

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No.: 08-113(JNE)

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) PLEA AGREEMENT AND  
 ) SENTENCING STIPULATIONS  
 THOMAS JOSEPH BALKO, )  
 )  
 Defendant. )

The United States of America and Thomas Joseph Balko (hereinafter referred to as the "defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

1. **Charges.** The defendant agrees to plead guilty to Count 1 of the Information, which charges the defendant with mail fraud, namely, a mortgage fraud scheme, in violation of Title 18, United States Code, Section 1341.

2. **Factual Basis.**

From approximately 2005 through 2007, the defendant was the owner, along with Jonathan Edward Helgason, of numerous companies, including TJ Waconia, LLC; TJ Holdings, LLC; Complete Real Estate Services, Inc. (a licensed mortgage broker); Total Title, LLC; CityWide Management, LLC, and Investor's Warehouse, LLC (collectively, these entities are referred to as the "TJ Group").

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FILED APR 17 2008  
RICHARD D. SLETTEN  
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From in or about 2005 through 2007, in the State of Minnesota, the defendant conspired and agreed with other individuals, including co-defendant Jonathan Edward Helgason, to execute a scheme to defraud and to obtain money by means of false and fraudulent pretenses, which operated as set forth below.

From 2005 through 2007, pursuant to the scheme, Helgason and Balko, through the TJ Group, purchased approximately 162 properties throughout the metropolitan area, and principally in North Minneapolis. Helgason and Balko would resell the property within a short period of time to an "investor". Oftentimes, the TJ Group would resell the property at a price approximately \$20,000 to \$60,000 higher than the price at which the TJ Group had purchased the property, after owning the property for a short period of time. The purchase price was set by Helgason and Balko and was not the product of arms-length negotiation. In fact, in most cases, the "investors" did not even inspect the property in question.

"Investors" were told by Helgason and Balko that the "investor" was simply "lending" his or her credit to the TJ Group in exchange for which the "investor" would receive a payment at the closing, typically \$2,500, and the promise of an additional payment after two years when the TJ Group was to re-purchase the property from the "investor."

Through the scheme, the defendants perpetrated a fraud on the lenders who were led to believe that the "investors" were the

actual owners of the properties, when, in fact, the "investors'" ownership was in name only. During the two-year period during which the "investor" owned the property, the TJ Group was responsible for all payments and maintenance on the property. Helgason and Balko, through the TJ Group, was to make payments to the "investor" equivalent to the mortgage payment on the property, such that the "investor" was to have no financial obligations for the property. Helgason and Balko also made arrangements for the seller of the property, the TJ Group, to provide some of the "investors" with funds to pay the buyer's portion of the property purchase price. On those transactions, the loan documentation utilized fraudulently indicated that such funds were provided by the buyer.

With regard to many of the fraudulent transactions, Helgason and Balko also worked with other individuals to provide lenders with false loan applications on behalf of some of the "investors" that would overstate the income of those "investors" so that they would qualify for the loan.

Through the scheme, Helgason and Balko, on behalf of the "investors", obtained approximately \$35 million in loan proceeds to purchase the properties from the TJ Group. During the course of the scheme, Helgason and Balko used most of the funds obtained by the TJ Group to make payments to "investors" for the purpose of making mortgage payments, thereby keeping the scheme afloat, and

purchasing new properties for new fraudulent transactions. Ultimately, the scheme collapsed: the TJ Group did not re-purchase the properties or continue making payments to the "investors" for making payments toward the mortgages. "Investors" were left owning properties purchased with mortgages that exceeded the market value of the property.

The defendant acknowledges that on or about March 21, 2006, it was reasonably foreseeable to the defendant that the U.S. mail and commercial interstate carriers delivered an item in furtherance of the scheme in relation to the sale of one such property in Minneapolis from the TJ Group to an "investor".

To the extent the government determines the defendant was responsible for additional fraudulent transactions, the defendant agrees that such transactions may be considered by the Court at sentencing for purposes of relevant conduct.

3. **Waiver of Indictment.** The defendant agrees to waive indictment by a grand jury on these charges and to consent to the filing of a criminal information. The defendant further agrees to execute a written waiver of his right to be indicted by a grand jury on this offense.

4. **Waiver of Pretrial Motions.** The defendant understands and agrees that he has certain rights to file pre-trial motions in this case. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, the

defendant knowingly, willingly, and voluntarily gives up the right to file pre-trial motions in this case.

5. **Statutory Penalties.**

The parties agree that Count 1 of the Information carries statutory penalties of:

- a. a term of imprisonment of up to 20 years;
- b. a criminal fine of up to the greater of \$250,000.00 or twice the amount of gain or loss;
- c. a term of supervised release of up to three years;
- d. a special assessment of \$100.00, which is payable to the Clerk of Court prior to sentencing; and
- e. the costs of prosecution (as defined in 28 U.S.C. §§ 1918(b) and 1920).

6. **Revocation of Supervised Release.** The defendant understands that, if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

7. **Guideline Calculations.** The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. § 3551, et seq. The parties also acknowledge that the Court will utilize the United States Sentencing Guidelines (those effective November 1,

2005) to determine the appropriate sentence and stipulate to the following guideline calculations:

- a. Base Offense Level. The parties agree that the base offense level for these offenses is 7. (U.S.S.G. § 2B1.1).
- b. Specific Offense Characteristics. The government contends that the loss amount is between \$7 million and \$20 million. Accordingly, the offense level should be increased by 20 levels. (U.S.S.G. § 2B1.1(b)(1)). The defendant reserves the right to conduct additional discovery so as to independently confirm the government's calculation; accordingly, until such confirmation is made, the defendant reserves the right to contend the loss amount is between \$2.5 million and \$ 7 million, which would increase the offense level by 18 levels. The government contends that the offense level should be increased by 4 levels, because there were fifty or more victims involved. (U.S.S.G. § 2B1.1(b)(2)). The defendant reserves the right to conduct additional discovery so as to independently confirm the number of victims; accordingly, until such verification is made, the defendant reserves the right to contend the number of victims was between 10 and 50, which would increase the offense level by 2 levels. The parties agree that no other specific offense characteristics apply.
- c. Role in the Offense. The parties agree that the offense level should be increased by 2 levels, because the defendant played a managerial role in the conspiracy. (U.S.S.G. § 3B1.1(c)).
- d. Acceptance of Responsibility. The government agrees to recommend that the defendant receive a 3-level reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, the defendant understands and agrees that this recommendation is conditioned upon the following: (i) the defendant testifies truthfully during the change of plea hearing, (ii) the defendant cooperates with the Probation Office in the pre-sentence investigation, (iii) the defendant commits no further acts inconsistent with acceptance of responsibility, and (iv) the

defendant complies with this agreement, fully identifies all assets and makes good faith efforts to make restitution to his victim. (U.S.S.G. §3E1.1). The parties agree that other than as provided for herein no other Chapter 3 adjustments apply.

- e. Criminal History Category. Based on information available at this time, the parties believe that the defendant's criminal history category is I. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history and related status will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing.
- f. Guideline Range. If the offense level is 30, and the criminal history category is I, the Sentencing Guidelines range is 97-121 months imprisonment. If the Court determines that a lower offense level applies, the Sentencing Guidelines range will be lower.
- g. Fine Range. If the adjusted offense level is 30, the fine range is \$15,000.00 to \$150,000.00. If the Court determines that a lower offense level applies, the fine range will be lower.
- h. Supervised Release. The Sentencing Guidelines require a term of supervised release of between two and three years. (U.S.S.G. § 5D1.2).
- i. Departures and Sentencing Recommendations. The defendant reserves the right to make a motion for departures from the applicable guideline. In particular, the defendant may argue that the loss amount overstates the seriousness of the offense. Specifically, the defendant may argue that the defendant received only a small amount of financial benefit compared to the loss amount resulting from the scheme. The government reserves the right to oppose any such motion. The defendant also reserves the right to argue for a sentence outside the applicable guideline.

8. Discretion of the Court. The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable guideline factors and the applicable criminal history category. The Court may also depart from the applicable guidelines. If the Court determines that the applicable guideline calculations or the defendant's criminal history category is different from that stated above, the parties may not withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.

9. Special Assessments. The Guidelines require payment of a special assessment in the amount of \$100.00 for each felony count of which the defendant is convicted. U.S.S.G. § 5E1.3. The defendant agrees to pay the special assessment prior to sentencing.

10. Restitution. The defendant understands and agrees that the Mandatory Victim Restitution Act, 18 U.S.C. §3663A, applies and that the Court is required to order the defendant to make restitution to the victim of his crime.

The defendant represents that he will fully and completely disclose to the United States Attorney's Office the existence and location of any assets in which he has any right, title, or interest. The defendant agrees to assist the United States in

identifying, locating, returning, and transferring assets for use in payment of restitution and fines ordered by the Court. The defendant represents that he will provide a financial statement to the United States Attorney's Office and that it will be accurate, truthful and complete.

If requested by the United States, the defendant agrees to submit to a polygraph examination to determine whether he has truthfully disclosed the existence of all of his assets.

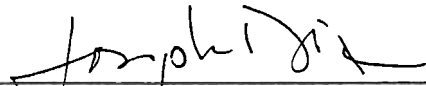
11. **Forfeiture.** The government reserves its right to proceed against any of the defendant's assets if said assets represent real or personal property involved in violations of the laws of the United States or are proceeds traceable to such property. The defendant stipulates that proceeds obtained by the TJ Group are proceeds of the mortgage fraud and are, accordingly, subject to forfeiture. The defendant requests that he be permitted to use any funds for restitution, which request the government will consider in its discretion based on an assessment of the defendant's assets and restitution obligations.

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12. Complete Agreement. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Date: April 17, 2008


FRANK J. MAGILL, JR.  
Acting United States Attorney

  
BY: JOSEPH T. DIXON, III  
Assistant U.S. Attorney  
Attorney ID No. 0283903

Date: 4/17/08

  
THOMAS JOSEPH BALKO,  
Defendant

Date: 4/17/08

  
ALLAN CAPLAN,  
Counsel for Defendant