

U.S. DISTRICT COURT  
EASTERN DISTRICT-WI  
FILED

2015 MAY -4 P 3:35

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
JON W. SANFILIPPO  
CLERK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 15-Cr-

**15-CR-082**

ANTHONY TOBIASZ,

Defendant.

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**PLEA AGREEMENT**

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1. The United States of America, by its attorneys, James L. Santelle, United States Attorney for the Eastern District of Wisconsin, and Stephen A. Ingraham, Assistant United States Attorney for the Eastern District of Wisconsin, and the defendant, Anthony Tobiasz, individually and by attorney John S. Schiro, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, enter into the following plea agreement.

**CHARGE**

2. In connection with this plea agreement, the defendant has been charged in a one-count information with a violation of Title 18, United States Code, Sections 208(a) and 216(a)(2).

3. The defendant has read and fully understands the charge contained in the information and fully understands the nature and elements of the crime with which he has been charged. The charge and the terms and conditions of the plea agreement have been explained to him fully by his attorney.

4. As to the information, the defendant voluntarily agrees to waive prosecution by indictment in open court.

5. The defendant voluntarily agrees to plead guilty to the offense alleged in the information, which is set forth in full as follows:

***THE UNITED STATES ATTORNEY CHARGES:***

*Between September 20, 2008, and June 19, 2013, in the State and Eastern District of Wisconsin,*

***ANTHONY TOBIASZ,***

*while acting in his capacity as an officer and employee of the United States Postal Service, participated personally, substantially, and willfully in the decision to approve, recommend, and award postal facility cleaning contracts to a business in which he had a financial interest.*

*All in violation of Title 18, United States Code, Sections 208(a) and 216(a)(2).*

6. The defendant acknowledges, understands, and agrees that he is, in fact, guilty of the offense charged in the information. The parties acknowledge and understand that if this case were to proceed to trial, the government would be able to prove the following facts beyond a reasonable doubt. The defendant admits to these facts and agrees that those facts establish his guilt beyond a reasonable doubt:

Anthony Tobiasz was a postal employee from February 1984 and was postmaster for Thiensville, Wisconsin from 2008 through most of 2012, and after that the Oconomowoc post office from November 2012. He received regular training in federal conflict of interest laws throughout his career with the Postal Service. He had a side cleaning business with a friend, Anthony Berna, called B&G Services. Although Berna, Berna's wife, and another employee did

the cleaning, Mr. Tobiasz was a financial partner with Berna with an expectation of a share in the company's profits. He also occasionally cleaned during staff shortages

Starting in September 2008, Tobiasz, as the Contract Officer Representative (COR) with contracting authority, awarded B&G the contract for cleaning the post office at Thiensville and/or the grounds around the building, without the Postal Service's knowledge of his interest in the company, violating government-wide prohibitions against financial conflicts of interest. Tobiasz would refer post office job leads to Berna and guide him through the application process. The two men had a joint business checking account at Guaranty Bank that was established in November 2007.

The Postal Service paid Berna (whose wife was also a postal employee) and B&G for their cleaning services, who in turn paid Tobiasz his share of the profits in cash, usually \$1,000 at a time always in person, and sometimes by check. Occasionally Berna did handyman work for Tobiasz at a fixer condominium that Tobiasz hoped to flip. B&G had what some considered to be poor service and charged more than previous vendors, usually about \$275 to \$400 per week per facility. Tobiasz helped B&G to also get contracts at post offices in Germantown, Root River, Hartford, Slinger, Cedarburg, Port Washington, and Hartland, where Berna began cleaning in June 2012. Many contracts operate until 2014, but most were not renewed at expiration.

The Postal Service paid B&G about \$418,000 for cleaning services as part of these illegal contracts, of which between \$77,774.80 and \$96,491.82 is deemed loss due to B&G's higher fees compared to successor cleaning vendors. B&G paid Tobiasz approximately \$10,000 annually of the funds received from these postal contracts. An email from Tobiasz to Berna dated 12/4/12 indicates that B&G paid Tobiasz \$13,000 in 2011, but only \$6,850 in

2012.

When interviewed in June 2013, Tobiasz made several false exculpatory statements about his business relationship with Berna and then refused to answer more pointed questions. The Bernas admitted that Tobiasz was a partner in B&G from the beginning, had arranged for the company to get postal contracts, and had taken a share in the profits.

Tobiasz admitted in his interview to knowing the rules about financial conflict of interest and tried to conceal his ties B&G.

This information is provided for the limited purpose of setting forth a factual basis for the defendant's plea of guilty. It is not a full recitation of the defendant's knowledge of or participation in the offense.

#### **PENALTIES**

7. The parties understand and agree that the charge set forth in the information carries the following maximum term of imprisonment and fine: 5 years and \$250,000. The offense also carries a mandatory special assessment of \$100 and a maximum of three years of supervised release. The parties' acknowledgments, understandings, and agreements with regard to a separate civil settlement agreement related to this case are set forth in paragraph 26 of this plea agreement.

8. The defendant acknowledges, understands, and agrees that he has discussed the relevant statutes as well as the applicable sentencing guidelines with his attorney.

#### **ELEMENTS**

9. The parties understand and agree that in order to sustain the charge of failing to disclose a financial conflict of interest in a federal government contract, as set forth in the information, the government must prove each of the following propositions beyond a

reasonable doubt:

First, that at the time alleged in the information, the defendant was an officer or employee of the Postal Service;

Second, that the defendant, in his capacity as an employee or officer of the Postal Service, participated personally and substantially in a matter which he knew that he had a substantial financial interest;

Third, that the defendant's participation was through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; and

Fourth, the defendant acted willfully.

#### **SENTENCING PROVISIONS**

10. The parties agree to waive the time limits in Fed. R. Crim. P. 32 relating to the presentence report, including that the presentence report be disclosed not less than 35 days before the sentencing hearing, in favor of a schedule for disclosure, and the filing of any objections, to be established by the court at the change of plea hearing.

11. The parties acknowledge, understand, and agree that any sentence imposed by the court will be pursuant to the Sentencing Reform Act, and that the court will give due regard to the Sentencing Guidelines when sentencing the defendant.

12. The parties acknowledge and agree that they have discussed all of the sentencing guidelines provisions which they believe to be applicable to the offense set forth in the information. The defendant acknowledges and agrees that his attorney in turn has discussed the applicable sentencing guidelines provisions with him to the defendant's satisfaction.

13. The parties acknowledge and understand that before sentencing the United States Probation Office will conduct its own investigation of the defendant's criminal history. The

parties further acknowledge and understand that, at the time the defendant enters a guilty plea, the parties may not have full and complete information regarding the defendant's criminal history. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentencing court's determination of defendant's criminal history.

#### **Sentencing Guidelines Calculations**

14. The parties acknowledge, understand, and agree that the sentencing guidelines calculations included in this agreement represent the positions of the parties on the appropriate sentence range under the sentencing guidelines. The defendant acknowledges and understands that the sentencing guidelines recommendations contained in this agreement do not create any right to be sentenced within any particular sentence range, and that the court may impose a reasonable sentence above or below the guideline range. The parties further understand and agree that if the defendant has provided false, incomplete, or inaccurate information that affects the calculations, the government is not bound to make the recommendations contained in this agreement.

#### **Relevant Conduct**

15. The parties acknowledge, understand, and agree that pursuant to Sentencing Guidelines Manual § 1B1.3, the sentencing judge may consider relevant conduct in calculating the sentencing guidelines range, even if the relevant conduct is not the subject of the offense to which defendant is pleading guilty.

#### **Base Offense Level**

16. The parties agree to recommend to the sentencing court that the applicable base offense level for the offense charged in the information is 6 under Sentencing Guidelines

Manual § 2C1.3(a).

**Specific Offense Characteristics**

17. The parties agree to recommend to the sentencing court that a four-level increase applies to the offense level for the offense charged in the information pursuant to Sentencing Guidelines Manual § 2C1.3(b)(1) because the offense involved actual harm to the government.

**Acceptance of Responsibility**

18. The government agrees to recommend a two-level decrease for acceptance of responsibility as authorized by Sentencing Guidelines Manual § 3E1.1(a), but only if the defendant exhibits conduct consistent with the acceptance of responsibility.

**Sentencing Recommendations**

19. Both parties reserve the right to provide the district court and the probation office with any and all information which might be pertinent to the sentencing process, including but not limited to any and all conduct related to the offense as well as any and all matters which might constitute aggravating or mitigating sentencing factors.

20. Both parties reserve the right to make any recommendation regarding any matters not specifically addressed by this agreement.

21. The parties acknowledge and understand that the United States will recommend a sentence of probation.

**Court's Determinations at Sentencing**

22. The parties acknowledge, understand, and agree that neither the sentencing court nor the United States Probation Office is a party to or bound by this agreement. The United States Probation Office will make its own recommendations to the sentencing court. The

sentencing court will make its own determinations regarding any and all issues relating to the imposition of sentence and may impose any sentence authorized by law up to the maximum penalties set forth in paragraph 7 above. The parties further understand that the sentencing court will be guided by the sentencing guidelines but will not be bound by the sentencing guidelines and may impose a reasonable sentence above or below the calculated guideline range.

23. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentence imposed by the court.

### **FINANCIAL MATTERS**

24. The defendant acknowledges and understands that any and all financial obligations imposed by the sentencing court are due and payable in full upon entry of the judgment of conviction. The defendant agrees not to request any delay or stay in payment of any and all financial obligations, except that, the United States agrees that the defendant can delay withdrawing money from his retirement account until December 4, 2015, to minimize penalties. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

### **Special Assessment**

25. The defendant agrees to pay the special assessment in the amount of \$100 before or at the time of sentencing.

### **Civil Settlement Agreement**

26. The defendant has reached a separate Civil Settlement Agreement with the United States related to the circumstances of this offense whereby he has agreed to pay the United States a \$50,000 lump sum payment in lieu of restitution. The defendant's pension is not affected by



this settlement.

**DEFENDANT'S WAIVER OF RIGHTS**

27. In entering this agreement, the defendant acknowledges and understands that in so doing he surrenders any claims he may have raised in any pretrial motion, as well as certain rights which include the following:

- a. If the defendant persisted in a plea of not guilty to the charge against him, he would be entitled to a speedy and public trial by a court or 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 citizens selected at random. The 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 peremptory challenges. The jury would have to agree unanimously before it could return a verdict of guilty. The court would instruct the jury that the defendant is presumed innocent until such time, if ever, as the government establishes guilt by competent evidence to the satisfaction of the jury 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 of the evidence, whether or not he was persuaded of defendant's guilt beyond a reasonable doubt.
- d. At such trial, whether by a judge or a jury, the government would be required to present witnesses and other evidence against the defendant. The defendant would be able to confront witnesses upon whose testimony the government is relying to obtain a conviction and he would have the right to cross-examine those witnesses. In turn the defendant could, but is not obligated to, present witnesses and other evidence on his own behalf. The defendant would be entitled to compulsory process to call witnesses.
- e. At such 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 on his own behalf.

28. The defendant acknowledges and understands that by pleading guilty he is waiving all the rights set forth above. The defendant further acknowledges the fact that his attorney has explained these rights to him and the consequences of his waiver of these rights. The defendant further acknowledges that as a part of the guilty plea hearing, the court may question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant intends to plead guilty. The defendant further understands that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

29. The defendant acknowledges and understands that he will be adjudicated guilty of the offense to which he will plead guilty and thereby may be deprived of certain rights, including but not limited to the right to vote, to hold public office, to serve on a jury, to possess firearms, and to be employed by a federally insured financial institution.

30. The defendant knowingly and voluntarily waives all claims he may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment. The defendant agrees that any delay between the filing of this agreement and the entry of the defendant's guilty plea pursuant to this agreement constitutes excludable time under the Speedy Trial Act.

#### **Further Civil or Administrative Action**

31. The defendant acknowledges, understands, and agrees that the defendant has discussed with his attorney and understands that nothing contained in this agreement is meant to limit the rights and authority of the United States of America or any other state or local government to take further civil, administrative, or regulatory action against the defendant, including but not limited to any listing and debarment proceedings to restrict rights and

opportunities of the defendant to contract with or receive assistance, loans, and benefits from United States government agencies.

#### **GENERAL MATTERS**

32. The parties acknowledge that this agreement does not require the government to take, or not to take, any particular position in any post-conviction motion or appeal.

33. The parties acknowledge that this plea agreement will be filed and become part of the public record in this case.

34. The parties acknowledge that the United States Attorney's office is free to notify any local, state, or federal agency of the defendant's conviction.

35. The defendant understands that pursuant to the Victim and Witness Protection Act and the regulations promulgated under the Act by the Attorney General of the United States, the victim of a crime may make a statement describing the impact of the offense on the victim and further may make a recommendation regarding the sentence to be imposed. The defendant acknowledges and understands that comments and recommendations by a victim may be different from those of the parties to this agreement.

#### **Further Action by Internal Revenue Service**

36. Nothing in this agreement shall be construed so as to limit the Internal Revenue Service in discharging its responsibilities in connection with the collection of any additional tax, interest, and penalties due from the defendant as a result of the defendant's conduct giving rise to the charge alleged in the information.

#### **EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT**

37. The defendant acknowledges and understands if he violates any term of this agreement at any time, engages in any further criminal activity prior to sentencing, or fails to

appear for sentencing, this agreement shall become null and void at the discretion of the government. If this plea agreement is revoked or if the defendant's conviction ultimately is overturned, then the government retains the right to file any and all charges which were not filed because of this agreement. The defendant hereby knowingly and voluntarily waives any defense based on the applicable statute of limitations for any charges filed against the defendant as a result of his breach of this agreement. The defendant understands, however, that the government may elect to proceed with the guilty plea and sentencing. If the defendant and his attorney have signed a proffer letter in connection with this case, then the defendant further acknowledges and understands that he continues to be subject to the terms of the proffer letter.

#### **VOLUNTARINESS OF DEFENDANT'S PLEA**

38. The defendant acknowledges, understands, and agrees that he will plead guilty freely and voluntarily because he is in fact guilty. The defendant further acknowledges and agrees that no threats, promises, representations, or other inducements have been made, nor agreements reached, other than those set forth in this agreement, to induce the defendant to plead guilty.

**ACKNOWLEDGMENTS**

I am the defendant. I am entering into this plea agreement freely and voluntarily. I am not now on or under the influence of any drug, medication, alcohol, or other intoxicant or depressant, whether or not prescribed by a physician, which would impair my ability to understand the terms and conditions of this agreement. My attorney has reviewed every part of this agreement with me and has advised me of the implications of the sentencing guidelines. I have discussed all aspects of this case with my attorney, and I am satisfied that my attorney has provided effective assistance of counsel.

Date: 5-1-15



\_\_\_\_\_  
ANTHONY TOBIASZ  
Defendant

I am the defendant's attorney. I carefully have reviewed every part of this agreement with the defendant. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.


Date: 5-1-15




\_\_\_\_\_  
JOHN S. SCHIRO  
Attorney for Defendant

For the United States of America:

Date: 5/4/15

  
for \_\_\_\_\_  
JAMES L. SANTELLE  
United States Attorney

Date: 5/4/15

  
\_\_\_\_\_  
STEPHEN A. INGRAHAM  
Assistant United States Attorney