

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

1:05 CR - 185

UNITED STATES OF AMERICA : CRIMINAL NO.
: :
: :
v. : :
: : PLEA AGREEMENT
: :
BRIAN YOUNG : :
: :
: :

U.S. DISTRICT COURT
SOUTHERN DISTRICT OHIO
WEST DIV CINCINNATI
2005 DEC 27 PM 3:53
JAMES J. ...
CLERK

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

1. **Brian Young** will waive Indictment by the Federal Grand Jury and will enter a plea of guilty before the United States District Judge to a two-count Information charging him with Bank Fraud, in violation of 18 U.S.C. § 1344 and Conspiracy, in violation of 18 U.S.C. § 371. Bank Fraud carries a maximum penalty of up to thirty (30) years imprisonment, a fine of up to \$1,000,000.00, a five (5) year term of supervised release, restitution, and a \$100 special assessment. Conspiracy carries a maximum penalty of five (5) years imprisonment, a \$250,000 fine, three years (3) of supervised release, a mandatory \$100 special assessment, and restitution.

2. The defendant understands that this Agreement permitting a guilty plea to the above-listed counts 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. 3.

A. The sentence in this case will be imposed by the Court. The defendant understands that while the parties have stipulated below to a particular United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") calculation, the 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 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.

B. The United States and the defendant stipulate and recommend that the Court adopt the following calculation under the Sentencing Guidelines:

Conspiracy and Bank Fraud

The applicable Guidelines are § 2X1.1, § 2B1.1, and § 3D1.2(b) (Guidelines effective November 1, 2002). The base offense level under § 2B1.1 is six; plus twelve levels because the intended loss was over \$200,000 (§2B1.1(b)(1)(J)), causing a final level of 18. Pursuant to § 2X1.1(a), the base offense level for Count 1 (conspiracy) is 18, the same as the offense level plus adjustments for the substantive offense. The parties agree that the defendant played a minor role in the overall conspiracy, and thus, agree that his offense level shall be reduced by two levels (§ 3B1.2(b)) causing a final offense level of 16.

The parties stipulate and recommend that no other upward or downward adjustments or departures apply. There is no stipulation or recommendation about the defendant's criminal history. The defendant fully understands that, after investigation and review, the Court may determine that the offense factors and recommendations listed anywhere in this plea agreement are not appropriate and is not obligated to accept such. In that event, the defendant fully understands that he shall not have the right to withdraw his guilty plea.

C. The United States agrees, and hereby does, recommend that the defendant be provided credit for acceptance of responsibility pursuant to both Section 3E1.1(a) and (b) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. The Court should treat this as the United States' motion under Section 3E1.1(b). The United States and the defendant, however, agree that the United States may withdraw this recommendation in the event any of the following occurs: (1) defendant fails or refuses to make a full, accurate and complete disclosure to this office or the probation office of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) defendant is found to have misrepresented facts to the government prior to entering his plea agreement; (3) defendant commits any misconduct after entering into this plea agreement, including, but not limited to, committing a state or federal offense, violating any term of release, or making a false statement or

misrepresentation to any government entity or official; or (4) defendant fails to comply with any of the terms of this plea agreement.

D. While no substantial assistance motion has been promised by the United States, the parties have discussed that **Mr. Young** could qualify for such a motion if he provides the United States with substantial assistance. **Mr. Young** agrees to and understands the following: That only the United States Attorney, in its sole discretion, may apply for a downward departure from the Guideline sentence pursuant to Sentencing Guideline § 5K1.1 and that only the United States Attorney may, within one year of sentencing and at the sole discretion of the United States Attorney, file a motion for reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, to reflect substantial assistance to the United States subsequent to sentencing. The defendant understands that the determination of whether he has provided substantial assistance pursuant to Section 5K1.1 of the Sentencing Guidelines, Rule 35(b), or 18 U.S.C. § 3553(e), is within the sole discretion of the United States Attorney's Office for the Southern District of Ohio and is not reviewable by the Court. The defendant further understands that if the Government does not file a motion for downward departure the Court has no authority to grant a downward departure, under Section 5K1.1 of the Sentencing Guidelines, Rule 35(b) or 18 U.S.C. § 3553(e). In any event, the defendant agrees not to seek a downward departure, without Government motion, based on any assistance provided in the investigation(s) or prosecution(s) of another person(s) who has committed a federal, state, local or any other offense. The defendant agrees and acknowledges that if this Office chooses not to file a substantial assistance departure motion it shall not be grounds for the defendant to move to withdraw his plea of guilty in this case or otherwise relieve his obligations under this agreement.

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. Young** 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. Young** 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. Young** 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. Young**, 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. Young** 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. Young** 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. Young** 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. Young** 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. Young** 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. Young** 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. Young**'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. Young** 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. Young** 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. Young**'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 previously entered guilty plea, 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.

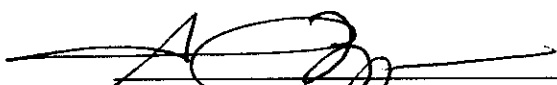
11. The defendant is aware that Title 18, United States Code, Section 3742, affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred 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.

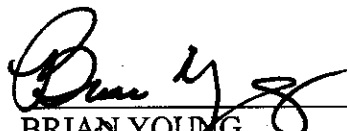
12. This Agreement does not resolve any civil liability of the defendant for tax, interest, and penalties relating to income from the offense of conviction or any other source. The defendant acknowledges that as part of the complete cooperation promised by him in this Agreement, he is obligated to give 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.

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.

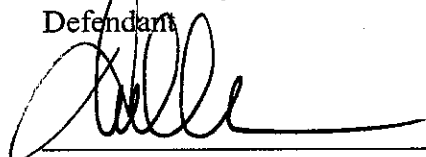
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12/20/05
DATE


BRIAN YOUNG
Defendant

10/8/05
DATE


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(513) 651-5666
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10/12/05
DATE

STATEMENT OF FACTS

UNITED STATES v. BRIAN YOUNG

Between May 1, 2001, and December 31, 2001, Brian Young, 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. Young, and his co-conspirators, also submitted false Housing and Urban Development forms in furtherance of this conspiracy. Finally, as part of the conspiracy, Mr. Young, 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. Young furthered this scheme by serving as the loan processor for some of the “flipped” properties. During the course of his work, he conspired with others to submit false loan packages to various financial institutions. Mr. Young processed approximately 15 to 20 loans that contained false documents, including false Uniform Residential Loan Applications (Forms 1003). Mr. Young

was paid \$300 to \$350 by his employer for each loan that he processed. Mr. Young also received monthly cash payments "under the table" from Cathy Yokum for whom he processed the fraudulent loans.

At the loan closings, the borrowers signed 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 or received a gift of equity to offset the down payment. Mr. Young knew that the buyer did not bring the down payment, but rather one of his co-conspirators brought the down payment, and that the gift of equity was fabricated to cover the down payment.

In furtherance of this conspiracy, on or about August 31, 2001, Christian Larson purchased the property at 114 N. 10th Street in Hamilton, Ohio, for \$75,000 from Ronald Trester. According to the HUD-1, Mr. Larson brought a down payment of \$9,744.28 to the closing. Mr. Young processed a false Form 1003 listing a Fifth Third Bank account with a balance of \$39,000 as the source of the down payment. In reality, Mr. Larson did not have these funds and did not provide the funds used to make the down payment on this property. The loan package was submitted to ABN AMRO Mortgage Group Inc., which is a wholly owned operating subsidiary of Standard Federal Bank. From sometime before 2001 until present, Standard Federal Bank's deposits were insured by the Federal Deposit Insurance Corporation. Mr. Young's actions were committed in furtherance of a scheme to defraud ABN AMRO Mortgage Group Inc..

Finally, when Mr. Young conducted this transaction 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. Young agree that as a result of his fraud he caused an actual and/or intended loss to various financial and lending institutions of \$255,370.

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