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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
JUN 16 2005
Judge Samuel Der-Yeghiayan
U.S. District Court

UNITED STATES OF AMERICA)
)
) v. No. 04 CR 921-6
)
LEROY S. PETERS) 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, LEROY S. PETERS, and his attorney, WILLIAM MARUTZKY, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure, and is governed in part by Rule 11(c)(1)(C), as more fully set forth in Paragraph 17, below.

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 921-6.

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, LEROY PETERS, and his attorney, WILLIAM MARUTZKY, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the superseding indictment (the "indictment") with: participating in a mail fraud scheme in violation of Title 18, United States Code, Sections 1341, 1346 and 2 (Count Four); and bribery in violation of Title 18, United States Code, Section 666(a)(2) (Count Twelve).

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 Four of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count Four 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:

Background

Defendant is the founder of LR&C, a trucking company that was originally located on the South Side of Chicago and later moved to Blue Island, Illinois, in the early 1990s. From at least the 1980s through the late 1990s, defendant was the owner and principal operating agent of LR&C. In or around 1998, defendant transferred ownership and operations of LR&C to his daughter, co-defendant Commelie Peters. Thereafter, however, defendant maintained a role in the operations of LR&C.

The principal customer of LR&C was the City of Chicago, with the Department of Water being the primary customer within the City. From in or around 1995 through January 2004, LR&C

participated in the City's Hired Truck Program ("HTP"). During its participation in the HTP, LR&C was registered with the City of Chicago ("the City") as a Minority Business Enterprise ("MBE") and, as of 1998, LR&C added Women-owned Business Enterprise ("WBE") status and was thereafter registered with the City as a MBE/WBE. For each year from 1997 through 2003, LR&C averaged over \$550,000 in revenues from HTP work of the Department of Water.

The City's Hired Truck Program

The HTP provided City operating departments, including the Department of Water (the "Department"), 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 the office of co-defendant Donald Tomczak, the First Deputy Commissioner, for review. After the request was reviewed and individual selections were made by Tomczak, individuals designated by Tomczak would notify the particular HTP participant 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 co-defendant Roger McMahan was an employee of the City through June 1998, at Tomczak's direction, McMahan 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 of Water at Tomczak’s direction. From 1995 through January 2004, defendant was a principal contact person on behalf of LR&C with certain Department officials, including McMahon and Wesolowski.

As stated in more detail below, co-defendant Flenory Barnes, then a Department employee, served as a liaison between Tomczak and defendant for the purposes of delivering cash payments from defendant to Tomczak in exchange for Tomczak calling out LR&C trucks for Department work in the HTP.

From 1998 to at least late 2003, during their respective employments with the City, and pursuant to the Chicago Governmental Ethics Ordinance, Tomczak, Wesolowski and Barnes (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.

Count of Conviction

Beginning no later than approximately the late 1990s and continuing until approximately late 2003, defendant, along with co-defendants Donald Tomczak, Gerald Wesolowski and Flenory Barnes, devised and intended to devise, and participated in, a scheme and artifice to defraud the

people of the City of Chicago (hereinafter, "the City"), and the City, of money, property and the intangible right to the honest services of Tomczak, Barnes and other officials, employees and agents of the City and the Department of Water, 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.

Specifically, beginning in or about the late 1990s, after a conversation with Flenory Barnes and another Department official, defendant agreed to provide Barnes cash payments with the understanding that Barnes would deliver the cash payments to Tomczak, and Tomczak, in turn, would provide LR&C ongoing business opportunities in the HTP for the Department. Thereafter, on approximately a monthly basis and continuing to in or about late 2003, defendant and/or co-defendant Commelie Peters met with Barnes to give him an envelope containing cash in the amount of \$1,500-\$2,500, which amount represented per truck bribe payments for LR&C trucks hired for HTP work of the Department.

Defendant or co-defendant Commelie Peters typically paid Barnes, acting as the middleman for the bribes, the cash payments during Barnes' monthly visits to LR&C's facility in Blue Island. Said cash was typically obtained by Commelie Peters withdrawing funds from LR&C's bank account.

Defendant acknowledges that the government could prove that, upon receipt of a cash payment, Barnes later delivered it to Tomczak, typically at his office at the Jardine Filtration Plant in Chicago. Barnes typically retained 50% of the bribe proceeds for himself. Defendant further acknowledges that the government could prove that, in exchange for the payments he and Commelie

Peters provided Barnes for the benefit of Tomczak, Tomczak was influenced and rewarded in the performance of his official acts related to the HTP.

In order to conceal the fact of the bribe payments being passed to Tomczak, defendant and co-defendant Commelie Peters disguised the cash payments as consulting services, which services were deducted as a business expense from their tax returns.

Defendant further acknowledges that the government could prove that, based on its best estimates, the total amount of cash payments that defendant and co-defendant Commelie Peters paid to Barnes for the purposes of influencing the reward of HTP work exceeded \$100,000 but was less than \$120,000.

During the period of the scheme, the City paid LR&C for its HTP work on a monthly basis via "warrants," which warrants were sent through the United States mails to LR&C. Defendant acknowledges that, on or about October 24, 2000, an envelope containing a City warrant and addressed to LR&C at a Blue Island, Illinois, address, was delivered by mail to that address, and that mailing was in furtherance of the scheme to defraud.

The above statement of facts is 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 the defendant's plea of guilty.

6. The defendant, for purposes of computing his sentence under the Federal Sentencing Guidelines, stipulates to having committed the following additional offense.

Defendant, along with an employee of the Chicago Regional Council of Carpenters Welfare Fund ("Employee A") embezzled, stole and unlawfully and willfully abstracted and converted to the

use of himself and Employee A, certain funds and assets of an employee welfare benefit plan, namely approximately \$15,003.30 of the Chicago Regional Council of Carpenters Welfare Fund (the "Fund"), in violation of Title 18, United States Code, Sections 664 and 2.

Background

The Fund is an employee welfare benefit plan covered under the provisions of Employment Retirement Income Security Act ("ERISA"). The Fund offers Medical Disability payments to its participants, principally Carpenter's Union members. The payments amount to between \$300 and \$400 a week and are intended for the participant who is disabled and can no longer work. The payments can only last one calendar year per injury. The medical disability payments come out of the general ERISA Fund checking account that is funded solely by employer contributions.

In or about early 2004, at the direction of and with the assistance of Employee A, defendant PETERS filled out a false Medical/Disability Claim Form in the name of a Carpenter's Union member ("Member A"). Defendant agreed to participate knowing that Employee A intended to divert the payments that would be forthcoming and payable to Member A.

After defendant filled out the claim form on behalf of Member A, Employee A used the form defendant filled out for the purpose of creating a Disability payment check in the name of Member A from the Fund in the amount of \$15,003.30.

Thereafter, on or about Saturday July 24, 2004, defendant met Employee A in the area of 183rd Street and Pulaski Road, Country Club Hills, Illinois. At this meeting, defendant received the above-referenced check from Employee A, which was made out to "Member A" in the amount of \$15,003.30. Defendant took the check, stamped the endorsement section with a business stamp of "RW & Sons Trucking Co." (an entity in which defendant had a business interest) and deposited the

check into an RW & Sons business checking account at Great Lakes Bank. After depositing the checks, defendant converted the proceeds of the Fund check for the benefit of himself and Employee A by, among other things, writing checks drawn on the above-referenced Great Lakes Bank account and payable to Employee A.

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 2003 edition of the Guidelines Manual.

Count of Conviction

(b) Pursuant to Guidelines Sections 2C1.7(c)(4) and 2C1.1(a), the base offense level is level 10.

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

(d) Pursuant to Guidelines Section 2C1.1(b)(2)(B), the offense level is increased by 8 levels because the offense involved a payment for the purpose of influencing an official holding a high-level decision making position, namely, Tomczak in the position of First Deputy Commissioner of the Department of Water.

Stipulated Offense

(e) Pursuant to Guidelines Sections 2B1.1(a)(2), the base offense level is 6.

(f) Pursuant to Guidelines Section 2B1.1(b)(1)(C), the offense level is increased by 4 levels because the offense involved more than \$10,000 and less than \$30,000.

Grouping

(g) Pursuant to the application of Guideline Sections 3D1.2-3D1.3, the following two groups are created, with the applicable offense levels:

i. Group One: a group with an adjusted offense level of 20 based on calculations set forth above in (b) -(d) and

ii. Group Two, a group with an adjusted offense level of 10 based on calculations set forth in (e)-(f) above;

(h) Based on application of 3D1.4(c) to the offense levels for the two respective groups, in that Group Two is 9 or more levels less serious than Group One, no offense levels are added to the adjusted offense level of Group One.

(i) 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.

(j) 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).

(k) Based on the facts known to the government, defendant's criminal history points equal zero (0) and his criminal history category is I; and

(l) 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. 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 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 twenty 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, defendant will be assessed \$100, in addition to any other penalty imposed. 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 charges 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. The 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 consider each charge separately, and agree unanimously before it could return a verdict of either guilty or not guilty on each count. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt and that it was to consider each count of the Indictment separately.

(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 and considering each count separately, 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. Defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement. Defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, including but not

limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

15. 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.

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

17. 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.

18. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, assuming the defendant's full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline 5K1.1, to depart from the applicable sentencing guidelines range and to impose the specific sentence agreed to by the parties as outlined below. Defendant understands that the decision to depart from the applicable guidelines range rests solely with the Court. However, this Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that the sentence imposed by the Court shall include a term of imprisonment in the custody of the Bureau of Prisons of 85% of the low end of the applicable sentencing guidelines. Other than the agreed term of incarceration, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the agreed term of incarceration set forth,

the defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d) and (e). If, however, the Court refuses to impose the agreed term of incarceration set forth herein, thereby rejecting the Plea Agreement, or otherwise refuses to accept the defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

19. Regarding restitution, the parties further agree that the offense to which the defendant is pleading guilty and the stipulated offense are offenses against property which were committed by fraud or deceit, and thus an order of restitution is required pursuant to Title 18, United States Code, Section 3663(A). 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 amount, the manner and the schedule by which fines and/or restitution are to be paid for the offense of conviction and the stipulated offense. Furthermore, defendant understands that he is required to notify the Court and the Attorney General of any material change in his economic circumstances that might affect his ability to pay restitution for the offense of conviction or the stipulated offense. 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.

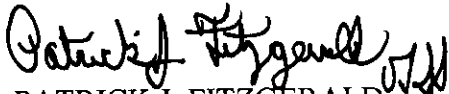
20. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.


21. At the time of sentencing, the government will move to dismiss the remaining counts of the superseding indictment and the initial indictment as to defendant LEROY PETERS.


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

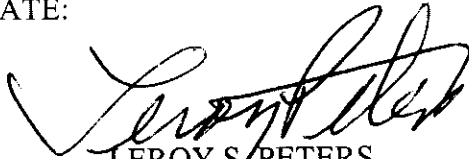
23. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.


AGREED THIS DATE:


PATRICK J. FITZGERALD
United States Attorney


PATRICK COLLINS


PATRICK McGOVERN
Assistant United States Attorneys


LEROY S. PETERS
Defendant


WILLIAM MARUTZKY
Attorney for Defendant