

IN THE UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA :
:
v. : **CRIMINAL NO. 12-185**
:
WILLIAM KEVIN KELLY :

GOVERNMENT'S CHANGE OF PLEA MEMORANDUM

I. INTRODUCTION

The defendant, William Kevin Kelly, was charged in an Indictment with wire fraud, in violation of 18 U.S.C. § 1343 (Counts 1 through 18); and money laundering and aiding and abetting, in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2 (Counts 19 through 23). As set forth in the indictment, the charges arise from a scheme in which Kelly victimized clients and investors through promised real estate deals in the Lancaster, Pennsylvania area. Through businesses such as Homelynx, Bantry Property Solutions, Multi County Properties, and For Sale by Seller Plus, which he owned and operated, Kelly – who had his real estate license revoked – promised clients and investors quick returns or results on their funds. After the victims turned over their funds, Kelly took their money, used it for personal purposes, and strung the victims along with various excuses and provided them with checks that bounced. As a result of his scheme, Kelly victimized at least 21 clients of over \$718,700.

Kelly has agreed to plead guilty to Counts 1 through 23 of the Indictment and has executed a cooperation guilty plea agreement, the terms of which are set forth below.

II. PLEA AGREEMENT

The essential terms of the proposed guilty plea agreement are as follows:

1. Kelly agrees to plead guilty to Counts 1 through 23 of the Indictment. Kelly acknowledges his waiver of rights, as set forth in the attachment to the plea agreement. Kelly agrees not to contest forfeiture as set forth in the notice of forfeiture and also agrees to pay the special victims/witness assessment in the amount of \$2,300 at such time as directed by the Court.

2. Kelly agrees to cooperate with the government; to provide truthful, complete and accurate information and testimony; to provide all information concerning his knowledge of, and participation in the offenses alleged in the Indictment and any and all other crimes about which he has knowledge; and, not to falsely implicate any person or entity and he will not protect any person or entity through false information or omission.

3. The government agrees that if, in its sole discretion, it finds Kelly fulfilled all of his obligations of cooperation, it will make the nature and extent of his cooperation known to the Court and move to allow the Court to depart from the Sentencing Guidelines pursuant to Sentencing Guideline § 5K1.1. In addition, the government will make whatever sentencing recommendation it deems appropriate based on the circumstances of this case and Kelly's cooperation.

4. The parties have agreed to and propose the following stipulations:

a. The parties agree and stipulate that the fraud scheme resulted in a loss of more than \$718,700, this amount was reasonably foreseeable to the defendant in connection with the scheme; and the defendant's Guideline range should be calculated based on this amount pursuant to USSG § 1B1.3.

b. The parties agree and stipulate that, as of the date of this agreement, the

defendant has demonstrated acceptance of responsibility for his offense, making the defendant eligible for a 2-level downward adjustment under USSG § 3E1.1(a).

c. The parties agree and stipulate that, as of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the government of his intent to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, resulting in a 1-level downward adjustment under USSG § 3E1.1(b).

III. ELEMENTS OF THE OFFENSE

A. Wire Fraud

To convict a defendant of wire fraud, the government must prove beyond a reasonable doubt the following elements:

1. The defendant devised a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises or willfully participated in such a scheme with knowledge of its fraudulent nature;
2. the defendant acted with the intent to defraud; and
3. that in advancing, furthering, or carrying out the scheme, the defendant transmitted any writing, signal, or sound by means of a wire, radio, or television communication in interstate commerce or caused the transmission of any writing, signal, or sound of some kind by means of a wire, radio, or television communication in interstate commerce.

B. Money Laundering

To convict a defendant of money laundering, the government must prove beyond a reasonable doubt the following elements:

1. That on or about the dates alleged in the indictment, the defendant conducted or attempted to conduct a financial transaction, which affected

interstate commerce;

2. that the defendant conducted the financial transaction with the proceeds of a specified unlawful activity, that is, **wire fraud**;
3. That the defendant knew the transaction involved the proceeds of some form of unlawful activity; and
4. That the defendant intended to promote the carrying on of the specified unlawful activity, that is loan and wire fraud and conducted the financial transaction with knowledge that the transaction was designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds of loan and wire fraud.

IV. MAXIMUM STATUTORY SENTENCE

A. Statutory Maximum Sentences:

The statutory maximum for each violation of 18 U.S.C. § 1343 is 20 years imprisonment, a \$250,000 fine, three years supervised release, and a \$100 special assessment per count, for each violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2 is 20 years imprisonment, a \$500,000 fine, three years supervised release, and a \$100 special assessment per count.

Kelly faces a total statutory maximum sentence of 460 years imprisonment, three years supervised release, a \$7 million fine, and a \$2,300 special assessment. In addition, forfeiture of any property that constitutes or is derived from proceeds obtained directly or indirectly as a result of the violations or any property of the defendant up to the value of property obtained directly or indirectly as a result of the violations also may be ordered.

The defendant further understands that supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased by up to 2 years per each count of conviction.

V. FACTUAL BASIS FOR THE PLEA

The Indictment and the justification for this plea are based on evidence that would prove beyond a reasonable doubt the following:

A. Testimonial Evidence

Kelly pitched his real estate experience and convinced victims to entrust him with their funds. The government would introduce the testimony of the victims who, collectively, would state that upon receiving a business card from Kelly, checking out his magazines and websites, and/or hearing of his experience, they decided to invest - either to try to buy a home, or to provide funds for a short-term loan for Kelly's real estate flipping business. They would identify the checks they wrote, describe how Kelly did not return their funds, and avoided their requests for back-up documentation. They would additionally testify that the e-mails sent to them lulled them into a false sense of security.

A witness from the Pennsylvania Department of State would testify that Kelly lost his real estate license and was not allowed to conduct real estate business after 1996.

FBI Agent Christopher Bean would testify about the investigation, the search of the house, and the admissions made by Kelly.

Representatives from the various ISPs would testify as to the interstate nature of the e-mails sent through Google and Comcast.

B. Documentary Evidence

We will present the promissory notes Kelly provided to victims. These promissory notes listed Kelly's address as an office suite (but in reality was a P.O. Box or an empty apartment). These promissory notes, signed by Kelly, provided that Kelly would repay the loan plus a high interest rate by a specific date. These short term loans were secured "with all property real or

otherwise including all business ownership in any entities," and Kelly would "personally guarantee the timely payment of the above promissory note." Victims stated that this promissory note helped convince them to lend Kelly money.

Bank records including bank statements, bounced checks presented by Kelly, the deposited checks victims provided to Kelly would also be included. We would also introduce evidence showing that Kelly did not deposit funds into escrow accounts as indicated to various victims. Summary charts of his spending would show the personal nature of funds used.

Evidence from Kelly's websites, including www.homelynx.net and www.bantrypropertysolutions.com show them as instruments used to gain credibility with victims and to allay their concerns.

Finally, consensually-recorded calls show how Kelly continued to make the same excuses for the unavailability of funds and how he lulled his victims.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney

/s/ Anita Eve
ANITA EVE
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Change of Plea Memorandum has been served by facsimile or electronic mail on:

William T. Cannon, Esquire

/s/ Anita Eve

ANITA EVE

Assistant United States Attorney

DATED: January 17, 2013