

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA

vs.

EDWARD J. MARTINS

)
)
)
)
)

U.S. DISTRICT COURT

No. 05 CR 50051-03

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, EDWARD J. MARTINS, and his attorney, ROBERT M. FAGAN, 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, EDWARD J. MARTINS, and his attorney, ROBERT M. FAGAN, 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 charge 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 charges contained Count One (conspiracy) and Count Thirty Four (false statement within jurisdiction of a federal agency) of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Thirty Four 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, as to Count One, defendant admits that from at least January 21, 2000, 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, as to Count One, defendant admits that during the time period of at least January 21, 2000, through at least October 15, 2003, he engaged in the business of purchasing residential properties, fixing up (or “re-habbing”) those properties, and selling those properties at a profit. Almost all of these properties were located in Freeport. Defendant’s partners in this enterprise were defendants Douglas L. Hastings and Philip R. Miskimon.

Hastings usually provided the funds needed for the initial purchases of the residences. On other occasions, defendant, Hastings, and Miskimon sold rental properties that Hastings already owned. Miskimon managed the re-habbing of the properties. Defendant and Miskimon operated a business known as “R & J Renovations,” which was located at 23 West Exchange in Freeport.

After the re-hab work was completed on the residences, defendant, Hastings, and Miskimon marketed the houses at prices that were substantially higher than the prices Hastings had paid for the properties. Defendant and Miskimon then recruited buyers to purchase the houses at the inflated prices. In order to find buyers, defendant and Miskimon offered and paid fees, usually \$500, to anyone who referred to them a buyer for one of the houses. Defendants Akia A. Sanders and Shawn M. Fleming each recruited several buyers to purchase houses involved in the conspiracy. Defendant and Miskimon paid Sanders and Fleming a fee for each buyer they successfully recruited.

In order to enable the buyers to purchase the houses at the inflated prices, defendant, Miskimon, and Hastings arranged for the buyers to receive FHA insured loans. The FHA insured loan program was administered by HUD. The program was designed to ensure adequate housing

for families of low and moderate income by providing federal mortgage insurance to lenders who made home loans to these families.

To be eligible to receive an FHA insured loan, a home buyer was required to establish that his or her income was sufficient to meet the mortgage payments. HUD required that the lenders making the loans verify the home buyer's employment for the two most recent years. This verification could be accomplished by having the home buyer's employer complete and sign a "Verification of Employment" form.

Applicants for FHA insured loans were also required to establish that they had satisfactory credit standing. Satisfactory credit standing could be established through a traditional credit report. If a buyer did not yet have an established credit history or a sufficient number of entries in his or credit report, HUD allowed the buyer to establish his or her satisfactory credit standing through alternative sources. These alternative sources often consisted of letters or other verifications from the buyer's creditors stating that the buyer had made timely payments on his or her debts.

Applicants for FHA insured loans were also required to establish that they had made a minimum equity investment of at least 3% of the cost of the home. Home buyers were permitted to use gifts from relatives, employers, unions, charitable organizations, or governmental agencies to meet this 3% equity investment. Home buyers were not, however, permitted to meet the equity requirement with gifts from persons or entities with an interest in the sale of the home, such as the seller, real estate agent or broker, or builder.

HUD granted Direct Endorsement Authority for FHA insured loans to certain lenders. Under the Direct Endorsement program, the lender determined if the buyer was eligible for an FHA insured loan. If the lender determined that the buyer was eligible, the lender then submitted to HUD the

application and all documentation supporting the lender's decision to approve the loan, including the "Verification of Employment" form, the home buyer's most recent pay stub, documents establishing the home buyer's satisfactory credit history, including verification of credit letters, and documents establishing the home buyer's 3% equity in the property, including documentation supporting any gifts received by the home buyer.

Defendant and Miskimon prepared most of the documents needed for the FHA loan application files of the buyers who purchased the houses involved in the conspiracy. Defendant and Miskimon submitted almost all of these FHA loan application files to loan officer who was employed at two different mortgage companies in Rockford, Illinois.

The underwriting departments of both mortgage companies approved the FHA loan application files submitted by defendant and Miskimon. Almost all of the files were then submitted to HUD. HUD issued FHA mortgage insurance for 46 of the 54 properties sold by Hastings, Miskimon, and defendant.

Almost all of the buyers of the houses involved in the conspiracy did not have sufficient income to meet the mortgage payments for the houses they were buying. In order to evade this HUD requirement, defendant and Miskimon prepared fraudulent Verifications of Employment and fraudulent pay stubs which falsely stated that the buyers had greater incomes than they actually did. Defendant, Miskimon, and Hastings then solicited other individuals, including defendants Dale L. Nelson, Todd P. Ernst, and Price V. Brooks, to sign these false Verifications of Employment. The individuals who signed the false Verifications of Employment were paid, usually \$500, for each false form they signed.

Most of the buyers of the houses involved in the conspiracy also had insufficient credit history to qualify for FHA insured loans. In order to evade this HUD requirement, defendant and Miskimon caused fraudulent verification of credit letters to be prepared which falsely stated that the buyers had made regular payments to the creditors who authored the letters. Defendant and Miskimon solicited other individuals, including Jeffrey L. Meyer, Julie A. Smith, Dale L. Nelson, and Chad J. Nicks, to prepare and sign these false verification of credit letters. Defendant, Miskimon, and Hastings paid the individuals who prepared and signed the false verification of credit letters, usually \$100 for each letter, and gave other favors to these individuals in return for preparing the false credit letters, such as providing business to them.

Some of the buyers of the houses involved in the conspiracy also did not have sufficient funds to meet the meet the 3% equity investment requirement for an FHA insured loan. In order to evade this HUD requirement, defendant, Hastings, and Miskimon arranged for fraudulent "gifts" to be provided to the buyers. Hastings provided the funds to be used for these fraudulent "gifts." Defendant, Miskimon, and Hastings recruited other individuals, including defendants Akia A. Sanders, Todd P. Ernst, and Tasha M. Thompson (formerly known as "Tasha M. Barnes"), to falsely pose as "relatives" of the buyers of the houses. Defendant and Miskimon then caused the funds provided by Hastings for the fraudulent "gifts" to be deposited into the bank accounts of the individuals who agreed to falsely pose as the "relatives" of the buyers. Immediately after the deposit of the "gift" funds, defendant and Miskimon caused the "gift" funds to be withdrawn from those accounts in the form of cashier's checks and official bank checks, payable to the buyers of houses, listing the remitters as the persons who were falsely posing as "relatives."

Defendant and Miskimon placed the false Verifications of Employment, the false credit letters, and the copies of the cashier's checks and official bank checks for the fraudulent "gifts" in the loan files that were submitted to HUD. The original cashier's checks and bank checks were cashed and the money was returned to Hastings.

On or about March 26, 2003, at Lena, in the Northern District of Illinois, Western Division, in furtherance of the conspiracy and to accomplish its objectives, defendant caused defendant Julie A. Smith to prepare a false document, namely a verification of credit letter written on the stationary of Marvin Uecker Agency which falsely represented that an individual referred to herein as "Buyer K" had insurance with Marvin Uecker Agency for the past 31 months, and had been making her premium payments on time.

(c) In general, as to Count Thirty Four, defendant admits that on or about January 20, 2003, at Freeport, Illinois, in a matter within the jurisdiction of HUD, he knowingly and willfully caused to be made and used a materially false document which he knew contained materially false, fictitious, and fraudulent statements and entries, namely a verification of credit letter signed by defendant Chad J. Nicks.

(d) Specifically, as to Count Thirty Four, defendant admits that on or about January 20, 2003, he caused defendant Nicks to prepare a false verification of credit letter. This verification of credit letter was written on the stationary of Planet Wireless, a cellular telephone business owned by Nicks. The letter contained the following false statement: "[An individual referred to herein as 'Buyer I'] has been a customer of Planet Wireless since December of 2001. She has been paying her cell phone bill as agreed." As defendant knew, "Buyer I" never had a cellular phone account with Planet Wireless.

Defendant further admits that he placed the false verification of credit letter from Nicks in the FHA insured loan application file for "Buyer I" and submitted the file to a mortgage company located in Rockford. After the file was approved by the underwriting department of the mortgage company, "Buyer I's" file was submitted to HUD. HUD subsequently issued an FHA insurance certificate for the mortgage that "Buyer I" received from the mortgage company.

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)(I), the offense level must be increased by 16 levels to 22, because the estimated anticipated loss caused to HUD by defendant's offense exceeds \$1,000,000;

(d) Pursuant to Guideline 3B1.1(a), the offense level must be increased by an additional 4 levels to 26, because the defendant was an organizer and leader of a criminal activity that involved more than five participants and was otherwise extensive;

(e) Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline 3E1.1, a two-level reduction in the offense level, is appropriate. Defendant acknowledges that if he falsely denies or frivolously contests any of the facts

underlying this offense or any relevant conduct that the court determines to be true, such a denial would be inconsistent with acceptance of responsibility, and the government's position as to acceptance of responsibility may change;

(f) Defendant has timely notified the government 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, within the meaning of Guideline 3E1.1(b). 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;

(g) Defendant and his attorney represent that defendant has no prior criminal convictions which result in criminal history points under the Sentencing Guidelines. Based upon defendant's representation, the parties agree that defendant's criminal history points will equal 0 and the defendant's criminal history category will be I;

(h) If the court accepts the parties' Guidelines calculations, defendant's adjusted offense level will be 23, his criminal history category will be I, and the guideline range from the sentencing table will be 46 - 57 months of imprisonment;

(i) 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

(j) 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 counts to which he will plead guilty carry the following maximum penalties:

(a) Count One carries a maximum penalty of 5 years of imprisonment, a maximum fine of \$250,000 or twice the gross loss caused by defendant's offense, and any restitution ordered by the court, which is currently estimated to be approximately \$1,921,423.96.

(b) Count Thirty Four carries a maximum penalty of 5 years of imprisonment, a maximum fine of \$250,000 or twice the gross loss caused by defendant's offense, and any restitution ordered by the court.

(c) Defendant further understands that these counts also require a period of supervised release of at least 2 years and not more than 3 years.

Therefore, the total potential sentence carried by the counts to which the defendant will plead guilty is 10 years of imprisonment, a total fine of \$500,000 fine or twice the gross loss caused by defendant's offenses, any restitution ordered by the court, and a term of supervised release of at least 2 years and 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 \$200 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 and 18 U.S.C. § 3553(e), 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 (65%) 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 \$1,921,423.96. 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.

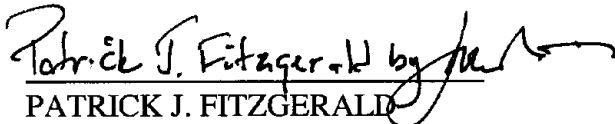
19. After sentence has been imposed on Counts One and Thirty Four, to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment as to this defendant.

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.

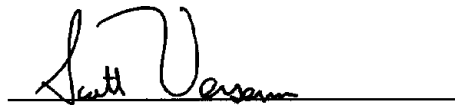
21. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.


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 13, 2005


PATRICK J. FITZGERALD
United States Attorney


EDWARD J. MARTINS
Defendant


SCOTT A. VERSEMAN
Assistant United States Attorney
308 West State Street – Room 300
Rockford, Illinois 61101
815-987-4444


ROBERT M. FAGAN
Attorney for Defendant
210 Lincoln – Douglas Center
10 North Galena Avenue
Freeport, Illinois 61032
815-233-5800