

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

2005 OCT 13 AM 9:17

JM

UNITED STATES OF AMERICA	:	CRIMINAL NO.
	:	1:05 CR -- 146
v.	:	
	:	<u>PLEA AGREEMENT</u>
MILTON TRICE, III	:	HONORABLE SUSAN J. DLOTT
	:	

The United States Attorney for the Southern District of Ohio and the defendant, **Milton Trice**, also called "the parties" herein, agree that:

1. **Milton Trice** will waive Indictment by the Federal Grand Jury and will enter a plea of guilty before the United States District Judge to a three-count Information charging him with Bank Fraud, in violation of 18 U.S.C. § 1344, Conspiracy, in violation of 18 U.S.C. § 371, and Failure to File Tax Returns in violation of 26 U.S.C. § 7203. Bank fraud carries a maximum penalty of up to thirty (30) years imprisonment, a fine of up to \$1,000,000.00 (or twice the gross gain to the defendant or gross loss to the victim), a five (5) year term of supervised release, restitution, and a \$100.00 special assessment. Conspiracy carries a maximum penalty of five (5) years imprisonment, a \$250,000 fine, three (3) years of supervised release, restitution, and a mandatory \$100 special assessment. Failure to File Tax Returns carries a maximum penalty of up to one (1) year imprisonment, a \$100,000 fine, the costs of prosecution, restitution, and a mandatory \$100 special assessment.

2. The defendant understands that this Agreement permitting a guilty plea to the above-listed count requires that the defendant abide by each term of this Agreement. The defendant understands

that if the defendant makes any statement that is materially false in whole or in part or otherwise fails to comply with any term of this Agreement, the United States has the right to declare this Agreement void and to prosecute the defendant to the full extent of the law. If this Plea Agreement or the defendant's conviction upon his guilty plea is voided for any reason, the defendant waives any statute of limitations with respect to the United States prosecuting him for any offense arising from his conduct in this case.

3. The sentence in this case will be imposed by the Court. There is no agreement as to what that sentence will be. The defendant understands that the United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") are advisory and not mandatory, although the Court is required to consider the Sentencing Guidelines and their application to this case in imposing sentence. Sentencing is within the discretion of the Court, and the defendant understands that the Court may or may not choose to impose sentence based on the applicable sentencing range under the Sentencing Guidelines for the offense charged in the Information. The defendant has thoroughly reviewed with his attorney how the Sentencing Guidelines might apply to this case. The defendant understands that he does not have the right to withdraw his guilty plea if the Court chooses to apply the Sentencing Guidelines including upward departures or otherwise imposes a sentence that is higher than expected. The defendant understands that the matter of sentence is reserved solely to the District Court and that the Court could impose the maximum penalty. No promises or representations have been made to the defendant as to what sentence the Court will impose.

4. The defendant will give complete cooperation to law enforcement authorities and others regarding his activities and those of others in relation to the offense of conviction and other matters on the following terms and conditions:

(a) **Mr. Trice** shall cooperate fully, truthfully, completely and forthrightly with the United States Attorney's Office for the Southern District of Ohio and other Federal, state and local law enforcement authorities identified by this Office in any and all matters as to which the Government deems the cooperation relevant. **Mr. Trice** acknowledges that his cooperation may include, but will not necessarily be limited to: answering questions; providing sworn written statements; taking government administered polygraph examination(s); and participating in covert law enforcement activities. Any refusal by **Mr. Trice** to cooperate fully, truthfully, completely and forthrightly as directed by this Office and other Federal, state and local law enforcement authorities identified by this Office in any and all matters in which the Government deems his assistance relevant will constitute a breach of this agreement by **Mr. Trice**, and will relieve the Government of its obligations under this agreement or any other agreement between the parties whether entered before or after this agreement. **Mr. Trice** agrees, however, that such breach by him will not constitute a basis for withdrawal of his plea of guilty or otherwise relieve him of his obligations under this agreement.

(b) **Mr. Trice** shall promptly turn over to the Government or other law enforcement authorities or direct such law enforcement authorities to any and all evidence of crime; all contraband and proceeds of crime; and all assets traceable to such proceeds of crime. **Mr. Trice** agrees to the forfeiture of all assets which are proceeds of crime or traceable to such proceeds of crime and all instruments that he used to aid him in committing the crimes.

(c) **Mr. Trice** shall submit a full and complete accounting of all of his financial assets, whether such assets are in his name or in the name of a third party.

(d) **Mr. Trice** shall testify fully, completely and truthfully before any and all Grand Jury(ies) in the Southern District of Ohio, and elsewhere, and at any and all trials of cases or other court proceedings in the Southern District of Ohio and elsewhere, at which his testimony may be deemed relevant by the Government.

(e) **Mr. Trice** understands and acknowledges that nothing in this agreement allows him to commit any criminal violation of local, state or federal law during the period of his cooperation with law enforcement authorities or at any time prior to the sentencing in this case. The commission of a criminal offense during the period of **Mr. Trice's** cooperation or at any time prior to sentencing will constitute a breach of this plea agreement and will relieve the Government of all of its obligations under this agreement or under any other agreement between the parties. **Mr. Trice** acknowledges, however, and agrees that such a breach of this agreement will not entitle him to withdraw his plea of guilty or relieve him of his obligations under this agreement. **Mr. Trice** further understands that, to establish a breach of this agreement, the Government need only prove his commission of a criminal offense by a preponderance of the evidence.

(f) Finally, **Mr. Trice's** cooperation also includes making restitution in this matter in a schedule and amount to be determined by the Court.

5. In exchange for the defendant's plea of guilty and complete cooperation, the United States Attorney for the Southern District of Ohio agrees that, after sentence has been imposed on the information, he will not file any additional charges against the defendant based on the defendant's conduct as described in the Information and Statement of Facts. This Agreement does not protect the defendant from prosecution for perjury, false statement, obstruction, or any other such charge for conduct after the date of this Agreement.

6. No promises have been made to the defendant that he will receive probation or that he will receive a lighter sentence on account of his plea of guilty.

7. The parties hereby state that the charges to which the defendant is pleading guilty adequately reflect the seriousness of the readily provable actual offense behavior and that the acceptance of the Agreement by the Court will not undermine the statutory purposes of sentencing.

8. The defendant agrees to pay the \$100.00 special assessment to the Clerk of the United States District Court for each count to which he pleads guilty no later than the date of his sentencing.

9. By signing this document, the defendant acknowledges the truth of the attached Statement of Facts.

10. In the event that the defendant does not plead guilty or successfully withdraws his plea of guilty, the defendant agrees and understands that he thereby waives any protection afforded by Section 1B1.8(a) of the Sentencing Guidelines and rule 11(f) of the Federal Rules of Criminal Procedure, and that any statements made by him as part of the plea discussions or as part of his cooperation with the government will be admissible against him without any limitation in any civil or criminal proceeding.

11. The defendant is aware that Title 18, United States Code, Section 3742, affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742, to appeal any sentence imposed, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the

United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. The defendant understands that by this agreement the defendant waives the right to appeal the sentence on the basis that the sentence is unreasonable or the result of an incorrect application of the Sentencing Guidelines.

12. This Agreement does not resolve any civil liability of the defendant for tax, interest, and penalties relating to income from the offense of conviction or any other source. The defendant acknowledges that as part of the complete cooperation promised by him in this Agreement, he is obligated to give complete cooperation to Federal, state, and local tax authorities in the determination of his taxable income and determination and payment of any applicable tax, interest, and penalties. The defendant agrees as part of his complete cooperation to file accurate tax returns for himself, amending returns if necessary, by December 31, 2005. Additionally, the defendant agrees, as part of his complete cooperation, that he will cooperate fully with the Internal Revenue Service as follows:

a. Defendant agrees to file tax returns and pay restitution of the tax due and owing, together with any interest and penalties finally determined to the Department of Treasury, Internal Revenue Service. The defendant agrees to pay all Federal, state and local taxes due and owing for tax years 2001, and 2002. The defendant agrees, as a term of his supervised release, to make all reasonable efforts to pay the tax liability due and owing to the Internal Revenue Service as a result of the offenses to which he is pleading guilty, including any relevant conduct amounts. Such payments will be completed within the period of his supervised release. In the event the defendant is unable to completely pay the tax liability prior to termination of the supervised release period, he agrees to make

regular monthly payments toward such liability in an amount to be determined by the Court at sentencing. Such amount will be set in accordance with the defendant's financial ability.

b. Defendant agrees to provide the IRS Examination Division, prior to sentencing, with all requested documents and information for the purpose of a civil audit.

c. Defendant agrees that subparagraphs a and b are appropriate conditions of supervised release.

d. Defendant agrees that he will make no objection to the entry of an order under Fed.R.Crim.P. 6(e)(3) permitting the IRS Criminal Investigation Division to disclose to the IRS Examination Collection Divisions (for purposes of a civil audit) all of the documents obtained, and the IRS reports produced, during the criminal investigation, whether or not such documents or reports are considered to be grand jury material within the meaning of Rule 6(e)(3).

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

13. This written Agreement embodies all of the agreements and understandings between the United States Attorney for the Southern District of Ohio and the defendant. No conversations, discussions, understandings, or other documents extraneous to the Agreement shall be considered part of this Agreement.

GREGORY G. LOCKHART
United States Attorney



AMUL R. THAPAR (DC459489)
Assistant United States Attorney
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
(513) 684-3711

10/12/05

DATE



MILTON TRICE, III
Defendant

9/2/05

DATE



HERBERT J. HAAS (0015411)
114 East 8th Street
Cincinnati, OH 45202
(513) 721-1126

9/2/05

DATE

STATEMENT OF FACTS

UNITED STATES v. MILTON TRICE

Between January 1, 2000, and July 31, 2003, Milton Trice, of Cincinnati, OH, along with others, conspired to defraud various federally insured financial institutions by, among other things, knowingly submitting false documents to those financial institutions in support of a loan application. Mr. Trice, and his co-conspirators, also submitted false Housing and Urban Development forms in furtherance of this conspiracy. Finally, as part of the conspiracy, Mr. Trice, and his co-conspirators, utilized the United States mail, commercial carriers, and wire services to carry out their scheme. The scheme involves the "flipping" of low-value homes located in the greater Cincinnati, Ohio, area.

A brief summary of the scheme is as follows: (1) a person would purchase a piece of real estate at a low value, e.g., \$20,000; (2) he/she, or someone else involved in the scheme, would then recruit a buyer for that property, usually someone that could not afford to otherwise purchase real estate, or an individual interested in properties as an investor; (3) after finding the buyer, one of the co-conspirators would create false documents, including pay stubs, W-2 forms, bank statements, and employment verifications; (4) the co-conspirators would then obtain a falsely inflated appraisal for the subject property; and (5) the co-conspirators would then submit the false loan package to the bank or lender for that same property in order to obtain a highly inflated loan, e.g. \$85,000 (for the property that was usually sold only months before for \$20,000).

Mr. Trice furthered this scheme by recruiting buyers for many of the "flipped" properties. Mr. Trice, thru his company, Big and Little Construction performed some rehab work on the properties. During these transactions, he was aware that fictitious and/or fraudulent appraisals were submitted to the financial institutions in furtherance of this scheme. In addition, during

several of the closings, Mr. Trice signed various forms containing false information, including a Department of Housing and Urban Development Form known as a HUD-1 Settlement Statement. That form usually indicated that the buyer brought the down payment to closing. Mr. Trice knew that the buyer did not bring the down payment, but rather he or one of his co-conspirators brought the down payment. Moreover, Mr. Trice was aware that the buyer often received a "kickback" outside of the closing, which was not disclosed to the lender. Thus, Mr. Trice aided and furthered the conspiracy to defraud financial institutions.

In furtherance of this conspiracy, on or about March 29, 2002, Preferred Investments purchased the property located at 1625 Pulte Street in Cincinnati, Ohio, for \$21,000. On July 13, 2002, Preferred Investments sold the property to Terry Chandler for \$79,000. According to the HUD-1 Settlement Statement, Mr. Chandler brought a down payment of \$6,753.36 to the closing. In reality, Mr. Chandler did not provide the funds used to make the down payment on this property. In addition, an appraisal completed by Combs Appraisal Service, supporting the inflated sales prices of \$79,000, was submitted to the lender. Mr. Trice was aware that this appraisal was false. The loan package was submitted to Indy Mac Bank whose deposits are insured by the Federal Deposit Insurance Corporation. Mr. Trice's actions were committed in furtherance of a scheme to defraud Indy Mac Bank.

Also in furtherance of this conspiracy, on November 13, 2002, Mr. Trice and other co-conspirators arranged for the sale of the property located at 4159 Langland Street in Cincinnati, Ohio to Earl Woods for \$86,500. According to the HUD-1 Settlement Statement, Mr. Woods brought a down payment of \$5,726.81 to the closing. In reality, Mr. Woods did not provide the funds used to make the down payment on this property. In addition, an appraisal completed by Zajac Appraisal Services, supporting the inflated sales prices of \$86,500, was submitted to the

lender. Mr. Trice was aware that this appraisal was false. The fraudulent loan package was submitted to Accredited Home Lenders by Mary Ann Orse of Midwest Mortgage of Ohio. Mr. Trice's actions were committed in furtherance of a scheme to defraud Accredited Home Lenders.

Finally, when Mr. Trice conducted each of these transactions he was aware that (1) the lender would make wire transactions, and (2) the United States mail and/or commercial carriers would be used in furtherance of these transactions. The United States and Mr. Trice agree that, as a result of his fraud, he caused an actual and/or intended loss to various financial and lending institutions of \$2,236,770.08.

In addition, Mr. Trice willfully failed to file his individual income tax returns for the years 2001 and 2002 and failed to report gross income of at least \$253,131. During these years, Mr. Trice received payoffs from the fraudulent loan proceeds in the form of checks made payable to himself and to his company, Big & Little Construction and failed to keep accurate and complete records. Due to his willful failure to file income tax returns, Mr. Trice owes \$70,876 of tax for the years 2001 and 2002.

All of the aforementioned conduct occurred in the Southern District of Ohio.

I have reviewed the above statement of facts with my attorney. I agree to the accuracy of the statement of facts and acknowledge the truth of the statement of facts as detailed above.


MILTON TRICE

9/16/05
DATE