

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

UNITED STATES OF AMERICA

v.

Case No.: 3:00cr48/LAC

BENJAMIN DAVID GILLILAND

**PLEA AND COOPERATION
AGREEMENT**

1. PARTIES TO AGREEMENT

This agreement is entered into by and between **BENJAMIN DAVID GILLILAND**, Donald L. Beckner, Attorney for the defendant,

and

the United States Attorney for the Northern District of Florida. This agreement specifically excludes and does not bind any other state or federal agency, including other United States Attorneys' Offices and the Internal Revenue Service, from asserting any civil, criminal or administrative claim against the defendant.

FILED BY DEPT. CLERK THIS

8/26/00

CLERK, U.S. DISTRICT COURT, NORTHERN DIST. FLA.

2. TERMS

The parties agree to the following terms:

a. The defendant will plead guilty to Counts One and Two of the Indictment. Count One charges the defendant with conspiracy to commit wire and securities fraud. Count Two charges the defendant with conspiracy to commit money laundering. On Count One the defendant faces a maximum possible penalty of 5 years, a fine of up to \$250,000.00, a three-year term of supervised release, and a \$100.00 special monetary assessment. On Count Two the defendant faces a maximum possible penalty of 10 years imprisonment, a fine up to \$250,000.00, and a 5-year term of supervised release, and a \$100.00 special monetary assessment. The defendant agrees to pay the assessment prior to sentencing. If the defendant is unable to pay the special assessment, the defendant agrees to execute, prior to sentencing, the necessary paperwork to establish his indigency. If the defendant is indigent, the defendant agrees to participate in the Inmate Financial Responsibility Program.

b. The parties acknowledge that the Sentencing Guidelines apply. The District Court's discretion in sentencing is limited only by statutory provisions and the Sentencing Guidelines.

c. That by voluntarily pleading guilty to Counts One and Two in the Indictment herein, the defendant, as to the Counts pled herein, knowingly waives and gives up his constitutional rights to plead not guilty, to compel the Government to prove his guilt beyond a reasonable doubt, not to be compelled to incriminate himself, to confront and cross-examine the witnesses against him, to have a jury or judge determine his guilt on the evidence presented, and other constitutional rights which attend a defendant on trial in a criminal case.

d. The Defendant agrees to cooperate fully and truthfully with the United States Attorney and his designated representatives and any agencies which the United States Attorney

directs. Such cooperation shall include but is not limited to complete and truthful debriefings and testimony at grand jury, trial, or as otherwise requested involving any matters under investigation.

e. The defendant agrees to make restitution to all victims to the best of his ability.

f. The defendant agrees to provide any and all information in his possession regarding assets which may be used or sold to reimburse the victims to the Securities and Exchange Commission Receiver, Michael J. Quilling. The defendant shall take all steps necessary to transfer these assets to the Receiver, including but not limited to executing any documents, providing consent to a cause of action filed by the Receiver, providing information and supporting documentation within the defendant's possession or control, and inducing persons holding property on the defendant's behalf to transfer such property to the Receiver. Upon satisfaction of the Receiver that all efforts have been made to identify and surrender assets, the United States agrees to move for dismissal of the forfeiture count in the Indictment.

g. The defendant hereby specifically waives any Fifth Amendment privilege or any other privilege inconsistent with the cooperation required by this agreement.

h. If all terms and conditions of this agreement are satisfied and there exists no cause for revocation as outlined in Section 3, any statements made by the defendant pursuant to this agreement, except as provided by guideline U.S.S.G., Section 1B1.8, will be treated by the United States as given under Rule 11(e), Federal Rules of Criminal Procedure.

i. Upon the District Court's adjudication of guilt of the defendant for violations of Title 18, United States Code, Section 371, Conspiracy to Commit Wire and Securities Fraud, and Section 1956(h), Conspiracy to Commit Money Laundering, the United States Attorney, Northern District of Florida, will dismiss the remaining counts of the Indictment against the defendant and will not file

any further criminal charges against the defendant arising out of the same transactions or occurrences to which the defendant has pled. The defendant agrees that the government at all times during this investigation and prosecution has proceeded in good faith and that substantial evidence existed to support all dismissed counts.

j. The United States Attorney agrees to make known his opinion as to the nature and extent of defendant's cooperation.

k. Regardless of any prior representations, the United States Attorney will not agree to recommend or be bound to recommend a specific sentence. Both parties may advise the District Court and other authorities of their versions of the offense committed by the defendant and may argue positions under the sentencing guidelines, including arguing for departures.

l. Nothing in this agreement shall protect the defendant from prosecution for any other offense committed if such offense is not otherwise covered by this plea agreement. Such offenses include offenses committed while the defendant cooperates under this agreement. Should the defendant be charged with any offense alleged to have occurred after the date of this agreement, the information and evidence disclosed to the Government during the course of cooperation can be used against the defendant in any such prosecution.

m. The defendant is pleading guilty because the defendant is in fact guilty of the charges contained in Counts One and Two of the Indictment. In pleading guilty, the defendant acknowledges that were the case to go to trial, the government would present evidence in support of these/this charge(s), as set out in the government's written Factual Basis for Plea. The parties agree that either party may offer additional evidence relevant to sentencing issues and that the court may consider any relevant evidence and is not limited to the written Factual Basis attached hereto.

3. REVOCATION

a. The parties agree that the United States Attorney may revoke this agreement upon showing, by a preponderance of the evidence, any of the following:

1. Defendant's failure to cooperate as provided by this agreement;
2. Defendant's statements or testimony are incomplete or untruthful;
3. Defendant's failure to comply with any of the terms of this agreement;
4. Defendant has any criminal liability for homicide;
5. Defendant has engaged in further criminal conduct after the defendant begins cooperating with the government in this case.

b. If this agreement is revoked,

1. Any plea of guilty entered by the defendant pursuant to this agreement and any judgment entered thereon shall remain in full force and effect and will not be the subject of legal challenge by defendant.

2. The United States may reinstate charges previously dismissed pursuant to this agreement and may otherwise file charges without limitation by this agreement.

3. All statements, information, and other evidence provided by the defendant pursuant to this agreement may be used against the defendant in any subsequent prosecution.

4. Regardless of the defendant's cooperation, and at the sole discretion of the United States Attorney, the defendant may be deemed not to have provided substantial assistance.

4. SENTENCING GUIDELINES

a. The parties understand and agree that the District Court will make the final determination of facts as to any sentencing issue. Adverse rulings or a sentence greater than

anticipated shall not be grounds for withdrawal of the defendant's plea. The Court is not limited to consideration of the facts provided by the United States Attorney and/or the defendant.

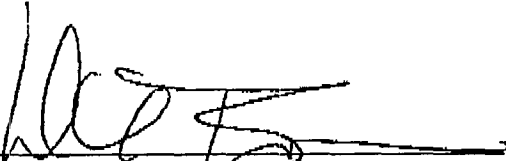
b. The defendant understands that any prediction of his sentence by any person is not a guarantee or binding promise.

c. If, in the sole discretion of the United States Attorney, the defendant is deemed to have provided substantial assistance in the investigation or prosecution of other persons who have committed offenses, and has otherwise complied with all terms of this agreement, and such assistance is prior to sentencing or within the time provided by Rule 35, Federal Rules of Criminal Procedure, then the United States Attorney will file an appropriate substantial assistance motion. Determination whether the defendant has provided substantial assistance will not depend upon any charges being filed or convictions being obtained as a result of defendant's cooperation. Should such a motion be filed, the United States Attorney may choose in his absolute discretion to file a motion under Title 18 U.S.C. Section 3553, or under Sentencing Guidelines Section 5K1.1, or under both provisions. Should a motion be filed, the granting of relief and the extent of relief is left solely to the discretion of the District Court.


d. The parties reserve the right to appeal any sentence imposed.


CONCLUSION

There are no other agreements between the United States Attorney, Northern District of Florida and the defendant, and the defendant enters this agreement knowingly, voluntarily and after consulting with counsel.


DONALD L. BECKNER
Attorney for Defendant

P. MICHAEL PATTERSON
United States Attorney


MICHELLE M. HELDMYER
Florida Bar #616214
Northern District of Florida
21 East Garden Street
Pensacola, Florida 32501
(904) 444-4000

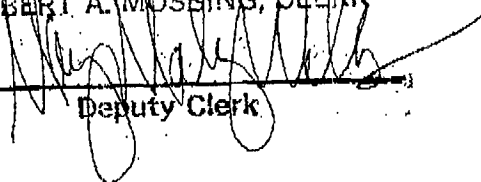

BENJAMIN DAVID GILLILAND
Defendant

8/21/00
Date

8/21/00
Date

coop13.com 3-9-98

CERTIFIED A TRUE COPY
ROBERT A. MOSSING, CLERK

By: 
Deputy Clerk

FACTUAL BASIS

In 1996, defendants BENJAMIN DAVID GILLILAND, Jerrold Gunn, William Dohan, and others developed Hammersmith Trust, LLC, represented to be a 13-month investment program designed to yield huge annual profits, sometimes over 700% interest per year. Investors were told before and after the investment process that: (1) their funds (called loans to avoid securities laws) went into Master accounts managed by an attorney, David Johnson, called an independent Trustee of Hammersmith, and would never leave the United States; (2) Hammersmith would use their funds to purchase U.S. Government Treasury Bills, which were absolutely safe and backed their investment in full; (3) Hammersmith would provide the investors with the CUSIP identifying numbers of the Treasury Bills Hammersmith had purchased with their funds; (4) Hammersmith would use the Treasury Bills as "leverage" to invest in the program; and (5) Hammersmith would pay investors interest payments every few months, at rates of return as high as 60% per month for as long as the investors left their funds in the program.

The program was bogus. The defendants did purchase a few Treasury Bills (only on 10% margin, which rendered them nearly valueless) and provided a CUSIP number from such a Treasury Bill to each investor, fraudulently representing that the investor's total funds invested were used to purchase that particular Treasury Bill. The same CUSIP numbers were used numerous times.

The defendants developed Microfund, Inc., as well. The Microfund program was nearly identical to the Hammersmith program in that it promised absolute safety for investors. In addition, the defendants represented that the Microfund program offered a heightened level of security. Before investor funds were invested, they would be held by Landfair Custodial Services, Inc., an independent custodian operated by former banker and codefendant Melody Rose. According to the Principals, this Custodian served a purpose similar to the attorneys in Hammersmith who handled the escrow accounts, that is, to ensure that all interests, including the investors', were protected in the transaction. In fact, Rose was anything but an independent custodian. Rose was in partnership with GILLILAND and Bridgeport to run the custodial service for the Microfund program. She worked at his pleasure and took direction from GILLILAND, and her office was adjacent to the Bridgeport Alliance office, where the defendants worked.

In order to facilitate the collection of monies for these programs, in 1997 GILLILAND and codefendants created Bridgeport Alliance, LLC., a limited liability company with offices at 4565 Commercial Drive, Bluewater Bay, Florida, run by codefendants William West and Kenneth Cobb. Bridgeport was an investment company through which the defendants offered the Hammersmith Trust and Microfund programs. Bridgeport contracted with agents and investors to fund Hammersmith. Codefendants Phillip Nesmith and Jeffery Matz were two such agents who brought millions of dollars into the programs knowing that the programs were bogus.

The programs were further facilitated by the purchase of a bank, American Pacific Bank and Trust, operated and partly owned by codefendant David Bishara. The defendants used the bank to launder investor funds (primarily Microfund investments) offshore. As part of this endeavor, the GILLILAND and others created another bogus program, Luxor Capital Markets,

Inc. A Luxor escrow account was established by codefendant Mark D. Talley, who laundered Microfund monies through the account to pay GILLILAND's bills and make payments to other investors.

The investment opportunities were a "Ponzi" scheme in which few investments were made but some funds collected from investors were distributed to select other investors based upon benefit to the scheme. For example, individuals who could potentially bring large numbers of new investors into the scheme received payments, sometimes at very high rates of return. Also, individuals who complained frequently or threatened exposure of the scheme received payments. Investor funds were not safe, and many investors lost all or part of their monies without realizing any profit. The promises made to investors, such as the purchase of safe T-Bills, the security of insurance policies and bonds, the use of "Trustees" and "Custodians," and the association of several attorneys such as codefendants Jerrold Gunn, David Johnson and Mark Talley, were all merely "sales tools" to lure investors' money to the defendants.

During the course of the scheme, nearly all monies invested in Hammersmith and ~~Luxor~~^{Microfund} were wire transferred from bank to bank, state to state and out of the United States. Most involved sums over \$10,000.00. The investments were legally considered to be securities sales, as defined and used in Title 15, United States Code.