

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA)

)

)

v.)

Cause No. 2:17 CR 44 (PPS)

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ASHLEY D. DUNLAP)

PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, come now the United States of America, by Assistant United States Attorney Maria N. Lerner, the defendant Ashley D. Dunlap, and his attorney, Kevin E. Milner, and show the Court they have entered into a plea agreement as follows:

1. I, Ashley D. Dunlap, am able to read, write and speak the English language.
2. I have received a copy of the Indictment and have read and discussed it with my lawyer, and believe and feel that I understand every accusation made against me in this case.
3. I have told my lawyer the facts and surrounding circumstances as known to me concerning the matters mentioned in the Indictment and believe and feel that my lawyer is fully informed as to all such matters. My

lawyer has counseled and advised me as to the nature and elements of every accusation against me and as to any possible defenses I might have.

4. I understand that I am entitled to have all of my rights which may be involved in this matter explained to me, and that I have the right to have any questions I may have answered for me.

5. I understand by pleading guilty I waive certain rights. The rights described below have been explained to me, as well as the consequences of my waiver of these rights:

- a. If I persisted in a plea of not guilty to the charges against me, I 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. I have the right to a jury trial. However, I may waive a jury trial in writing with the approval of the Court and the consent of the government.
- b. If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. I and my 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 to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that a defendant is presumed innocent, and that it could not convict unless, after hearing all the evidence, it was persuaded of my guilt beyond a reasonable doubt, and that it was to consider each accusation against me 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 charge separately, whether or not the judge was persuaded of my guilt beyond a reasonable doubt.

- d. At a trial whether by a jury or a judge, the prosecution would be required to present its witnesses and other evidence against me. I would be able to confront those government witnesses and my attorney would be able to cross-examine them. In turn, I could present witnesses and other evidence in my own behalf. If the witnesses for me would not appear voluntarily, I could require their attendance through the subpoena power of the Court.
- e. At a trial, I would have a privilege against self-incrimination so that I could decline to testify, and no inference of guilt could be drawn from my refusal to testify. If I desired to do so, I could testify on my own behalf.
- f. At trial and at every stage of the proceedings, I have a right to an attorney, and if I could not afford an attorney one would be appointed for me.
- g. In the event that I should be found guilty of the charges against me, I would have the right to appeal my conviction on such charges to a higher court.

6. I understand that under the U.S. Sentencing Guidelines, the Court, in light of an investigation by the United States Probation Office, will determine the applicable sentencing guideline range, and that the Court will determine all matters, whether factual or legal, relevant to the application of the U.S. Sentencing Guidelines. I understand that the U.S. Sentencing Guidelines are advisory only, and that the specific sentence to be imposed upon me will be determined by the judge after a consideration of a pre-sentence investigation report, input from my lawyer and the government, federal sentencing statutes, and the U.S. Sentencing Guidelines.

7. Notwithstanding the above, I have, with the assistance of counsel, entered into an agreement with the United States Attorney's Office as follows:

- a. I will plead guilty to Count 1 of the Indictment charging me with Counterfeiting Securities of a Private Entity, in violation of Title 18, United States Code, Section 513(a), because I am in fact guilty of this offense.
- b. I understand the maximum possible penalties that may be imposed upon me for Count 1 are listed below:

<u>Prison</u>	<u>Fine</u>	<u>Supervised Release</u>
10 years	\$250,000 plus cost of prosecution	3 years

I further understand that a special assessment of \$100 will be imposed on each count of conviction in addition to any other penalty imposed, and the \$100 special assessment is due and payable prior to my sentencing hearing.

- c. The United States Attorney and I have also entered into the following agreements, which are submitted to the Court pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure and are not binding upon the Court, and I understand that if the Court does not follow these agreements I will not be allowed to withdraw my guilty plea:
 - i. The United States Attorney and I agree that in recognition of my acceptance of responsibility for my offense conduct, I am entitled to a two-level reduction in offense level. The United States of America and I further agree that I have assisted authorities in the investigation or prosecution of my own misconduct by timely notifying the United States Attorney's Office of my intention to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently, and we agree that if my offense level is 16 or greater, the government will move at sentencing for me to receive an additional one-level reduction in offense level.

However, the government's obligation to recommend acceptance of responsibility under this plea agreement is contingent upon my continuing manifestation of acceptance of responsibility; should I deny my involvement, give conflicting statements of my involvement, or engage in additional criminal conduct including any personal use of controlled substances, the government shall not be bound to recommend any reduction in offense level for acceptance of responsibility. I further understand the Court is not bound by this recommendation and that the Court makes the final decision regarding my receipt of a reduction in offense level for acceptance of responsibility.

- ii. The base offense level for my offense is 6, pursuant to United States Sentencing Guidelines, Section 2B1.1(a)(1).
 - iii. The intended loss is \$347,950, pursuant to United States Sentencing Guidelines, Section 2B1.1, Commentary 3(A)(ii).
- d. After the Court imposes sentence, the United States Attorney will ask the Court to dismiss Count 2 of the Indictment.
- e. I agree to make restitution to the Gary Housing Authority and the U.S. Department of Housing and Urban Development, in an amount to be determined by the sentencing court. I understand that in determining the appropriate amount of restitution I am to pay, the Court is not limited to the conduct detailed in Count 1 to which I am pleading guilty, and the Court may consider the total loss sustained by the victims in Counts 1 and 2.
- f. I expressly authorize the U.S. Attorney's Office to immediately obtain a credit report in order to evaluate my ability to satisfy any financial obligation imposed by the Court. I agree to submit within 30 days of the filing of this plea agreement a completed financial statement to the U.S. Attorney's Office in a form it provides and as it directs. I promise that the financial statement and disclosures will be complete, accurate and truthful, and I understand that any willful falsehood on the financial statement will be a separate crime and may be punished under 18 U.S.C. § 1001 by an additional five years' incarceration and fine. If deemed necessary by the U.S.

Attorney's Office, I agree to submit, prior to sentencing, to an examination under oath on the issue of my ability to pay restitution.

- g. I understand that the law gives a convicted person the right to appeal the conviction and the sentence imposed. I also understand that no one can predict the precise sentence that will be imposed, and that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for my offenses as set forth in this plea agreement. With this understanding and in consideration of the government's entry into this plea agreement, I expressly waive my right to appeal or to contest my conviction and all components of my sentence or the manner in which my conviction or my sentence was determined or imposed, to any Court on any ground other than a claim of ineffective assistance of counsel, including any appeal under Title 18, United States Code, Section 3742 or any post-conviction proceeding, including but not limited to, a proceeding under Title 28, United States Code, Section 2255. I also agree to waive all rights, whether asserted directly or through a representative, to, after sentencing, request or receive from the United States any further records, reports, or documents pertaining to the investigation or prosecution of this matter; this waiver includes, but is not limited to, rights conferred by the Freedom of Information Act and the Privacy Act of 1974.
- h. I understand that the government has reserved the right to tell the Court the good things about me and the bad things about me, and to fully inform the Court of the nature and extent of my offense(s) as well as the full extent of my criminal history.

8. The elements of the offense to which I am pleading are that: (1) I made, uttered, or possessed (2) a forged or counterfeit security (3) of an organization which operates in or the activities of which affect interstate commerce, and (4) I did so with the intent to deceive another person,

organization, or government. I am prepared to swear to the following facts in this matter that cause me to believe I am guilty of Count 1 of the Indictment:

In about July 2013, the Gary Housing Authority (GHA) solicited construction bids to improve units in the Dorie Miller Apartments and Delaney Community properties in Gary, Indiana. I bid on these projects through my company, D&R Construction Company, and my bid was successful for a contract price of \$347,950. GHA required surety, and I elected the option of providing 20% of the bid price to be placed into escrow. However, I did not have the ability to make this financial commitment. To solve the problem, I created two cashier's checks that appeared to be issued from JP Morgan Chase Bank; one for \$20,000 and the other for \$49,600. JP Morgan Chase Bank did not issue either check. I provided the counterfeit checks to GHA on or about September 3, 2013. When I tendered the checks, I knew I was deceiving GHA for the purpose obtaining and retaining the contract with GHA. In September 2013, JP Morgan Chase Bank did business nationwide.

9. I understand that if I violate any of the provisions of this plea agreement, including my continuing obligation to demonstrate acceptance of responsibility, the United States may at its option either (1) ask the Court to make a determination that I have breached a term in this agreement in which event I will at sentencing lose the benefit of all the non-binding promises made by the government in this agreement and I would have no right to withdraw my guilty plea, or (2) the United States could seek to have the Court declare this

entire plea agreement null and void, in which event I can then be prosecuted for all criminal offenses that I may have committed.

10. I believe and feel that my lawyer has done all that anyone could do to counsel and assist me, and that I now understand the proceedings in this case against me.

11. I declare that I offer my plea of guilty freely and voluntarily and of my own accord, and no promises have been made to me other than those contained in this agreement, nor have I been threatened in any way by anyone to cause me to plead guilty in accordance with this agreement.

12. I understand and acknowledge that this agreement, once filed with the court, is a public document and available for public viewing.

/s/ Ashley D. Dunlap
Ashley D. Dunlap

/s/ Kevin E. Milner
Kevin E. Milner
Attorney for Defendant

APPROVED:
THOMAS L. KIRSCH II,
United States Attorney

By: /s/ Maria N. Lerner
Maria N. Lerner
Assistant U. S. Attorney