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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

MAY 18 2005

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

UNITED STATES OF AMERICA)
)
 v.) No. 04 CR 921-13
)
 CHARLES ROMANO) 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, CHARLES ROMANO, and his attorney, DANIEL WOLFF, 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 921-13.

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, CHARLES ROMANO, and his attorney, DANIEL WOLFF, 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 Seven); and making a false statement in violation of Title 18, United States Code, Section 1001(a)(2) (Count Twenty Three).

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 Seven of the indictment in this case.

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

Beginning no later than 2001 and continuing until early 2004, defendant, along with Michael Harjung and co-defendants Donald Tomczak, Gerald Wesolowski, Richard Rylewicz, and Joan Policky, 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, Wesolowski 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. In particular, on or about October 14, 2003, at Chicago, defendant along with Tomczak, Wesolowski, Harjung, Rylewicz, and Policky, for the

purpose of executing the aforesaid scheme, and attempting to do so, did knowingly cause to be delivered by mail according to the direction thereon an envelope containing a City warrant addressed to Garfield Trucking, Inc. at a Chicago, Illinois, address, in violation of Title 18, United States Code, Sections 1341, 1346 and 2.

Specifically, under the City's Hired Truck Program ("HTP"), the City rented trucks and drivers from privately owned truck companies. Once companies were approved to participate in the HTP, they could have trucks called out to work in several City departments, including the Department of Water. At the Department of Water, First Deputy Commissioner Donald Tomczak had final authority in the selection or "calling out" of trucks.

From June 1979 to February 2005, defendant was employed as an operating engineer for the Department of Water. As a City employee, defendant was prohibited from doing any business with the City. In or around late 2000, defendant was asked by Michael Harjung, a former Department of Water employee, to participate in the formation and operation of a trucking company, Garfield Trucking Inc. ("Garfield). Harjung told defendant that Garfield, once formed, would have a steady stream of business from the HTP because he had an ongoing payment arrangement with Tomczak, involving another trucking company Harjung was involved in, Cayla Trucking ("Cayla"). Harjung further told defendant that Tomczak called out Cayla's trucks in exchange for a payment to him of \$75 per truck per week. Harjung told defendant that the same arrangement with Tomczak would exist once Garfield was formed.

After hearing Harjung describe his arrangement with Tomczak, defendant agreed to participate in the business of Garfield and provided a \$10,000 investment, principally for purposes of purchasing a 10-ton truck that would be used in the HTP by Garfield. After making the

investment, Harjung then introduced defendant to Joan Policky and Richard Rylewicz at Rylewicz's office in Berwyn. Harjung had recruited Policky to be the owner of record of Garfield and to maintain Garfield's financial books. Policky's husband, Richard Rylewicz, also agreed to participate in the formation and operation of Garfield. On January 26, 2001, Garfield was incorporated in the State of Illinois with Rylewicz being its registered agent. Defendant set up an office and mailbox for Garfield's business address on North Avondale Avenue in Chicago.

After Garfield was enrolled in the HTP, it initially did not receive any business in the HTP. By April 2002, however, Garfield began receiving HTP business from the Department of Water, which business was arranged in communications between Harjung and Tomczak. Between April 2002 and January 2004, Garfield had one truck that worked exclusively and regularly for the Department of Water in the HTP. During this period, defendant's principal operating role on behalf of Garfield was to pick up mail from Garfield's business address and maintain the truck.

Defendant never paid Tomczak money directly, nor did he ever accompany Harjung when Harjung paid Tomczak. Defendant's sole source of knowledge regarding the Tomczak payments were statements made by Harjung. With the permission of defendant, Policky and Rylewicz, Harjung regularly obtained the \$75 per truck per week to pay Tomczak from Garfield's bank account, which was maintained by Policky.

During the period April 2002 to January 2004, Harjung gave an approximate total of \$6,600 in payments Tomczak in exchange for Tomczak calling out Garfield's truck for Department of Water work in the HTP. Also during this period, the City paid Garfield for its HTP work on a monthly basis via "warrants" that were mailed to Garfield's business address. Among the warrants sent to Garfield was one sent by the City to Garfield's business address on or about October 14, 2003. From

April 2002 through November 2003, Garfield received approximately \$118,660 (\$49,060 in 2002 and \$69,600 in 2003) from the City for the use of Garfield's truck in the HTP. During this period, Policky maintained Garfield's books.

By January 2004, defendant had invested an approximate total of \$20,000 into Garfield for operational purposes and was ultimately repaid approximately \$8,000 from the revenue generated by Garfield in the HTP, thereby resulting in a financial loss to the defendant.

On February 16, 2005, after Harjung had begun cooperating with the investigation and identified defendant's role in Garfield, defendant was interviewed by federal law enforcement, including an agent from the United States Postal Inspection Service. During the February 16th interview, agents questioned defendant concerning, among other things, his involvement with Garfield, how Garfield obtained business in the HTP, and whether Harjung told him that he was making payments to Tomczak. Defendant falsely stated that his only involvement in Garfield was investing in the business and that he was never told by Harjung that he was paying Tomczak to receive HTP business for Garfield.

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. 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 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.

(e) The parties agree that application of Guidelines Section 3C1.1 does not apply because under Guidelines Section 3C1.1 Application Note 5(b), defendant's materially false statements to law enforcement officers were not under oath and did not significantly obstruct or impede the official investigation or prosecution of the instant offense.

(f) Pursuant to Guidelines Section 3B1.2, the offense level is decreased 2 levels because defendant was a minor participant in the offense conduct.

(g) 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.

(h) 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).

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

(j) 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.

7. 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.

8. 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.

9. 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 greater; and a term of supervised release of not more than three years.

10. 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.

11. 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.

12. 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.

13. 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.

14. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate that is related to or results from the charges in this case.

(a) Defendant agrees to provide complete and truthful information in any investigation and pre-trial preparation, and complete and truthful testimony, if called upon to testify, before any federal grand jury and United States District Court proceeding, and any related civil administrative or court proceeding.

(b) Defendant agrees to postpone his sentencing until after the conclusion of the prosecution of his co-defendants.

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 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 shall make known to the sentencing judge the extent of defendant's cooperation, and, assuming 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 be a sentence within Zone C in the range called for by an offense level of 12. At the time of sentencing, both parties shall be free to recommend any sentence within Zone C at offense level 12. Other than this agreed sentencing range, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the agreed sentence within Zone C, 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 sentence within Zone C, thereby rejecting the Plea Agreement, or otherwise refuses to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

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

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

20. 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.

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 Charles Romano.

22. 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. 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.

23. 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. Defendant understands and agrees that in the event that this Plea Agreement is breached by defendant, and the Government elects to void the Plea Agreement and prosecute 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

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.

24. 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.

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

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: May 18, 05

Patrick J. Fitzgerald / P.D.G.
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PATRICK COLLINS
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