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AUG 30 2007

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGE CHARLES R. NORGLÉ
U.S. District Court Judge

UNITED STATES OF AMERICA)
)
 vs.)
)
 ROBERT GROEBNER)

No. 07 CR 54
Judge

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant ROBERT GROEBNER, and his attorney, JEREMY MARGOLIS, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charge in This Case

2. The information in this case charges defendant with tax fraud, in violation of Title 26, United States Code, 7206(1).

3. Defendant has read the charge against him contained in the information, and that charge has been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crime 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 information. The information charges that the defendant wilfully made a false statement on his tax return, in violation of Title 26, United States Code, Section 7206(1).

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt: On or about April 12, 2002, in the Northern District of Illinois, Eastern Division, and elsewhere, the defendant, who at the time of filing his return was a resident of Morton Grove, Illinois, willfully did make and cause to be made and did subscribe a joint United States Individual Income Tax Return (Form 1040) for the calendar year 2001, on behalf of himself and his wife, which return was verified by a written declaration that it was reviewed and made under penalties of perjury, which return he did not believe to be true and correct as to every material matter contained therein, in that the return under-reported income at line 7 by as much as \$48,000, and under-reported the total tax at line 52 by as much as \$13,440, in violation of Title 26, United States Code, Section 7206(1):

Specifically, from approximately 1992 to 2002, the defendant was employed by Allstate Insurance Company as a damage evaluator or re-inspector. Allstate was a Delaware corporation, with its headquarters in Illinois, that was engaged in the business of providing insurance coverage and whose activities affect interstate commerce. Allstate provided insurance to insured nationwide, including automobile insurance. As a convenience for automobile insurance policy holders, Allstate operated the "Priority Repair Option" (PRO) program whereby certain auto body repair shops were pre-approved by Allstate to repair

vehicles. Auto body shops selected to participate in the PRO program were permitted to write estimates and complete repairs without pre-authorization from Allstate. Allstate typically allowed PRO body shops to fill out less paperwork, usually paid PRO shops in less time than non-PRO shops, and referred customers to PRO shops. Allstate employed damage evaluators, also referred to as re-inspectors, who periodically visited PRO shops and reviewed a representative number of vehicles to ensure estimates were accurate and that cost-effective repairs were being made. Damage evaluators could impact the success of a shop within the PRO program. Because of their role in visiting and evaluating the PRO shops, the shops' operators likely believed that damage evaluators also had authority to increase or decrease the number of referrals, or cars in need of repair, to each shop under their authority.

As of 2002, the defendant was assigned a geographic territory that included approximately 21 auto body shops encompassing the PRO shops from Highway I-90 north, from Chicago, Illinois to the far northwest suburb of Antioch, Illinois. Starting no later than 1999, and continuing through mid-2002, the defendant used his position as a damage evaluator to obtain payments from the owners (Owners A, B, and C) of three auto body shops that were part of the Allstate PRO program.

Owner A

Owner A's body shop was located in Palatine, Illinois, and was in the PRO program. In approximately 1997, the defendant was the damage evaluator for the territory that included Palatine. Sometime in 1997, the defendant no longer had responsibility for that territory. In

around mid-1999, however, the defendant resumed responsibility for the territory. At some time no later than October 1999, Owner A began making payments to the defendant on an approximately monthly basis. Owner A made the payments because Owner A believed that, unless the payments were made, the defendant would either take steps to eliminate Owner A from the PRO program or to reduce substantially the volume of Allstate business referred to Owner A. The payments by Owner A to the defendant varied in amount between \$500 per month and \$2000 per month. In total, the defendant received no more than \$72,000 in cash payments from Owner A.

On August 21, 2002, the defendant visited Owner A's auto body shop. Previously, and unbeknownst to the defendant, the FBI had provided Owner A with a covert audio recording device and video camera in Owner A's office. In a consensually recorded conversation, Owner A told the defendant, "I know I owe you for two months." The defendant, rather than respond directly to that statement, changed the subject of the conversation. Later in the conversation, Owner A stated that he "only had two," meaning \$2,000 for one month. The defendant told Owner A to "forget about the other month." The defendant then received \$2,000 in cash from Owner A.

Owner B

Owner B owned an auto body shop located in Chicago, Illinois, which he purchased in 1998. At that time, the body shop was already part of the PRO program. However, Owner B believed that, in order to maintain his status in the PRO program, he was required to make

\$1,000 monthly payments to the defendant. From 1999 to 2001, the defendant obtained as much as \$12,000 per year in cash from Owner B.

Owner C

Owner C owned an auto body shop in Chicago, Illinois, and was a PRO shop for many years. Starting no later than 1999, the defendant obtained cash payments from Owner C in order for Owner C to remain in the PRO program. Because Owner C's business depended greatly on business from Allstate, Owner C made these payments. On an approximately monthly basis, the defendant informed Owner C what the amount was required for that month, and the payment ranged from \$500 to \$2,000 for each payment. In each of the years 1999 through 2001, the defendant received as much as \$12,000 per year from Owner C.

For the tax years 1999 through 2001, the defendant engaged a tax return preparer to prepare Form 1040 personal income tax returns for the defendant and his wife. The defendant provided the return preparer with information showing purportedly all of his income, but in fact the defendant intentionally did not disclose the cash payments from Owners A, B, and C. Specifically, for tax years 1999, 2000, and 2001, the defendant knew that the cash payments from the Owners constituted personal taxable income, but did not report the payments on the defendant's personal tax returns for those years. For example, on or around April 12, 2002, the defendant signed his and his wife's personal income tax return, which reported under-reported income on line 7 by as much as \$48,000, and under-reported the total tax at line 52 by as much as \$13,440. The defendant knew that signing and filing

a materially false federal income tax return violated his legal duty to make and file an accurate federal tax return.

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 3 years' imprisonment. This offense also carries a maximum fine of \$250,000. Defendant further understands that the Court must order costs of prosecution, estimated to be \$500. Defendant further understands that the judge also may impose a term of supervised release of not more than one year.

b. 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 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:

a. **Applicable Guidelines.** The Sentencing Guidelines to be applied 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 2006 Guideline Manual.

b. **Offense Level Calculations.**

i. It is the government's position that the base offense level for the charge in the information is 14, pursuant to Guideline § 2T1.1(a)(1) and § 2T4.1(E), because the total under-reported income from the offense and relevant conduct was approximately \$144,000 and the tax loss was approximately \$40,320.

ii. The offense level is increased by 2 levels because the defendant failed to report the source of income exceeding \$10,000 in any year from criminal activity, pursuant to Guideline § 2T1.1(b)(1).

iii. 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 U.S. Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

iv. 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 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 13, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 12 to 18 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 Guideline calculations are preliminary in nature and based on facts known to the parties as of the time of this Plea Agreement. 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. Defendant understands that with the exception of the Guideline provisions identified in this subparagraph as binding on the parties, the Guideline calculations set forth above are non-binding predictions, upon which neither party is entitled to rely, and are not governed by Fed.R.Crim.P. 11(c)(1)(B). Errors in applying or interpreting any of the Sentencing Guidelines (other than those identified in this subparagraph as binding) 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 Plea 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 Plea Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. The government agrees to recommend that sentence be imposed within the applicable guidelines range and to make no further recommendation concerning at what point within the range sentence should be imposed.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea 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. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a check or money order payable to the Clerk of the U.S. District Court.

Presentence Investigation Report/Post-Sentence Supervision

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

14. 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 United States 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.

15. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the United States 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 Plea 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).

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

16. 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 07 CR _____.

17. This Plea 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.

18. Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest or penalties from defendant and his spouse. Defendant understands that the amount of tax as calculated by the IRS may exceed the amount of tax due as calculated for the criminal tax case.

a. Defendant agrees to cooperate with the IRS in any tax examination or audit of defendant and his spouse which directly or indirectly relates to or arises out of the course of conduct which defendant has acknowledged in this Plea Agreement, by transmitting to the IRS original records or copies thereof, and any additional books and

records which the IRS may request that are in the possession or control of the defendant. Nothing in this paragraph precludes defendant from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

b. Preliminary to or in connection with any judicial proceeding, as that term is used in F.R.Cr. P. 6(e), defendant will interpose no objection to the entry of an order under Rule 6(e) authorizing disclosure of those documents, testimony and related investigative materials which may constitute grand jury material. Defendant will not object to the government soliciting consent from third parties, who provided information to the grand jury pursuant to grand jury subpoena, to turn those materials over to the Civil Division, appropriate federal or state administrative agency or the Internal Revenue Service, for use in civil or administrative proceedings or investigations, rather than returning them to such third party for later summons or subpoena in connection with the civil case or collection of taxes from defendant.

Waiver of Rights

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

a. **Right to be charged by indictment.** Defendant understands that he has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right

to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

b. 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. Defendant has a right to a jury trial. 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. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

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, 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.

c. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction and any part of the sentence, including any term of imprisonment and fine within the maximums

provided by law, and including any order of restitution or forfeiture (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, or the manner in which the sentence was determined, in any collateral attack or future challenge, 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.

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

Other Terms

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

21. Pursuant to Title 18, United States Code, Section 3663A(a)(3), the defendant agrees to pay restitution to the following persons who are not victims of the specific offense of conviction, in an amount to be determined by the Court, but no more than: \$72,000 to Owner A; \$36,000 to Owner B; and \$36,000 to Owner C. Defendant understands that the restitution order of the Court is enforceable both as a part of this sentence and in the same manner as a civil judgment.

22. Defendant agrees to pay restitution to the Internal Revenue Service in an amount to be determined by the Court, but no more than \$40,320 pursuant to 18 U.S.C. § 3663A(a)(3), which represents not more than \$13,400 in restitution for each of the tax years 1999, 2000, and 2001.

Conclusion

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

24. Defendant understands that his compliance with each part of this Plea 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.


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

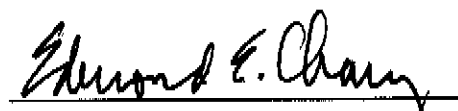
26. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.


27. Defendant acknowledges that he has read this Plea 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: 8/30/07


PATRICK J. FITZGERALD
United States Attorney


ROBERT GROEBNER
Defendant


EDMOND E. CHANG
Assistant U.S. Attorney


JEREMY MARGOLIS
Attorney for Defendant