

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

AUG 25 2006

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BRETT L. TOLLMAN, United States Attorney (#8821)
BARBARA BEARNSON, Assistant United States Attorney (#3986)
CY H. CASTLE, Special Assistant United States Attorney (#808)
Attorneys for the United States of America
185 South State Street, #400
Salt Lake City, Utah 84111-1506
Telephone: (801) 524-5682
Facsimile: (801) 524-6924

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, :
 :
 Plaintiff, : Case No. 2:06cr0193 DS
 :
 vs. : STATEMENT BY DEFENDANT IN
 : ADVANCE OF PLEA OF GUILTY
 MARK NEUSCH and :
 MICHAEL DAVIS, :
 :
 Defendants. :
 :
 :

I hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights, and that I have had the assistance of counsel in reviewing, explaining and completing this form:

1. The nature of the charge against me has been explained. I have had an opportunity to discuss the nature of the charge with my attorney. I understand the charge and what the government is required to prove in order to convict me.

2. I know that the maximum possible penalty provided by law for the offenses to which I am pleading guilty are: Count 1, Equity Skimming, a violation of Title 18, United States Code, § 1709-2, is a term of imprisonment of up to five (5) years and a fine of \$250,000 or twice the gross gain or loss, whichever is greater, or both, and a term of supervised release of up to 3 years; and Count 2, Bankruptcy Fraud, a violation of 18 U.S.C. § 157, a term of imprisonment of up to five (5) years and a fine of \$250,000 or twice the gross gain or loss, whichever is greater, or both, and a term of supervised release of up to 3 years.

I understand that if the supervised release term is violated, I can be returned to prison for the length of time provided in Title 18, United States Code, Section 3583(e)(3).

Additionally, I know the Court is required to impose an assessment in the amount of \$100.00 for each offense of conviction and that restitution to the victims of my offenses shall be ordered pursuant to Title 18, United States Code, Section 3663A.

3. I know that the sentencing procedures in this case and the ultimate sentence will be determined pursuant to 18 U.S.C. § 3553(a), and that the Court must consider, but is not bound by, the United States Sentencing Guidelines, in determining my sentence. I have discussed these facts with my attorney. I further know that the final calculation by the Court for sentencing purposes may differ from any calculation the United States, my attorney, or I may have made, and the Court may impose a sentence above or below the Guidelines, and I will not be able to withdraw my plea in spite of that fact.

4. I know that I can be represented by an attorney at every stage of the proceeding, and I know that if I cannot afford an attorney, one will be appointed to represent me.

5. I know that I have a right to plead "Not Guilty," and I know that if I do plead "Not Guilty," I can persist in that plea.

6. I know that I have a right to a trial by jury, and I know that if I stand trial by a jury:

(a) I have a right to the assistance of counsel at every stage of the proceeding.

(b) I have a right to see and observe the witnesses who testify against me.

(c) My attorney can cross-examine all witnesses who testify against me.

(d) I can call the witnesses I want to call, and I can obtain subpoenas to require the attendance and testimony of those witnesses. If I cannot afford to pay for the appearance of a witness and mileage fees, the government will pay them.

(e) I cannot be forced to incriminate myself and I do not have to testify at any trial.

(f) If I do not want to testify, the jury will be told that no inference adverse to me may be drawn from my election not to testify.

(g) The government must prove each and every element of the offense charged against me beyond a reasonable doubt.

(h) It requires a unanimous verdict of a jury to convict me.

(i) If I were to be convicted, I could appeal, and if I could not afford to appeal, the government would pay the costs of the appeal, including the services of appointed counsel.

7. Under a plea of guilty, there will not be a trial of any kind.

8. I know there is no appellate review of any lawful sentence imposed under a plea of guilty. I also know I may appeal the sentence imposed upon me in this case only if the sentence is imposed in violation of law or, in light of the factors listed in 18 U.S.C. § 3553(a), the sentence is unreasonable.

9. I know the United States may appeal the sentence imposed upon me in this case only if the sentence is imposed in violation of law or, in light of the factors listed in 18 U.S.C. § 3553(a), the sentence is unreasonable.

10. I know that under a plea of guilty the judge may ask me questions under oath about the offense to which the plea is entered. The questions, if asked on the record and in the presence of counsel, must be answered by me and, if I give false answers, I can be prosecuted for perjury.

11. I stipulate and agree that the following facts accurately describe my conduct. They provide a basis for the Court to accept my guilty plea and for calculating the sentence in my case:

As to Count 1, from March 2002 to December 2003, in the District of Utah, with the intent to defraud, I willfully engaged

in a practice of purchasing single-family dwellings that were subject to a loan in default at the time of purchase and secured by a mortgage or deed of trust insured by the United States Secretary of Housing and Urban Development. Thereafter, I failed to make the payments under the mortgages or deeds of trust as the payments became due. Moreover, I applied the rents obtained from these properties to my own use. I understand and do not dispute that my conduct violated 12 U.S.C § 1709-2.

As to Count 2, on or about July 26, 2002, in the District of Utah, I, for the purpose of executing a scheme to defraud the United States Secretary of Housing and Urban Development, filed a chapter 7 petition under title 11 of the United States Code in the name of M&M Properties, Case Number 02-32279, to delay the foreclosure of the properties at (a) 4112 South King Arthur Drive, West Valley City, Utah, (b) 3746 South Dunn Court, Magna, Utah, (c) South Purple Sage Drive, West Jordan, Utah, and (d) 4705 West Harmon, West Valley City, Utah so I could continue to collect rents from these properties and divert and use them for my personal use in violation of 18 U.S.C. § 157.

12. The only terms and conditions pertaining to this plea agreement between the defendant and the United States are as follows:

(a) Defendant agrees to enter a plea of guilty to Count 1 and Count 2 of the Indictment.

(b) Defendant agrees to pay restitution to the victims of the offenses contained in the Indictment.

(c) The Government agrees as follows:

(i) To recommend that the defendant receive credit for acceptance of responsibility, dependent upon the appropriate offense level, if defendant demonstrates an acceptance of responsibility for this offense by virtue of conduct up to and including the time of sentencing. If, in the opinion of the United States Attorney's Office, the defendant fails to demonstrate an acceptance of responsibility for this offense, the Government will not recommend the reduction of the applicable guideline range. If the Government does not make a recommendation for acceptance of responsibility due to defendant's failure to accept responsibility for this offense, it will **NOT** be a basis for defendant to withdraw the guilty plea.

(ii) Dismiss Counts 3 and 4 at the time of sentencing.

(d) The Government and Defendant agree that the intended loss figure to be used for calculating the increase in the offense level for the loss caused by the offenses committed by the Defendant is \$121,000.

13. I understand that if I knowingly violate any local, state or federal law between now and the time of my sentencing, such offense may constitute a violation of this plea agreement. I also understand that the Court will decide whether a violation of the plea agreement has occurred. If the Court finds that I have breached this agreement by violating any law, I understand that the Court may relieve the government of all obligations and commitments in this plea agreement while leaving intact my plea of "Guilty."

14. I understand that the Court can make no decision as to what the sentence will be until the Presentence Report has been received and reviewed by the judge. I further understand that the Court is not obligated in any way to follow the recommendation of the government concerning sentencing matters. If the Court does not follow the government's recommendation, I know that I will not be allowed to withdraw my plea of guilty.

15. I understand that the Court can and will consider all available information in determining my sentence. I also understand that if I am sentenced to prison, such information may be considered by prison officials in making decisions concerning my incarceration.

16. I know I have a right to ask the Court any questions I wish to ask concerning my rights, or about these proceedings and the plea.

I make the following representations to the Court:

1. I am 37 years of age. My education consists of High School. I can read and understand English.

2. No threats or promises of any sort have been made to me to induce me or to persuade me to enter this plea.

3. No one has told me that I would receive probation or any other form of leniency because of my plea.

4. I have discussed this case and this plea with my lawyer as much as I wish to.

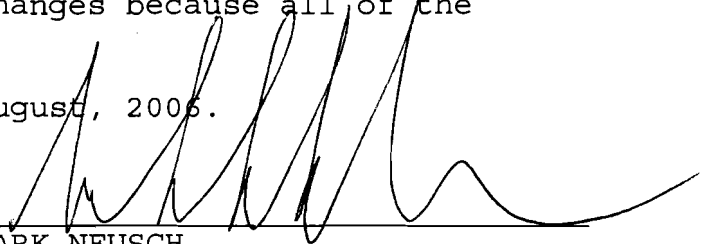
5. I am satisfied with my lawyer.

6. My decision to enter this plea was made after full and careful thought, with the advice of counsel, and with a full understanding of my rights, the facts and circumstances of the case and the consequences of the plea. I was not under the influence of any drugs, medication or intoxicants when the decision to enter the plea was made and I am not now under the influence of any drugs, medication or intoxicants.

7. I have no mental reservations concerning the plea.

8. I understand and agree to all of the above. I know that I am free to change or delete anything contained in this statement. I wish to make no changes because all of the statements are correct.

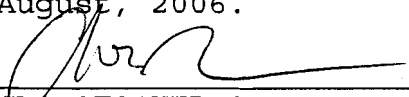
DATED this 25th day of August, 2006.



MARK NEUSCH
Defendant

I certify that I have discussed this statement with the defendant, that I have fully explained his rights to him, and I have assisted him in completing this form. I believe that he is knowingly and voluntarily entering the plea with full knowledge of his legal rights and that there is a factual basis for the plea.

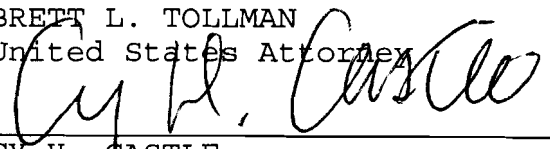
DATED this 25th day of August, 2006.



CHRISTOPHER SNOW
Attorney for Defendant

This statement sets forth the entire agreement entered into by the United States.

DATED this 25th day of August, 2006.

BRETT L. TOLLMAN
United States Attorney


CY H. CASTLE
Special Assistant U.S. Attorney