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SEP 15 2005
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JUDGE AMY ST. EVE
United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

JOSEPH CARI

)
)
) No. 05 CR 691
) Judge Amy J. St. Eve
)

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, JOSEPH CARI, and his attorney, SCOTT R. LASSAR, 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 above captioned 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 or agencies 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, JOSEPH CARI, and his attorney, SCOTT R. LASSAR, have agreed upon the following:

1. Defendant acknowledges that he has been charged in Count 11 of the indictment in this case with attempting to commit extortion in violation of 18 U.S.C. § 1951.

2. Defendant has read the charge against him contained in the indictment in this case and the charge has been fully explained to him by his attorney.

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

4. Defendant will enter a voluntary plea of guilty to Count 11 of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 11 of the indictment in this case. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt. The following is not a complete statement of all the details known to the defendant regarding the defendant's criminal conduct. The following facts are set forth solely as a factual basis for this guilty plea:

Defendant JOSEPH CARI ("Cari") was an attorney; he was also a partner and a managing director of a private equity firm ("Firm A") that received \$35 million, in or about 2003, from the Teachers' Retirement System of the State of Illinois ("TRS"), which was a public pension plan. Co-defendant Stuart Levine ("Levine") was a member of the TRS Board of Trustees. Investment Firm 4 ("Firm 4") was a real estate investment and asset management firm that solicited and ultimately received \$85 million from TRS to invest.

Cari admits that in or about the spring of 2004, Cari attempted to commit extortion, which would affect commerce, in that Cari and Levine attempted to obtain property, in the form of a Compensation Agreement and payments from Firm 4 to a consultant identified by Levine ("the consultant"), with Firm 4's consent induced under the color of official right, and by the wrongful use of actual and threatened fear of economic harm; namely, acting at the direction of Levine, Cari told representatives of Firm 4 that they had to sign a contract with the consultant, or Firm 4 would be taken off the TRS agenda for the May 2004 TRS Board meeting, and Firm 4 would not receive funds from TRS; Cari threatened that Firm 4 would not receive TRS funds unless the firm hired the consultant identified by Levine; all in violation of 18 U.S.C. § 1951.

Specifically, Cari admits the following: In or about early 2004, Cari learned that one of his partners from Firm A ("Partner A") had contacted Levine on behalf of Firm 4, which was seeking TRS funds to invest. Levine told Cari and Partner A that Firm 4 needed to hire a consultant, and that Levine would provide the name of the consultant that Firm 4 needed to hire.

Levine and Cari had previously discussed the use of consultants. Levine said that a high ranking Illinois public official ("Public Official A"), acting through two close associates, was selecting consultants for the private equity funds that appeared before the State Pension Funds. Levine said that this was part of a fundraising strategy. Levine said that Public Official A, and his associates, were going to pick law firms, investment banking firms, and consultants that would help Public Official A.

Levine had advised Cari that Levine and Public Official A's two associates had agreed that they would not let an Illinois public pension fund, including TRS, invest in a private equity fund unless a consultant selected by Levine or those associates was hired. Levine told Cari that consultants selected by Levine and those associates would subsequently be required to make certain political or charitable contributions as directed by Levine and

those associates. Cari understood that requiring Firm 4 to hire a consultant was part of that plan.

In or about April 2004, Levine told Cari that Levine needed to give Firm 4 the name of the consultant, but Levine did not want to deal directly with Firm 4 and would like to have Cari relay the information to Partner A. Cari agreed to do so. Levine told Cari that one of Levine's close associates was going to pick the consultant that Firm 4 should hire. Levine also told Cari that Levine thought he could assist Cari's private equity firm, which was attempting to obtain money from an Illinois state pension fund and other funds.

Based on information provided by Levine, Cari understood that Firm 4 had gotten an \$80 million commitment from TRS, and Firm 4's proposal was on the agenda for the May TRS Board meeting for approval. It was Cari's understanding that once the TRS staff recommended an investment in a fund, and the fund was on the TRS agenda, the fund would get the investment. Cari believed that Firm 4 would get the TRS funds unless Levine prevented it. It was Cari's understanding that if Levine did not want something to be approved by the TRS Board, it would not be approved. Levine had previously told Cari that he had the ability to control what would be on the TRS agenda.

Partner A told Cari that the Executive had called the consultant, and the consultant did not know who the Executive was or what she was calling about. Cari gave that information to Levine, and Levine said that he would get it worked out. In or about early May 2004, based on information provided by Partner A, Cari understood that Firm 4 did not want to hire the consultant and the Executive handling the matter for Firm 4 ("the Executive") did not think that the firm needed to do so. Cari knew that Firm 4 had not received any services from the consultant by early May 2004.

During May 2004, Levine repeatedly told Cari that Firm 4 would not get any money from TRS if the contract was not signed. Levine said that Firm 4 would be pulled off of the TRS agenda if the consulting contract was not signed. Cari agreed to follow up on the issue. A law partner of Cari's also urged Cari to assist Levine.

In or about May 18-20, 2004, Cari had a series of conversations with Levine, in which Levine said he was very upset that the consulting contract was not signed, and that the contract had to be signed because the TRS Board meeting was coming up. Levine said it would be a reflection on Cari if this did not get done, and Levine would remember it. Levine asked Cari to stay on

top of this until Firm 4 signed the contract. Cari agreed to do so.

On or about May 20, 2004, Cari had a series of calls with representatives of Firm 4, in which Cari said that the consulting contract had to be signed or Firm 4's application would be pulled off of the TRS agenda, and Firm 4 would not get funds from TRS. Cari threatened that Firm 4 would not get TRS funds if they did not hire the consultant because Levine directed him to do so.

Cari spoke to a secretary at Firm 4, and said that Firm 4 would lose the investment from TRS and the secretary would lose her job if the Executive did not call Cari back within one hour.

In conversations with the Executive, Cari said that the TRS Board meeting was the following week, and the consulting contract had to be signed before the meeting or Firm 4 was going to get pulled from the TRS Board meeting agenda. Cari said it had to get done right away. Cari said that Partner A told him that Firm 4 had agreed to sign the contract, and Cari did not understand what the problem was. During one conversation with someone from Firm 4, Cari said the contract had to be signed by the end of the day.

Cari talked to the general counsel for Firm 4. Cari said that Firm 4 had to sign the contract, or Firm 4's application for funds would get pulled off the TRS agenda. Cari said that it was political and this was how Public Official A handled patronage. Cari said that his private equity firm had agreed to hire a consultant in order to get funding from another State board. Cari said that the TRS Board meeting was coming up in a few days, and this contract had to get signed.

During the calls with Firm 4, Cari delivered the message from Levine that Firm 4 had to hire the consultant or Firm 4's application would get pulled, and they had no choice about this if they wanted the investment. Based on Cari's initial conversations with the Executive and the general counsel, it was clear to Cari that Firm 4 did not want to sign the consulting contract.

Late in the afternoon, Cari spoke to Firm 4's general counsel and outside counsel. Co-defendant Steven Loren also participated briefly. Cari said that if Firm 4 did not sign the contract, Firm 4 would be taken off of the TRS May agenda. One attorney asked whether Cari was saying that if the contract was not signed, Firm 4 was not going to get funding. Cari said that was absolutely right. Cari said that if the contract did not get signed by the following day, Firm 4 would be taken off the agenda. The attorneys for Firm 4 told Cari that no one from Firm 4 had ever met the consultants, the consulting agreement had been faxed from some

place in the Caribbean, and the consultant had done absolutely no work. Cari said that they were all lawyers on the call, and they should do whatever they needed to do to advise their client. Cari did not retract any of his earlier statements or advise Firm 4 that they did not need to sign the consulting agreement since the consultant had not provided services.

Cari believed that Firm 4 would suffer economically if they did not hire the consultant as directed, and that Levine was using and would continue to use his position on the TRS Board in order to carry out his threats that Firm 4 had to hire the consultant or Firm 4 would not get TRS funding. Cari understood that requiring Firm 4 to hire a consultant was part of the plan previously described to him by Levine, in which Public Official A and his two close associates would name consultants for the private equity funds that appeared before the State Pension Funds, which was part of a fundraising strategy. Cari believed that if Firm 4 hired the consultant identified by Levine, the consultant would be required to make political or charitable contributions as directed by Levine and Public Official A's associates.

When Cari delivered Levine's message to Firm 4, saying that Firm 4 had to hire the consultant or Firm 4 would not get TRS funding, Cari delivered a threat to Firm 4. Cari was attempting to help Levine, who was using his official position, to get Firm 4 to consent to hiring and paying the consultant by threatening Firm 4 with economic harm. Cari initially delivered this message to Partner A, to be passed along to Firm 4. Partner A told Cari several times that he passed it along. On May 20, 2004, Cari delivered that message directly to Firm 4.

Cari agreed to help Levine in terms of Firm 4 in part because Cari thought Levine would help Cari's private equity firm obtain funds from Illinois State Pension funds, and possibly other funds or entities, and in part because Cari was pushed by one of his law partners, and, in part because Cari was being pressured by Levine.

Cari acknowledges that it was reasonably foreseeable that Firm 4 would purchase goods and services from out of state, and that payments to the consultant would lessen the funds available for such purchases. Cari acknowledges that the evidence would show that Firm 4, which was located in Virginia, routinely used corporate funds to purchase goods and services from other states.

On or about May 21, 2004, Cari talked to a staff member from TRS. That individual said that he had gotten a call from someone at Firm 4, who said that Cari told Firm 4 that they had to sign a consulting agreement, or Firm 4's application would get pulled off

of the TRS agenda. Cari initially denied saying that. Cari subsequently said he was involved because of Partner A, who was trying to help Firm 4. Cari did not disclose Levine's involvement.

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 stipulate and agree on the following points:

a. The parties agree that the applicable Guidelines version is the 2003 Guidelines Manual.

b. The parties agree that the applicable Guidelines Section is § 2C1.1(1) and the base offense level is 10.

c. The parties agree that pursuant to Guideline §§ 2C1.1(b)(2)(A) and 2B1.1(b)(1)(H), the base offense level should be increased by 14 levels based on an attempted loss between \$400,000 and \$1,000,000, because the amount to be paid to the consultant pursuant to the terms of the consulting contract was approximately \$850,000 (1% of the \$85 million that Firm 4 was to receive from TRS), and it was reasonably foreseeable to the defendant that the consultant's fee would be at least 1% of the amount invested by TRS.

d. The parties agree that the 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 the defendant continues to accept responsibility for his

actions, within the meaning of Guideline § 3E1.1, a 2 level reduction in the offense level is appropriate.

e. The parties agree that the defendant has provided timely notice of his intention to enter a plea of guilty, and truthful information, within the meaning of Guideline § 3E1.1(b), so that an additional 1 point reduction in the offense level is appropriate, if the offense level is 16 or greater, and the Court finds that a reduction under Guideline § 3E1.1(a) is appropriate.

f. Based on the facts known to the government, the defendant's criminal history points equal 0 and the defendant's criminal history category is I.

g. Based on the above calculations, which are preliminary in nature, and assuming that the defendant's criminal history category is I, the preliminary projected applicable offense level is a level 21, so that the preliminary projected applicable sentencing range is 37 to 46 months.

h. The defendant and his 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 plea 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 plea

agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

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 his plea on the basis of such corrections.

8. The 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.

9. Defendant understands that Count 11 of the indictment to which he will plead guilty carries a maximum penalty of 20 years' imprisonment, a maximum fine of \$250,000, and a term of supervised release of at least two years but not more than three years, as well as any restitution ordered by the Court.

10. The defendant understands that in accordance with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on Count 11 of the Indictment to which he has pled guilty, in addition

to any other penalty imposed. The defendant agrees to pay the special assessment of \$100 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

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

(a) If defendant persisted in a plea of not guilty to the charge against him, he 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 layperson selected at random. Defendant and his 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 him unless, after hearing all the

evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) If the trial was 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 his attorney would be able to cross-examine them. In turn, 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.

(e) 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.

12. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial.

13. The defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, in exchange for the concessions made by the United States in this Plea Agreement, the defendant knowingly agrees to waive the right to appeal any sentence imposed that is within or below the guidelines range corresponding to offense Level 21, Criminal History Category I, and waives the right to appeal any stipulated guideline calculation. The defendant also waives his right to challenge any sentence imposed that is within or below that guidelines range, and any stipulated guideline calculation, or the manner in which the sentence was determined, in any collateral attack, 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.

14. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to anyone.

15. Defendant agrees he will fully and truthfully cooperate with the government in any matter in which he is called upon to cooperate, including the following:

a. Defendant agrees to provide complete and truthful information and testimony, (i) in any criminal investigation and

any pre-trial preparation if called upon to do so by the government; (ii) before any grand jury, and (iii) in any United States District Court proceeding, state court proceeding, and civil, administrative, or other court proceeding, if called upon to do so by the government;

b. The parties agree that the parties will jointly recommend that the defendant's sentencing be postponed until after the conclusion of any on-going investigation in which the defendant is cooperating, and the conclusion of any prosecution arising from that investigation, if the government deems such postponement appropriate;

c. Defendant agrees that in the event that he breaches the terms of this plea agreement, or the plea agreement is vacated for any reason - other than the government's breaching the terms of this plea agreement, when there has been no breach, withdrawal, or rejection by the defendant - then any grand jury testimony provided by the defendant, in part and/or in whole, can be used against him in any proceeding, including, but not limited to, before the grand jury and/or in any criminal prosecution against him, without restriction;

d. In the event that the defendant's grand jury testimony can be used against him, pursuant to subsection (d) of this paragraph, as stated above, the parties agree and stipulate that the admissibility and use of the defendant's grand jury testimony

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is not governed by Rule 11 of the Federal Rules of Criminal Procedure or Rule 410 of the Federal Rules of Evidence. The defendant agrees that he will not seek to use Rule 11 or Rule 410 to prevent the admission of his grand jury testimony into evidence.

16. The United States agrees not to seek additional criminal charges against the defendant, in the Northern District of Illinois, for the events between January 1, 2002 and June 1, 2005, which occurred in the Northern District of Illinois, relating to Stuart Levine, TRS, Firm A, and Firm 4, which the defendant has described in proffers provided to the United States, or which are described in this plea agreement. However, nothing in this Agreement limits the United States in prosecution of the defendant in other districts, or for crimes which the defendant has not disclosed in proffers provided to the United States, or which are not described in this plea agreement.

17. 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 charges against him in this case, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

18. At the time of sentencing, the government shall make known to the sentencing judge the extent of the defendant's cooperation, and, assuming the defendant's full and truthful

cooperation, shall move the Court, pursuant to Sentencing Guideline § 5K1.1, to depart downward from the applicable sentencing guidelines range. The government will recommend that the Court impose a term of imprisonment in the custody of the Bureau of Prisons of two-thirds of the low end of the applicable guidelines range. The government's recommendation is not binding on the Court. The government remains free to make any other recommendations that it deems appropriate. The defendant is free to recommend whatever sentence he deems appropriate.

19. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose the maximum penalties as set forth in paragraph 9 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 his guilty plea.

20. Regarding restitution, the parties agree that the offense of conviction resulted in no loss and therefore restitution is inappropriate.

21. The defendant understands that Title 18, United States Code, Section 3664 and Section 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine. The defendant agrees to provide full and truthful information to the

court and United States Probation Officer regarding all details of his economic circumstances, and to provide such information to the United States Attorney's office. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court, and would constitute a breach of this Plea Agreement.

22. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he 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 the defendant's Plea is subsequently withdrawn, vacated or 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.

23. Defendant and his attorneys 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.

24. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

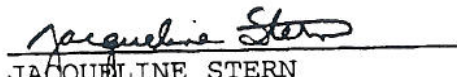
25. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

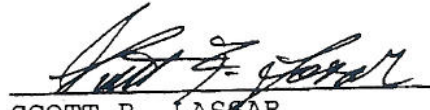
26. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorneys. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 9/15/05


PATRICK J. FITZGERALD
UNITED STATES ATTORNEY


JOSEPH CARI
Defendant


JACQUELINE STERN
Assistant United States Attorney


SCOTT R. LASSAR
Attorney for Defendant