



U.S. Department of Justice

United States Attorney
District of New Jersey

402 E. State Street, Room 430
Trenton, New Jersey 08608

609-989-2190

EWM/MJM/PL AGR
2008R01205

July 14, 2014

Scott Krasny, Esq.
Furlong and Krasny
Mountain View Office Park
820 Bear Tavern Road, Suite 304
West Trenton, NJ 08628

R E C E I V E D

JUL 29 2014

AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

Re: Plea Agreement with Robert Kahan

12-13-473 (PGS)

Dear Mr. Krasny:

This letter sets forth the plea agreement between your client, Robert Kahan, and the United States Attorney for the District of New Jersey ("this Office").

Charges

Conditioned on the understandings specified below, this Office will accept a guilty plea from Robert Kahan to Count 8 of the Indictment captioned United States v. Robert Kahan, Crim. No. 13-473 (PGS), which charges that Robert Kahan knowingly made and caused to be made false statements for the purpose of influencing the action of a bank upon a construction loan for the Southwest Village II Project, in violation of 18 U.S.C. § 1014; and Count 12 of the Indictment, which charges that Robert Kahan transacted in criminal proceeds derived from false statements to obtain loans and fraud against a local government agency, in violation of 18 U.S.C. § 1957. If Robert Kahan enters a guilty plea and is sentenced on these charges, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Robert Kahan relating to the conduct described in the Indictment. In addition, if Robert Kahan fully complies with all of the terms of this agreement, at the time of sentencing in this matter, this Office will move to dismiss Counts 1 through 7, Counts 9 through 11 and Counts 13 through 25 of the Indictment against Robert Kahan. However, in the event that a guilty plea in this matter is not entered for any reason or the

judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, Robert Kahan agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Robert Kahan may be commenced against him, notwithstanding the expiration of the limitations period after Robert Kahan signs the agreement.

Sentencing

The violation of 18 U.S.C. § 1014 to which Robert Kahan agrees to plead guilty carries a statutory maximum prison sentence of 30 years, and a statutory maximum fine equal to the greatest of: (1) \$1,000,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense.

The violation of 18 U.S.C. § 1957 to which Robert Kahan agrees to plead guilty carries a statutory maximum prison sentence of 10 years, and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense; or (4) not more than twice the amount of the criminally derived property involved in the transaction.

The sentence on each count may run consecutively. Fines imposed by the sentencing judge may be subject to the payment of interest.

Further, in addition to imposing any other penalty on Robert Kahan, the sentencing judge: (1) will order Robert Kahan to pay an assessment of \$100 per count pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) must order Robert Kahan to pay restitution pursuant to 18 U.S.C. § 3663 *et seq.*; (3) may order Robert Kahan, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offenses; and (4) pursuant to 18 U.S.C. § 3583 may require Robert Kahan to serve a term of supervised release of not more than 5 years with respect to Count 8 and of not more than 3 years with respect to Count 12, which will begin at the expiration of any term of imprisonment imposed. Should Robert Kahan be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Robert Kahan may be sentenced to not more than 3 years' imprisonment with respect to Count 8 and not more than 2 years' imprisonment with respect to Count 12 in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time

previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

In addition, Robert Kahan agrees to make full restitution from the offenses of conviction charged in Counts 8 and 12 or from the scheme or pattern of criminal activity underlying those offenses to the victims of those offenses in an amount to be determined by the Sentencing Court. The parties agree that restitution may be provided to entities other than the victims of the offense who have sustained loss, as determined by the Court, which may include the financial institutions and public entities that funded the Canal Plaza Homeownership Project, the Southwest Village II Project and the Catherine S. Graham Project; namely, Roma Bank, third Federal Bank, Delanco Federal Savings Bank, Federal Home Loan Bank of New York, Metuchen Savings Bank (or the successors in interest of such financial institutions), the City of Trenton, New Jersey Housing and Mortgage Finance Agency, the United States Department of Housing and Urban Development and the New Jersey Department of Community Affairs.

Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Robert Kahan by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Robert Kahan's activities and relevant conduct with respect to this case.

Stipulations

This Office and Robert Kahan agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation

in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Robert Kahan from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict this Office's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Robert Kahan waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Forfeiture

Robert Kahan agrees that as part of his acceptance of responsibility and pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982(a)(1), 982(a)(2)(A), and 28 U.S.C. § 2461, he will consent to the entry of a forfeiture money judgment in the amount of \$989,900.82 (the "Forfeiture Money Judgment"). Defendant acknowledges that the Forfeiture Money Judgment is subject to forfeiture as property, real or personal, that constitutes or is traceable to violations of 18 U.S.C. § 1014, which constitutes a specified unlawful activity within the meaning of 18 U.S.C. § 981(a)(1)(C), and/or is property involved in a violation of 18 U.S.C. § 1957, and/or constitutes substitute assets for property subject to forfeiture, as described in 21 U.S.C. § 853(p).

Further, as part of his acceptance of responsibility Robert Kahan agrees to forfeit to the United States \$86,000 in United States currency that was seized from Robert Kahan on or about August 20, 2010 (the "Forfeitable Property"). Robert Kahan acknowledges that the Forfeitable Property is subject to forfeiture as property, real or personal, that constitutes or is traceable to violations of 18 U.S.C. § 1014, which constitutes a specified unlawful activity within the meaning of 18 U.S.C. § 981(a)(1)(C), and/or is property involved in a violation of 18 U.S.C. § 1957, and/or constitutes substitute assets for property subject to forfeiture, as described in 21 U.S.C. § 853(p). Upon forfeiture to the United States, the value of the Forfeitable Property is to be applied in partial satisfaction of the Forfeiture Money Judgment leaving a balance of \$903,900.82.

Payment of the balance of the Forfeiture Money Judgment totaling \$903,900.82 shall be made by certified or bank check. On or before the date of the defendant's plea of guilty pursuant to this agreement, Robert Kahan shall cause said check to be hand-delivered to the Asset Forfeiture and Money Laundering Unit, United States Attorney's Office, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102.

If the Forfeiture Money Judgment is not paid on or before the date of the defendant's plea, interest shall accrue on any unpaid portion thereof at the judgment rate of interest from that date. Furthermore, if Robert Kahan fails to pay any portion of the Forfeiture Money Judgment by the date of his plea, Robert Kahan consents to the forfeiture of any other property alleged to be subject to forfeiture in the Indictment, including substitute assets, in full or partial satisfaction of the Forfeiture Money Judgment, and remains responsible for the payment of any deficiency until the Forfeiture Money Judgment is paid in full.

In addition, Robert Kahan agrees that the real property and residence located at 19111 Collins Avenue, Sunny Isles Beach, Florida, Unit 2808 (the "Property"), is subject to forfeiture as property, real or personal, that constitutes or is traceable to violations of 18 U.S.C. § 1014, which constitutes a specified unlawful activity within the meaning of 18 U.S.C. § 981(a)(1)(C), and/or is property involved in a violation of 18 U.S.C. § 1957, and/or constitutes substitute assets for property subject to forfeiture, as described in 21 U.S.C. § 853(p).

Robert Kahan agrees that he will sell the Property for fair market value and will apply the net proceeds in full from the sale of the Property, after payment of all liens and judgments against the Property, in partial satisfaction of the Forfeiture Money Judgment. Robert Kahan agrees: (1) not later than 10 days before any closing on the sale of the Property, to give notice to the Asset Forfeiture and Money Laundering Unit, United States Attorney's Office, District of New Jersey, of the identity of the buyer, the sale price and the closing date; (2) to keep all payments on the property up to date, including any mortgage payments, taxes and utilities and to maintain homeowner's insurance on the Property; and (3) to maintain the Property in good repair and to prevent waste. The parties further agree that in the event that Robert Kahan violates any of the terms of this agreement he will immediately vacate, and cause all third parties to vacate, the Property. Robert Kahan also agrees to vacate, and cause all third parties to vacate the Property if the Property is not sold within nine months of entering into this agreement, or at least two weeks prior to his sentencing date in this matter, whichever date occurs first. Robert Kahan understands that the Property is, in any event, to be liquidated at least two weeks prior to his sentencing in this proceeding. If Robert Kahan violates any

of the terms of this agreement or the Property is not sold after nine months from the date this agreement is entered into or at least two weeks prior to the sentencing date in this matter, whichever occurs first, Robert Kahan consents to the government taking possession, and selling the Property with all proceeds being applied in full or partial satisfaction of the Forfeiture Money Judgment, and that he remains responsible for the payment of any deficiency until the Forfeiture Money Judgment is paid in full.

Robert Kahan represents that he has disclosed all of his assets to the government on the attached Financial Disclosure Statement. Robert Kahan agrees that if the government determines that he has intentionally failed to disclose assets on that Financial Disclosure Statement, that failure constitutes a material breach of this agreement. In addition, Robert Kahan consents to the administrative, civil, and/or criminal forfeiture of his interests in any assets that he failed to disclose on the Financial Disclosure Statement. Should undisclosed assets that the defendant owns or in which the defendant has an interest be discovered, Robert Kahan knowingly and voluntarily waives his right to any required notice concerning the forfeiture of said assets. Robert Kahan further agrees to execute any documents necessary to effectuate the forfeiture of said assets.

Robert Kahan further agrees to waive all interest in the Forfeiture Money Judgment, the Forfeitable Property, the Property, and any other property forfeited in partial or full satisfaction of the Forfeiture Money Judgment in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. Robert Kahan agrees to consent to the entry of orders of forfeiture for the Forfeiture Money Judgment, the Forfeitable Property, the Property, and any other property forfeited in partial or full satisfaction of the Forfeiture Money Judgment and waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Robert Kahan understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding.

Robert Kahan hereby waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

Immigration Consequences

Robert Kahan understands that, if he is not a citizen of the United States, his guilty plea to the charged offenses may result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. Robert Kahan understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. Robert Kahan wants and agrees to plead guilty to the charged offenses regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. Robert Kahan understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, Robert Kahan waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Robert Kahan. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service) or any third party from initiating or prosecuting any civil or administrative proceeding against Robert Kahan.

No Other Promises

This agreement constitutes the plea agreement between Robert Kahan and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.


Very truly yours,

PAUL J. FISHMAN
United States Attorney



By: ERIC W. MORAN
MARK J. McCARREN
Assistant U.S. Attorneys

APPROVED:



JAMES B. NOBILE
Chief, Special Prosecutions Division

I have received this letter from my attorney, Scott Krasny, Esq. My attorney and I have discussed it and all of its provisions, including those addressing the charges, sentencing, restitution, stipulations, waiver, forfeiture, and immigration consequences. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.


AGREED AND ACCEPTED:



Robert Kahan

Date: 7/14/14

I have discussed with my client this plea agreement and all of its provisions, including those addressing the charges, sentencing, restitution, stipulations, waiver, forfeiture, and immigration consequences. My client understands this plea agreement fully and wants to plead guilty pursuant to it.



Scott Krasny, Esq.

Date: 7/14/14

Plea Agreement with Robert Kahan

Schedule A

1. This Office and Robert Kahan recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Robert Kahan nevertheless agree to the stipulations set forth herein.

2. The version of the United States Sentencing Guidelines effective November 1, 2013 applies in this case.

Count 8 - 18 U.S.C. § 1014: False Statements to Obtain Loans

3. With respect to Count 8, the applicable guideline is U.S.S.G. § 2B1.1. This guideline carries a Base Offense Level of 7.

4. Because the loss amount was more than \$400,000 but not more than \$1,000,000, an upward adjustment of 14 levels is appropriate. U.S.S.G. § 2B1.1(b)(1)(H). Accordingly, the applicable Guidelines offense level as to Robert Kahan's criminal conduct charged in Count 8 is 21.

Count 12 - 18 U.S.C. § 1957: Transacting in Criminal Proceeds

5. With respect to Count 12, the applicable guideline is U.S.S.G. § 2S1.1. The applicable Base Offense Level as to Robert Kahan's criminal conduct charged in Count 8 is 21, pursuant to U.S.S.G. § 2S1.1(a)(1).

6. Because the offense charged in Count 12 is a violation of 18 U.S.C. § 1957, an upward adjustment of 1 is appropriate. Accordingly, the applicable Guidelines offense level as to Robert Kahan's criminal conduct charged in Count 12 is 22.

Multiple Count Analysis

7. Count 8 and Count 12 should be grouped together for purposes of determining a single offense level in accordance with U.S.S.G. § 3D1.2(c). U.S.S.G. § 2S1.1, Application Note 6. Accordingly, the combined offense level of Count 8 and Count 12 is 22, pursuant to U.S.S.G. § 3D1.3(a).

Miscellaneous

8. As of the date of this letter, Robert Kahan has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offenses charged. Therefore, a downward adjustment of 2 levels for acceptance

of responsibility is appropriate if Robert Kahan's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

9. As of the date of this letter, Robert Kahan 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 this Office to avoid preparing for trial and permitting this Office and the court to allocate their resources efficiently. At sentencing, this Office will move for a further 1-point reduction in Robert Kahan's offense level pursuant to U.S.S.G. § 3E1.1(b) if the following conditions are met: (a) Robert Kahan enters a plea pursuant to this agreement, (b) this Office in its discretion determines that Robert Kahan's acceptance of responsibility has continued through the date of sentencing and Robert Kahan therefore qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and (c) Robert Kahan's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater.

10. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Robert Kahan is 19 (the "agreed total Guidelines offense level").

11. The parties agree not to seek or argue for any upward or downward departure, adjustment or variance not set forth herein. Robert Kahan reserves the right to seek a variance pursuant to 18 U.S.C. § 3553(a) and this Office reserves the right to oppose any such motion or request for a variance.

12. Robert Kahan knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the agreed total Guidelines offense level of 19. This Office will not file any appeal, motion, or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from the agreed total Guidelines offense level of 19. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

13. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.