

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

CAROLINE WALTERS

No. 13 CR 951-2

Judge Robert M. Dow, Jr.

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant CAROLINE WALTERS, and her attorney, THOMAS K. MCQUEEN, 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 superseding indictment in this case charges defendant with bank fraud, in violation of Title 18, United States Code, Section 1344 (Counts 1-7), mail fraud, in violation of Title 18, United States Code, Section 1341 (Count 8), wire fraud, in violation of Title 18, United States Code, Section 1343 (Count 9), and making a false statement to a financial institution, in violation of Title 18, United States Code, Section 1014 (Counts 10-13, 15).

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

4. Defendant fully understands the nature and elements of the crimes with which she 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 superseding indictment: Count Fifteen, which charges defendant with making a false statement to a financial institution, in violation of Title 18, United States Code, Section 1014.

Factual Basis

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

On or about November 3, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant CAROLINE WALTERS knowingly made a false statement to Cole Taylor Bank, the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing Cole Taylor to delay enforcement and protection of its rights to the TIF project note for the Uptown Goldblatts project issued by the City of Chicago, in that

WALTERS told Cole Taylor that they were working with Bank of America to resolve the double pledge issue with the Uptown Goldblatts TIF note as part of continued negotiations with Bank of America regarding a loan modification, in violation of Title 18, United States Code, Section 1014.

Specifically, in September 2006, WALTERS became Treasurer of Joseph Freed & Associates (“JFA”), a real estate development company based in Chicago, Illinois. In late 2008, WALTERS became Vice President of JFA. In or about 2002, JFA formed a limited liability company called Uptown Goldblatts Venture LLC (“Uptown Goldblatts”) to develop a building formerly owned by Goldblatt’s Department Store, located in the Uptown neighborhood of Chicago.

On or about November 20, 2002, the City of Chicago entered into a Redevelopment Agreement with Uptown Goldblatts, in which the City of Chicago agreed to issue two Tax Increment Financing (“TIF”) notes for the financing of the Uptown Goldblatts project. TIF notes were conditional grants of taxpayer funds to a specific project development that the Chicago City Council had approved. For the Uptown Goldblatts project, one TIF note was a redevelopment area note with a principal of approximately \$4,300,000, and one TIF note was a project note with a principal of approximately \$2,400,000. The Redevelopment Agreement provided that if an event of default occurred, the City of Chicago would no longer be obligated to make TIF payments.

Uptown Goldblatts entered into a Security Agreement and Collateral Assignment of Redevelopment Documents with Cole Taylor Bank on or about November 20, 2002. Cole Taylor agreed to loan approximately \$15,000,000 to Uptown Goldblatts in exchange for Uptown Goldblatts' assignment to Cole Taylor of its rights in and to the project note, among other things. The agreement provided that Uptown Goldblatts would receive the annual proceeds from the project note so long as Uptown Goldblatts was not in default concerning the agreement with Cole Taylor. If Uptown Goldblatts was in default, Cole Taylor was entitled to the proceeds. The Cole Taylor agreement further forbid any liens or security interests other than Cole Taylor's security interest to attach to any of the collateral or impair the value of any of the collateral or security for the agreement, which included the project note. Under the Cole Taylor agreement, such an event would constitute an event of default. JFA's Chief Financial Officer ("CFO") represented Uptown Goldblatts in reaching the Cole Taylor Agreement.

On or about May 1, 2006, DDL LLC and Freed Illinois Holdings LLC—entities associated with JFA—entered into a number of agreements, including a revolving loan agreement, with a bank consortium consisting of LaSalle Bank National Association, Associated Bank, Northern Trust, and Wachovia Bank for a revolving line of credit for up to approximately \$105,000,000. In exchange for this revolving line of credit, the JFA-related entities pledged certain collateral. Again, JFA's CFO represented JFA in reaching the revolving loan agreement.

On or about November 30, 2007, Uptown Goldblatts entered into a Security Agreement with LaSalle, which, by that time, Bank of America had acquired. In the Security Agreement, Uptown Goldblatts became a borrower under the revolving loan agreement. In the Security Agreement, Uptown Goldblatts pledged the project note and the redevelopment area note as collateral for the line of credit, including the proceeds from those two TIF notes. Uptown Goldblatts also represented and warranted in the Security Agreement that the collateral was owned free and clear of all liens, claims, encumbrances, and security interests other than the security interests held by Uptown Goldblatts. At that time, however, the project note had been previously pledged to Cole Taylor. JFA's CFO failed to discover the 2002 TIF project note pledge to Cole Taylor in his review of collateral for the Security Agreement.

In August 2008, immediately prior to leaving JFA, the CFO discovered the TIF note double pledge. On August 29, 2008, as the CFO was leaving JFA, he notified WALTERS of the TIF project note double pledge to Cole Taylor and the bank consortium.

In June 2009 and September 2009, Uptown Goldblatts entered into Second and Third Amendments, respectively, to the Cole Taylor Loan Agreement representing that the borrower would obtain release and termination of the double pledge by July 31, 2009 and October 31, 2009, respectively. The release and termination was not obtained by October 31, 2009.

On or about November 3, 2009, WALTERS falsely told Cole Taylor that JFA would resolve the issue with the project note as part of JFA's negotiations with the bank consortium regarding a loan modification and extension. But as WALTERS knew at the time, the bank consortium had already declared that JFA was in default and was no longer negotiating with JFA on the loan modification and extension.

Maximum Statutory Penalties

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

a. A maximum sentence of 30 years' imprisonment. Pursuant to Title 18, United States Code, Section 3561, defendant may not be sentenced to a term of probation for this offense. This offense also carries a maximum fine of \$1,000,000, 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 five 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 she 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 specified below:

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. The base offense level is 7, pursuant to Guideline § 2B1.1(a)(1).

ii. It is the government's position that, pursuant to Guideline § 2B1.1(b)(1)(K), the offense level is increased by 20 levels because the loss exceeded \$9,500,000 but did not exceed \$25,000,000. It is the defendant's position that, pursuant to Guideline § 2B1.1(b)(1)(A), the offense level is not increased because the total loss amount foreseeable to defendant was less than \$6,500.

iii. It is the government's position that, pursuant to Guideline § 2B1.1(b)(10)(C), the offense level is increased by 2 levels because the offense involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means. It is defendant's position that this enhancement does not apply.

iv. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for her criminal conduct 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 her ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level will be appropriate. The government reserves the right to take whatever position it deems appropriate at the time of sentencing with respect to whether defendant has accepted responsibility within the meaning of Guideline § 3E1.1(a).

v. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of her 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, the government takes the position that defendant's offense level is 26, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 63 to 78 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. Defendant takes the position that defendant's offense level is 5, which, when combined with the anticipated criminal history category of I, results in a preliminary advisory Sentencing Guidelines range of 0 to 6 months' imprisonment.

e. Defendant and her 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 her plea on the basis of the Court's rejection of these calculations.

10. 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 her plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

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

12. 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 her guilty plea.

13. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant, together with any jointly liable co-defendants, to make full restitution to [victim(s)] in an amount to be determined by the Court at sentencing, which amount shall reflect credit for any funds repaid prior to sentencing.

14. 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), she is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect her ability to pay restitution.

15. 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.

16. 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.

17. 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 superseding indictment, as well as the indictment as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

18. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 13 CR 951-2.

19. 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

20. Defendant understands that by pleading guilty she 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 her, and if she does, she 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 her 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 her unless, after hearing all the evidence, it was persuaded of her guilt beyond a reasonable doubt and that it was to consider each count of the superseding 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 her attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in her own behalf. If the witnesses for defendant would not appear voluntarily, she 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 she could decline to testify, and no inference of guilt could be drawn from her refusal to testify. If defendant desired to do so, she could testify in her own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands she is waiving all appellate issues that might have been available if she had exercised her right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal her conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal her conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in

which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture, in exchange for the concessions made by the United States in this Agreement. In addition, defendant also waives her right to challenge her conviction and sentence, and 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, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

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

Presentence Investigation Report/Post-Sentence Supervision

22. 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 her,

and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

23. 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 her financial circumstances, including her 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 her 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.

24. For the purpose of monitoring defendant's compliance with her obligations to pay a fine and restitution during any term of supervised release 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 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

25. 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.

26. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed. R. Crim. P. 6(e)(3)(E)(i). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the Civil Division of the United States Attorney's Office, or an appropriate federal or state agency (including but not limited to the Internal Revenue Service), for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, defendant. Nothing in this paragraph or the preceding paragraph precludes

defendant from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

27. Defendant understands that pursuant to Title 12, United States Code, Sections 1785(d) and 1829, her conviction in this case will prohibit her from directly or indirectly participating in the affairs of any financial institution insured by the National Credit Union Share Insurance Fund or the Federal Deposit Insurance Corporation, except with the prior written consent of the National Credit Union Administration Board or the FDIC and, during the ten years following her conviction, the additional approval of this Court. Defendant further understands that if she knowingly violates this prohibition, she may be punished by imprisonment for up to five years, and a fine of up to \$1,000,000 for each day the prohibition is violated.

28. Defendant recognizes that pleading guilty may have consequences with respect to her immigration status if she is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense to which defendant is pleading guilty. Indeed, because defendant is pleading guilty to an offense that may be an “aggravated felony” as that term is defined in Title 8, United States Code, Section 1101(a)(43), removal would be presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including her attorney or the Court, can predict to a certainty the effect of her conviction on

her immigration status. Defendant nevertheless affirms that she wants to plead guilty regardless of any immigration consequences that her guilty plea may entail, even if the consequence may be her automatic removal from the United States.

Conclusion

29. 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.

30. Defendant understands that her compliance with each part of this Agreement extends throughout the period of her sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event she 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.

31. 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.

32. Defendant and her 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.

33. Defendant acknowledges that she has read this Agreement and carefully reviewed each provision with her attorney. Defendant further acknowledges that she understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

ZACHARY T. FARDON
United States Attorney

CAROLINE WALTERS
Defendant

RENATO MARIOTTI
Assistant U.S. Attorney

THOMAS K. MCQUEEN
Attorney for Defendant