one (1) level, pursuant to Section 2S1.1(b)(2)(A), because the defendant was convicted under Title 18, United States Code, Section 1957.

G. The government and ROTH agree that the adjusted offense level for Count 2 is twenty-four (24).

Grouping

H. The government and ROTH agree that the adjusted offense level for all counts is therefore twenty-four (24), pursuant to Section 3D1.1(a) and subparagraph 15A above.

Acceptance of Responsibility

I. The government and ROTH agree that, to date, ROTH has demonstrated an acceptance of responsibility for his offense. In the event he continues to accept responsibility, he is entitled to a decrease from the base offense level of two (2) levels, pursuant to Section 3E1.1(a).

J. The government and ROTH agree that, by entering into this plea agreement and filing a petition to enter a plea of guilty in this case, ROTH has timely notified authorities of his intention to enter a plea of guilty, and has thereby permitted the United States to avoid preparing for trial and permitted the United States to allocate its resources effectively. In the event ROTH continues to accept responsibility, at the time of sentencing, the United States will file a motion that informs the Court of the same, thereby enabling the Court to decrease ROTH's offense level by one additional level, pursuant to Section 3E1.1(b).

FINAL PROVISIONS

ROTH acknowledges that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this document, to induce ROTH to plead guilty. This document is the complete and only plea agreement between ROTH and the United States Attorney for the Southern District of Indiana and is binding only on the parties to this agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified except in writing, signed by all parties and filed with the Court, or on the record in open court.

The terms of this agreement shall not be binding on the Office of the United States Attorney for the Southern District of Indiana nor upon ROTH until signed by ROTH and his counsel and by counsel for the United States of America.

4/22/09

DATE

Susan H. Dowd

Timothy M. Morrison, U.S. Attorney
By: Susan H. Dowd, AUSA

4/23/09

DATE

Christina McKee

Christina McKee
Chief, Criminal Division

4-10-09

DATE

Mark Roth

Mark Roth
Defendant

4-10-09

DATE

Bruce D. Brattain

Bruce D. Brattain
Attorney for Mark Roth

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 crimes 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 ten (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.

4-10-09

DATE



Mark Roth
Defendant