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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

APR 26 2016

4-26-16
Judge Edmond E. Chang
United States District Court

UNITED STATES OF AMERICA

No. 15 CR 676

v.

Judge Edmond E. Chang

ROBERT PEARSON

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant ROBERT PEARSON, and his attorney, PAUL FLYNN, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts 1-10).

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

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

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following count of the indictment: Count 1, which charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 1 of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Defendant ROBERT PEARSON was the CEO, President, and sole owner of the Illinois Stock Transfer Company (IST). The company was a transfer agent that provided services to customer companies and shareholders, which included issuing, cancelling, and replacing stock certificates and acting as an intermediary or agent for customer companies and shareholders. IST received funds from customer companies in connection with company acquisitions or mergers, so that IST could repurchase shares from shareholders on behalf of customer companies. Customer companies provided cash to IST, so that IST could pay shareholders in order to repurchase the relevant shares. IST had a bank account at BMO Harris Bank, entitled Miscellaneous Clearing Account (“the Harris Bank account”), which Pearson controlled, and used to hold and distribute certain customers’ funds.

Beginning no later than February 2012, and continuing until in or about approximately April 2014, Pearson devised, intended to devise, and participated in a scheme to defraud

customers and shareholders, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by material omissions, which scheme is further described below.

Pearson misappropriated at least approximately \$1,494,000 that belonged to customers and shareholders. Pearson knowingly and fraudulently made materially false representations to customers and shareholders concerning the safety and security of their funds, which false statements were designed to cause customers and shareholders to entrust funds to Pearson and his company, IST. In fact, Pearson knew that funds belonging to customers and shareholders were not safe or secure because Pearson was misappropriating funds from the Harris Bank account to cover his company's payroll expenses and payroll taxes.

Pearson falsely represented, and caused others to falsely represent, to customers and shareholders that his company complied with the SEC's rules and guidelines. Pearson advertised the company as having expertise in all SEC rules, and as having a complete understanding of the laws and legal requirements regarding securities transfers. In fact, Pearson knew that his company did not comply with the SEC rules, which mandated that transfer agents safeguard customers' funds. Pearson concealed from customers and shareholders that he was violating the SEC rules by misappropriating funds.

Pearson falsely represented, and caused others to falsely represent, to customers and shareholders that Pearson's company, IST, would safeguard their funds, and would distribute or reinvest those funds as directed by the customers or shareholders. As Pearson knew, his

company was not safeguarding all of the funds from customers and shareholders, because Pearson was misappropriating certain funds.

Pearson falsely represented, and caused others to falsely represent, to customers and shareholders that his company would protect their interests, and that they could rely on the integrity of the company. In fact, Pearson knew that he was misappropriating funds instead of protecting them.

Pearson falsely represented, and caused others to falsely represent, to customers that his company would hold the customer funds in a bank account, and would disburse those funds as directed by the customer. In fact, Pearson knew that certain customer funds would not be held or disbursed as directed because Pearson was misappropriating customer funds.

Pearson falsely represented, and caused others to falsely represent, to customers and shareholders that the company's computerized system, Transtar, provided them with full access to all of the information and details relating to their accounts and the transactions that were being administered for them by the company. In fact, Pearson knew that information concerning his misappropriation of funds was not reflected on the Transtar system, making the reported information about their accounts false and misleading.

Pearson fraudulently provided two Management Letters to the company's outside accountant, which contained false representations, so that the accountant would prepare and submit two Auditor's Reports to the Securities and Exchange Commission (SEC) and the New York Stock Exchange. Pearson falsely represented: (a) that the company was

appropriately safeguarding funds against loss from unauthorized use or disposition, and that the company maintained effective internal controls to do so; (b) that the company had made all relevant records available to the accountant; and (c) that the company's management had not engaged in any fraud. In fact, Pearson knew that the company's internal controls were inadequate, funds were not being safeguarded, Pearson had not disclosed the existence of the Harris Bank account to the accountant and had not provided records to the accountant relating to that account, and Pearson, who was the CEO and President of the company, had engaged in fraud by misappropriating funds.

Pearson fraudulently caused the company's outside accountant to falsely represent to the SEC and to the New York Stock Exchange, in Auditor's Reports for 2012 and 2013, that Pearson's company, IST, appropriately safeguarded funds against loss from unauthorized use or disposition, and that the company maintained effective internal controls to do so. Pearson did not disclose the existence of the Harris Bank account to the outside accountant, or Pearson's misappropriation of funds prior to the time that the outside accountant issued his Reports. In fact, Pearson knew that the company was not safeguarding the funds that he misappropriated.

As a result of his actions, Pearson misappropriated at least approximately \$1,494,659. After the SEC notified Pearson that the SEC was going to do an examination of the company's books and records, Pearson repaid a portion of the misappropriated funds. At the

same time, Pearson continued to misappropriate funds. Pearson caused a loss to customer companies of at least approximately \$1,005,524.

On or about February 29, 2012, for the purpose of executing the scheme to defraud, Pearson did knowingly cause to be transmitted in interstate commerce, from Naperville, Illinois, to Norcross, Georgia, by means of wire communication, certain writings, signs, and signals, namely: the electronic transfer of customer funds that Pearson misappropriated, in the amount of approximately \$13,915, which were sent by means of interstate wire from BMO Harris Bank's processing center in Naperville, Illinois, to an internet server in Norcross, Georgia, and then through the Federal Reserve system, as part of the bank's transfer of funds and payment process, for the purpose of paying payroll related expenses, in violation of Title 18, United States Code, Section 1343.

Maximum Statutory Penalties

7. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years' imprisonment. This offense also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as indicated:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2015 Guidelines Manual.

b. **Offense Level Calculations.**

i. Pursuant to Guideline § 2B1.1(a)(1), the base offense level is 7.

ii. It is the government's position that pursuant to Guideline § 2B1.1(b)(1)(H), the base offense level is increased by 14 levels because the actual loss (at least approximately \$1,494,659) is between \$550,00 and \$1,500,000. Defendant disagrees and is free to make his position known at sentencing.

iii. Pursuant to Guideline § 2B1.1(b)(2)(A), the offense level is increased by 2 levels because there were more than 10 victims, in that defendant misappropriated funds belonging to more than 10 customer company victims.

iv. It is the government's position that pursuant to Guideline § 2B1.1(b)(10)(C), the base offense level is increased by 2 levels because the offense involved sophisticated means, in that the offense conduct pertaining to the execution and concealment of the fraud was especially complex and intricate. The defendant disagrees and is free to make his position known at sentencing.

v. Pursuant to Guideline § 3B1.3, the base offense level should be increased by 2 levels, because the defendant abused a position of trust in a manner that significantly facilitated the commission and concealment of the offense.

vi. 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 defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vii. In accord with Guideline § 3E1.1(b), defendant has timely notified the government 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. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, it is the government's position that the anticipated offense level is 24, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 51 to 63 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation

Office 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 guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. Each party is free to recommend whatever sentence it deems appropriate.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

12. Regarding restitution, defendant acknowledges that the total amount of restitution owed to customer victims is at least approximately \$1,005,524, minus any credit for funds repaid prior to sentencing, and that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make full restitution in the amount outstanding at the time of sentencing.

13. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

14. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

15. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

16. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

17. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 15 CR 676.

18. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are 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.

Waiver of Rights

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

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a

jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. 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 that the government had established defendant's guilt beyond a reasonable doubt.

v. 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.

vi. At a trial, 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. A defendant is not required to present any evidence.

vii. 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.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

20. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

21. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

22. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

23. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed

subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

24. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

25. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

Conclusion

26. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

27. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the

Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the 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.

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

29. 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.

30. 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: 4/26/16

Zachary T. Fardon by JY
ZACHARY T. FARDON
United States Attorney

Jacqueline Stern
JACQUELINE STERN
Assistant U.S. Attorney

Robert Pearson
ROBERT PEARSON
Defendant

Paul Flynn
PAUL FLYNN
Attorney for Defendant