

**FILED**

JUL 21 2005

**Judge Samuel Der-Yeghiayan  
U.S. District Court**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA )  
 )  
 v. ) No. 04 CR 921-8  
 )  
 JOHN CANNATELLO ) Judge Samuel Der-Yeghiayan

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant JOHN CANNATELLO, and his attorney, JEFFREY STEINBACK, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 04 CR 921-8.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant JOHN CANNATELLO and his attorney, JEFFREY STEINBACK, have agreed upon the following:

1. Defendant acknowledges that he has been charged in Counts Eight and Nine of the superseding indictment (the "indictment") in this case with mail fraud in violation of Title 18, United States Code, Sections 1341, 1346 and 2.

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

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

4. Defendant will enter a voluntary plea of guilty to Count Eight of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count Eight of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt as to the charged offense, as to relevant conduct and the forfeiture of property as set forth in paragraph 18:

Beginning in or about 1998 and continuing through late 2003, defendant, along with Roger McMahon, Donald Tomczak, Gerald Wesolowski and others who worked at Tomczak's direction, devised and intended to devise, and participated in, a scheme and artifice to defraud the people of the City, and the City, of money, property and the intangible right to the honest services of Tomczak, Wesolowski and other officials, employees and agents of the City and the Department, by means of materially false and fraudulent pretenses, representations, promises and material omissions, and in furtherance thereof used the United States mails and other interstate carriers.

By way of background, beginning no later than the mid 1990s and continuing through early 2004, defendant John Cannatello was a principal operating agent of GNA Trucking (“GNA”), a Hired Truck Program (“HTP”) participating company. The principal customer of GNA was the City of Chicago, and, as of late 1998, the company was registered with the City as a Women Owned Business Enterprise (“WBE”). For each year from 1997 through 2003, GNA averaged over \$325,000 in revenues from HTP work of the Water Department (the “Department”). In addition to the Department, GNA received HTP work from the Department of Transportation. During its busiest period, GNA employed 8 drivers relating to its HTP work.

As to GNA’s status as a WBE, pursuant to a City Ordinance, the City established a MBE/WBE Procurement Program to promote minority and women owned businesses by modifying City procurement practices and policies (the “MBE/WBE Ordinance”). Under the MBE/WBE Ordinance and regulations promulgated thereunder, to participate in the MBE/WBE Procurement Program, a minority or women owned business was required to submit a MBE/WBE certification application and all required documentation to the City demonstrating, among other things, that the applicant company met certain ownership and managerial requirements.

Contrary to certain written representations made to the City on behalf of GNA, defendant was, in fact, a principal operator of GNA. Among other things, defendant had decision-making authority to act on behalf of GNA and did act on behalf of GNA with respect to: 1) hiring and firing of truck drivers; 2) marketing and sales efforts relating to the City, GNA’s sole customer, and Department personnel; 3) dispatching GNA trucks and its drivers; 4) repairing GNA trucks and other truck-related matters; 5) purchasing and selling GNA trucks; 6) leasing arrangements regarding GNA facilities; and 7) other operating matters.

The City's HTP provided the Department, along with other City operating departments, with a mechanism to use trucking services on an as-needed basis to complete construction and operating obligations. As to the Department's use of the HTP, individual requests for HTP services typically were made by Department supervisors in the field and directed to Tomczak's office for review. After the request was reviewed and individual selections were made by Tomczak, individuals designated by Tomczak would notify the particular HTP participant, such as GNA Trucking, as to the assignment and type of truck(s) necessary, thereby "calling out" the trucks for the Department. Upon completion of the HTP assignment or based upon further review by Tomczak, individual HTP trucking company participants would be notified that the truck was being assigned to another Department project, terminated or otherwise designated. From at least 1989 to late 2003, Tomczak exercised sole and final authority as to selection, assignment, and hiring of trucks, as well as the order in which companies would be laid off at the end of a season or project (hereinafter the "lay off process") related to the HTP business of the Department.

While he was an employee of the City through June 1998, at Tomczak's direction, co-defendant Roger McMahon performed functions and tasks relating to HTP work of the Department, including "calling out" trucks identified by Tomczak. Shortly after McMahon's retirement, co-defendant Gerald Wesolowski, a Department official who reported to Tomczak and was also a close associate of Tomczak, "called out" trucks at Tomczak's direction and otherwise performed HTP functions on behalf of the Department at Tomczak's direction. From 1998 through late 2003, defendant Cannatello was the principal contact person with McMahon, Wesolowski and Tomczak on behalf of GNA.

From 1998 to at least late 2003, during their respective employments with the City, and pursuant to the Chicago Governmental Ethics Ordinance, Tomczak and Wesolowski (collectively, the "City Employees") each owed a duty of honest services to the City and the people of the City in the performance of their respective public duties. Illinois law and City ordinances defined that duty, providing limitations on the acceptance of payments and the solicitation of political contributions from persons doing business with the City. Defendant acknowledges that the City employees could not accept gifts or solicit political contributions from persons in the HTP Program.

In furtherance of the aforementioned scheme, defendant provided annual cash payments to Tomczak, Wesolowski and McMahon on certain occasions between 1998 through 2003. In return, Tomczak, with McMahon's and Wesolowski's assistance, performed and authorized official Department actions to benefit the financial interests of GNA by awarding, and authorizing the award of, assignments to perform HTP work for the Department; and providing business opportunities in the selection, hiring, assigning and lay off process for HTP Department projects. In addition to cash payments, defendant also provided campaign contributions and other things of value for the benefit of Tomczak, McMahon and third parties associated with Tomczak, with the defendant knowing that such benefits were provided with intent to influence and reward Tomczak in the performance of his official acts related to the HTP.

More specifically, on annual occasions in or around December through December 2003, defendant gave Tomczak an envelope containing \$1,000-\$3,000 cash at the Jardine Filtration Plant. In addition, in or around December 2003, defendant gave Wesolowski \$1,000 cash due to the fact that Tomczak was retiring and defendant understood that Wesolowski would be assuming

Tomczak's role in the HTP. During McMahon's participation in the HTP in "calling out" trucks, defendant provided McMahon approximately \$200 each Christmas.

On other occasions during the time period of the scheme, McMahon solicited campaign contributions from defendant on behalf of Tomczak. On each occasion McMahon solicited a contribution from defendant, defendant responded affirmatively. Defendant provided the campaign contributions understanding that the contribution was being provided with intent to influence and reward Tomczak in the performance of his official acts related to the HTP.

Defendant further acknowledges that the government could prove that, during the time period of the scheme, defendant provided more than \$10,000 in cash, campaign contributions and financial benefits for the benefit of Tomczak and other Department officials and agents.

Defendant further acknowledges that, on or about January 16, 2003, an envelope containing a City warrant and addressed to GNA Trucking at a Palos Park, Illinois, address, was delivered by mail to that address, and that mailing was in furtherance of the scheme to defraud.

The government has no evidence that GNA failed to perform any of the work requested of it in the HTP.

6. Defendant also stipulates, pursuant to Section 1B1.3, that for the purpose of computing his sentence under the U.S. Sentencing Guidelines, that he engaged in the following relevant conduct:

Payments To HTP Officials Outside The Department

At certain periods during the scheme, defendant provided cash and other things of value to multiple City officials (outside the Department) who had decision making authority or responsibility in the HTP with the intent to influence and reward the officials in the performance of his official acts

related to the HTP. In particular, defendant provided approximately \$500 cash annually to Nick Lococo, a CDOT official during December for each year from approximately 1998 to 2003. In addition, in or about December 1997, defendant provided cash Christmas gifts to two City officials who worked in the HTP Administrative offices.

In total, defendant provided no more than \$4,000 cash and things of value to non-Department City officials with HTP responsibility.

The above statement of facts in paragraphs 5 and 6 are not an exhaustive account of the defendant's knowledge of the events described, nor does it describe all of the government's evidence regarding the count of conviction. Rather, it is a true and accurate summary of facts necessary to establish a factual predicate for defendant's plea of guilty and certain relevant conduct.

7. For purposes of calculating the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

(a) The Guidelines are calculated pursuant to the November 2002 edition of the Guidelines Manual.

(b) Pursuant to Guidelines Sections 2B1.1(c)(3)(C) and 2C1.1(a), the base offense level for the count of conviction and relevant conduct is level 10.

(c) Pursuant to Guidelines Section 2C1.1(b)(1), the offense level is increased by 2 levels because the offense and relevant conduct involved more than one bribe payment.

(d) It is the position of the government that, pursuant to Guidelines Section 2C1.1(b)(2)(B), the offense level is increased by 12 levels because the benefit received in return for the bribe payments, as measured by the net profits of GNA, exceeded \$200,000 but was less than

\$400,000. Defendant reserves the right to argue that the benefit received was substantially less than \$200,000, and, thus, that the offense level should be increased no more than 8 levels, due to the fact that the offense and relevant conduct involved a payment for the purpose of influencing an official holding a high-level decision making position, namely the position of First Deputy Commissioner.

(e) Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for his actions, within the meaning of Guideline Section 3E1.1, a two-level reduction in the offense level is appropriate.

(f) Defendant has provided timely complete information concerning his own involvement in the offense, and notified the government timely of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently, within the meaning of Guideline Section 3E1.1(b); an additional one-point reduction in the offense level is therefore appropriate, provided the Court determines the offense level to be 16 or greater prior to the operation of Guideline Section 3E1.1(a).

(g) Based on the facts known to the government, the defendant's criminal history points equal 1 and the defendant's criminal history category is I; and

(h) Defendant and his attorney and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly,

the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

8. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, and that the Court must consult those Guidelines and take them into account when sentencing the defendant.

9. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

10. Defendant understands the count to which he will plead guilty carries a maximum penalty of five years imprisonment and a maximum fine of \$250,000, or twice the gross gain to the defendant or loss to others, whichever is greatest; and a term of supervised release of not more than three years.

11. Defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of \$100 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

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

(a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence and considering each count separately, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

13. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

14. Nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from the defendant and his wife.

15. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to any party.

16. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

17. At the time of sentencing, the government will recommend that the Court impose a sentence within the applicable guideline range.

18. The indictment charges that, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), defendant acquired interests subject to forfeiture. Defendant agrees to the entry of a forfeiture judgment in the amount of \$100,000 and a preliminary order of forfeiture because funds in this amount are subject to forfeiture. Prior to sentencing, defendant agrees to deposit \$100,000 into his attorney's escrow account. Defendant

further agrees that the forfeiture judgment shall be satisfied on the day sentence is imposed with a check or wire transfer from his attorney's escrow account to the United States Marshal Seized Asset Management Account. Defendant understands that forfeiture of this property shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to the forfeiture judgment, but that said amount is in total satisfaction of defendant's forfeiture liability notwithstanding the charged forfeiture alleging joint and several liability in the superseding indictment.

19. Defendant understands that the government has the right to seek defendant's truthful testimony before a grand jury or a district court.

20. The defendant understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine and in determining the schedule, if any, according to which any restitution is to be paid in this case. The defendant agrees to provide full and truthful information to the Court and United States Probation Officer regarding all details of his economic circumstances in order to determine the proper fine and restitution schedule according to which the defendant may be ordered to pay. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court.

21. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in

this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this agreement and the commencement of such prosecutions.

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

23. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

24. At the time of sentencing, the government will move to dismiss the remaining count in the indictment as to defendant.

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

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

AGREED THIS DATE: July 21, 2005

David H. Hoover for PJF  
PATRICK J. FITZGERALD  
United States Attorney

Patrick J. McGovern  
PATRICK COLLINS  
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