

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA)

vs.)

PRICE V. BROOKS)

No. 05 CR 50051-08

Judge Philip G. Reinhard

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, PRICE V. BROOKS, and his attorney, JOHN M. NELSON, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure, and is governed in part by Rules 11(c)(1)(A) & (C), as more fully set forth in Paragraphs 17 and 19 below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the present case.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, PRICE V. BROOKS, and his attorney, JOHN M. NELSON, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the indictment in this case with conspiring to defraud the United States and to commit offenses against the United States, in violation

of Title 18, United States Code, Section 371, making material false statements in a matter within the jurisdiction of a federal agency, in violation of Title 18, United States Code, Section 1001, and making materially false statements for the purpose of obtaining loans insured by the Department of Housing and Urban Development (hereinafter "HUD"), in violation of Title 18, United States Code, Section 1010.

2. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to the charge contained in Count One (conspiracy) of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count One of the indictment to which he is pleading guilty. In pleading guilty, defendant admits the following facts and that those facts establish his guilt and relevant sentencing facts beyond a reasonable doubt. These facts are not all the facts known to defendant, but are set forth solely to provide a factual foundation for this guilty plea:

(a) In general, defendant admits that from at least June 6, 2002, and continuing to at least October 15, 2003, at Freeport, Illinois, and elsewhere, he conspired with the defendants named in the indictment and other individuals to defraud the United States by causing HUD to insure loans through the Federal Housing Administration ("FHA") for unqualified applicants, to make material false statements in matters within the jurisdiction of a federal agency, and to make material false statements for the purpose of obtaining loans insured by FHA.

(b) Specifically, defendant admits that he operated a car wash in Freeport, Illinois, known as Brooks Detail Shop. Brooks Detail Shop was owned by defendant Douglas L. Hastings. Defendant was aware that Hastings engaged in real estate business with defendants Philip R. Miskimon and Edward J. Martins.

At some point, Hastings told defendant that he should talk to Miskimon and Martins if he wanted to make some additional money. Defendant followed Hastings' advice and talked to Miskimon and Martins. Miskimon and Martins then asked defendant to sign "Verification of Employment" forms which falsely stated that certain individuals worked at Brooks Detail Shop. Defendant agreed to sign these false "Verification of Employment" forms. Miskimon and Martins, paid defendant \$500 for each false "Verification of Employment" form he signed.

On June 6, 2002, at Freeport, in the Northern District of Illinois, Western Division, in furtherance of the conspiracy and to accomplish its objectives, defendant signed a "Verification of Employment" form which falsely stated that Shawn M. Fleming was employed by Brooks Detail Shop. At the time he signed this form, defendant knew that the information contained on the form was false, because he knew that Fleming had never been employed by Brooks Detail Shop. Defendant was also aware that Miskimon and Martins intended to use the document in connection with a loan related to their real estate transactions with Hastings. Defendant was paid \$500 for signing this false form.

Defendant signed two additional false "Verification of Employment" forms. On July 3, 2002, defendant signed a "Verification of Employment" form which falsely stated that defendant an individual referred to herein as "Buyer B" was employed by Brooks Detail Shop. On July 29, 2003, defendant signed a "Verification of Employment" form which falsely stated that an individual

referred to herein as “Buyer O” was employed by Brooks Detail Shop. At the time he signed these forms, defendant knew that the information contained on the forms was false, because he knew that neither “Buyer B” nor “Buyer O” had ever been employed by Brooks Detail Shop. Defendant was also aware that Miskimon and Martins intended to use these documents in connection with loans related to their real estate transactions with Hastings. Defendant was paid \$500 a piece for signing each of these false forms.

After the defendant signed the false “Verification of Employment” forms, the forms were submitted to HUD as part of applications for Fleming, “Buyer B,” and “Buyer O” to receive FHA insured loans. HUD subsequently issued FHA insurance certificates to the mortgage companies that made loans to “Buyer B” and “Buyer O”.

6. For purposes of applying the guidelines promulgated by the United States Sentencing Commission, pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

(a) Pursuant to Guideline 1B1.11(a), the Sentencing Guidelines Manual in effect as of November 1, 2004, is the appropriate Guidelines Manual to use in this case;

(b) Pursuant to Guideline 2B1.1(a)(2), the base offense level is 6;

(c) Pursuant to Guideline 2B1.1(b)(1)(E), the offense level must be increased by 8 levels to 14, because the estimated anticipated loss caused to HUD by defendant’s offense and relevant conduct exceeds \$70,000;

(d) Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. In the event that the court determines that the defendant’s offense level is 16 or greater and if the court reduces the defendant’s offense level by

two levels pursuant to Guideline 3E1.1(a), the government agrees to make a motion, pursuant to Guideline 3E1.1(b), seeking the further reduction of the defendant's offense level by one additional level;

(e) On December 26, 1972, in Stephenson County, Illinois, defendant was convicted of attempted theft of less than \$150 and was sentenced to pay a fine and costs. Pursuant to Guideline 4A1.2(e)(2), defendant receives no criminal history points for this sentence;

(f) On January 18, 1974, in Stephenson County, Illinois, defendant was convicted of armed robbery and was sentenced to 4 - 6 years in prison. Pursuant to Guideline 4A1.2(e)(1), defendant receives no criminal history points for this sentence;

(g) On March 31, 1977, in Stephenson County, Illinois, defendant was convicted of burglary and was sentenced to 20 - 60 months in prison. Pursuant to Guideline 4A1.2(e)(1), defendant receives no criminal history points for this sentence;

(h) On January 14, 1980, in Cook County, Illinois, defendant was convicted of retail theft and was sentenced to 2 years in prison. Pursuant to Guideline 4A1.2(e)(1), defendant receives no criminal history points for this sentence;

(i) On February 22, 1984, in Cook County, Illinois, defendant was convicted of retail theft and was sentenced to 6 years in prison. Pursuant to Guideline 4A1.2(e)(1), defendant receives no criminal history points for this sentence;

(j) On September 20, 1991, in Stephenson County, Illinois, defendant was convicted of manufacturing/delivering a controlled substance and was sentenced to 8 years in prison. Pursuant to Guideline 4A1.1(a), defendant receives 3 criminal history points for this sentence;

(k) On November 20, 1997, in Stephenson County, Illinois, defendant was convicted of domestic battery and was sentenced to 60 days in jail. Pursuant to Guideline 4A1.1(b), defendant receives 2 criminal history points for this sentence;

(l) On March 24, 1999, in Stephenson County, Illinois, defendant was convicted of violating an order of protection and was sentenced to 14 days in jail. Pursuant to Guideline 4A1.1(c), defendant receives 1 criminal history point for this sentence;

(m) On June 18, 1999, in Stephenson County, Illinois, defendant was convicted of criminal neglect/failure to pay support and was sentenced to 24 months of conditional discharge. Pursuant to Guideline 4A1.1(c), defendant receives 1 criminal history point for this sentence;

(n) At the time defendant committed the instant offense and relevant conduct listed in paragraphs 5 and 6 above, defendant was under a criminal justice sentence of conditional discharge for the offense described in subparagraph 6(m) above. Pursuant to Guideline 4A1.1(d), defendant receives 2 criminal history points based upon this factor;

(o) If the court accepts the parties' Guidelines calculations, defendant's adjusted offense level will be 12, his criminal history category will be IV, and the guideline range from the sentencing table will be 21 - 27 months of imprisonment;

(p) Defendant and his attorney and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Plea Agreement. Defendant understands that the United States Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation.

Accordingly, the validity of this Plea Agreement is not contingent upon the United States Probation Officer's or the Court's concurrence with the above calculations; and

(q) Defendant understands that, in imposing the sentence, the court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are advisory, not mandatory, but that the court must consider the Guidelines in determining a reasonable sentence. Further, defendant understands that the court, while guided by the applicable Sentencing Guidelines, may depart from those Guidelines under some circumstances.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the United States Probation Office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such supplements or corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

8. Defendant understands that the charge to which he will plead guilty carries a maximum penalty of 5 years of imprisonment, a maximum fine of \$250,000, and any restitution ordered by the court. The defendant also understands that the charge to which he will plead guilty carries a term of supervised release of at least 2 years, but not more than 3 years.

9. The defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order made payable to the Clerk of the United States District Court.

10. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt and that it was to consider each count separately.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant

could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

11. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant also is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal or contest, under 18 U.S.C. § 3742 or 28 U.S.C. § 2255, or otherwise, his conviction and the resulting sentence, in exchange for the concessions made by the United States in this plea agreement. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or its negotiation.

12. Defendant agrees that he will fully and truthfully cooperate with the government in any matter in which is related to the charges contained in the indictment in this case, including the criminal trials of his co-defendants, and any civil or administrative proceedings that are related to the facts alleged in the indictment. Defendant further agrees to provide complete and truthful information in any investigation and pre-trial preparation, and complete and truthful testimony, if called upon to testify, before any grand jury and United States District Court, and in any related civil

or administrative proceeding. Defendant further agrees to postpone his sentencing until after the conclusion of the prosecution of his co-defendants.

13. Nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from the defendant.

14. Defendant understands that this Plea Agreement shall be filed and become a part of the public record and may be disclosed to anyone.

15. Defendant understands that the United States Attorney reserves the right to notify any local government, state, or federal agency, including any local government, state, or federal agency by whom defendant is licensed or with whom defendant does business, of defendant's conviction.

16. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

17. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, assuming the defendant's full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline 5K1.1, to depart from the applicable sentencing guidelines range, and to impose the specific sentence agreed to by the parties as outlined below. Defendant understands that the decision to depart from the applicable guidelines range rests solely with the Court. However, this Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that the sentence imposed by the Court shall include a term of imprisonment in the custody of the Bureau of Prisons of sixty-five percent (67%) of the low-end of the applicable sentencing guidelines range. Other than the agreed

term of incarceration, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the agreed term of incarceration set forth, the defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(c)(3) and (5). If, however, the Court refuses to impose the agreed term of incarceration set forth herein, thereby rejecting the Plea Agreement, or otherwise refuses to accept the defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

18. Regarding restitution, defendant understands that the amount of restitution which the United States will argue that the defendant must be ordered to pay to the United States is approximately \$104,096.40. Defendant understands that Title 18, United States Code, Sections 3663, 3663A, and 3664, and the Sentencing Guidelines Sections 5E1.1 and 5E1.2, set forth the factors to be used in setting a fine and imposing any additional restitution in this case. Defendant agrees to provide full and truthful information to the court and United States Probation Officer regarding all details of his economic circumstances in order to determine the proper restitution which the defendant shall be ordered to pay. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court.

19. After sentence has been imposed on Count One, to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment as to this defendant.


20. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates

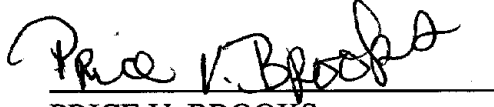
this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to re-sentence the defendant. The defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this agreement and the commencement of such prosecutions.

21. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.


22. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: June 14, 2005


PATRICK J. FITZGERALD
United States Attorney


PRICE V. BROOKS
Defendant


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