

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
: UNITED STATES OF AMERICA : Criminal No. 03 Cr. 826
: :
: v. : Filed: 7/8/03
: :
: BARRY HOLLAND, : Violation: 18 U.S.C. § 371
: :
: Defendant. :
: :
----- x

PLEA AGREEMENT

The United States of America and the defendant, Barry Holland, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure.

1. Barry Holland (“Holland”) will plead guilty to an Information, in the form attached, in which he is charged with violating 18 U.S.C. § 371 in connection with a conspiracy to commit mail fraud involving his receipt of kickbacks from a vendor to his employer from approximately 1991 through 2000.

2. If Holland fully complies with the understandings specified in this Agreement, he will not be further prosecuted criminally by the Antitrust Division of the Department of Justice for crimes committed prior to the date of this Agreement arising from his receipt of kickbacks from The Color Wheel, Inc. and Manhattan Color Graphics, Inc. from approximately 1991 through 2000. This Agreement does not provide any protection against prosecution for any crimes except as set forth above. This Paragraph does not apply to civil matters of any kind, any violations of federal securities or tax laws, or crimes of violence.

3. It is understood that this Agreement does not bind any federal, state, or local prosecuting authority other than the Antitrust Division.

4. The United States and Holland agree and stipulate that the Nov. 2000 version United States Sentencing Commission Guidelines Manual (Nov. 2000) (“USSG”), the version in effect at the time of the offense, should be applied, pursuant to USSG § 1B1.11(b)(1), because application of a later version (now the Nov. 2002 edition) would lead to a higher adjusted offense level.

5. Holland understands and agrees that, pursuant to 18 U.S.C. § 371 and 18 U.S.C. § 3571, the maximum sentence provided by law to which he is subject for his violation of 18 U.S.C. § 371, a class D felony, is (a) a term of imprisonment of not more than five years; (b) a fine of not more than the greater of \$250,000, or the greater of twice his gross pecuniary gain from the offense or twice the victim’s gross pecuniary loss from the offense; or (c) both such sentences. Holland also understands that, pursuant to 18 U.S.C. § 3663A and USSG § 5E1.1, the Court shall impose an order of restitution. The Court may also impose a term of supervised release of no more than three years, pursuant to 18 U.S.C. § 3583(b)(2) and USSG § 5D1.2(a)(2). In addition, Holland understands that, pursuant to 18 U.S.C. § 3013(a)(2)(A) and USSG § 5E1.3, the Court must impose a special assessment of \$100.

6. The United States and Holland agree and stipulate that the combined adjusted offense level applicable to the offense charged in the attached Information is level 14 (15-21 months), which is derived from the following calculations:

(a) The offense level for the fraud offense, calculated according to the instructions in Part F, is level 17 (base level of 6, pursuant to USSG § 2F1.1(a); plus 7 levels,

pursuant to § 2F1.1(b)(1)(i) (loss of more than \$120,000 but less than \$200,000); plus 2 levels, pursuant to USSG § 2F1.1(b)(2)(A) (more than minimal planning), plus 2 levels, pursuant to USSG § 3B1.3 (abuse of a position of trust); and

(b) Holland has demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct, thereby reducing the adjusted offense level of 17 by 3 levels to level 14, pursuant to USSG § 3E1.1 (a) and (b).

7. The United States acknowledges that, pursuant to USSG §§ 5K2.0, Holland intends to move for a departure from the confinement portion of the sentence calculated in accordance with the above stipulations based on his mental health. The United States reserves the right to oppose this motion, should it decide that such a departure is not merited under the circumstances, and to respond to any factual inquiries by the Court or the Probation Office.

8. The United States and Holland agree and stipulate that the fine range for Holland for the offense charged in the Information is from \$4,000 to \$40,000, pursuant to USSG § 5E1.2(b), although the United States reserves the right to argue that, pursuant to Application Note 4 to USSG § 5E1.2, an upward departure from the fine guideline range may be warranted to ensure Holland's disgorgement of any gain from the offense.

9. In accordance with USSG §§ 5E1.1(a)(1), the United States and Holland agree to recommend to the Court that Holland pay \$76,226.00 in restitution to Viacom, Inc., the victim of his offense.

10. Holland understands that the sentence to be imposed on him will be determined solely by the sentencing judge. The United States cannot and does not make any promises or representations as to what sentence Holland will receive. Holland understands that, as provided

in Rule 11(c)(3)(B) of the Federal Rules of Criminal Procedure, if the Court does not impose a sentence consistent with the stipulations contained in this Agreement, he nevertheless has no right to withdraw his plea of guilty. The United States reserves the right to make any statements to the Court or the Probation Office concerning the nature of the criminal violation charged in the Information, Holland's participation therein, and any other facts or circumstances that it deems relevant, to make a recommendation of a sentence, including a recommendation of any specific sentence consistent with the stipulations set out in this Agreement and with any applicable provision of the Guidelines, to comment on or correct any representation made by or on behalf of the defendant, and to supply any other information that the Court may require.

11. Holland understands that this Agreement does not in any way affect or limit the right of the United States to respond to and take positions on post-sentencing motions or requests for information that relate to reduction or modification of sentence.

12. Holland agrees to provide to the United States, on request, all documents, records or other tangible evidence in his possession, custody, or control, relating to any matters about which he may be asked, if any such documents or other materials exist.

13. Holland understands and agrees that should he fail in any way to fulfill any of the obligations set out in this Agreement, the United States will be released from its obligations and he will be subject to prosecution for any federal criminal violation of which the United States has knowledge. In addition, Holland agrees that, should the United States be released from its obligations under this Agreement, and should the United States prosecute him, he will not assert a defense that any such prosecution is time-barred based on a statute of limitations that expired after the signing of this Agreement.

14. This Agreement constitutes the entire agreement between the United States and Holland concerning the disposition of the charge contained in the attached Information. The United States has made no other promises to or agreements with Holland. This Agreement cannot be modified other than in a writing signed by the parties.

Dated: 7/8/03

/s/ _____
BARRY HOLLAND

/s/ _____
PAUL GIANELLI, ESQ.
Counsel for Barry Holland

/s/ _____
REBECCA MEIKLEJOHN

/s/ _____
DOUGLAS M. TWEEN

/s/ _____
ELIZABETH PREWITT

Attorneys, Department of Justice

Antitrust Division
26 Federal Plaza, Room 3630
New York, NY 10278
Phone: (212) 264-4886