



U.S. Department of Justice **FILED** *JS*

United States Attorney
District of New Jersey

MAR 21 2003

AT 8:30

WILLIAM T. WALSH

CLERK

970 Broad Street, Suite 700
Newark, NJ 07102

973/645-2700

Bohdan Vitvitsky
1998RO1274

CR 02-315-01

March 4, 2003

Michael Critchley, Esq.
345 Main Street
West Orange, New Jersey 07052

Re: Plea Agreement with Timothy Burke

Dear Mr. Critchley:

This letter sets forth the full and complete agreement between your client, TIMOTHY W. BURKE, and the United States Attorney for the District of New Jersey ("this Office"). This plea offer expires at 5:00 p.m. on March 6, 2003.

Charge

Conditioned on the understandings and conditions specified below, this Office will accept a guilty plea from TIMOTHY W. BURKE to Count One of the Indictment, Criminal No. 02-315, which charges conspiracy to commit equity skimming and mail fraud, in violation of 18 U.S.C. § 371. If TIMOTHY W. BURKE enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against TIMOTHY W. BURKE relating to his activities connected with the operations of Franklin Properties, Lincoln Management and Tower Management between, and including, the years 1993 and 1999. In addition, if TIMOTHY W. BURKE fully complies with all of the terms of this agreement, at the time of sentencing in this matter, this Office will move to dismiss Counts Two, Three and Four of the Indictment, Criminal No. 02-315, against TIMOTHY W. BURKE. However, in the event that the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, the dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by TIMOTHY W. BURKE may be commenced against him, notwithstanding the

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DISTRICT COURT

expiration of the limitations period after TIMOTHY W. BURKE signs the agreement.

Plea Agreement Contingent Upon Plea by Co-Defendant Ligas

This plea agreement is contingent upon: (1) co-defendant Paul M. Ligas's execution of a plea agreement by 5:00 p.m. on March 6, 2003; and (2) co-defendant Ligas's entry of his plea agreement on the same day that TIMOTHY W. BURKE enters his plea.

Sentencing

The violation of 18 U.S.C. § 371 to which TIMOTHY W. BURKE agrees to plead guilty carries a statutory maximum prison sentence of 5 years and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. All fines imposed by the sentencing judge in excess of \$2,500 are subject to the payment of interest.

The sentence to be imposed upon TIMOTHY W. BURKE is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742 and the United States Sentencing Guidelines. The sentencing judge may impose the maximum term of imprisonment and maximum fine that are consistent with the Sentencing Reform Act and the Sentencing Guidelines, up to and including the statutory maximum term of imprisonment and the maximum statutory fine. The United States Sentencing Guidelines may impose a minimum term of imprisonment and/or fine, and may authorize departure from the minimum and maximum penalties under certain circumstances. This Office cannot and does not make any representation or promise as to what guideline range will be found applicable to TIMOTHY W. BURKE, or as to what sentence TIMOTHY W. BURKE ultimately will receive.

Further, in addition to imposing any other penalty on TIMOTHY W. BURKE, the sentencing judge: (1) will order TIMOTHY W. BURKE to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) must order TIMOTHY W. BURKE to pay restitution pursuant to 18 U.S.C. §§ 3663 *et seq.*; (3) may order TIMOTHY W. BURKE, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; and (4) pursuant to 18 U.S.C. § 3583 and § 5D1.2 of the Sentencing Guidelines, may require TIMOTHY W. BURKE to serve a term of supervised release of up to three years, which will begin at the expiration of any term of imprisonment imposed. Should TIMOTHY W. BURKE be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, TIMOTHY W. BURKE may be sentenced to not more than 2 years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

In addition, TIMOTHY W. BURKE agrees to make full restitution for all losses resulting from the offense of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying that offense.

Rights of this Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on TIMOTHY W. BURKE by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of TIMOTHY W. BURKE's activities and relevant conduct with respect to this case.

Stipulations

This Office and TIMOTHY W. BURKE agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or TIMOTHY W. BURKE from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and TIMOTHY W. BURKE waive certain rights to file an appeal, collateral attack, writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentencing court's determination or imposition of the offense level or its acceptance of any of the stipulations on Schedule A. Otherwise, this Office specifically reserves the right to file, oppose, or take any position in any appeal, collateral attack, or proceedings involving post-sentencing motions or writs.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against TIMOTHY W. BURKE. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil proceeding against TIMOTHY W. BURKE.

Prior to the date of sentencing, TIMOTHY W. BURKE shall: (1) file accurate personal returns for calendar years 1997, 1998 and 1999; (2) provide all appropriate documentation to the Internal Revenue Service in support of such returns, upon request; (3) pay to the Internal Revenue Service all taxes and penalties owed on those returns or, if unable to do so, make satisfactory repayment arrangements with the Internal Revenue Service; and (4) fully cooperate with the Internal Revenue Service and comply with the tax laws of the United States. Further, TIMOTHY W. BURKE agrees to allow the contents of his IRS criminal file to be given to civil attorneys and support staff of the Internal Revenue Service to enable them to investigate any and all civil penalties that may be due and owing by. With respect to disclosure of the criminal file to the Internal Revenue Service, TIMOTHY W. BURKE waives any rights under Title 26, United States Code, Section 7213 and Fed. R. Crim. P. 6(e), and any other right of privacy with respect to TIMOTHY W. BURKE's tax returns and return information.

This agreement constitutes the full and complete agreement between TIMOTHY W. BURKE and this Office and supersedes any previous agreement between them. No additional promises, agreements, or conditions have been entered into other than those set forth in this letter,

and none will be entered into unless in writing and signed by the parties.

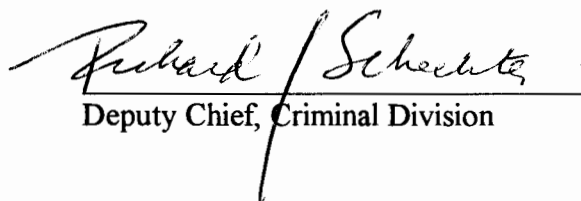
Very truly yours,

CHRISTOPHER J. CHRISTIE
United States Attorney

A handwritten signature in black ink, appearing to read "Bohdan Vitvitsky", with a long horizontal flourish extending to the right.

By: BOHDAN VITVITSKY
Assistant U.S. Attorney

APPROVED:

A handwritten signature in black ink, appearing to read "Richard Schechter", with a long horizontal flourish extending to the right.
Deputy Chief, Criminal Division

I have received this letter from my attorney, MICHAEL CRITCHLEY, Esq., I have read it and I understand it fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the full agreement between the parties. There have been no additional promises or representations made to me by any officials or employees of the United States Government or by my attorney in connection with this matter.

AGREED AND ACCEPTED:



TIMOTHY W. BURKE

Date:

3/21/03



MICHAEL CRITCHLEY, Esq.

Date:

3/21/03

PLEA AGREEMENT WITH TIMOTHY W. BURKE

Schedule A

This Office and TIMOTHY W. BURKE agree to stipulate at sentencing to the statements set forth below, subject to the conditions in the attached plea agreement. The applicable Sentencing Guidelines are the November 2000 Guidelines.

1. The applicable guideline is § 2F1.1. This guideline carries a Base Offense Level of 6.

2. Specific Offense Characteristic § 2F1.1.(b)(1)(L) applies. The fraud loss was more than \$800,000 but not more than \$1,500,000. This Specific Offense Characteristic results in an increase of 11 levels.

3. Specific Offense Characteristic § 2F1.1.(b)(2) applies. The offense involved more than minimal planning. This Specific Offense Characteristic results in an increase of 2 levels.

4. Specific Offense Characteristic § 2F1.1.(b)(3) applies. The offense was committed through mass marketing. This Specific Offense Characteristic results in an increase of 2 levels.

5. TIMOTHY W. BURKE was an organizer or leader of the relevant criminal activity, pursuant to U.S.S.G. § 3B1.1(a). This results in an increase of 4 levels.

6. TIMOTHY W. BURKE knew that victims of his offense were vulnerable victims, pursuant to U.S.S.G. § 3A1.1(b)(1). This results in an increase of 2 levels.

7. As of the date of this letter, TIMOTHY W. BURKE has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. If TIMOTHY W. BURKE clearly demonstrates acceptance of responsibility through the date of sentencing, this will result in a decrease of two levels, pursuant to U.S.S.G. § 3E1.1(a).

8. The total offense level based on all of above is a level 25.

9. The parties agree that there is no basis for any upward or downward departure or any upward or downward adjustment not set forth herein. Accordingly, neither party will seek or argue for any departure or adjustment not set forth herein.

10. TIMOTHY W. BURKE knows that he has, and voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentencing court's determination or imposition of the offense level, if the total

offense level determined by the court is equal to or less than the statutory maximum sentence of five years. The United States will not file any appeal, motion, or writ that challenges the sentencing court's determination or imposition of the offense level, if the total offense level determined by the court is equal to the statutory maximum of five years. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so. To the extent that any appeal, collateral attack, writ, or motion is barred by this paragraph, the parties agree that it should be dismissed.

11. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.