

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-20123-CR-ROSENBAUM

UNITED STATES OF AMERICA,

v.

HENRY FECKER, III,

Defendant.

_____ /

PLEA AGREEMENT

The United States of America and Henry Fecker, III (hereinafter “defendant”) enter into the following agreement:

1. The defendant understands that he has the right to have the evidence and charges against him presented to a federal grand jury for determination of whether or not there is probable cause to believe he committed the offenses with which he is charged. Understanding this right, and after full and complete consultation with his counsel, the defendant agrees to waive in open court his right to prosecution by indictment and agrees that the United States may proceed by way of an Information to be filed pursuant to Rule 7 of the Federal Rules of Criminal Procedure.

2. The defendant agrees to plead guilty to an Information to be filed in the future, that will charge the defendant with one count of bank fraud, in violation of Title 18, United States Code, Section 1344(2). In exchange for defendant’s agreement to plead guilty, and for fulfilling all of his other obligations set forth in the plea agreement, the Office of the United States Attorney for the Southern District of Florida (hereinafter “Office”), agrees to seek the

dismissal of Counts 1 through 7 pending against defendant in the Indictment in *United States v. Henry Fecker, III, No. 12-20123-RSR*, at the time of sentencing. The United States further agrees not to seek any additional charges with regard to the conduct set forth in paragraph 13 below. This agreement includes only the conduct set forth in paragraph 13 below, and excludes Title 26 offenses, crimes of violence, any other conduct not set forth in paragraph 13 below. This agreement is also limited to this Office, and as such, does not and cannot bind other federal, state, regulatory, or local prosecuting authorities.

3. The defendant is aware that the sentence will be imposed by the court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the court relying in part on the results of a Pre-Sentence Investigation by the court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in

paragraph 2, and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

4. The defendant also understands and acknowledges that the court may impose a statutory maximum term of imprisonment of up to 30 years for the Information as to Count One to be charged and up to five years of supervised release. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to \$250,000 or double the gross proceeds, and must order restitution. The defendant agrees that he will make restitution according to a payment schedule to be determined by the Court, and specifically agrees to the entry of an order of restitution that he pay \$158,423.48 to BCBS of Florida, Inc., pursuant to 18 U.S.C. § 3611.

5. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 4 of this agreement, a special assessment in the amount of \$100.00 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

6. The Office reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offense committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, the Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. The United States agrees that it will recommend at sentencing that the court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's

recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the government will make a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. The United States, however, will not be required to make these recommendations if the defendant: (1) fails to fulfill all of his obligations under this plea agreement; (2) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (3) is found to have misrepresented facts to the United States Attorney's Office prior to entering into this plea agreement; or (4) 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 false statements or misrepresentations to any governmental entity or official.

8. The Office and the defendant agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed on the count to which the defendant shall plead:

a. Applicable Guideline Offense and Base Offense Level: Pursuant to Section 2B1.1 of the Sentencing Guidelines, the offense guideline applicable to Count One, the base offense level is 7.

b. Specific Offense Characteristics:

The parties agree and stipulate that the following offense characteristics apply: The loss attributable to the offense under Section 2B1.1(b)(1) was

\$5,000 or less resulting in no increase; The defendant derived more than \$1 million in gross receipts from one or more financial institutions as a result of the offense, for a 2-level increase under Section 2B1.1(b)(16).

9. The defendant is aware that the sentence has not yet been determined by the court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the court. The defendant understands further that any recommendation that the government makes to the court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the court and the court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the defendant may not withdraw his plea based upon the court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

10. 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, and in exchange for the undertakings made by this Office in this plea agreement, the defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742 to appeal the conviction, any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure ^{or variance} from the guideline range that the court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect this Office's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if this Office

appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with this Office, to request that the district court enter a specific finding that the defendant's waiver of his right to appeal the conviction or sentence to be imposed in this case was knowing and voluntary.

11. In the event the defendant withdraws from this agreement prior to pleading guilty or breaches the agreement before or after he pleads guilty to the charge identified in paragraph two (2) above or otherwise fails to fully comply with any of the terms of this plea agreement, this Office will be released from its obligations under this agreement, and the defendant agrees and understands that: (a) the defendant thereby waives any protection afforded by any proffer letter agreements between the parties, Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, and that any statements made by the defendant as part of plea discussions, any debriefings or interviews, or in this agreement, whether made prior to or after the execution of this agreement, will be admissible against the defendant without any limitation in any civil or criminal proceeding brought by the government; and (b) the defendant stipulates to the admissibility and authenticity, in any case brought by the United States in any way related to the facts referred to in this agreement, of any documents provided by the defendant or the defendant's representatives to any state or federal agency and/or this Office.

12. The defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status, if the defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, and, in some cases,

removal is presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including the defendant's attorney or the district court, can predict to a certainty the effect of the defendant's conviction on the defendant's immigration status. The defendant nevertheless affirms the desire to plead guilty regardless of any immigration consequences that the plea may entail, even if the consequence is automatic removal from the United States.

13. The defendant hereby (i) confirms that he has reviewed the following facts with legal counsel, (ii) adopts the following factual summary as his own statement, (iii) agrees that the following facts are true and correct, and (iv) stipulates that the following facts provide a sufficient factual basis for the plea of guilty in this case, in accordance with Rule 11(b)(3) of the Federal Rules of Criminal Procedure:

A. The Bank Fraud Scheme

From on or about October 18, 2006, through on or about July 19, 2011, in Broward County, Florida, in the Southern District of Florida, and elsewhere, defendant Henry Fecker III ("defendant") and another individual, Steven Steiner a/k/a Steven Steinger, committed bank fraud.

On or about October 20, 2006, defendant executed a Uniform Residential Loan Application ("Loan Application") and caused it to be submitted to Washington Mutual Bank ("WaMu") in order to obtain a residential loan in the amount of \$1,500,000 (the "WaMu loan") for a waterfront vacation residence located at 24 Norumbega Drive, Camden Maine, 04843 (the "Maine Vacation House"). WaMu was a financial institution and was an insured depository institution as defined in Title 18, United States Code, Section 20. The loan was a cash-out refinance of an existing \$1 million loan, and the cash-out proceeds of the loan were \$481,801.15. Also on or about October 20, 2006, defendant executed closing documents for the loan, including a HUD-1 settlement statement and promissory note, among other documents.

Defendant represented in the Loan Application that it contained true and correct information, and acknowledged that it is a federal crime to make a material false representation or omission in the information provided to the lender. Knowing this, defendant represented that he had been employed by Camden Consulting, Inc., with a business address of 501 Riviera Isle Drive, Ft.

Lauderdale, Florida, 33301 (“the Ft. Lauderdale House”), that he had worked for this company for 11 years, and had the title of President. Defendant also listed his home address as 2100 South Ocean Lane, Unit 1505, Ft. Lauderdale, Florida, 33316 (the “South Ocean Lane Condo”). Defendant further listed his monthly income as \$102,083.

At the time defendant executed the Loan Application, he did not live at the South Ocean Lane Condo but instead lived at the Ft. Lauderdale House. As of October 2006, Camden Consulting was a shell company that had never had any business activity, had no active bank accounts, and was not registered to do business in the State of Florida. Furthermore, as of the date defendant executed the Loan Application, he had not had any employment since approximately 1996, and had not received any income from any source since at least 2004. Furthermore, defendant did not declare any income in 2005 or 2006 on his personal income tax return. Information for the loan application was provided to the lender by defendant’s accomplice, Steven Steiner. Defendant knew at the time he executed the Loan Application that it would be used and relied upon by WaMu in order to make the lending decision to provide defendant with funds. Defendant also knew that the representations as to employment, home address, business address and income were material to the decision of the lender as to whether or not to provide funds. The representations were in fact material and were relied upon by WaMu in its decision to provide the approximately \$1,500,000 in loan proceeds to defendant.

B. Transmission of Proceeds to South Florida and Use and Concealment of Funds

On or about October 20, 2006, defendant directed the closing attorney to transmit the loan proceeds from the closing attorney’s office in Camden, Maine, to the Ft. Lauderdale House addressed to defendant, but in care of Steven Steiner. In so doing, defendant caused the proceeds of the loan to be transmitted from Camden, Maine to Ft. Lauderdale, Florida via Federal Express priority overnight airbill ending in X-8662 and dated October 20, 2006, in order for himself and his accomplice to take possession, use and control the proceeds. Defendant further requested that the closing attorney convey the proceeds in the form of a bank check that was made payable to a bank, Camden National Bank, instead of being made payable to defendant or his accomplice, Steven Steiner.

Defendant and his accomplice Steven Steiner did not cash the \$481,801.15 check constituting the loan proceeds for approximately two years. On or about October 29, 2008, defendant took the bank check to Camden National Bank, the bank to which it was made payable by the closing attorney, and had the check broken down into 10 more bank checks, each of approximately \$48,174.62. Defendant cashed these checks at the direction of Steven Steiner.

From time to time thereafter, defendant and his accomplice would cash the bank checks that were derived from the WaMu loan, including Check No. 110378 in the amount of \$48,174.62 on June 2, 2011, at a Bank of America branch in Ft. Lauderdale, Florida and Check No. 110377 in the amount of \$48,174.62 on July 19, 2011, at The First, N.A., in Rockland, Maine. Defendant and his accomplice, Steven Steiner, maintained the proceeds of the WaMu loan in the form of certified checks to avoid detection or confiscation by judgment creditors of defendant and Steven Steiner, including the U.S. Securities and Exchange Commission.

C. The Insurance Fraud Scheme

From in or around August 2006 through in or around April 2011, defendant and two accomplices, Steven Steiner and Joel Steinger, obtained health insurance by claiming fictitious employment with two shell companies, Royal Oak Farms, LLC and Blue Hill Trading, Inc. Defendant knew that he was receiving health insurance from health insurance companies, including Blue Cross Blue Shield of Florida ("BCBS") and various healthcare providers, including Aventura Hospital, using fraudulently obtained health insurance. Defendant knew that the insurance was group insurance, and that a false claim of employment had been made so that defendant could qualify for the insurance. Defendant would pay the premiums for the group insurance from time to time using proceeds derived from the WaMu loan referenced above.

BCBS paid out on defendant's behalf approximately \$158,423.48 in healthcare and pharmaceutical claims during the course of the fraudulently-obtained insurance scheme. The United States and Henry Fecker stipulate that the facts set forth in Paragraph C of this factual basis do not constitute a loss that is applicable as relevant conduct for sentencing purposes under U.S.S.G. Section 1B1.3 as to the Bank Fraud charge referenced in Paragraphs A and B above.

D. WaMu Loan Fully Paid-Off Based on Criminal Forfeiture Action in *United States v. Steven Steiner and Henry Fecker*, No. 11-20578-KMW

Based on a criminal forfeiture allegation in *United States v. Steven Steiner and Henry Fecker*, No. 11-20578-KMW, the Maine Vacation House was seized by the United States Marshals Service and sold pursuant to a court order. Defendant did not oppose the pretrial sale of the Maine Vacation House. The proceeds of the sale were sufficient to pay off the WaMu loan referenced above and WaMu did not suffer a loss other than administrative expenses, related to the above-referenced criminal conduct.¹

¹ I, Henry Fecker III, after having completed plea negotiations and having reached a plea agreement with the United States, hereby affirm that I understand the foregoing and voluntarily and knowingly adopt the Factual Basis set forth in paragraph 13 as my own statement. This statement is intended to be a post-plea discussion statement and is not protected by Criminal Procedure Rule 11(e)(6)

14. This Office represents that the undersigned prosecutor is unaware of any information establishing the factual innocence of the defendant in the offense referred to in paragraph two of this agreement. This Office understands it has a continuing duty to provide such information establishing factual innocence of the defendant. The defendant understands that if this case proceeded to trial, this Office would be required to provide impeachment information relating to any informants or other witnesses. In addition, if the defendant raised an affirmative defense, this Office would be required to provide information in its possession that supports such a defense. Further, if this case proceeded to trial, this Office would be required to provide other information and materials in accordance with Fed. R. Crim. P. 16 and the Southern District of Florida's Standing Discovery Order. In return for the Government's promises set forth in this agreement, the defendant waives the right to receive in discovery any such information and materials other than information and materials establishing the factual innocence of the defendant, and agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of such information and materials other than information and materials establishing the factual innocence of the defendant.

15. This Office agrees that it will not seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement, except that this Office shall have the right in its discretion to seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond those, if

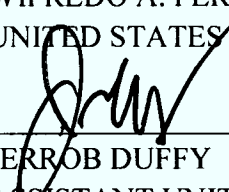
or Federal Rule of Evidence 410. No promises or inducements have been made to me other than those contained in this agreement. I am satisfied with the representation of my attorney in this matter.

Defendant  and Defense Counsel 

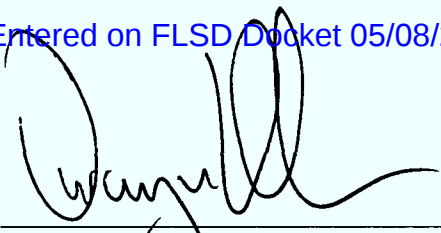
any, specifically referred to in this agreement where any such additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level would be based on conduct occurring after the defendant enters into this agreement. Furthermore, based on the nature and seriousness of the offense and the history and characteristics of the defendant, the government will agree to seek a non-custodial sentence, which may include a period of home detention. The defendant agrees that he will be sentenced under the Sentencing Guidelines and will not seek additional downward specific offense characteristics, reductions, variances, or downward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement and set forth in this paragraph. However, in the event the probation office recommends any specific offense characteristics, enhancements, reductions, or departures to or from the defendant's offense level other than those, if any, specifically referred to in this agreement, either party shall have the right but not the obligation to oppose any such recommendation.

16. This Plea Agreement between the parties is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Date: 5/8/14


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