

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

RICHARD HATCH

CR 05 09 T

CR. No. FILED

JAN 18 2005
U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

PLEA AGREEMENT

Pursuant to Rule 11(c)(1) of the Federal Rules of Criminal Procedure, the United States and Defendant, RICHARD HATCH, have reached the following agreement:

1. Defendant will waive presentation of this matter to a grand jury and consent to the filing of an Information which charges him with the following two counts of Tax Evasion, in violation of 26 U.S.C. § 7201:

Count 1 - Willfully attempting to evade income tax by filing a false and fraudulent 2000 U.S. Individual Income Tax Return, Form 1040;

Count 2 - Willfully attempting to evade income tax by filing a false and fraudulent 2001 U.S. Individual Income Tax Return, Form 1040, and a false and fraudulent 2001 U.S. Income Tax Return for an S Corporation, Form 1120S.

2. In exchange for Defendant's plea of guilty:

a. Defendant agrees to be sentenced pursuant to the United States Sentencing Guidelines. Defendant agrees that the sentencing judge can find by a preponderance of the evidence any fact which is relevant to determining his guideline sentencing range, and to deciding whether and how much to depart from that range. Defendant waives any right to have those facts (1) charged in the indictment, (2) found by a jury, or (3) proven beyond a reasonable doubt. Defendant agrees that the sentencing judge may impose the maximum term of imprisonment

and/or fine that are supported by those facts and consistent with the Sentencing Reform Act and the Sentencing Guidelines, up to and including the statutory maximum terms of imprisonment and/or fine.

b. The government will recommend that the Court impose a term of imprisonment at the lowest point of the range of sentences for the offense level determined by the Court under the United States Sentencing Guidelines (the "guidelines"), provided that the defendant does not seek a downward departure under the guidelines.

c. For purposes of determining the offense level, the government agrees to recommend a 2-level reduction in the offense level for acceptance of responsibility under §3E1.1(a) of the guidelines if Defendant continues to demonstrate his acceptance of responsibility through sentencing.

d. As of the date of this agreement, Defendant has timely notified authorities of an intention to enter a plea of guilty. If the offense level is 16 or greater and the defendant enters his plea of guilty pursuant to this agreement, the government will move the sentencing court for an additional decrease of 1 level, pursuant to U.S.S.G. § 3E1.1(b)(2), unless Defendant indicates an intention not to enter a plea of guilty, thereby forcing the government to prepare for trial.

e. The government is free to recommend any combination of supervised release, fines, and restitution which it deems appropriate.

f. The United States and Defendant stipulate and agree to the following facts under the guidelines:

- i. The amount of the combined tax loss under Counts 1 and 2 is more than \$200,000.00, but less than \$400,000.00, and therefore the Base Offense Level is Level 18 under Guideline §§ 2T1.1(a)(1) and 2T4.1(G);
- ii. The offenses described in Counts 1 and 2 did not involve sophisticated means under Guideline § 2T1.1(b)(2).

g. Except as expressly provided in the preceding paragraph, there is no agreement as to which Offense Level and Criminal History Category applies in this case. Both the United States and Defendant reserve their rights to argue and present evidence on all matters affecting the guideline calculation.

h. Defendant understands and agrees that the terms of the plea agreement in no way resolve his personal civil income tax liability, including any penalties and interest for the years 2000 and 2001. Defendant further understands and agrees that this plea agreement in no way restricts the Internal Revenue Service from pursuing any administrative or civil actions against Defendant for the aforementioned years. It is further agreed that, prior to the date of sentencing, the defendant shall file accurate amended personal tax returns for the calendar years 2000 and 2001, and an accurate amended Tri-Whale Enterprises, Inc. tax return for an S corporation for the calendar year 2001. The defendant will pay past taxes due and owing to the Internal Revenue Service ("IRS") by him for calendar years 2000 through 2001, including any applicable penalties subject to the defendant's ability to pay and on such terms and conditions as will be agreed upon between the defendant and the IRS.

3. The maximum statutory penalties for each offense to which Defendant is pleading is 5 years imprisonment, a fine of up to \$250,000.00, a term of supervised release of up to 3 years, and a mandatory special assessment of \$100.00. The maximum total penalties for both offenses

are 10 years imprisonment, a fine of up to \$500,000.00, a term of supervised release of up to 6 years, and mandatory special assessments of \$200.00.

4. Defendant agrees that, after he and his counsel sign this agreement, counsel will return it to the United States Attorney's Office along with a money order or certified check, payable to the Clerk, United States District Court, in payment of the special assessment(s). Failure to do so, unless the Court has made a previous finding of indigence, will relieve the government of its obligation to recommend a reduction in the offense level under the guidelines for Acceptance of Responsibility.

5. Defendant is advised and understands that:

- a. The government has the right, in a prosecution for perjury or making a false statement, to use against the defendant any statement that the defendant gives under oath;
- b. Defendant has the right to plead not guilty, or having already so pleaded, to persist in that plea;
- c. He has the right to a jury trial;
- d. He has the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and every other stage of the proceeding;
- e. He has the right at trial to confront and cross-examine adverse witnesses, to be protected from self-incrimination, to testify and present evidence, and to compel the attendance of witnesses the witnesses against him; and that
- f. Defendant waives these trial rights if the court accepts a plea of guilty.

6. The government reserves its full right of allocution, including the right to present any information to the Court for its consideration in fashioning an appropriate sentence, the right

to correct misstatements, misrepresentations, or omissions by Defendant, and to answer any questions asked by the Court.

7. Except for paragraph 2, above, the parties have made no agreement concerning the application of the guidelines in this case.

8. Defendant understands that the Court alone makes all sentencing decisions, including the application of the guidelines and the sentence to be imposed. The Court is not bound by the parties' stipulations of fact, offense level adjustments, or the government's recommendations. The Court is free to impose any sentence it deems appropriate up to and including the statutory maximum. Defendant also understands that, even if the Court's guideline determinations and sentence are different than he expects, Defendant will not be allowed to withdraw his plea of guilty.

9. Defendant understands that he has the right to file a direct appeal. Defendant hereby waives his right to file a direct appeal if the Offense Level under the guidelines as determined by the sentencing court (after taking into account a 3 level decrease in the offense level for Acceptance of Responsibility) is level 15 or lower. This Agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b) and the government retains its right to appeal any of the Court's sentencing determinations.

10. This agreement is binding on the government only if Defendant pleads guilty, fulfills all his obligations under the agreement, does not engage in any conduct constituting obstruction of justice under §3C1.1 of the guidelines, and does not commit any new offenses, and does not otherwise violate the terms of his release pending sentence. Defendant understands that if he violates this agreement in any way, the government shall be released from its obligations

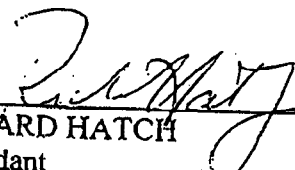
under the agreement and will be free to make any recommendations that it deems appropriate. If that occurs, Defendant shall not have the right to withdraw his guilty plea.

11. This agreement is limited to the District of Rhode Island and does not bind any other federal, state, or local prosecutive authorities.

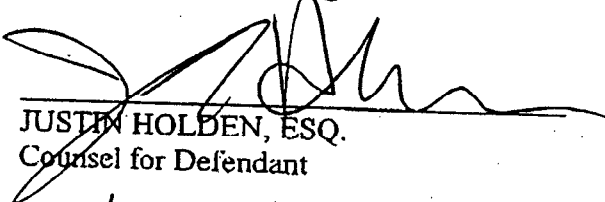
12. This agreement constitutes the entire agreement between the parties. No other promises or inducements have been made concerning the plea in this case. Defendant acknowledges that no person has, directly or indirectly, threatened or coerced him to enter this agreement. Any additions, deletions, or modifications to this agreement must be made in writing and signed by all the parties in order to be effective.

13. Counsel for Defendant states that he has read this agreement, been given a copy of it for his file, explained it to his client, and states that to the best of his knowledge and belief, Defendant understands the agreement.

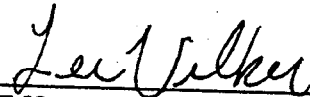
14. Defendant states that he has read the agreement or has had it read to him, has discussed it with counsel, understands it, and agrees to its provisions.


RICHARD HATCH
Defendant

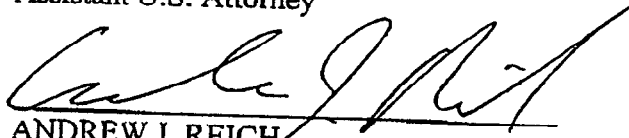
1/6/05
Date


JUSTIN HOLDEN, ESQ.
Counsel for Defendant

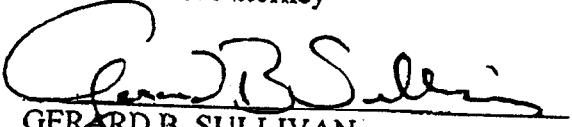
1/10/05
Date


LEE H. VILKER
Assistant U.S. Attorney

1/12/05
Date


ANDREW J. REICH
Assistant U.S. Attorney

1-12-05
Date


GERARD B. SULLIVAN
Assistant U.S. Attorney
Chief, Criminal Division

January 12, 2005
Date