

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-80085-CR-Hurley/Vitunao

UNITED STATES OF AMERICA,

vs.

ANTHONY F. CUTAIA,

Defendant.

_____ /

PLEA AGREEMENT

The United States of America and ANTHONY F. CUTAIA, (hereinafter referred to as the “defendant”) enter into the following agreement:

1. The defendant agrees to waive Indictment and plead guilty to Count Two of the Information, which charges him with mail fraud, in violation of Title 18, United States Code, Section 1341. This Office agrees to seek dismissal of Counts 1 and 3 - 8 of the Information after sentencing. The defendant understands that the maximum statutory sentence under Title 18, United States Code, Section 1341 is a period of up to 20 years in prison, a maximum term of up to three years supervised release, a fine of \$250,000, and restitution.
2. In addition to any sentence imposed under paragraph 1 of this agreement, a special assessment in the amount of \$100.00 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.
3. The parties stipulate to and agree not to contest the following facts, and stipulate that such facts, in accordance with Rule 11(b)(3) of the Federal Rules of Procedure, provide a sufficient basis for the plea of guilty in this case:

Factual Basis

The government and the defendant stipulate to and agree not to contest the following facts, and stipulate that such facts, in accordance with Rule 11(b)(3) of the Federal Rules of Criminal Procedure, provide a sufficient factual basis for the plea of guilty in this case. The parties stipulate and agree to the following Statement of Facts:

Factual Proffer

From 2002 through at least 2006, the defendant Anthony Cutaia was the host of a regular Sunday morning television program called "Talk About Mortgages and Real Estate", which was carried on local television stations. Cutaia also had a popular radio program and held seminars in the Palm Beach County area. Many investors learned about Cutaia and his real estate investments through these seminars, television, and radio programs.

In late 2002, the defendant Anthony Cutaia incorporated CMG Property Investment Group LLC, ("CMG"), a company Cutaia owned and controlled. Beginning in 2003, Cutaia sold investments in his "Contract Participation Agreements" ("CPAs") to investors. These agreements purported to be investments in commercial real estate contracts for the purchase and sale of various commercial real estate properties.

Cutaia usually met with investors at his CMG offices, located at 95 South Federal Highway, Boca Raton, Florida. The CPAs typically provided that investors' funds would be used to purchase contracts for the purchase of commercial real estate, that they would participate in any profits and would also be paid interest payments on their investment.

An analysis of the bank accounts for Cutaia's company, CMG, reveals that Cutaia used investors' money to pay other investors' interest payments. He did not use investors' money as he

had promised. Analysis of the CMG bank accounts show that from the beginning, Cutaia paid his personal bills and other business expenses from these accounts, using money received from investors. Only a portion of investors' money was invested in commercial real estate deals. Investor money was spent on trips to casinos, payments for gambling debts, furniture for both Cutaia's other businesses and his house, restaurants, cars, and other personal expenses.

Investors were not told, nor did they believe, that their investment funds would be used to pay other investors' interest payments, or Cutaia's own personal or other expenses.

Cutaia used the U.S. Mail as an integral part of his scheme to defraud investors. He mailed, or caused to be mailed, interest checks and other payments to investors. In the summer of 2006, he also mailed, or caused to be mailed letters to investors.

On or about July 1 and again on July 31, 2006, Cutaia wrote "lulling" letters to investors explaining that their distributions, and interest payments would be delayed. In the July 1 letter Cutaia informed investors "one of the primary sources of distributions is from closed transactions." Again in the letter dated July 31, Cutaia stated, "we receive the funds to make the distributions from the sale of properties and contracts primarily." In fact, analysis of the CMG bank accounts reveal the main source of funding was from new investors.

During the summer of 2006, Cutaia met with G.S., a potential investor. Cutaia advised G.S. that he should refinance the mortgage on his house in order to invest the equity. In August 2006, G.S. did refinance his mortgage through Cutaia Mortgage Group and invested the equity with Cutaia in another investment offered by Cutaia. In September 2006, G.S. took out a second mortgage on his home, and on or about September 18, 2006, G.S., entered into a CPA with Cutaia in which he agreed to invest \$80,000 of those proceeds in a CPA. CMG was to invest the \$80,000 "from time to

time in various real estate contracts or properties at its sole discretion for the purpose of generation profit from the sale of these contracts". On or about October 2, 2006, G.S. mailed a check for \$80,000 to Cutaia along with his signed CPA agreement.

After Cutaia deposited the check from G.S., Cutaia used the money to pay interest owed to other investors including \$10,000.00 to investor J.S. and other personal and business expenses such as \$4,815.00 to Sea escape Casino Cruise, \$41,000.00 to Tasso Corporation for overdue rent on Cutaia's offices, radio program expenses, Direct TV subscription, and a life insurance policy, among other expenses. One of the life insurances policies named CMG as the beneficiary.

During the course of the scheme, Cutaia collected more than \$1 million from numerous investors and diverted most of that money to his own personal use and benefit.

4. The defendant is aware that the sentence will be imposed by the court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the court relying in part on the results of a Pre-Sentence Investigation by the court's probation office which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing

Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

5. The Office of the United States Attorney for the Southern District of Florida (hereinafter "Office") reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

6. The defendant is aware that the sentence has not yet been determined by the court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the court. The defendant understands further that any recommendation that the government makes to the court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the court and the court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 2 above, that the defendant may not withdraw his plea based upon the court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

7. The United States agrees that it will recommend at sentencing that the court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the government will make a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. The United States further agrees to recommend that the defendant be sentenced at the low end of the guideline range, as that range is determined by the court. The United States, however, will not be required to make this motion and this recommendation if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

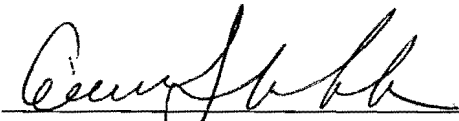
8. The United States and the Defendant agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed:

- a. Loss amount: The loss resulting from the fraud is more than \$1,000,000, but not more than \$2,500,000, resulting in a 16 level increase pursuant to §2B1.1(b)(1)(I) of the Sentencing Guidelines.
- b. Sophisticated Means: The government agrees that the defendant did not use sophisticated means to commit this offense.
- c. Number of victims: The number of victims is more than 10, but ^{fewer} less than 50, which results in a 2 level increase, pursuant to §2B1.1(b)(2)(A) of the Sentencing Guidelines.
- D. Vulnerable victim: The government agrees that the enhancement pursuant to §3A1.1 of the Sentencing Guidelines do^enot apply.

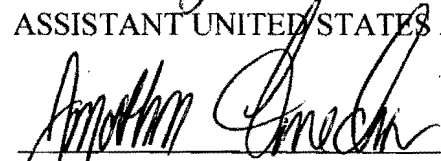
8. This is the entire agreement and understanding between the United States and the defendant.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

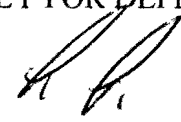
Date: 7/26/11

By: 
EMALYN H. WEBBER
ASSISTANT UNITED STATES ATTORNEY

Date: 6/3/11

By: 
JONATHAN FRIEDMAN
ATTORNEY FOR DEFENDANT

Date: 6-3-11

By: 
ANTHONY F. CUTAIA
DEFENDANT