



U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

June 23, 1998

Stephen P. Scaring, Esq.  
666 Old Country Road, Suite 501  
Garden City, New York 11530

Re: United States v. HERBERT TANNENBAUM

Dear Mr. Scaring:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from HERBERT TANNENBAUM ("the defendant") to the attached one-count felony information (the "Information"), which charges the defendant with conspiracy to violate the Foreign Corrupt Practices Act, in violation of Title 18, United States Code, Section 371, and carries a maximum sentence of 5 years' imprisonment, a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense, a \$100 special assessment, and supervised release of 3 years.

In consideration of his plea to the above offense, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for the conduct described in Criminal Complaint 98 Mag. 673.

In consideration of the foregoing and pursuant to Sentencing Guidelines §6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. Sentencing Guideline §2B4.1 is applicable to the offense charged in the Information, resulting in a base offense level of 8.

2. Because the value of the bribe was more than \$120,000, but less than \$200,000, the offense level is increased by 7 levels. U.S.S.G. §2F1.1(b)(1)(H).

3. Based on the information now available to this Office, and assuming the court determines that the defendant has accepted responsibility

by pleading guilty, and by truthfully admitting all relevant conduct for which he is accountable under U.S.S.G. §1B1.3, the offense level should be reduced by two levels for acceptance of responsibility. See U.S.S.G. §3E1.1(a).

In accordance with the above, the applicable Guidelines offense level is 13.

B. Criminal History Category

The defendant has a 1980 misdemeanor conviction for failure to file tax returns, and received a one year suspended sentence.

In accordance with the above, the defendant's Criminal History Category is I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated sentencing Guidelines range is 12 to 18 months.

The parties agree that neither a downward nor an upward departure from the Guidelines range set forth above is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, or suggest that the Court sua sponte consider such a departure or adjustment.

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and TANNENBAUM, nothing in this agreement limits the right of the parties (i) to present to the Probation Department or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Guidelines range set forth above (or such other range as the Court may determine) the defendant should be sentenced; (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above. Nothing in this agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, see U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, see U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this agreement.

It is understood that pursuant to Sentencing Guidelines § 6B1.4(d), neither the Probation Department nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is further agreed (i) that the defendant will neither appeal, nor otherwise litigate under Title 28, United States Code, Section 2255, any sentence within or below the stipulated Guidelines range and (ii) that the Government will not appeal any sentence within or above the stipulated Guidelines range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation.


It is further agreed that should the conviction(s) following TANNENBAUM's plea(s) of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against TANNENBAUM, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

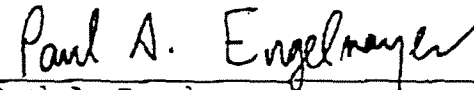
Apart from any written Proffer Agreement(s) that may have been entered into between this Office and TANNENBAUM, this Agreement supersedes any prior understandings, promises, or conditions between this Office and TANNENBAUM. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

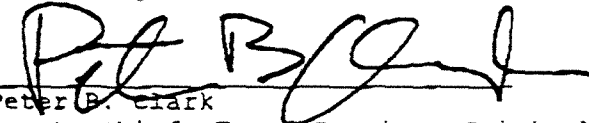
Very truly yours,


MARY JO WHITE  
United States Attorney

By:   
Daniel C. Becker  
Assistant United States Attorney  
(212) 637-2401

APPROVED:

  
Paul A. Engelmayer  
Chief, Major Crimes Unit

  
Peter B. Clark  
Deputy Chief, Fraud Section, Criminal  
Division, U.S. Department of Justice

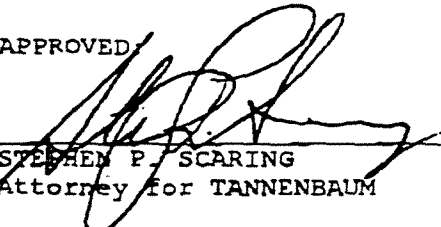
  
David A. Frank  
Trial Attorney, Fraud Section, Criminal  
Division, U.S. Department of Justice

AGREED AND CONSENTED TO:

  
HERBERT TANNENBAUM

8/5/98  
DATE

APPROVED:

  
STEPHEN P. SCARING  
Attorney for TANNENBAUM

8/5/98  
DATE