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SEP 4 2012

**Judge Gary Feinerman
United States District Court**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	No. 11 CR 342-1
vs.)	Judge Gary Feinerman
)	
MICHAEL MORAWSKI)	

PLEA AGREEMENT

1. This Plea Agreement between the Acting United States Attorney for the Northern District of Illinois, GARY S. SHAPIRO, and defendant MICHAEL MORAWSKI, and his attorney, JEFFREY LEVINE, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts One through Seven), and mail fraud, in violation of Title 18, United States Code, Section 1341 (Counts Eight and Nine).

3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following counts of the indictment: Counts Eight and Nine, which charge defendant with mail fraud, in violation of Title 18, United States Code, Section 1341.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts Eight and Nine of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline §1B1.3:

Defendant MICHAEL MORAWSKI, along with co-defendant Frank Constant, devised and participated in a scheme to defraud investors and prospective investors, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by means of material omissions.

MORAWSKI, with Constant, operated a number of real estate investment companies, including Michael Franks, LLC, Michael Franks Holding, LLC, and Assurance Property Management, LLC (collectively "Michael Franks"). MORAWSKI and Constant were each principals and co-owners of Michael Franks. Michael Franks was located at 800 East Northwest Highway, Suite 201, Palatine, Illinois 60074. Michael Franks was in the business of real estate investment, including purchasing real estate properties, such as apartment complexes, operating the properties as rental units, renovating these properties, and then

selling the properties. In order to help finance the purchase, operation, and renovation of these properties, MORAWSKI and Constant solicited and caused to be solicited investors to invest funds into Michael Franks. In total, MORAWSKI and Constant obtained between approximately \$16,000,000 and \$18,000,000 of investor funds from over 240 investors.

MORAWSKI and Constant offered and sold and caused to be offered and sold two forms of investments to the public through Michael Franks. The first form of investment was an interest in the acquisition, improvement, and operation of a specific apartment complex property for a period of three to five years. The defendants represented that investors would earn between 7% to 9% annual returns and potentially more upon the sale of the property. The second investment, executed through a promissory note, was an interest in "real estate-based funds" such as the Michael Franks Alternative Fund, LLC, the Structured Equities Fund, LLC, and the Stone Creek Ventures Fund, LLC. The defendants represented and caused to be represented to these investors that their investment would be spread among different real estate properties, with an annual interest payment of between 8% and 30% per annum. MORAWSKI and Constant represented to many of the investors who invested in Michael Franks that the returns on their investment agreements would be generated from the operating revenue of the real estate properties and paid to them on a monthly or quarterly basis.

However, at a certain point, many of the properties were not generating sufficient revenue and had significant debt. As a result, MORAWSKI and Constant made the monthly

or quarterly return payments to existing investors through the use of new investor funds coming into Michael Franks. MORAWSKI knew that this was contrary to representations to existing investors that their returns would be generated from the operating revenue of the real estate properties. MORAWSKI and Constant also represented to these new investors that their funds would be used to invest in real estate but MORAWSKI and Constant used the new investors' funds to make monthly or quarterly payments to old investors.

MORAWSKI and Constant represented to certain investors that the investors' funds would be used to operate a specific real estate property, such as a designated residential apartment complex. However, MORAWSKI and Constant used those investors' funds to operate other, unrelated real estate projects that were performing poorly and needed investor funds to continue operating.

MORAWSKI and Constant used investor funds for the general expenses of Michael Franks, including administrative and payroll expenses, for payments to MORAWSKI and Constant, and to open, fund, and operate Lanis Securities, a broker dealer entity formed and operated by MORAWSKI and Constant. MORAWSKI knew that these expenditures were not disclosed to investors and were contrary to representations to certain investors that their funds would be invested in real estate only.

MORAWSKI and Constant also represented to investors in the Michael Franks Alternative Fund LLC that this investment offered the opportunity for "guaranteed" monthly or quarterly returns on the investment and that it was secured by a "personal guarantee" that

was “leveraged against personal net worth into the millions.” MORAWSKI knew that he and Constant did not have net worth in the millions by which they could personally guarantee the payment of investor returns.

MORAWSKI and Constant also recruited investors with promises of annual returns between 14% and 30% per annum in certain investments often to be paid quarterly from the net operating revenue of the real estate properties. At a certain point, MORAWSKI knew that Michael Franks was not generating sufficient revenue to fund these returns and that the only way they could make these promised payments was through the use of other investors’ money.

As a result, MORAWSKI and Constant fraudulently obtained investor funds and caused some investors to lose their investment entirely, except for payments made back to certain investors using other investors’ funds.

On December 2, 2009, the Illinois Department of Securities issued a Temporary Order of Prohibition that found that MORAWSKI and Constant, through their offer and sale of promissory notes, were engaging in the unregistered sale of securities in Illinois and prohibited Michael Franks, MORAWSKI, and Constant from offering or selling securities in or from Illinois until further order. However, MORAWSKI and Constant raised approximately \$2 million in new investments after this order was entered.

Count Eight

On or about February 15, 2011, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant, for the purpose of executing the above-described scheme, and attempting to do so, knowingly caused to be sent and delivered by United States mail, according to the directions thereon, an envelope containing a check in the amount of approximately \$1,250 and addressed to Investor G's Family Trust in Hawthorn Woods, Illinois.

Count Nine

On or about February 15, 2011, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant, for the purpose of executing the above-described scheme, and attempting to do so, knowingly caused to be sent and delivered by United States mail, according to the directions thereon, an envelope containing a check in the amount of approximately \$1,250 and addressed to Investor K in Elk Grove Village, Illinois.

Maximum Statutory Penalties

7. Defendant understands that the charges to which he is pleading guilty carry the following statutory penalties:

a. Count Eight carries a maximum sentence of 20 years' imprisonment.

Count Eight also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with

respect to Count Eight the judge also may impose a term of supervised release of not more than three years.

b. Count Nine carries a maximum sentence of 20 years' imprisonment. Count Nine also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count Nine, the judge also may impose a term of supervised release of not more than three years.

c. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

d. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty or restitution imposed.

e. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is 40 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$500,000, or twice the gross gain or gross loss resulting from the offenses of conviction, whichever is greater, a period of supervised release, and special assessments totaling \$200, in addition to any restitution ordered by the Court.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing

Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as otherwise noted:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2011 Guidelines Manual.

b. **Offense Level Calculations.**

i. Pursuant to Guideline § 2B1.1(a)(1), the base offense level is 7.

ii. Pursuant to Guideline §2B1.1(b)(1)(K), it is the government's position that the amount of loss is approximately \$14,000,000, which is over \$7,000,000 but less than \$20,000,000, which increases the base offense level by 20 levels. Defendant reserves the right to argue that the amount of loss is less than \$14,000,000.

iii. Pursuant to Guideline §2B1.1(b)(2)(C), it is the government's position that the offense level is increased by an additional 6 levels because the offense involved more than 250 victims. Defendant reserves the right to argue that the offense involved less than 250 victims.

iv. Pursuant to Guideline §2B1.1(b)(9)(C), it is the government's position that the base offense level is increased by an additional 2 levels because defendant's

offense conduct violated a cease-and-desist order issued by the Illinois Department of Securities on December 2, 2009. Defendant reserves the right to argue that this guideline provision does not apply.

v. Pursuant to Guideline §3B1.3, it is the government's position that the base offense level is increased by an additional 2 levels because defendant abused a position of private trust in committing the offense by soliciting and recruiting investors to invest funds with defendant based on their purported expertise in the area and in obtaining and maintaining discretion over the disposition of investor funds. Defendant reserves his right to argue that this guideline provision does not apply.

vi. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level will be appropriate. Defendant understands that the government will argue at sentencing that defendant has not accepted responsibility within the meaning of Guideline §3E1.1(a).

vii. If the Court determines that defendant has fully accepted responsibility within the meaning of Guideline § 3E1.1(a), and that the offense level is 16 or higher prior to the application of any reduction for acceptance of responsibility pursuant

to §3E1.1(a), the government will move for an additional one-level reduction in the offense level pursuant to Guideline §3E1.1(b) because 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.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the government anticipates that the offense level is 37, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 210 to 262 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the 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 Guideline

calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. Each party is free to recommend whatever sentence it deems appropriate.
11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.
12. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant, together with any jointly liable co-

defendants, to make full restitution to victims in an amount to be determined by the Court at sentencing, which amount shall reflect credit for any funds repaid prior to sentencing.

13. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

14. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

15. After sentence has been imposed on the counts to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

16. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 11 CR 342-1.

17. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the

United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are 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.

Waiver of Rights

18. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. 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 that the government had established defendant's guilt beyond a reasonable doubt.

v. 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.

vi. At a trial, 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. A defendant is not required to present any evidence.

vii. 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.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

19. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

20. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the

Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

21. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

22. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing

financial statements and supporting records as requested by the United States Attorney's Office.

Conclusion

23. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

24. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute 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 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.

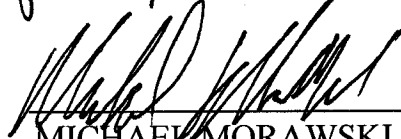
25. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

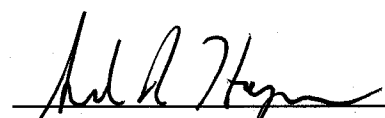
26. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

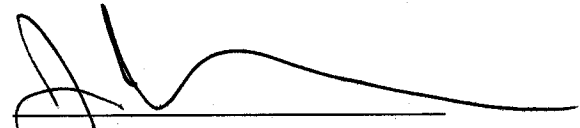
27. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: Sept 4, 2012

~~Gary S. Shapiro by JSP~~
GARY S. SHAPIRO
Acting United States Attorney


MICHAEL MORAWSKI
Defendant


SUNIL R. HARJANI
Assistant U.S. Attorney


JEFFREY LEVINE
Attorney for Defendant