

GUILTY PLEA and PLEA AGREEMENT

United States Attorney
Northern District of Georgia

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CRIMINAL NO. 1:10-CR-283-JEC

FILED IN OPEN COURT
JUL 06 2010

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By JAMES N. HATTEN, Clerk
[Signature]
Deputy Clerk

The United States Attorney for the Northern District of Georgia and Defendant DOUGLAS BALLARD, enter into this plea agreement as set forth below in Part IV pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure. DOUGLAS BALLARD, Defendant, having received a copy of the above-numbered Information and having been arraigned, hereby pleads GUILTY to Counts One and Two thereof.

I. ADMISSION OF GUILT

The Defendant admits that he is pleading guilty because he is in fact guilty of the crimes charged in Counts One and Two of the Information.

II. ACKNOWLEDGMENT & WAIVER OF RIGHTS

The Defendant understands that by pleading guilty, he is giving up the right to plead not guilty and the right to be tried by a jury. At a trial, the Defendant would have the right to an attorney, and if the Defendant could not afford an attorney, the Court would appoint one to represent the Defendant at trial and at every stage of the proceedings. During the trial, the Defendant would be presumed innocent and the Government would have the burden of proving him guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the witnesses against him. If the Defendant wished, he could testify on his own behalf and present evidence in his defense, and he could subpoena witnesses to testify on his behalf. If, however, the Defendant did

not wish to testify, that fact could not be used against him, and the Government could not compel him to incriminate himself. If the Defendant were found guilty after a trial, he would have the right to appeal the conviction.

The Defendant understands that by pleading guilty, he is giving up all of these rights and there will not be a trial of any kind.

By pleading guilty, Defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could have been filed.

The Defendant also understands that he ordinarily would have the right to appeal his sentence and, under some circumstances, to attack the conviction and sentence in post-conviction proceedings. By entering this Plea Agreement, the Defendant may be waiving some or all of those rights to appeal and to collaterally attack his conviction and sentence, as specified below.

Finally, the Defendant understands that, to plead guilty, he may have to answer, under oath, questions posed to him by the Court concerning the rights that he is giving up and the facts of this case, and the Defendant's answers, if untruthful, may later be used against him in a prosecution for perjury or false statements.

III. ACKNOWLEDGMENT OF PENALTIES

The Defendant understands that, based on his plea of guilty, he will be subject to the following maximum and mandatory minimum penalties:

As to Count One

- (a) Maximum term of imprisonment: 5 years.
- (b) Mandatory minimum term of imprisonment: None.

- (c) Term of supervised release: 0 year(s) to 3 years.
- (d) Maximum fine: \$250,000, due and payable immediately.
- (e) Full restitution, due and payable immediately, to all victims of the offense(s) and relevant conduct.
- (f) Mandatory special assessment: \$100.00, due and payable immediately.
- (g) Forfeiture of any and all proceeds from the commission of the offense and any and all property used to facilitate the offense.

As to Count Two

- (a) Maximum term of imprisonment: 5 years.
- (b) Mandatory minimum term of imprisonment: None.
- (c) Term of supervised release: 0 year(s) to 3 years.
- (d) Maximum fine: \$100,000, due and payable immediately.
- (e) Full restitution, due and payable immediately, to all victims of the offense(s) and relevant conduct.
- (f) Mandatory special assessment: \$100.00, due and payable immediately.

The Defendant understands that, before imposing sentence in this case, the Court will be required to consider, among other factors, the provisions of the United States Sentencing Guidelines and that, under certain circumstances, the Court has the discretion to depart from those Guidelines. The Defendant further understands that the Court may impose a sentence up to and including the statutory maximum as set forth in this paragraph and that no one can predict his exact sentence at this time.

IV. PLEA AGREEMENT

The Defendant, his counsel, and the United States Attorney for the Northern District of Georgia ("the Government"), as counsel for the United States, subject to approval by the Court, have agreed upon a negotiated plea in this case, the terms of which are as follows:

Dismissal of Counts

The Government agrees that, upon the entry of the Judgment and Commitment Order, any and all remaining counts in the Criminal Indictment dated April 14, 2010, still pending against Defendant under docket number 1:10-CR-168, shall be dismissed pursuant to Standing Order No. 07-04 of this Court and to Rule 48(a) of the Federal Rules of Criminal Procedure. The Defendant understands that the Probation Office and the Court may still consider the conduct underlying such dismissed counts in determining relevant conduct under the Sentencing Guidelines and a reasonable sentence under Title 18, United States Code, Section 3553(a).

No Additional Charges

The United States Attorney for the Northern District of Georgia agrees not to bring further criminal charges against the Defendant related to the charges to which he is pleading guilty. The United States Attorney for the Northern District of Georgia also promises not to bring criminal charges against the Defendant's wife, Sharon Ballard, related to the charges to which the Defendant is pleading guilty, including any potential criminal tax offenses relating to the joint 2006 personal return that is the subject of the Defendant's tax evasion charge. Except for the promises not to bring further criminal tax charges against the Defendant or Sharon Ballard as set forth above – which has been approved by the U.S. Department of Justice, Tax Division – the Defendant understands that this provision does not bar prosecution by any other federal, state, or local jurisdiction.

Sentencing Guidelines Recommendations

Base/Adjusted Offense Level Recommendations

Based upon the evidence currently known to the Government, the Government will recommend the following applications of the Sentencing Guidelines:

- (a) The amount of loss resulting from the offense(s) of conviction and all relevant conduct attributable to the Defendant is more than \$7 million but less than \$20 million.
- (b) The offense substantially jeopardized the safety and soundness of a financial institution, thus resulting in a 4-point enhancement.
- (c) The Defendant violated a position of trust or used a special skill in commission of the offense, thus resulting in a 2-point enhancement under §3B1.3.

Acceptance of Responsibility

The Government will recommend that the Defendant receive the two-level adjustment for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines, and the additional one-level adjustment if the offense level is 16 or higher. However, the Government will not be required to recommend acceptance of responsibility if, after entering this Plea Agreement, the Defendant engages in conduct inconsistent with accepting responsibility. Thus, by way of example only, should the Defendant falsely deny or falsely attempt to minimize Defendant's involvement in relevant offense conduct, give conflicting statements about Defendant's involvement, fail to pay the special assessment, fail to meet any of the obligations set forth in the Financial Cooperation Provisions set forth below, or participate in additional criminal conduct, including unlawful personal use of a controlled substance, the Government will not be required to recommend acceptance of responsibility.

Right to Answer Questions, Correct Misstatements, and Make Recommendations

The Government reserves the right to inform the Court and the Probation Office of all facts and circumstances regarding the Defendant and this case, and to respond to any questions from the Court and the Probation Office and to any misstatements of fact or law. Except as expressly stated elsewhere in this Plea Agreement, the Government also reserves the right to make recommendations regarding application of the Sentencing Guidelines.

Right to Modify Recommendations

With regard to the Government's recommendation as to any specific application of the Sentencing Guidelines as set forth elsewhere in this Plea Agreement, the Defendant understands and agrees that, should the Government obtain or receive additional evidence concerning the facts underlying any such recommendation, the Government will bring that evidence to the attention of the Court and the Probation Office. In addition, if the additional evidence is sufficient to support a finding of a different application of the Guidelines, the Government will not be bound to make the recommendation set forth elsewhere in this Plea Agreement, and the failure to do so will not constitute a violation of this Plea Agreement.

Cooperation

General Requirements

The Defendant agrees to cooperate truthfully and completely with the Government, including being debriefed and providing truthful testimony at any proceeding resulting from or related to Defendant's cooperation. Defendant agrees to so cooperate in any investigation or proceeding as requested by the Government. Defendant agrees that Defendant's cooperation shall include, but not be limited to:

(a) producing all records, whether written, recorded, electronic, or machine readable, in his actual or constructive possession, custody, or control, of evidentiary value or requested by attorneys and agents of the Government;

(b) making himself available for interviews, not at the expense of the Government if he is on bond, upon the request of attorneys and agents of the Government;

(c) responding fully and truthfully to all inquiries of the Government in connection with any investigation or proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001), obstruction of justice (18 U.S.C. § 1503) and related offenses;

(d) when called upon to do so by the Government in connection with any investigation or proceeding, testifying in grand jury, trial, and other judicial proceedings, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), obstruction of justice (18 U.S.C. § 1503), and related offenses.

The Defendant understands that the Government alone will determine what forms of cooperation to request from the Defendant, and the Defendant agrees that Defendant will not engage in any investigation that is not specifically authorized by the Government.

Section 1B1.8 Protection

Pursuant to Section 1B1.8 of the Sentencing Guidelines, the Government agrees that any self-incriminating information that was previously unknown to the Government and is provided to the Government by the Defendant in connection with Defendant's cooperation and as a result of this Plea Agreement will not be used in determining the applicable sentencing guideline range, although

such information may be disclosed to the Probation Office and the Court. The Government also agrees not to bring additional charges against the Defendant, with the exception of charges resulting from or related to violent criminal activity, based on any information provided by the Defendant in connection with cooperation that was not known to the Government prior to the cooperation. However, if the Government determines that the Defendant has not been completely truthful and candid in cooperation with the Government, may be subject to prosecution for perjury, false statements, obstruction of justice, and any other appropriate charge, and all information Defendant has provided may be used against Defendant in such a prosecution.

Conditional Section 5K/Rule 35 Motion

The Government agrees to make the extent of the Defendant's cooperation known to the sentencing court. In addition, if the cooperation is completed before sentencing and the Government determines that such cooperation qualifies as "substantial assistance" pursuant to Title 18, United States Code, Section 3553(e) and/or Section 5K1.1 of the Sentencing Guidelines, the Government will file a motion at sentencing recommending a downward departure from the applicable guideline range. If the cooperation is completed after sentencing and the Government determines that such cooperation qualifies as "substantial assistance" pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, the Government will file a motion for reduction of sentence. In either case, the Defendant understands that the determination as to whether Defendant has provided "substantial assistance" rests solely with the Government. Good faith efforts by the Defendant that do not substantially assist in the investigation or prosecution of another person who has committed a crime will not result in either a motion for downward departure or a Rule 35 motion. The Defendant also understands that, should the Government decide to file a motion pursuant to this paragraph, the

Government may recommend any specific sentence, and the final decision as to what credit, if any, the Defendant should receive for Defendant's cooperation will be determined by the Court. If the Defendant fails to cooperate truthfully and completely, or if the Defendant engages in additional criminal conduct or other conduct inconsistent with cooperation, Defendant will not be entitled to any consideration whatsoever pursuant to this paragraph.

Sentencing Recommendations

Specific Sentence Recommendation

The Government agrees to recommend that the Defendant be sentenced at the low end of the adjusted guideline range.

Fine--No Recommendation

The Government agrees to make no specific recommendation as to the fine to be imposed on the Defendant within the applicable guideline range.

Restitution

The Defendant agrees to pay full restitution to all victims of the offense(s) to which he is pleading guilty and all relevant conduct, including, but not limited to, any counts dismissed as a result of this Plea Agreement. The Defendant understands that the amount of restitution owed to each victim will be determined at or before sentencing. The Defendant also agrees to cooperate fully in the investigation of the amount of restitution and the identification of victims.

Financial Cooperation Provisions

Special Assessment

The Defendant agrees that, within 30 days of the guilty plea, he will pay a special assessment in the amount of \$200 by money order or certified check made payable to the Clerk of Court, U.S.

District Court, 2211 U.S. Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303. The Defendant agrees to provide proof of such payment to the undersigned Assistant United States Attorney within 30 days of the guilty plea.

Fine/Restitution - Terms of Payment

The Defendant agrees to pay any fine and/or restitution imposed by the Court to the Clerk of Court for eventual disbursement to the appropriate account and/or victim(s). The Defendant also agrees that the full fine and/or restitution amount shall be considered due and payable immediately. If the Defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, he agrees that the custodial agency and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The Defendant understands that this payment schedule represents a minimum obligation and that, should Defendant's financial situation establish that he is able to pay more toward the fine and/or restitution, the Government is entitled to pursue other sources of recovery of the fine and/or restitution. The Defendant further agrees to cooperate fully in efforts to collect the fine and/or restitution obligation by set-off of program payments, execution on non-exempt property, and any other means the Government deems appropriate. Finally, the Defendant and his counsel agree that Government officials may contact the Defendant regarding the collection of any fine and/or restitution without notifying and outside the presence of his counsel.

Disclosure of Assets

The Defendant agrees to make a full accounting of all assets and other real and personal property in which Defendant has any legal or equitable interest. The Defendant further agrees that Defendant will not sell, hide, waste, encumber, destroy, or otherwise devalue any such asset worth

more than \$5,000 before sentencing, without the prior approval of the Government. The Defendant understands and agrees that Defendant's failure to comply with this provision of the Plea Agreement should result in Defendant receiving no credit for acceptance of responsibility.

Back Taxes

In addition, the Defendant's acceptance of responsibility shall include filing of lawful amended income tax returns for the year 2006 before the date set for sentencing in this case, and full cooperation with the Examination Division, Internal Revenue Service, in making a complete and accurate determination of all taxes, penalties, and interest that Defendant owes. The Defendant agrees to provide the Government with a copy of such tax returns at the time they are filed. The Defendant understands and agrees that failure to do everything within his power to comply with this provision of the Plea Agreement should result in receiving no credit for acceptance of responsibility. The Defendant also understands and agrees that the Internal Revenue Service will not be bound by the tax loss calculations referenced in this Plea Agreement or otherwise determined by the Court at sentencing. Nothing in this Plea Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest, and penalties from the Defendant.

Financial Disclosure

The Defendant agrees to cooperate fully in the investigation of the amount of restitution and in the identification of assets to be applied toward restitution. The Defendant's cooperation obligations include: (A) fully and truthfully completing the Department of Justice's Financial Statement of Debtor form, and any addenda to said form deemed necessary by the Government, within ten days of the change of plea hearing; (B) submitting to a financial deposition or interview (should the Government deem it necessary) prior to sentencing regarding the subject matter of said

form; (C) providing any documentation within his possession or control requested by the Government regarding his financial condition and that of his household; and (D) fully and truthfully answering all questions regarding his past and present financial condition and that of his household in such interview(s).

So long as the Defendant is completely truthful, the Government agrees that anything related by the Defendant during his financial interview or deposition or in the financial forms described above cannot and will not be used against him in the Government's criminal prosecution. However, the Government may use the Defendant's statements to identify and to execute upon assets to be applied to restitution in this case. Further, the Government is completely free to pursue any and all investigative leads derived in any way from the interview/deposition/financial forms, which could result in the acquisition of evidence admissible against the Defendant in subsequent proceedings. If the Defendant subsequently takes a position in any legal proceeding that is inconsistent with the interview/deposition/financial forms—whether in pleadings, oral argument, witness testimony, documentary evidence, questioning of witnesses, or any other manner—the Government may use the Defendant's interview/deposition/financial forms, and all evidence obtained directly or indirectly therefrom, in any responsive pleading and argument and for cross-examination, impeachment, or rebuttal evidence. Further, the Government may also use the Defendant's interview/deposition/financial forms to respond to arguments made or issues raised sua sponte by the Magistrate or District Court.

Recommendations/Stipulations Non-binding

The Defendant understands and agrees that the recommendations of the Government incorporated within this Plea Agreement, as well as any stipulations of fact or guideline computations incorporated within this Plea Agreement or otherwise discussed between the parties, are not binding on the Court and that the Court's failure to accept one or more of the recommendations, stipulations, and/or guideline computations will not constitute grounds to withdraw his guilty plea or to claim a breach of this Plea Agreement.

Limited Waiver of Appeal

LIMITED WAIVER OF APPEAL: To the maximum extent permitted by federal law, the Defendant voluntarily and expressly waives the right to appeal his conviction and sentence and the right to collaterally attack his conviction and sentence in any post-conviction proceeding (including, but not limited to, motions filed pursuant to 28 U.S.C. § 2255) on any ground, except that the Defendant may file a direct appeal of an upward departure or a variance from the sentencing guideline range as calculated by the district court. The Defendant understands that this Plea Agreement does not limit the Government's right to appeal, but if the Government initiates a direct appeal of the sentence imposed, the Defendant may file a cross-appeal of that same sentence.

Miscellaneous Waivers

FOIA/Privacy Act Waiver

The Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the

Privacy Act of 1974, Title 5, United States Code, Section 552a.

DNA Waiver

The parties agree that no biological evidence (as defined in Title 18, United States Code, Section 3600A) has been identified in this case; therefore, the Defendant understands and agrees that no evidence will be preserved for DNA testing.

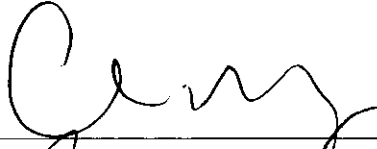
Employment Consequence

The Defendant acknowledges that he is aware that Title 12, United States Code, Section 1829, generally prohibits any person who has been convicted of a criminal offense involving dishonesty, a breach of trust, or money laundering, such as the defendant, from direct or indirect affiliation, ownership, control, or participation in the conduct of the affairs of an insured depository institution. Accordingly, the Defendant agrees to consent to any regulatory action taken by a Federal financial institution regulatory agency to permanently remove defendant from office and or prohibit defendant from participating, whether as an institution-affiliated party or otherwise, in the conduct of the affairs of any insured depository institution or depository institution holding company, or any other organization or entity provided in Section 8(c) of the Federal Deposit Insurance Act.


No Other Agreements

There are no other agreements, promises, representations, or understandings between the Defendant and the Government.


In Open Court this ^{6th} day of ^{July}, 2010




SIGNATURE (Attorney for Defendant)
Aaron Danzig



SIGNATURE (Defendant)
DOUGLAS BALLARD



SIGNATURE (Assistant U.S. Attorney)
Justin S. Anand

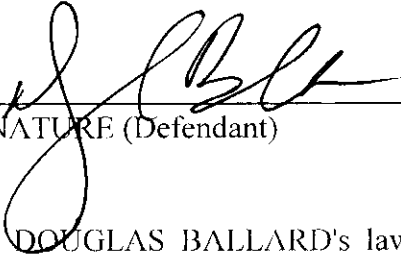


SIGNATURE (Approving Official)
Barbara Nelan

July 2, 2010
DATE

I have read the Information against me and have discussed it with my attorney. I understand the charges and the elements of each charge that the Government would have to prove to convict me at a trial. I have read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I also have discussed with my attorney the rights I may have to appeal or challenge my conviction and sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my conviction and sentence or challenging my conviction and sentence in any post-conviction proceeding. No one has

threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the Government toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.

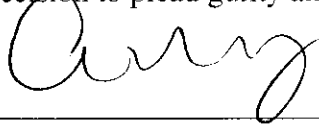


SIGNATURE (Defendant)

7/6/10

DATE

I am DOUGLAS BALLARD's lawyer. I have carefully reviewed the charges and the Plea Agreement with my client. To my knowledge, my client is making an informed and voluntary decision to plead guilty and to enter into the Plea Agreement.



SIGNATURE (Defense Attorney)

7/6/10

DATE

INFORMATION BELOW MUST BE TYPED OR PRINTED

Aaron Danzig
NAME (Attorney for Defendant)

DOUGLAS BALLARD
NAME (Defendant)

171 17th St. #2102
STREET

STREET

Atl GA 30306
CITY & STATE ZIP CODE

CITY & STATE ZIP CODE

PHONE NUMBER 404-873-8500

PHONE NUMBER _____

STATE BAR OF GEORGIA NUMBER 205151

Filed in Open Court

By J. McFaldrick 7/6/10

U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIMINAL ACTION NO.:	
DEFENDANT'S NAME:	DOUGLAS BALLARD
PAY THIS AMOUNT:	\$200

INSTRUCTIONS:

1. PAYMENT MUST BE MADE BY **CERTIFIED CHECK OR MONEY ORDER**
PAYABLE TO:

CLERK OF COURT, U.S. DISTRICT COURT

PERSONAL CHECKS WILL NOT BE ACCEPTED

2. PAYMENT MUST REACH THE CLERK'S OFFICE WITHIN 30 DAYS OF THE ENTRY OF YOUR GUILTY PLEA
3. PAYMENT SHOULD BE SENT OR HAND DELIVERED TO:

Clerk, U.S. District Court
2211 U.S. Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30303

(Do not Send Cash)

4. INCLUDE DEFENDANT'S NAME ON **CERTIFIED CHECK OR MONEY ORDER**
5. ENCLOSE THIS COUPON TO INSURE PROPER AND PROMPT APPLICATION OF PAYMENT
6. PROVIDE PROOF OF PAYMENT TO THE ABOVE-SIGNED AUSA WITHIN 30 DAYS OF THE GUILTY PLEA