



United States District Court
District of Connecticut
FILED NEW HAVEN

U.S. Department of Justice

6/16/2014
Robertta D. Tabora, Clerk
By *J. Lewis*
Deputy Clerk

United States Attorney
District of Connecticut

1000 Lafayette Boulevard, 10th Floor (203)696-3000
Bridgeport, Connecticut 06604 www.justice.gov/usao/ct

June 16, 2014

Elliot R. Warren, Esq.
830 Post Road East, Suite 214
Westport, CT 06880

Re: United States v. Asm Afsary
Criminal No. 3:14CR 129 (JCH)

Dear Attorney Warren:

This letter confirms the plea agreement between your client, Asm Afsary (the "defendant"), and the United States Attorney's Office for the District of Connecticut (the "Government" or "this Office") concerning the referenced criminal matter.

THE PLEA AND OFFENSE

Asm Afsary agrees to waive his right to be indicted and to plead guilty to a one count information charging him with conspiracy to commit wire fraud and bank fraud, in violation of 18 U.S.C. § 1349.

The defendant understands that, to be guilty of this offense, the following essential elements of the offense must be satisfied:

1. That on or about the dates charged in the Information, a conspiracy existed to commit bank fraud and wire fraud; and,
2. That the defendant knowingly and intentionally became a member of that conspiracy.

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THE PENALTIES

The offense of conspiracy in violation of 18 U.S.C. § 1349 carries a maximum penalty of thirty years imprisonment and a \$1,000,000 fine. In addition, under 18 U.S.C. § 3583, the Court may impose a term of supervised release of not more than five (5) years to begin at the expiration of any term of imprisonment. The defendant understands that, should he violate any condition of the supervised release, he may be required to serve a further term of imprisonment of up to three (3) years with no credit for time already spent on supervised release.

The defendant also is subject to the alternative fine provision of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on the defendant is the greatest of the following amounts: (1) twice the gross gain to the defendant resulting from the offense; (2) twice the gross loss resulting from the offense; or (3) \$1,000,000.

In addition, the defendant is obligated by 18 U.S.C. § 3013 to pay a special assessment of \$100 on each count of conviction. The defendant agrees to pay the special assessment to the Clerk of the Court on the day the guilty plea is accepted.

The defendant is also subject to restitution, as discussed below. Unless otherwise ordered, should the Court impose a fine or restitution of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of the fine or restitution not paid within 15 days after the judgment date. 18 U.S.C. § 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine or restitution pursuant to 18 U.S.C. § 3572 (h), (i) and § 3612(g).

Restitution

In addition to the other penalties provided by law, the Court must also order that the defendant make restitution under 18 U.S.C. § 3663A, and the Government reserves its right to seek restitution on behalf of victims consistent with the provisions of § 3663A. The scope and effect of the order of restitution are set forth in the attached Rider Concerning Restitution. Restitution is payable immediately unless otherwise ordered by the Court.

Forfeiture

The Information to which the defendant agrees to enter a plea of guilty includes a forfeiture allegation under 28 U.S.C. § 2461(c) and 18 U.S.C. § 981(a). By entering a guilty plea the defendant agrees to forfeit all of his right, title and interest in the real property described below:

- (1) 46 Fairfield Avenue, Stamford, Connecticut

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- (2) 15 Hanover Street, Stamford, Connecticut
- (3) 83 Orange Street, Stamford, Connecticut
- (4) 34 Ranson Street, Stamford, Connecticut
- (5) 9 Sherman Street, Stamford, Connecticut
- (6) 96-98 Beechwood Avenue, Bridgeport, Connecticut
- (7) 307-309 Dover Street, Bridgeport, Connecticut
- (8) 407 Logan Street, Bridgeport, Connecticut
- (9) 260-264 Pearl Harbor Street, Bridgeport, Connecticut
- (10) 420-422 Jane Street, Bridgeport, Connecticut

In particular, the defendant acknowledges that each of the above-listed assets is subject to forfeiture as proceeds of illegal conduct.

The defendant understands and agrees that by virtue of his plea of guilty he waives any rights or cause of action to claim that he is a “substantially prevailing party” for the purpose of recovery of attorney fees and other litigation costs in any related forfeiture proceeding pursuant to 28 U.S.C. § 2465(b)(1).

THE SENTENCING GUIDELINES

Applicability

The defendant understands that the Court is required to consider any applicable Sentencing Guidelines as well as other factors enumerated in 18 U.S.C. § 3553(a) to tailor an appropriate sentence in this case and is not bound by this plea agreement. The defendant agrees that the Sentencing Guideline determinations will be made by the Court, by a preponderance of the evidence, based upon input from the defendant, the Government, and the United States Probation Office. The defendant further understands that he has no right to withdraw his guilty plea if his sentence or the Guideline application is other than he anticipated, including if the sentence is outside any of the ranges set forth in this agreement.

Acceptance of Responsibility

At this time, the Government agrees to recommend that the Court reduce by two levels the defendant’s adjusted offense level under § 3E1.1(a) of the Sentencing Guidelines, based on the defendant’s prompt recognition and affirmative acceptance of personal responsibility for the offense. Moreover, should the defendant qualify for a decrease under § 3E1.1(a) and his offense level determined prior to the operation of subsection (a) is level 16 or greater, the Government will file a motion with the Court pursuant to § 3E1.1(b) which recommends that the Court reduce the defendant’s Adjusted Offense Level by one additional level based on his prompt notification of his intention to enter a plea of guilty. The defendant expressly

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understands that the Court is not obligated to accept the Government's recommendations on the reductions.

Notwithstanding anything to the contrary herein, the Government's recommendation pursuant to § 3E1.1(b) is conditioned upon the defendant indicating through his counsel that he intends to enter into a plea agreement as set forth in this document by no later than April 30, 2014, and entering a plea of guilty before the district court by no later than May 9, 2014.

The above-listed recommendations are conditioned upon the defendant's affirmative demonstration of acceptance of responsibility, by (1) truthfully admitting the conduct comprising the offense(s) of conviction and truthfully admitting or not falsely denying any additional relevant conduct for which the defendant is accountable under Sentencing Guideline § 1B1.3, (2) truthfully admitting his conduct in any civil proceeding, including any civil forfeiture proceeding; (3) collecting rent or other monies or proceeds from real properties controlled, owned or managed by the defendant, truthfully accounting for same to the Government, with all proceeds not used for debt service or necessary, receipted repairs or maintenance for the property being paid over to, and held in escrow by, the defendant's counsel of record in this case (and proceeds from one property cannot be used to pay the mortgage or expenses related to another property); and (4) truthfully disclosing to the Probation Office personal information requested, including the submission of a complete and truthful financial statement detailing the defendant's financial condition.

In addition, the Government expressly reserves the right to seek denial of the adjustment for acceptance of responsibility if the defendant engages in any acts, unknown to the Government at the time of the signing of this agreement, which (1) indicate that the defendant has not terminated or withdrawn from criminal conduct or associations (Sentencing Guideline § 3E1.1); (2) could provide a basis for an adjustment for obstructing or impeding the administration of justice (Sentencing Guideline § 3C1.1); or (3) constitute a violation of any condition of release. Moreover, the Government reserves the right to seek denial of the adjustment for acceptance of responsibility if the defendant seeks to withdraw his plea of guilty or takes a position at sentencing, or otherwise, which, in the Government's assessment, is inconsistent with affirmative acceptance of personal responsibility. The defendant understands that he may not withdraw his plea of guilty if, for the reasons explained above, the Government does not make one or both of the recommendations or seeks denial of the adjustment for acceptance of responsibility.

Stipulation

Pursuant to § 6B1.4 of the Sentencing Guidelines, the defendant and the Government have entered into a stipulation, which is attached to and made a part

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of this plea agreement. The defendant understands that this stipulation does not set forth all of the relevant conduct and characteristics that may be considered by the Court for purposes of sentencing. The defendant understands that this stipulation is not binding on the Court. The defendant also understands that the Government and the United States Probation Office are obligated to advise the Court of any additional relevant facts that subsequently come to their attention.

Guideline Stipulation

The parties agree that the Guidelines Manual in effect on the date of sentencing is used to determine the applicable Guidelines range. The parties stipulate to the following Guidelines calculation:

U.S.S.G. § 2B1.1 Fraud

(a) Base offense level:	7
(b)(1)(K) More than \$7,000,000	20
(b)(2)(A)(i) 10 or more victims	2
SUBTOTAL OFFENSE LEVEL	29
LESS: Up to 3 points for acceptance of responsibility	(3)
TOTAL OFFENSE LEVEL:	26

The parties agree to disagree as to any increase for an aggravating role pursuant to U.S.S.G. § 3B1.1. The Government asserts there should be a three (3) point increase for the defendant's role as a manager supervisor while the defendant asserts there should be no increase for role.

Based on an initial assessment, the parties agree that the defendant falls within Criminal History Category I. The parties reserve the right to recalculate the defendant's Criminal History Category and corresponding sentencing ranges if this initial assessment proves inaccurate.

If the defendant is correct as to a zero point role enhancement pursuant to U.S.S.G. § 3B1.1, then a total offense level 26, assuming a Criminal History Category I, would result in a range of 63 to 78 months of imprisonment (sentencing table) and a fine range of \$12,500 to \$125,000, U.S.S.G. § 5E1.2(c)(3). The defendant is also subject to a supervised release term of ~~one (1) year~~ ^{two (2)} to ~~three (3)~~ ^{five (5)} years. U.S.S.G. § 5D1.2.

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EJCW
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If the Government is correct as to a three (3) point role enhancement pursuant to U.S.S.G. § 3B1.1, then a total offense level 29, assuming a Criminal History Category I, would result in a range of 87 to 108 months of imprisonment (sentencing table) and a fine range of \$15,000 to \$150,000, U.S.S.G. § 5E1.2(c)(3). The defendant is also subject to a supervised release term of ~~one (1) year~~ to ~~three (3) years~~. U.S.S.G. § 5D1.2.

AMN
two(2) five(5) ERW
AL

The defendant expressly understands that the Court is not bound by this agreement on the Guideline ranges specified above. The defendant further understands that he will not be permitted to withdraw the plea of guilty if the Court imposes a sentence outside any of the ranges set forth in this agreement.

The defendant reserves his right to seek a downward departure at sentencing and/or a non-Guideline sentence, and the Government reserves its right to object. The Government and the defendant also agree that no other specific offense characteristics or Guideline adjustments apply, based on the information currently known to them.

The defendant and the Government agree that for purposes of this Sentencing Guidelines calculation the loss amount exceeds \$7,000,000 but is less than \$20,000,000.

In the event the Probation Office or the Court contemplates any sentencing calculations different from those stipulated by the parties, the parties reserve the right to respond to any inquiries and make appropriate legal arguments regarding the proposed alternate calculations. Moreover, the parties expressly reserve the right to defend any sentencing determination, even if it differs from that stipulated by the parties, in any post-sentencing proceeding.

The defendant and the Government agree that they reserve their respective rights to appeal any sentence entered in this case.

The defendant and the Government further agree that all other aspects of the sentence, including the imposition of any fine and the determination of the length and conditions of supervised release, about which the parties intend to make recommendations, will be left to the discretion of the Court.

Information to the Court

The Government reserves its right to address the Court with respect to an appropriate sentence to be imposed in this case. Moreover, the Government will discuss the facts of this case, including information regarding the defendant's background and character, 18 U.S.C. § 3661, with the United States Probation

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Office and will provide the Probation Officer with access to material in its file, with the exception of grand jury material.

WAIVER OF RIGHTS

Waiver of Right to Indictment

The defendant understands that he has the right to have the facts of this case presented to a federal grand jury, consisting of between sixteen and twenty-three citizens, twelve of whom would have to find probable cause to believe that he committed the offense set forth in the information before an indictment could be returned. The defendant acknowledges that he is knowingly and intelligently waiving his right to be indicted.

Waiver of Trial Rights and Consequences of Guilty Plea

The defendant understands that he has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him.

The defendant understands that he has the right to plead not guilty or to persist in that plea if it has already been made, the right to a public trial, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against him, the right not to be compelled to incriminate himself, the right to testify and present evidence, and the right to compel the attendance of witnesses to testify in his defense. The defendant understands that by pleading guilty he waives and gives up those rights and that, if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.

The defendant understands that, if he pleads guilty, the Court may ask him questions about each offense to which he pleads guilty, and if he answers those questions falsely under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making false statements.

Waiver of Statute of Limitations

The defendant agrees that, should the conviction following defendant's plea of guilty pursuant to this plea agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this plea agreement (including any indictment or counts the Government has agreed to dismiss at sentencing pursuant to this plea agreement) may be commenced or reinstated against defendant, notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the

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commencement or reinstatement of such prosecution. The defendant agrees to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date the plea agreement is signed.

ACKNOWLEDGMENT OF GUILT AND VOLUNTARINESS OF PLEA

The defendant acknowledges that he is entering into this agreement and is pleading guilty freely and voluntarily because he is guilty. The defendant further acknowledges that he is entering into this agreement without reliance upon any discussions between the Government and him (other than those described in the plea agreement letter), without promise of benefit of any kind (other than the concessions contained in the plea agreement letter), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges his understanding of the nature of the offense to which he is pleading guilty, including the penalties provided by law. The defendant also acknowledges his complete satisfaction with the representation and advice received from his undersigned attorney. The defendant and his undersigned counsel are unaware of any conflict of interest concerning counsel's representation of the defendant in the case.

SCOPE OF THE AGREEMENT

The defendant acknowledges that this agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state or local authority. The defendant acknowledges that no representations have been made to him with respect to any civil or administrative consequences that may result from this plea of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved. Finally, the defendant acknowledges that this agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving him.

COLLATERAL CONSEQUENCES

The defendant understands that he will be adjudicated guilty of each offense to which he has pleaded guilty and will be deprived of certain rights, such as the right to hold public office, to serve on a jury, to possess firearms, and in some states, the right to vote. Further, the defendant understands that if he is not a citizen of the United States, a plea of guilty may result in removal from the United States, denial of citizenship, and denial of admission to the United States in the future. The defendant understands that pursuant to section 203(b) of the Justice For All Act, the Bureau of Prisons or the Probation Office will collect a DNA sample from the defendant for analysis and indexing. Finally, the defendant understands that the Government reserves the right to notify any state or federal agency by which he

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is licensed, or with which he does business, as well as any current or future employer of the fact of his conviction.

SATISFACTION OF FEDERAL CRIMINAL LIABILITY; BREACH

The defendant's guilty plea, if accepted by the Court, will satisfy the federal criminal liability of the defendant in the District of Connecticut as a result of his participation in a conspiracy to commit bank fraud and wire fraud, which forms the basis of the information in this case.

The defendant understands that if, before sentencing, he violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the Government may void all or part of this agreement. If the agreement is voided in whole or in part, defendant will not be permitted to withdraw his plea of guilty.

NO OTHER PROMISES

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this plea agreement, and none will be entered into unless set forth in writing, signed by all the parties.

This letter shall be presented to the Court, in open court, and filed in this case.

Very truly yours,

MICHAEL J. GUSTAFSON
ACTING UNITED STATES ATTORNEY



ANN M. NEVINS
ASSISTANT UNITED STATES ATTORNEY

The defendant certifies that he has read this plea agreement letter and its attachment(s) or has had it read or translated to him, that he has had ample time to discuss this agreement and its attachment(s) with counsel and that he fully understands and accepts its terms.




ASM AFSARY
The Defendant

6/16/14

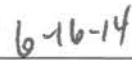
Date

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I have thoroughly read, reviewed and explained this plea agreement and its attachment(s) to my client who advises me that he understands and accepts its terms.



ELLIOT R. WARREN
Attorney for the Defendant



Date

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STIPULATION OF OFFENSE CONDUCT

The defendant Asm Afsary and the Government stipulate to the following offense conduct that gives rise to the defendant's agreement to plead guilty to the indictment/information:

1. From in or around 2005 to approximately June 2013, in the District of Connecticut and elsewhere, the defendant Asm Afsary, knowingly and willfully participated in a conspiracy to execute a scheme and artifice to defraud mortgage lenders and financial institutions out of money or property by means of interstate wires. The scheme involved obtaining fraudulent mortgages for the purchase of numerous single and multiple-family houses in Bridgeport, Norwalk and Stamford, Connecticut.

2. Afsary participated in the conspiracy by recruiting and directing the actions of numerous "straw buyers," or individuals who applied for and obtained mortgage loans but did not have an actual financial investment or stake in the mortgage loan transactions.

3. Afsary allowed his name and real estate license to be used by his co-conspirators for the purpose of adding legitimacy to transactions for which he was not, in fact, acting as a real estate agent or broker.

4. Afsary performed the following overt acts, in the district of Connecticut, in furtherance of the conspiracy:

- a) On or about August 8, 2008, AFSARY prepared or directed the preparation of a mortgage loan application containing materially false information that he then directed a straw buyer to sign in order for the straw buyer to obtain a mortgage loan from Salem Five Mortgage Co. in the amount of \$826,000.
- b) On or about December 12, 2010, AFSARY prepared or directed the preparation of a mortgage loan application containing materially false information that he then directed a straw buyer to sign in order for the straw buyer to obtain a mortgage loan from JPMorgan Chase Bank in the amount of \$378,026.00.
- c) On or about July 16, 2008, AFSARY paid \$24,566.62 to the Closing Attorney's law firm as part of the down payment to purchase real property A, the identity of which is known to AFSARY, in the name of another individual.
- d) On or about February 26, 2009, AFSARY and other co-conspirators arranged for another individual to purchase Property A, using loan proceeds from a mortgage loan issued by National City Bank.

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e) During the period from October 26, 2011, through July 30, 2013, AFSARY and other co-conspirators, with the intention to delay litigation so that they could continue to collect rent from Property A, filed or directed the filing of pleadings in a foreclosure proceeding for Property A pending before the state foreclosure court and the state appellate court.


4. In connection with many of the mortgage loans, Afsary or his co-conspirators would prepare, or cause to be prepared, materially false HUD-1 forms that were submitted to the mortgage lender or financial institution in order to disguise the false representations made to obtain approval of the mortgage loans.

5. Afsary knew that many of the borrowers had falsified their loan applications by their overstating their monthly income and lying about their place of employment.

6. Afsary knew that many of the borrowers were in fact "straw" buyers, acting on behalf of the true buyer, and in fact Afsary recruited many of the straw buyers to purchase property that was in truth owned and controlled by Afsary and others. The straw buyer did not have the financial means to consummate the real estate transaction.

7. The reasonably foreseeable loss from the scheme exceeded seven million (\$7,000,000.00) dollars but was less than twenty million (\$20,000,000.00) dollars.

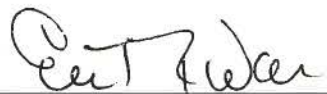
The written stipulation above is incorporated into the preceding plea agreement. The defendant and the Government reserve their right to present additional relevant offense conduct to the attention of the Court in connection with sentencing.



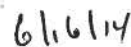
ASM AFSARY
The Defendant



ANN M. NEVINS
ASSISTANT UNITED STATES ATTORNEY



ELLIOT R. WARREN
Attorney for the Defendant



Date

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RIDER CONCERNING RESTITUTION

The Court shall order that the defendant make restitution under 18 U.S.C. § 3663A. The order of restitution may include:

1. If the offense resulted in damage to or loss or destruction of property of a victim of the offense, the order of restitution shall require the defendant to:
 - A. Return the property to the owner of the property or someone designated by the owner; or
 - B. If return of the property is impossible, impracticable, or inadequate, pay an amount equal to:

The greater of -

 - (I) the value of the property on the date of the damage, loss, or destruction; or
 - (II) the value of the property on the date of sentencing, less the value as of the date the property is returned.
2. In the case of an offense resulting in bodily injury to a victim –
 - A. Pay an amount equal to the costs of necessary medical and related professional services and devices related to physical, psychiatric, and psychological care; including non-medical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;
 - B. Pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and
 - C. Reimburse the victim for income lost by such victim as a result of such offense;
3. In the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and
4. In any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

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The order of restitution has the effect of a civil judgment against the defendant. In addition to the court-ordered restitution, the court may order that the conditions of its order of restitution be made a condition of probation or supervised release. Failure to make restitution as ordered may result in a revocation of probation, or a modification of the conditions of supervised release, or in the defendant being held in contempt under 18 U.S.C. § 3583(e). Failure to pay restitution may also result in the defendant's re-sentencing to any sentence which might originally have been imposed by the Court. *See* 18 U.S.C. §§ 3614; 3613A. The Court may also order that the defendant give notice to any victim(s) of his offense under 18 U.S.C. § 3555.