

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

OCT 18 2006

JUDGE PHILIP G. REINHARD
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA)
)
 v.) No. 06 CR 50062
)
 KATHY M. BARTELS,) Judge Philip G. Reinhard
 f/k/a Kathy M. Hoefler)

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, KATHY M. BARTELS, and her attorney, HANEEF L. OMAR, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in the present case. This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, KATHY M. BARTELS, and her attorney, HANEEF L. OMAR, have agreed upon the following:

1. Defendant acknowledges that she has been charged in the Information in this case with concealment of assets in a bankruptcy proceeding, in violation of Title 18, United States Code, Section 152(1).

2. Defendant has read the charge against her contained in the Information, and that charge has been fully explained to her by her attorney.

3. Defendant fully understands the nature and elements of the crime with which she has been charged.

4. Defendant will enter a voluntary plea of guilty to the charge contained in the Information.

5. Defendant will plead guilty because she is in fact guilty of the charge contained in the Information. In pleading guilty, defendant admits the following, which establish her guilt and relevant sentencing facts beyond a reasonable doubt:

(a) In general, the defendant admits that she knowingly and fraudulently concealed property belonging to the estate of the defendant from the bankruptcy trustee, creditors, and the United States Trustee in connection with a case under Title 11, United States Code, namely, *In re Thomas Hoefler and Kathryn Hoefler*, No. 03-72009, in the United States Bankruptcy Court, Northern District of Illinois, Western Division;

(b) In particular, the defendant admits that April 11, 2003, the defendant and her (then) husband filed a Chapter 7 Bankruptcy Petition, Schedules of Assets and Liabilities, and Statement of Financial Affairs, in the United States Bankruptcy Court for the Northern District of Illinois, Western Division. The filings were assigned case no. 03-72009 by the Bankruptcy Court.

(c) On April 28, 2003, the defendant personally deposited a check for \$29,875 from the Edward F. Bartels Trust No. 694 into a bank account of which she was the sole owner. At the time of the deposit, the defendant knew that the check represented a distribution of trust assets which resulted from the death of her father, Edward F. Bartels, on June 22, 2002. The defendant had

been aware prior to April 11, 2003 that she would receive property as a result of her father's death. However, the defendant did not list any inheritance or trust interests in her Schedules of Assets and Liabilities or Statement of Financial Affairs.

(d) On May 15, 2003, the defendant, while under oath, answered questions by the Trustee in the bankruptcy case. In the course of the questions, the defendant denied that she expected to receive any inheritances within the following six months. Further, she was told by the Trustee that she would have to report any inheritances received within that time period.

(e) On August 2, 2003, the defendant received a check from her sister in the amount of \$42,872.00 and deposited it into a different bank account which was also solely owned by her. When she received the check, the defendant knew that the check represented life insurance proceeds which were payable as a result of the death of her father.

(f) Knowing that she was required to disclose any inheritances she received within six months after she filed her Bankruptcy Petition, the defendant intentionally withheld information concerning the two checks from the Trustee.

6. For purposes of calculating the Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

(a) Pursuant to Guideline § 1B1.11(a), the November 2005 Sentencing Guidelines Manual is applicable to this case;

(b) The base offense level for the offense is level 6, pursuant to Guideline § 2B1.1(a)(2);

(c) The offense level must be increased by 6 levels to level 12, pursuant to Guideline § 2B1.1(b)(1)(E), because the loss was more than \$30,000;

(c) The offense level must be increased by 4 levels to level 16, pursuant to Guideline § 2B1.1(b)(1)(E), because there were more than 50 victims;

(d) The offense level must be increased by 2 levels to level 18, pursuant to Guideline § 2B1.1(b)(8), because the offense included a misrepresentation or fraudulent action during the course of a bankruptcy proceeding;

(e) Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for her criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if the defendant continues to accept responsibility for her actions within the meaning of Guideline § 3E1.1, a two-level reduction in the offense level to 16 is appropriate. Defendant acknowledges that if she falsely denies or frivolously contests facts which the Court determines to be true, such action by defendant would be inconsistent with acceptance of responsibility, and the government's position as to defendant's acceptance of responsibility could change.

(f) 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, within the meaning of Guideline § 3E1.1(b). In the event that the Court determines that the defendant's offense level is 16 or greater, and if the Court reduces the Defendant's offense level by two levels pursuant to Guideline § 3E1.1(a), the government agrees to make a motion pursuant to Guideline § 3E1.1(b) seeking the further reduction of the defendant's offense level by one additional level;

(g) The defendant and her attorney have represented that defendant has no criminal history that would result in the assessment of criminal history points. Thus, based on this representation and the facts currently known to the parties, the defendant's criminal history points are 0 and the defendant's criminal history category is I;

(h) Based upon the provisions set forth above, under the parties' calculations, the defendant's offense level will be 15, her criminal history category will be I, and the guideline range from the sentencing table will be 18 to 24 months of imprisonment;

(i) The defendant and her attorney and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations; and

(j) Defendant understands that, in imposing the sentence, the Court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence. Further, defendant understands that the Court, while guided by the applicable Guidelines, may depart from these Guidelines under some circumstances.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or Court setting forth the disagreement as

to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections and the defendant shall not have a right to withdraw her plea on the basis of such corrections.

8. Defendant understands that the charge to which she will plead guilty carries a maximum penalty of five years of imprisonment, a maximum fine of \$250,000, a period of supervised release of at least two but not more than three years, and any restitution ordered by the Court.

9. The defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on the count to which she has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment at the time of sentencing with a cashier's check or money order made payable to the Clerk of the U. S. District Court.

10. Defendant understands that by pleading guilty she surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against her, she would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury;

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and her 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 defendant is presumed innocent, and that it could not convict her unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt;

(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, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt;

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and her attorney would be able to cross-examine them. In turn, 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;

(e) 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; and

(f) Defendant understands that she has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a legally constituted grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Plea Agreement, defendant knowingly waives her right to be prosecuted by indictment and to assert at trial, sentencing, or on appeal any defects or errors arising from the information, the information process, or the fact that she has been prosecuted by way of information.

11. Defendant understands that by pleading guilty she is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to her, and the consequences of her waiver of those 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 also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal or contest under Title 18, United States Code, Section 3742 or Title 28, United States Code, Section 2255, or otherwise, her conviction and the resulting sentence, in exchange for the concessions made by the United States in this plea agreement. 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.

12. Defendant understands that the government has the right to seek the defendant's truthful testimony before a grand jury or district court.

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

14. Defendant understands that this Plea Agreement shall be filed and become part of the record in this case and is a matter of public record and may be disclosed to anyone.

15. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charge against her, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

16. At the time of sentencing, the government will recommend that the Court impose a sentence at the low end of the applicable guideline range. The defendant will request that the court exercise its discretion, pursuant to *United States v. Booker* , 125 S.Ct. 738 (2005), to impose a sentence below the applicable Guidelines range. The government will oppose defendant's request for a downward variance.

17. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and, subject to the limitations of the sentencing guidelines, may impose the maximum penalties as set forth in paragraph 8 above. However, the sentencing Court is obligated to consult and take into account the Sentencing Guidelines in imposing a reasonable sentence. The defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, the defendant will have no right to withdraw her guilty plea.

18. Regarding restitution, the parties agree that pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664, the amount of restitution which the defendant must be ordered to pay to the Clerk of the Bankruptcy Court for the Northern District of Illinois for the offense is \$40,497. The defendant understands that 18 U.S.C. §§ 3663, 3663A, and 3664 and Sentencing Guidelines §§ 5E1.1 and 5E1.2 set forth the factors to be weighed in setting a fine and restitution in this case. The defendant agrees to provide full and truthful information to the District Court and United States Probation Office regarding all details of her economic circumstances in order to determine the proper fine and restitution which the defendant shall be ordered to pay. Defendant understands that providing false or incomplete information may be prosecuted as a violation of 18 U.S.C. § 1001, or as a contempt of the court.

19. Defendant agrees and consents that Case No. 03-72009, *In re Thomas Hoefer and Kathryn Hoefer*, in the United States Bankruptcy Court, Northern District of Illinois, Western Division, may be reopened for the purpose of the revocation of the discharge of debts granted to her by the Bankruptcy Court. Defendant further agrees and consents to the revocation of the discharge.

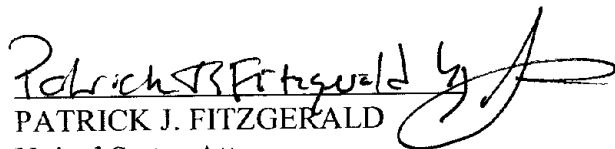
20. Defendant understands that her compliance with each part of this Plea Agreement extends throughout and beyond the period of her sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. She further understands that in the event she violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the 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 the 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.


21. 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.

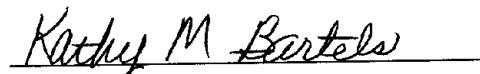
22. Should the judge refuse to accept the defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

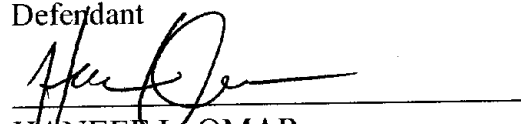
23. Defendant acknowledges that she has read this Plea Agreement and carefully reviewed each provision with her attorney. Defendant further acknowledges that she understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 10-18-06


PATRICK J. FITZGERALD
United States Attorney


MICHAEL D. LOVE
Assistant United States Attorney
308 W. State Street - Room 300
Rockford, Illinois 61101
815-987-4444


KATHY M. BARTELS,
f/k/a Kathy M. Hoefler
Defendant


HANEEF L. OMAR
Attorney for Defendant
202 West State Street
Suite 600
Rockford, IL 61101
815-961-0800