

IN THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION,

Relator

v.

DONALD M. POWERS, JR.,

Respondent

Case No. 2008-0396

Disciplinary Action

Board of Commissioners on Grievances and
Discipline of the Supreme Court of Ohio

Case No. 06-012

**RELATOR CINCINNATI BAR ASSOCIATION'S
OBJECTIONS TO FINDINGS AND RECOMMENDATION OF
THE BOARD OF COMMISSIONERS ON
GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO**

Franklin A. Klaine, Jr. (0019300)
150 E. Fourth Street, 4th Floor
Cincinnati, Ohio 45202
Telephone: 513-621-2120
Facsimile: 513-241-8259
faklaine@straussstroy.com

E. Hanlin Bavely (0025868)
432 Walnut Street, Suite 850
Cincinnati, Ohio 45202
Telephone: 513-621-6621
Facsimile: 513-721-4129
ehbavely@zoomtown.com

*Counsel of Record for Relator
Cincinnati Bar Association*

Edward G. Marks, Esq. (0001251)
Hardin, Lazarus, Lewis & Marks, LLC
30 Garfield Place, Suite 915
Cincinnati, OH 45202
Telephone: 513-421-4400
Facsimile: 513-721-7008
emarks@hlmlaw.com

*Counsel for Respondent
Donald M. Powers, Jr.*



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STATEMENT OF FACTS

Respondent Donald M. Powers, Jr. ("Respondent" or "Powers") is charged by Relator Cincinnati Bar Association ("Relator" or "CBA") with violating DR 1-102(A)(3) by engaging in illegal conduct involving moral turpitude, DR 1-102(A)(4) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and DR 1-102(A)(6) by engaging in conduct adversely reflecting on a lawyer's fitness to practice law. Many of the facts of this case are set forth in a Stipulation of facts filed by the parties with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (the "Board"), and in the Board's findings of fact set forth in its Findings of Fact, Conclusions of Law and Recommendation. Additional facts set forth herein are derived from the transcript of the Board's hearing in this matter.

A. Stipulated Facts

The Stipulation filed by the parties with the Board includes a number of facts and exhibits. The Stipulation and exhibits thereto are set forth in the Appendix hereto. The Stipulation filed by the parties includes, but is not limited to, the following relevant facts:

Respondent Powers is an attorney duly admitted to the practice of law in the State of Ohio in 1997. (Stipulation p. 1, ¶1.) Respondent is currently not registered as an attorney with the Supreme Court of Ohio. (Stipulation p. 1, ¶ 2.)

Respondent and his wife operated Premier Land Title Agency in Glendale, Ohio, from September 2000 to July 2003. (Stipulation p. 1, ¶ 3.) During this period, Respondent was a participant (along with several others) in a scheme involving "flipping" low value homes in the greater Cincinnati, Ohio area. (Stipulation p. 1, ¶ 4.) The "flipping" scheme involved buying a piece of real estate for a low value, recruiting a buyer for the property who may not otherwise be able to afford property, and creating false documents, including pay stubs, W-2 forms, bank

statements and employment verification for the potential buyer. Next, a falsely inflated appraisal of the property would be obtained, and a false loan package would be submitted to the bank or lender in order to obtain a highly inflated loan. (Stipulation p. 2, ¶ 5.)

Premier Land Title Agency, of which Respondent was an owner, participated in the closing of 310 loans involved in this scheme. (Stipulation p. 2, ¶ 6.) Respondent was aware of some of the fictitious and/or fraudulent appraisals that were submitted to financial institutions in furtherance of this scheme. (Stipulation p. 2, ¶ 6.) Additionally, Respondent and/or Premier Land Title Agency took part in acts which defrauded various federally insured financial institutions in the execution of the “flipping” scheme by knowingly submitting false Housing and Urban Development (HUD) forms to the financial institutions in support of a loan application. In signing numerous HUD forms, Respondent falsely certified that the buyer had brought a down payment to the closing, which he knew not to be true. (Stipulation p. 2, ¶ 7.)

Respondent further participated by acting as both the title agent and the seller in connection with five properties involved in the “flipping” scheme. Respondent purchased one such property located at 1794 Carll Street in Cincinnati for \$37,000 and sold it three months later for \$78,000. Also, in furtherance of the conspiracy, Respondent purchased property located at 2283 Loth in Cincinnati for \$6,000 and sold it six months later for \$110,000. In both of these transactions, Respondent signed HUD statements certifying that the buyers brought over \$11,000 to each of the closings as down payments, but in fact, the buyers did not provide any funds as down payments. (Stipulation p. 2, ¶ 8.) Respondent has admitted that due to his and Premier's fraudulent activity, various financial and lending institutions have suffered an actual or intended loss of \$3,492,217.59. (Stipulation p. 3, ¶ 9 (emphasis added).)

Respondent additionally willfully filed false individual income tax returns with the

Internal Revenue Service for the years 2001 and 2002. He failed to report payoffs from the fraudulent loan proceeds and from others involved in the “flipping” scheme. (Stipulation p. 3, ¶ 10.)

On February 1, 2005, Respondent pled guilty in United States District Court, Southern District of Ohio, Western Division, to making a material false statement in a loan application in violation of 18 U.S.C. § 1014, and to filing a false income tax return, in violation of 26 U.S.C. § 7206(1). (Stipulation p. 3, ¶ 11.) On October 31, 2005, Respondent was sentenced to imprisonment for 28 months on the first count and 36 months on the second count. (Stipulation p. 3, ¶ 12.)

In addition to the above stipulated facts, the parties stipulated to the authenticity of certain documents which were filed as exhibits to the Stipulation. Those stipulated documents include the following:

Powers’ Plea Agreement in the United States District Court, Southern District of Ohio, Western Division, *United States of America v. Donald Powers*, Criminal Case No. CR 1-05-011-001, Exhibit A to the Stipulation (“Stipulation Exhibit A”);

The Presentence Investigation Report dated June 28, 2005 in the United States District Court, Southern District of Ohio, Western Division, *United States of America v. Donald M. Powers, Jr.*, Case No. CR1-05-011-001, Exhibit B to the Stipulation (“Stipulation Exhibit B”); and

Judgment in a Criminal Case in the United States District Court, Southern District of Ohio, Western Division, *United States of America v. Donald M. Powers, Jr.*, Case No. 1-05-011-001, Exhibit C to the Stipulation (“Stipulation Exhibit C”).

B. The Board’s Findings of Fact

Several significant findings of the Board in its Findings of Fact, Conclusions of Law and Recommendation (“Findings”) are contrary to the Stipulation filed by the parties and the criminal Plea Agreement of Respondent attached to the Stipulation.

The Board found that Respondent partnered in the purchase of two residential properties in Cincinnati. (Findings p. 3.) The Board concluded that the Respondent, when he was made aware of the investigation by the local police, cooperated with law enforcement in the investigation. (Findings p. 3.) The Board believed and therefore found as factual that Respondent's involvement in the day to day affairs of the title agency was very limited, and that Respondent employed numerous persons, including his wife, who handled the actual paperwork in the transactions involving the flipping scheme. (Findings p. 3.) The Board found that Respondent relied ultimately to his detriment on those persons to do a thorough and honest job in the work handled by the title agency. (Findings p. 3.) The Board further found that because Respondent was the owner and overseer of others working at the agency, Respondent accepted – and still accepts – full responsibility for their misconduct in the course of their employment. (Findings p. 3.) The Board also concluded that Respondent opted to take advantage of a negotiated Plea Agreement offered by federal prosecutors in order to avoid mounting an expensive trial defense. (Findings p. 4.) The Supreme Court of Ohio suspended Respondent from the practice of law on an interim basis as the result of the federal felony convictions on January 27, 2006. (Findings p. 4.) Respondent was paroled from prison on August 7, 2007. (Findings p. 4.)

The Board unanimously found by clear and convincing evidence that the conduct of Respondent violated DR 1-102(A)(3), DR 1-102(A)(4), and DR 1-102(A)(6). (Findings p. 4.)

Relator recommended to the Board that Respondent be disbarred; Respondent urged that an indefinite suspension be imposed. (Findings p. 5.) The Board recommended that Respondent should be indefinitely suspended. (Findings p. 5.) The hearing panel noted in its conclusion that it found Respondent's testimony extremely compelling and credible and that Respondent had a

limited involvement in the criminal and fraudulent conduct involved in the federal case, notwithstanding the general acknowledgments made on the record in federal court in order that Respondent's negotiated plea would be accepted. (Findings pp. 5-6.) The Board further found that Respondent expressed a great deal of remorse, took complete responsibility for his actions as well as those of his employees and business associates, and that Respondent had already been subject to serious sanctions through his federal prison sentence. (Findings p. 6.)

The Board failed entirely to address the Respondent's failure to make restitution, or his failure to finalize his agreement with Trustcorp as to restitution even though the Respondent acknowledged that he had not made restitution or made arrangements for restitution with Trustcorp. (Hearing Transcript ("Tr."), pp. 77-82.) The Board failed to recommend the payment of restitution to the victims of Respondent's wrongful conduct.

ARGUMENT

Proposition of Law I: The Board erroneously accepted the testimony of the Respondent which enabled the Respondent to contradict the Stipulated facts agreed to by Relator and Respondent and which, more importantly, contradicted the Plea Agreement and Statement of Facts agreed to by the Respondent in Federal District Court which was voluntarily made by Respondent in order to achieve a reduced sentence in the criminal proceedings.

The Board acted erroneously in accepting and giving weight to the testimony of the Respondent which was contradictory to the signed Stipulation, the Plea Agreement in Federal District Court, and Respondent's sworn Statement of Facts in that proceeding. The Board allowed Respondent to relitigate, minimize, and essentially shift the responsibility for his fraudulent and criminal actions to his now ex-wife and other employees in his office.

Respondent is estopped from contending that he did not partake in the activities he pled guilty to in the criminal proceeding. Respondent's motivation is irrelevant. Respondent should not be permitted to agree to his involvement in criminal activities in order to obtain favor in the

criminal proceedings, and then seek to avoid those same admissions when it suits his purpose in these disciplinary proceedings. it is egregious to permit Respondent to take advantage of a Plea Agreement, wherein he stated as true that he:

Aided others in a scheme to defraud various federally insured financial institutions by, among other things, knowingly submitted false Housing and Urban Development forms to those financial institutions in support of a loan application. The scheme involves the “flipping” of low value homes located in Greater Cincinnati, Ohio area (Stipulation Exhibit A at p. 12 of Statement of Facts.)

In those transactions respondent stated he was aware of the fictitious and/or fraudulent appraisals (Stipulation Exhibit A, at of Statement of Facts.) Respondent signed forms containing false information that buyers did not bring down payments to closing and that there were “kickbacks” outside of the closing, which were not disclosed to the lender. (Stipulation Exhibit A at p. 13 of Statement of Facts.)

Respondent also personally participated in five fraudulent transactions as a buyer and then seller of properties. (Stipulation p. 2, ¶ 8.) Respondent agreed to these facts to receive a reduced sentence from the Federal District Court. Respondent now turns around and attempts to minimize and reject responsibility in the proceeding. If such action is permitted the flood gates in criminal and civil proceedings will be opened for people to change their positions to secure a more advantageous position in a second proceeding such as the present disciplinary proceeding.

Respondent’s situation is similar to that of the plaintiff in *Wolszek v. Weston, Hurd, Fallon, Paisely & Howley LLP* (8th Dist. 2004), 2004 WL 64947, wherein the plaintiff claimed innocence in a civil trial with regards to conduct she had pled guilty to in a previous criminal trial. As clearly stated by the court in *Wolszek*, “a criminal conviction is conclusive proof and operates as an estoppel on defendants as to the facts supporting the conviction in a subsequent civil action,” and thus the plaintiff was estopped from claiming innocence. In reaching their

decision, the *Wolszek* court relied on U.S. and Ohio Supreme Court decisions (*Emich Motors Corp. v. General Motors* (1951) 340 U.S. 558; *State v. Szefcyk* (1996), 77 Ohio St. 3d 93) that held that issue preclusion applies in criminal and civil proceedings, and that it bars relitigation of issues determined in the initial proceeding.

Similar to the plaintiff in *Wolszek*, Respondent pled guilty to conduct in a criminal trial and is now claiming that he was only responsible because he was responsible for his subordinates' actions. Because the issue of his guilt, and the facts supporting it, were agreed to and determined in the criminal proceeding, Respondent is estopped from taking a position inconsistent with his Plea Agreement and Statement of Facts in this disciplinary proceeding.

Additionally, Respondent is also prevented from attacking his criminal conviction during the disciplinary proceedings pursuant to Gov. Bar. R. (V)(5)(B), which states:

A certified copy of a judgment entry of conviction of an offense or of a determination of default under a child support order shall be conclusive evidence of the commission of that offense or of the default in any disciplinary proceedings instituted against a justice, judge, or an attorney based upon the conviction or default.

A nearly identical previous version of this rule was applied in *Bar Association of Greater Cleveland v. Bendis* (1982), 70 Ohio St. 2d 282, and in *Portage County Bar Association v. Miller* (1982), 70 Ohio St. 2d 162, where the Court held that the respondent could not collaterally attack a criminal conviction in subsequent disciplinary proceedings.

The Respondent's criminal conviction stands and what he stated therein is conclusive evidence of his commission of that crime, and the Board should not allow him to collaterally attack the criminal conviction or minimize his involvement in the disciplinary proceedings.

Moreover, as the Court stated in *Disciplinary Counsel v. Margolis* (2007), 114 Ohio St. 3d 165, where a respondent previously pled guilty to a criminal conviction, the Court will not

allow the Respondent to try and minimize or reject responsibility for the conviction during the disciplinary proceedings.

For the reasons stated above, Respondent is prohibited from trying to attack, minimize, or reject responsibility for his criminal conviction during these disciplinary proceedings and the Board erred in permitting such testimony and taking such testimony into account in rendering its decision herein.

Proposition of Law II: The Board gave inappropriate weight to Respondent's testimony, and the evidence warrants disbarment of Respondent from the practice of law.

The case law with regard to whether or not an individual in a position such as Respondent should be disbarred or indefinitely suspended creates no definitive test.

It continues to be the position of the Relator CBA that the massive fraud perpetrated by Respondent, which is set out in his Plea Agreement and Statement of Facts, is of such magnitude that an indefinite suspension is insufficient. Participating in 301 loans that resulted in losses to victims of Respondent's scheme in the amount of \$3,492,217.59 requires disbarment. Stipulation Exhibit A at p. 14 of Statement of Facts.)

In *Disciplinary Counsel v. Stern* (2005), 106 Ohio St.3d 266, this Court held that disbarment was the appropriate sanction where the respondent was convicted of a felony drug offense, malicious damaging or building by fire, bank fraud and money laundering. Such conduct violated the Disciplinary Rules barring illegal conduct involving moral turpitude, barring conduct involving dishonesty, fraud, deceit or misrepresentation, and barring conduct adversely reflecting on lawyer's fitness to practice law. This Court further stated that permanent disbarment is the appropriate sanction for conduct that violates the Disciplinary Rules and results in a felony conviction.

In *Cincinnati Bar Association v. Blake* (2003), 100 Ohio St.3d 298, the respondent pled guilty to three counts of theft and one count of forgery, and was sentenced to five years community service in order to make restitution to his victims in the amount of \$25,297. The Court found that respondent had violated DR1-102(A)(3), 1-102(A)(4), 1-102(A)(5) and 1-102(A)(6) and ordered that he be permanently disbarred. In considering sanctions, the Court noted that there was no evidence to substantiate respondent's good faith compliance with the order of restitution.

In *Cincinnati Bar Association v. Blankemeyer* (2006), 109 Ohio St.3d 156, the respondent pled guilty to felony theft and was sentenced to community control for a period of five years in order to pay restitution of \$184,643.41. The respondent was subsequently arrested on a first degree misdemeanor theft charge and sentenced to prison. This Court found the respondent violated DR1-102(A)(3), 1-102(A)(4) and 1-102(A)(6), and rejected the Board's recommendation that the respondent be indefinitely suspended and instead permanently disbarred him. The Court then stated "an attorney who has been convicted of felony theft offenses has violated the basic professional duty to act with honest and integrity." *Id.* at 158.

In *Disciplinary Counsel v. Bein* (2004), 105 Ohio St.3d 62, the respondent pled guilty to two federal criminal charges, being one count of conspiracy to engage in the interstate transportation of stolen property and one count of conspiracy to conduct financial transactions for stolen goods (money laundering). The respondent was sentenced to a term of five years probation with six months of home detention and to forfeit \$150,000 to the U.S. Government. The Court disbarred the Respondent and stated:

A lawyer who engages in the kind of criminal conduct committed by respondent violates the duty to maintain personal honesty and integrity, which is one of the most basic professional obligations owed by lawyers to the public. Respondent's misconduct was not only harmful not only to the businesses affected but also to

the legal profession, which is and ought to be a high calling dedicated to the service of clients and the public good. *Id.* at 360.

Similarly, in *Columbus Bar Association v. Neal* (2007), 114 Ohio St.3d 461, this Court held that permanent disbarment was appropriate where the attorney staged burglaries, and then submitted false insurance claims totaling \$126,000. This conduct led to convictions for multiple felony offenses, and violation of DR 1-102(A)(3), 1-102(A)(4) and 1-102(A)(6).

In *Disciplinary Counsel v. Ulinski* (2005), 106 Ohio St.3d 53, the respondent was involved in a fraudulent investment scheme victimizing approximately 100 clients which resulted in convictions for conspiracy to commit securities fraud, mail fraud, and wire fraud. The conduct also violated multiple provisions of the Code of Professional Responsibility. The Court held that the appropriate sanction was permanent disbarment.

We would also refer the Court to the cases of *Cincinnati Bar Association v. Heekin* (1984), 9 Ohio St.3d 84, and *Disciplinary Counsel v. Goldberg* (2002), 94 Ohio St.3d 337, both of which involved theft issues and disciplinary violations similar to the violation present here. In both cases, the respondent was disbarred. *See also Cuyahoga County Bar Association v. Mazanec* (2007), 114 Ohio St.3d 427 (permanent disbarment was warranted where attorney misappropriated funds from trust, attorney had dishonest and selfish motive, he failed to cooperate in disciplinary process, harmed vulnerable clients, and failed to make restitution, even though attorney had no prior disciplinary record and a civil judgment had already been imposed against him); *Medina County Bar Association v. Wootton* (2006), 110 Ohio St.3d 179 (permanent disbarment was appropriate sanction for attorney's misconduct in real estate transactions given his repeated theft of funds, dishonesty to clients, the considerable financial harm he caused, and his lack of cooperation in disciplinary process); *Disciplinary Counsel v. Hunter* (2005), 106 Ohio St.3d 418 (attorney's embezzlement of nearly \$300,000 from two separate estates in her charge

warranted permanent disbarment, even though attorney suffered from depression, had no prior record of professional discipline, and claimed to have made restitution; attorney committed her misconduct out of greed and deceit, and engaged in a pattern of misconduct, and restitution was neither timely nor in good faith); *Cleveland Bar Association v. Dadisman* (2006), 109 Ohio St.3d 82.

Relator believes that the sole motivation of Respondent in the transactions involving his title insurance company was for his own pecuniary benefit. This is evidenced by his testimony as to how well the title company was doing, having a daily balance in its accounts averaging \$4,000,000, and closing somewhere in the neighborhood of 150 to 200 loans per month, (Tr. pp. 34, 35.) The Respondent testified that he was paid a salary of \$50,000 per year and the title company was netting \$500.00 per closing which was split three ways with his wife and Steve Minger, his investor partner. (Tr. pp. 37, 107.) Five Hundred Dollars (\$500.00) per closing, 150 to 200 closings per month equals between \$75,000 to \$100,000 per month or between \$900,000 and \$1,200,000 a year which translates to yearly compensation to Respondent and his wife of \$600,000 to \$900,000 per year.

Respondent generally testified at his hearing that he knew nothing about the fraudulent loan applications, false appraisals, false documents, and false HUD statements, and knew little about the closings and relied on others. (Tr. pp. 33, 34.) Respondent testified he only became aware of these problems when he met with Detective Whitman. (Tr. pp. 46, 48, 49.) A review of Respondent's Stipulation, Plea Agreement and Statement of Facts clearly shows that he was personally involved in five transactions as a buyer and seller, and Respondent knew that the buyers did not pay the down payments. (Stipulation p. 2, ¶ 8.)

Respondent bought Carll Street for \$37,000 on September 10, 2001 and sold it on December 11, 2001 for \$78,000, but had no idea why this property increased in value and what money if any was put into the property for improvements. (Tr. pp. 91-92.)

Respondent also bought Loth Street for \$6,000 on September 6, 2001 and sold it six months later for \$110,000. A review of Respondent's testimony is that he knew nothing specific as to what went into this property and only made \$6,000 to \$9,000 on the sale and that money went to investors. When questioned further as to where the money went he could not explain. (Tr. pp. 93-94.)

One of the most telling question and answer exchanges took place when Relator's counsel asked Respondent to clarify his answer that no one had suffered because of his actions.

Q. One of the questions that Mr. Marks asked and you answered, you said that – correct me if I misunderstood, you said that you felt that no one had suffered because of your actions. And I didn't understand that.

A. I think I can clarify. I think that statement came in the context of my legal representation of clients. That none of my clients had ever suffered as a result of any of my conduct as an attorney, as distinct from a business ownership.

Q. But you would then recognize that your obligations as an attorney are not to defraud people; isn't that correct?

A. As I sit before this Panel today, I think in full recognition and agreement that the role in the position of an attorney extends even into your personal life, which prior to my unfortunate circumstance I don't think was really in the forefront of my thinking.

And I think there may be many just like me in the Bar who don't quite understand that the ethics that are required to act as an attorney extend much farther than we're willing to concede at this time.

Q. You lost me there. Is this to say that you don't think a lot of attorney in the Bar Association don't understand the difference between making true and false statements?

A. Oh, no. I think it's much bigger than that. What I'm trying to say is the line is much smaller than that, I think, in terms of being an ethical attorney. It

doesn't come – At least it's my understanding it doesn't begin and end at actual defrauding and criminal conduct. I think it's of a more strict standard than that.

Q. Do you see yourself separating yourself being an attorney and being a business person?

A. Yes, sir. I think because it's – because in our industry before we say we represent somebody, we're very careful about the information that we give out. We like to get letters of engagement in retaining – otherwise, we're not really counsel.

And I think to a large extent, I saw this as – because the cases that I took were entirely different. I didn't take real estate cases. I took a lot of pro bono cases.

Q. When you were running your title company and you were working and responsible for all these loans that were being closed, didn't you see that as your responsibility as an attorney to be honest, fair, not defraud people, not accept false appraisals, not achieve kickbacks?

A. Yes, sir, I did.

Q. And you just ignored that?

A. I think my testimony was not so much that I ignored it, but I took responsibility for the fact that it went on in the scope of this operation that I had.

Q. And in that process, wouldn't you acknowledge that a lot of people were damaged and hurt by that process?

A. I would acknowledge, yeah.

Q. And that's your responsibility?

A. Absolutely. Absolutely.

And the difficult part of it, oftentimes, it remains nameless and faceless. And that's what makes it difficult to see when this stuff is going forward. And what I tried to get across is that even though it was an operation of volume and of size, you can't point to an individual homeowner who may have been damaged.

But certainly hundreds of banks have people who work who suffered financial loss and hardship, investors there. Absolutely. Those people probably aren't appreciated up front.

Q. The big people, the trust companies, they lose money. That's –

A. Not just them sir. Each one of them have a web of people below them. And even though it's easy to look at the big trust companies, it's not. I mean, there are people involved, and they take the hit for decisions like that.

There are people below that get paychecks that depend on this company being solvent. When stuff like this happens, companies are put in a position that is precarious.

Q. What about the individual property owner? What about this guy by the name of Goedde or whoever he was, that bought that particular piece of property from you? Anything happen to him as a result of this?

A. You know, I'm uncertain because from what I knew – And I represented some of Mr. Minger's investors – I really don't know. I mean, if they had to go through foreclosure and whatnot as a result of that, I don't know if it was as a result of that or the fact that when the federal authorities came down Mr. Minger stopped managing their properties for them. To that extent if they had to file bankruptcy, yeah, they were damaged, as well.

Q. Bankruptcies, foreclosures, loss of credit, loss of credit because of this?

A. You have to understand that, apparently, after looking at this – after this there were many people that Minger worked with that simply just walked away.

I don't know if Mr. Goedde was one of those people or not. If I could put them all into one basket and say, you know, the innocent and the wanna-bes, yes. But if I want to be honest about it and look at the people that may have not been as scrupulous as some others, it's difficult to put us all in the same basket.

Q. So Mr. Goedde, he's got a mortgage that he can't pay and so the property goes into foreclosure. He ends up with absolutely nothing. He has got a lawsuit against him. Maybe he went bankrupt, maybe he didn't.

But somewhere along the line all of those individuals that these properties were flipped ended up in losses to Trust Corp. – whatever the figure was that we acknowledged or talked about before – for close to three-and-a-half million dollars. That's money that they lost because they couldn't get it back from the people that these properties had been sold to. Is that accurate?

A. I would suppose that in the foreclosure process and during the evidentiary hearing we never got to visit that. So what you're talking about is conjecture with the way the foreclosure process works when the lending institution takes a property back.

Ordinarily, it's two-thirds appraisal value or they'll bid it up. And then

you don't know if they sold it for market value. I really couldn't testify to – I can say that argument can be made, whether or not that actually happened.

The same with Mr. Goedde. I have no idea what he profited from and some of the other deals. The other thing I can tell you is that Mr. Minger's investors were in the same situation as Mr. Goedde and they came out doing okay. (Tr. pp. 85-91.)

The Respondent's testimony in describing his involvement in the closings on Carll Street and Loth Street is either misleading or illogical, but certainly contradictory to his Stipulation and Statement of Facts. This Court must weigh Respondent's Plea Agreement and Statement of Facts against his testimony and reject his testimony about knowing little if anything about how the title company worked; knowing little about the sale of the properties in which he personally benefited; as one of the three owners of Premier Title he had no knowledge of the transactions involved; and that the 310 flipping transactions that he agreed took place were completely without his knowledge.

Relator is concerned that the Board was overly influenced by Powers' emotional testimony at the hearing and the proclaimed tragedies in his life, and ignored the Stipulation of Facts and most importantly Respondent's own plea Agreement and Statement of Facts in the federal criminal proceedings. The Board essentially stated that because Respondent went to prison that he had been sufficiently punished and this, somehow, excuses the severity of the matter involved for the profession.

However, an underlying crime or misdeed should not be excused simply because a person is contrite, sorrowful, and accepts responsibility, especially for a crime of the magnitude involved here. In the given situation, this Court must really look at whether such perceived credibility and acceptance of responsibility somehow excuses Respondent's disregard of his and our oath of office.

Proposition of Law III: The Board, in recommending an indefinite suspension without restitution, failed to acknowledge or give weight to the fact that the U.S. District Court has ordered Respondent to make restitution.

In further considering this matter and reviewing the decision of the Board, there is no mention of any restitution required by the Respondent in the within matter. It is the position of Relator that in the event that the Supreme Court is inclined to accept the recommendation of the Board, that any such indefinite suspension be specifically conditioned upon the payment of restitution by Respondent to Trustcorp and as required by the United States District Court.

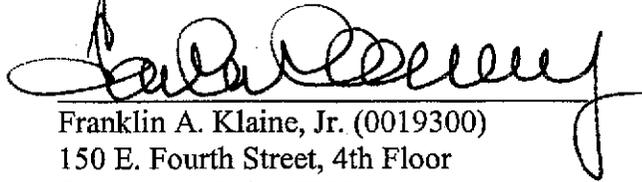
In cases involving felony convictions and indefinite suspensions, restitution has consistently been required. See *Office of Disciplinary Counsel v. Lawlor* (2001), 92 Ohio St.3d 406; *Cincinnati Bar Association v. Arnold* (1999), 85 Ohio St.3d 294; *Office of Disciplinary Counsel v. Williams* (1999), 84 Ohio St.3d 392; *Akron Bar Association v. Mudrick* (2001), 93 Ohio St.3d 621. Even in cases where there has been no felony conviction, the Court has consistently required restitution where indefinite suspension is ordered. See *Disciplinary Counsel v. Mathewson* (2007) 113 Ohio St.3d 365; *Disciplinary Counsel v. Griffith* (2004) 104 Ohio St.3d 50.

CONCLUSION

Relator Cincinnati Bar Association respectfully requests that the Supreme Court modify the Board of Commissioners' Decision herein and order disbarment of Respondent. In the event that the Supreme Court accepts the recommendation of the Board of Commissioners, Relator requests that this Court require that restitution be made to Trustcorp and as required by the United States District Court.

Dated: March 19, 2008

Respectfully submitted,



Franklin A. Klaine, Jr. (0019300)
150 E. Fourth Street, 4th Floor
Cincinnati, Ohio 45202
Telephone: 513-621-2120
Facsimile: 513-241-8259
faklaine@straussstroy.com

E. Hanlin Bavely ~~by~~ NM Cundiff
(0075146)

E. Hanlin Bavely (0025868)
432 Walnut Street, Suite 850
Cincinnati, Ohio 45202
Telephone: 513-621-6621
Facsimile: 513-721-4129
ehbavely@zoomtown.com

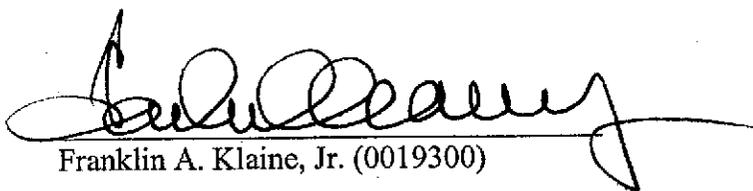
Attorneys for Relator

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by ordinary U.S. mail this 19th day of March, 2008 upon:

Edward G. Marks, Esq.
Hardin, Lazarus, Lewis & Marks, LLC
30 Garfield Place, Suite 915
Cincinnati, OH 45202

Jonathan W. Marshall, Secretary
Board of Commissioners on Grievances & Discipline
Supreme Court of Ohio
65 South Front Street, 5th Floor
Columbus, OH 43215-3431



Franklin A. Klaine, Jr. (0019300)

APPENDIX

- A. STIPULATION
- B. FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

1511302

verification for the potential buyer. Next, a falsely inflated appraisal of the property would be obtained, and a false loan package would be submitted to the bank or lender in order to obtain a highly inflated loan.

6. Premier Land Title Agency, of which Respondent was an owner, participated in the closing of 310 loans involved in this scheme. Respondent was aware of some of the fictitious and/or fraudulent appraisals that were submitted to financial institutions in furtherance of this scheme.

7. Additionally, Respondent and/or Premier Land Title Agency took part in acts which defrauded various federally insured financial institutions in the execution of the "flipping" scheme by knowingly submitting false Housing and Urban Development (HUD) forms to the financial institutions in support of a loan application. In signing numerous HUD forms, Respondent falsely certified that the buyer had brought a down payment to the closing, which he knew not to be true.

8. Respondent further participated by acting as both the title agent and the seller in connection with five properties involved in the "flipping" scheme. Respondent purchased one such property located at 1794 Carll Street in Cincinnati for \$37,000 and sold it three months later for \$78,000. Also, in furtherance of the conspiracy, Respondent purchased property located at 2283 Loth in Cincinnati for \$6,000 and sold it six months later for \$110,000. In both of these transactions, Respondent signed HUD statements certifying that the buyers brought over \$11,000 to each of the closings as down payments, but in fact, the buyers did not provide any funds as down payments.

9. Respondent has admitted that due to his and Premier's fraudulent activity, various financial and lending institutions have suffered an actual or intended loss of

\$3,492,217.59.

10. Respondent additionally willfully filed false individual income tax returns with the Internal Revenue Service for the years 2001 and 2002. He failed to report portions of the payments received from the fraudulent loan proceeds and from others involved in the "flipping" scheme.

11. On February 1, 2005, Respondent pled guilty in United States District Court, Southern District of Ohio, Western Division, to making a material false statement in a loan application in violation of 18 U.S.C. § 1014, and to filing a false income tax return, in violation of 26 U.S.C. § 7206(1).

12. On October 31, 2005, Respondent was sentenced to imprisonment for 28 months on the first count and 36 months on the second count, to be served concurrently, and he is currently imprisoned.

13. The filing of this Stipulation will not preclude either party from presenting witnesses or legal arguments at the hearing of this matter.

In addition to the above stipulated facts, the parties hereto stipulate to the authenticity of the following documents which were filed as copies to this Stipulation as exhibits thereto.

A. In the United States District Court, Southern District of Ohio, Western Division, Criminal Case No. CR 1-05-011-001 being *United States of America v. Donald Powers* Plea Agreement Exhibit A.

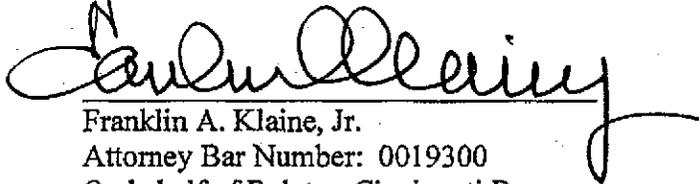
B. In the United States District Court, Southern District of Ohio, Western Division, *United States of America v. Donald M. Powers, Jr.*, Docket No. CR1-05-011-001, Presentence Investigation Report dated June 28, 2005 Exhibit B.

C. In the United States District Court, Southern District of Ohio, Western Division,

United States of America v. Donald M. Powers, Jr., Case No. CR 1-05-011-001, Judgment in a Criminal Case Exhibit C.

Respectfully submitted,

STRAUSS & TROY



Franklin A. Klaine, Jr.
Attorney Bar Number: 0019300
On behalf of Relator, Cincinnati Bar Association
The Federal Reserve Building
150 East Fourth Street
Cincinnati, OH 45202
Telephone: (513) 621-2120
Facsimile: (513) 241-8259
faklaine@strausstroy.com



Edward G. Marks
Attorney Bar Number: 0001251
Attorney for Respondent, Donald M. Powers, Jr.
30 Garfield Place, Suite 915
Cincinnati, OH 45202
Telephone: (513) 421-4400
Facsimile: (513) 721-7008
emarks@hlmlaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

I certify that this is a true and correct copy of the original filed in my Office on 2-1-2005.
JAMES BONINI, CLERK
BY: Mercedes Lee
U. S. Deputy Clerk
DATE: 11-8-2005

UNITED STATES OF AMERICA

: CRIMINAL NO.

v.

1:05CR00011

: PLEA AGREEMENT

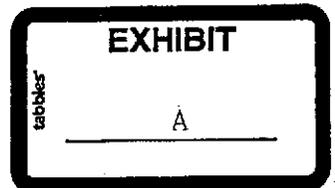
DONALD POWERS

: HONORABLE SUSAN J. DLOTT

The United States Attorney for the Southern District of Ohio and the defendant, Donald Powers, also called "the parties" herein, agree that:

1. Donald Powers will waive Indictment by the Federal Grand Jury and will enter a plea of guilty before the United States District Judge to a two-Count Information charging him with Making a Material False Statement in a Loan Application, in violation of 18 U.S.C. § 1014 and Filing a False Income Tax Return, in violation of 26 U.S.C. § 7206(1). Making a Material False Statement carries a maximum penalty of up to thirty (30) years imprisonment, a fine of up to \$1,000,000.00, a five (5) year term of supervised release, restitution, and a \$100.00 special assessment. Filing a False Income Tax Return carries a maximum penalty of up to five (5) years imprisonment, a \$250,000 fine, the costs of prosecution, restitution, and a mandatory \$ 100 special assessment.

2. The defendant understands that this Agreement permitting a guilty plea to the above-listed counts requires that the defendant abide by each term of this Agreement. The defendant understands that if the defendant makes any statement that is materially false in whole or in part or otherwise fails to comply with any term of this Agreement, the United States has the right to declare this Agreement



void and to prosecute the defendant to the full extent of the law. If this Plea Agreement or the defendant's conviction upon his guilty plea is voided for any reason, the defendant waives any statute of limitations with respect to the United States prosecuting him for any offense arising from his conduct in this case.

3. The defendant will give complete cooperation to law enforcement authorities and others regarding his activities and those of others in relation to the offense of conviction and other matters on the following terms and conditions:

(a) **Mr. Powers** shall cooperate fully, truthfully, completely and forthrightly with the United States Attorney's Office for the Southern District of Ohio and other Federal, state and local law enforcement authorities identified by this Office in any and all matters as to which the Government deems the cooperation relevant. **Mr. Powers** acknowledges that his cooperation may include, but will not necessarily be limited to: answering questions; providing sworn written statements; taking government administered polygraph examination(s); and participating in covert law enforcement activities. Any refusal by **Mr. Powers** to cooperate fully, truthfully, completely and forthrightly as directed by this Office and other Federal, state and local law enforcement authorities identified by this Office in any and all matters in which the Government deems his assistance relevant will constitute a breach of this agreement by **Mr. Powers**, and will relieve the Government of its obligations under this agreement or any other agreement (such as an agreement under Section 5K1.1 of the United States Sentencing Guidelines) between the parties whether entered before or after this agreement. **Mr. Powers** agrees, however, that such breach by him will not constitute a basis for withdrawal of his plea of guilty or otherwise relieve him of his obligations under this agreement.

(b) **Mr. Powers** shall promptly turn over to the Government or other law enforcement authorities or direct such law enforcement authorities to any and all evidence of crime; all contraband and proceeds of crime; and all assets traceable to such proceeds of crime. **Mr. Powers** agrees to the forfeiture of all assets which are proceeds of crime or traceable to such proceeds of crime and all instruments that he used to aid him in committing the crimes.

(c) **Mr. Powers** shall submit a full and complete accounting of all of his financial assets, whether such assets are in his name or in the name of a third party.

(d) **Mr. Powers** shall testify fully, completely and truthfully before any and all Grand Jury(ies) in the Southern District of Ohio, and elsewhere, and at any and all trials of cases or other court proceedings in the Southern District of Ohio and elsewhere, at which his testimony may be deemed relevant by the Government.

(e) **Mr. Powers** understands and acknowledges that nothing in this agreement allows him to commit any criminal violation of local, state or Federal law during the period of his cooperation with law enforcement authorities or at any time prior to the sentencing in this case. The commission of a criminal offense during the period of **Mr. Powers**' cooperation or at any time prior to sentencing will constitute a breach of this plea agreement and will relieve the Government of all of its obligations under this agreement or under any other agreement between the parties (including any potential Section 5K1.1 of the Sentencing Guidelines and/or 18 U.S.C. § 3553(e) agreement). **Mr. Powers** acknowledges, however, and agrees that such a breach of this agreement will not entitle him to withdraw his plea of guilty or relieve him of his obligations under this agreement. **Mr. Powers** further understands that, to establish a breach of this agreement, the Government need only prove his commission of a criminal offense by a preponderance of the evidence.

(f) Finally, Mr. Powers' cooperation also includes making restitution in this matter in a schedule and amount to be determined by the Court.

4. While no substantial assistance motion has been promised by the United States, the parties have discussed that Mr. Powers could qualify for such a motion if he provides the United States with substantial assistance. Mr. Powers agrees to and understands the following: that only the United States Attorney, in its sole discretion, may apply for a downward departure from the Guideline sentence pursuant to Sentencing Guideline § 5K1.1 and that only the United States Attorney may, within one year of sentencing and at the sole discretion of the United States Attorney, file a motion for reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, to reflect substantial assistance to the United States subsequent to sentencing. The defendant understands that the determination of whether he has provided substantial assistance pursuant to Section 5K1.1 of the Sentencing Guidelines, Rule 35(b), or 18 U.S.C. § 3553(e), is within the sole discretion of the United States Attorney's Office for the Southern District of Ohio and is not reviewable by the Court. The defendant agrees that in the event the United States files such a motion, he will not contest the recommendation of the government as to the sentencing level and will not seek to go below the sentencing level recommended by the government. The defendant further understands that if the Government does not file a motion for downward departure the Court has no authority to grant a downward departure, under Section 5K1.1 of the Sentencing Guidelines, Rule 35(b) or 18 U.S.C. § 3553(e). In any event, the defendant agrees not to seek a downward departure, without Government motion, based on any assistance provided in the investigation(s) or prosecution(s) of another person(s) who has committed a Federal, state, local or any other offense. The defendant agrees and acknowledges that if this Office chooses not to file a substantial assistance

departure motion it shall not be grounds for the defendant to move to withdraw his plea of guilty in this case or otherwise relieve him of his obligations under this agreement.

5. In exchange for the defendant's plea of guilty and complete cooperation, the United States Attorney for the Southern District of Ohio agrees that, after sentence has been imposed on the information, he will not file any additional charges against the defendant based on the defendant's conduct as described in the Information and Statement of Facts. This Agreement does not protect the defendant from prosecution for perjury, false statement, obstruction, or any other such charge for conduct after the date of this Agreement.

6. No promises have been made to the defendant that he will receive probation or that he will receive a lighter sentence on account of his plea of guilty.

7. The defendant understands and agrees that the sentence will be imposed in conformity with the Federal Sentencing Guidelines and Policy Statements (hereinafter "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 applicable guideline range and impose a sentence that is either more severe or less severe than the guideline range. Defendant waives any constitutional challenge to the Sentencing Guidelines, waives indictment and trial by jury on all findings relevant to sentencing, and agrees that the Court may make all such findings by a preponderance of the evidence based on any reliable evidence, including hearsay. Defendant understands and acknowledges that the Court has the authority to impose any sentence up to the statutory maximum authorized by law and that the defendant may not withdraw the plea solely as a result of the sentence imposed. Defendant

acknowledges that he has discussed this waiver and its consequences fully with his attorney and that he understands the nature and consequences of the waiver.

8. The parties hereby state, pursuant to Sentencing Guideline § 6B1.2(a), that the charge to which the defendant is pleading guilty adequately reflects the seriousness of the readily provable actual offense behavior and that the acceptance of the Agreement by the Court will not undermine the statutory purposes of sentencing.

9. The defendant understands that the matter of sentence is reserved solely to the District Court and that the Court could impose the maximum penalty. No promises or representations have been made to the defendant as to what sentence the Court will impose.

10. The defendant agrees to pay the \$100.00 special assessment to the Clerk of the United States District Court for each count to which he pleads guilty no later than the date of his sentencing.

11. By signing this document, the defendant acknowledges the truth of the attached Statement of Facts.

12. The United States agrees that it will recommend that the defendant be provided credit for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. The United States, however, will not be required to make these sentencing recommendations if any of the following occurs: (1) defendant fails or refuses to make a full, accurate and complete disclosure to this office or the probation office of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) defendant is found to have misrepresented facts to the government prior to entering his plea agreement; (3) defendant 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 a false statement or misrepresentation to any government entity or official; or (4) defendant fails to comply with any of the terms of this plea agreement. If the defendant continues to accept responsibility through the time of sentencing and continues to comply with all the terms of this agreement including the aforementioned provisions of this paragraph, the United States will file a motion pursuant to U.S.S.G. § 3E1.1(b) stating to the District Court that the defendant has timely notified authorities of his intention to plead guilty.

13. The United States and the defendant stipulate and recommend that the Court adopt the following calculation under the Sentencing Guidelines:

Bank Fraud

The applicable Guideline is § 2B1.1 (Guidelines effective November 1, 2002). The base offense level under § 2B1.1 is six; plus eighteen levels because the intended loss was over \$2,500,000 (§2B1.1(b)(1)(J)); plus two levels because there were more than 10, but less than 50 victims (§2B1.1(b)(2)(A)), causing a final level of 26.

Tax Evasion

The applicable Guideline is § 2T1.1 (Guidelines effective November 1, 2002). The base offense level for more than \$30,000 Tax Loss is 14 (2T4.1); causing a final level of 14.

Combined Offense Level

To determine the combined offense level, the parties have applied § 3D1.4 of the Guidelines. Under § 3D1.4, the Bank Fraud (level 26) counts as one-unit group because it has the highest offense level. The tax evasion (level 14) is disregarded because it is more than nine levels "less serious than the Group with the highest offense level. Thus, there is one-unit, which means there is no increase in offense level under § 3D1.4 causing a final offense level of 26.

The parties stipulate and recommend that no other upward or downward adjustments or departures apply. There is no stipulation or recommendation about the defendant's criminal history. The defendant fully understands that, after investigation and review, the Court may determine that the

offense factors and recommendations listed anywhere in this plea agreement are not appropriate and is not obligated to accept such. In that event, the defendant fully understands that he shall not have the right to withdraw his guilty plea.

14. In the event that the defendant does not plead guilty, the defendant agrees and understands that he thereby waives any protection afforded by Section 1B1.8(a) of the Sentencing Guidelines and Rule 11(f) of the Federal Rules of Criminal Procedure, and that any statements made by him as part of the plea discussions or as part of his cooperation with the government will be admissible against him without any limitation in any civil or criminal proceeding.

15. The defendant is aware that Title 18, United States Code, Section 3742, affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742, to appeal any sentence imposed, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute. This appeal waiver includes a waiver of the right to appeal the sentence on the ground that the sentencing guidelines are in any respect unconstitutional, or on the grounds that any fact found by the Court at sentencing was not alleged in the indictment, admitted by the Defendant, found by a jury, or found beyond a reasonable doubt. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. The defendant understands that, although the defendant will be sentenced in conformity with the Sentencing

Guidelines, by this agreement the defendant waives the right to appeal the sentence on the basis that the sentence is the result of an incorrect application of the Sentencing Guidelines.

16. This Agreement does not resolve any civil liability of the defendant for tax, interest, and penalties relating to income from the offense of conviction or any other source. The defendant acknowledges that as part of the complete cooperation promised by him in this Agreement, he is obligated to give complete cooperation to Federal, state, and local tax authorities in the determination of his taxable income and determination and payment of any applicable tax, interest, and penalties. The defendant agrees as part of his complete cooperation to file accurate tax returns for himself, amending returns if necessary, by April 30, 2005. Additionally, the defendant agrees, as part of his complete cooperation, that he will cooperate fully with the Internal Revenue Service as follows:

a. Defendant agrees to pay restitution of the tax due and owing, together with any interest and penalties finally determined to the Department of Treasury, Internal Revenue Service.

The defendant agrees to pay all Federal, state and local taxes due and owing for tax years 2000, 2001, and 2002. The defendant agrees, as a term of his supervised release, to make all reasonable efforts to pay the tax liability due and owing to the Internal Revenue Service as a result of the offenses to which he is pleading guilty, including any relevant conduct amounts. Such payments will be completed within the period of his supervised release. In the event the defendant is unable to completely pay the tax liability prior to termination of the supervised release period, he agrees to make regular monthly payments toward such liability in an amount to be determined by the Court at sentencing. Such amount will be set in accordance with the defendant's financial ability.

- b. Defendant agrees to provide the IRS Examination Division, prior to sentencing, with all requested documents and information for the purpose of a civil audit.
- c. Defendant agrees that subparagraphs a and b are appropriate conditions of supervised release.
- d. Defendant agrees that he will make no objection to the entry of an order under Fed.R.Crim.P. 6(e)(3) permitting the IRS Criminal Investigation Division to disclose to the IRS Examination Collection Divisions (for purposes of a civil audit) all of the documents obtained, and the IRS reports produced, during the criminal investigation, whether or not such documents or reports are considered to be grand jury material within the meaning of Rule 6(e)(3).
- e. Nothing in this agreement shall limit the Internal Revenue Service in its collection of any taxes, penalties or interest due from the defendant.

17. This written Agreement embodies all of the agreements and understandings between the United States Attorney for the Southern District of Ohio and the defendant. No conversations, discussions, understandings, or other documents extraneous to the Agreement shall be considered part of this Agreement.

GREGORY G. LOCKHART
United States Attorney



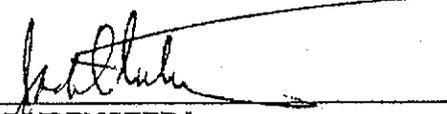
AMUL R. THAPAR (DC459489)
Assistant United States Attorney
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
(513) 684-3711

1/11/05
DATE



DONALD POWERS
Defendant

October 26, 2004
DATE



JACK RUBENSTEIN
Attorney for the Defendant
7 West Seventh Street
Suite 1850
Cincinnati, Ohio 45202

10-26-04
DATE

STATEMENT OF FACTS

UNITED STATES v. DONALD POWERS

Between on or about January 1, 2000, and on or about July 22, 2003, Donald Powers aided others in a scheme to defraud various federally insured financial institutions by, among other things, knowingly submitting false Housing and Urban Development forms to those financial institutions in support of a loan application. The scheme involves the "flipping" of low-value homes located in the greater Cincinnati, Ohio, area.

A brief summary of the scheme is as follows: (1) a person would purchase a piece of real estate at a low value, e.g., \$20,000; (2) he/she, or someone else involved in the scheme, would then recruit a buyer for that property, usually someone that could not afford to otherwise purchase real estate, or an individual interested in properties as an investor; (3) after finding the buyer, one of the co-conspirators would create false documents, including pay stubs, W-2 forms, bank statements, and employment verifications; (4) the co-conspirators would then obtain a falsely inflated appraisal for the subject property; and (5) the co-conspirators would then submit the false loan package to the bank or lender for that same property in order to obtain a highly inflated loan, e.g. \$85,000 (for the property that was usually sold only months before for \$20,000).

Mr. Powers furthered this scheme by serving as the owner of a Title Company that closed many of these loans. Mr. Powers also served as the seller of several "flipped" properties. Mr. Powers purchased properties at market value, or allowed the properties to be purchased and placed in his name, and then sold them at artificially inflated values. During these transactions, he was aware that fictitious and/or fraudulent appraisals were submitted to the financial institutions in furtherance of this scheme. In addition, during several of the closings, Mr. Powers signed various forms

containing false information, including a Department of Housing and Urban Development Form known as a HUD-1 Settlement Statement. That form usually indicated that the buyer brought the down payment to closing. Mr. Powers knew that the buyer did not bring the down payment, but rather someone else involved in the scheme brought the down payment. Moreover, Mr. Powers was aware that the buyer often received a "kickback" outside of the closing, which was not disclosed to the lender. Thus, Mr. Powers aided others in a scheme to defraud financial institutions.

In furtherance of this conspiracy, on or about September 5, 2001, Donald Powers purchased the property located at 1794 Carll Street in Cincinnati, Ohio, for \$37,000. On December 11, 2001, Mr. Powers sold the property to Patrick Goedde for \$78,000. According to the HUD-1 Settlement Statement, Mr. Goedde brought a down payment of \$11,659.67 to the closing. In reality, Mr. Goedde did not provide the funds used to make the down payment on this property. Mr. Powers signed the HUD-1 as the seller of the property knowing the document was false. The loan packages were submitted to First Union Mortgage Corporation, which at the time was a division of First Union Bank, whose deposits were insured by the Federal Deposit Insurance Corporation (First Union Bank has since merged with Wachovia Corporation, whose deposits are also federally insured). Mr. Powers' actions were committed in furtherance of a scheme to defraud First Union.

Also in furtherance of this conspiracy, on or about November 6, 2001, Donald Powers purchased the property located at 2283 Loth in Cincinnati, Ohio for \$6,000. On May 17, 2002, Mr. Powers sold the property to William Graham for \$110,000. According to the HUD-1 Settlement Statement, Mr. Graham brought a down payment of \$11,808.46 to the closing. In reality, Mr. Graham did not provide the funds used to make the down payment on this property. Mr. Powers signed the HUD-1 as the seller of the property knowing the document was false. The loan package

was submitted to ABN Amro whose deposits were then insured by the Federal Deposit Insurance Corporation. Mr. Powers' actions were committed in furtherance of a scheme to defraud ABN Amro.

The United States and Mr. Powers agree that, as a result of his fraud, he caused an actual and/or intended loss to various financial and lending institutions of \$3,492,217.59.

In addition, Mr. Powers willfully filed false individual income tax returns with the Internal Revenue Service for the years 2001 and 2002. During these years, Mr. Powers received payoffs from the fraudulent loan proceeds and from others involved in the scheme. Mr. Powers failed to provide his return preparer with complete and accurate information regarding all of the payments he received. As a result, Mr. Powers failed to report a substantial amount of income on his individual tax returns, thereby causing his taxable income to be understated by \$38,657 in 2001 and \$53,094 in 2002. Thus, Mr. Powers willfully understated his tax liability in the aggregate amount of \$34,217 for the years 2001 and 2002.

All of the aforementioned conduct occurred in the Southern District of Ohio.

I have reviewed the above statement of facts with my attorney. I agree to the accuracy of the statement of facts and acknowledge the truth of the statement of facts as detailed above.


DONALD POWERS

October 26, 2004
DATE



CONFIDENTIAL

FINAL

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA)

v.)

DONALD M. POWERS, JR.)

) PRESENTENCE INVESTIGATION REPORT

) Docket No. CR 1-05-011-001

Prepared for:

The Honorable Susan J. Dlott
United States District Judge

Prepared by:

Laura S. Jensen
United States Probation Officer
(513) 564-7561

Assistant U.S. Attorney
Amul R. Thapar, Esq.
Atrium Two, Suite 400
221 East Fourth Street
Cincinnati, Ohio 45202
(513) 684-3711

Defense Counsel
Jack C. Rubenstein Esq.
Suite 1850
7 West Seventh Street
Cincinnati, Ohio 45202-2417
(513) 241-7460

Sentence Date:

Unknown

Offense:

Count 1:

Making a False Statement on a Loan Application, a Class B Felony, in violation of 18 U.S.C. § 1014. PENALTIES: Up to 30 years imprisonment, a \$6,984,435.18 fine, a period of supervised release not more than five years, a \$100 special assessment, and restitution

Count 2:

Filing a False Income Tax Return, a Class D Felony, in violation of 26 U.S.C. § 7206(1). PENALTIES: Up to 5 years imprisonment, a \$250,000 fine, the costs of prosecution, restitution, and a mandatory \$100 special assessment

Release Status:

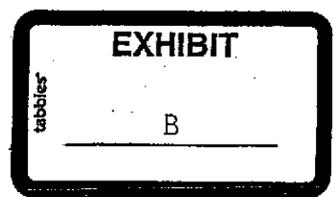
Powers was released on an Own Recognizance Bond on April 18, 2005.

Detainers:

None

Co-Defendants:

None



 CONFIDENTIAL
FINAL

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA)

v.)

DONALD M. POWERS, JR.)

) PRESENTENCE INVESTIGATION REPORT

) Docket No. CR 1-05-011-001

Prepared for:

The Honorable Susan J. Dlott
United States District Judge

Prepared by:

Laura S. Jensen
United States Probation Officer
(513) 564-7561

Assistant U.S. Attorney
Amul R. Thapar, Esq.
Atrium Two, Suite 400
221 East Fourth Street
Cincinnati, Ohio 45202
(513) 684-3711

Defense Counsel
Jack C. Rubenstein Esq.
Suite 1850
7 West Seventh Street
Cincinnati, Ohio 45202-2417
(513) 241-7460

Sentence Date:

Unknown

Offense:

Count 1:

Making a False Statement on a Loan Application, a Class B Felony, in violation of 18 U.S.C. § 1014. PENALTIES: Up to 30 years imprisonment, a \$6,984,435.18 fine, a period of supervised release not more than five years, a \$100 special assessment, and restitution

Count 2:

Filing a False Income Tax Return, a Class D Felony, in violation of 26 U.S.C. § 7206(1). PENALTIES: Up to 5 years imprisonment, a \$250,000 fine, the costs of prosecution, restitution, and a mandatory \$100 special assessment

Release Status:

Powers was released on an Own Recognizance Bond on April 18, 2005.

Detainers:

None

Co-Defendants:

None

Related Cases:

Kristine Neff [CR 1-03-130]

Lisa Holderman-Powers [CR 1-03-131]

Steven Minger [CR 1-5-074]

Date Report Prepared: May 17, 2005

Date Report Revised: June 28, 2005

Identifying Data

Date of Birth: April 26, 1963
Age: 42
Race: White/Non-Hispanic
Sex: Male

S.S. #: 295-80-4603
FBI #: None
USM #: 04113-061
Other ID# 1724578 (Hamilton County, Ohio's Regional Crime Information Center Control Number)
QE388959 (Driver's License Number for State of Ohio)

Education: Juris Doctor Degree
Dependents: One
Citizenship: United States

Legal Address: 11651 Norbourne Drive, Apt. 515
Cincinnati, Ohio 45240

Aliases: None

RE: POWERS, Donald

PART A. THE OFFENSE

Charges and Conviction

1. On February 1, 2005, the United States Attorney for the Southern District of Ohio, Western Division, filed a two count Information charging Donald M. Powers, Jr. as defendant.
2. Count 1 charged that on or about September 5, 2001, the defendant was charged with Making a False Statement on a HUD-1 Settlement Statement, in violation of 18 U.S.C. §1014. The purpose of the false statement was to defraud a mortgage company with regard to a loan.
3. Count 2 charged the defendant with Filing a False Tax Return, in violation of 26 U.S.C. §7206(1). This behavior is alleged to have occurred on October 17, 2003 and was in regard to his 2002 U.S. Individual Income Tax Return, Form 1040.
4. On April 18, 2005, the defendant appeared in U.S. District Court and pled guilty to Counts 1 and 2 pursuant to a plea agreement. The plea agreement outlined the basic elements of the defendant's plea of guilty, including maximum penalties, requirement of special assessment fees, and agreements regarding the defendant's cooperation. He agreed to cooperate with the government by providing complete information to authorities; turning over to the government all evidence, contraband and assets of his crime; submitting to a full accounting of his financial assets; testifying before a Grand Jury; and making restitution on a schedule and amount to be determined by the Court.
5. While no substantial assistance motion has been promised by the United States, the parties have discussed that Mr. Powers could qualify for such a motion if he provides substantial assistance. The defendant understands that the U.S. Attorney has the sole discretion to file the motion pursuant to 5K1.1 and/or Rule 35 (b) of the Federal Rules of Criminal Procedure. If the U.S. Attorney files a motion, the defendant agreed not to contest the government's recommendation as to the departure. The defendant understands that his sentence will be imposed in conformity with the Federal Sentencing Guidelines and Policy Statements. The applicable guidelines will be determined by the Court relying in part on the results of a presentence investigation by the Court's probation office. The defendant waived any constitutional challenge to the Sentencing Guidelines.
6. By signing the plea agreement, the defendant acknowledged the truth of the Statement of Facts. The United States agreed to recommend that the defendant be provided credit for acceptance of responsibility pursuant to 3E1.1, based on the defendant's recognition and affirmative acceptance of personal responsibility. If the defendant continues to accept responsibility through the time of sentencing, the United States will file a motion pursuant to 3E1.1(b) stating to the Court that the defendant has timely notified authorities of his intention to plead guilty.

7. The parties stipulate and recommend that the Court adopt a certain set of guideline calculations which result in a total offense level of 26 before the application of 3E1.1. There is no stipulation regarding the defendant's criminal history. The defendant waived his right to appeal pursuant to 18 U.S.C. 3742. However, if the government appeals the defendant's sentence, the defendant's waiver is void. The plea agreement does not resolve any civil liability of the defendant for tax, interest, and penalties relating to income from the offense of conviction or any other source. The defendant agreed as part of his complete cooperation to file accurate tax returns for himself, amending returns if necessary, by April 30, 2005.
8. The defendant agreed to pay restitution of the tax due and owing, together with any interest and penalties determined by the Dept. of Treasury, Internal Revenue Service. As a part of his supervised release, the defendant will make reasonable efforts to pay the tax liability due to the IRS. The defendant shall complete these payments by the end of his supervised release. If he is unable to do so, he shall continue to make monthly payments as set by the Court at the time of sentencing. The payments will be in accordance with his ability to pay. The defendant will cooperate with the IRS with regard to a civil audit. There are no other understandings with regard to this case.

Pretrial Adjustment

9. The defendant was released on his own recognizance on April 18, 2005 with conditions. He has complied with his bond conditions thus far.

Related Cases

10. The United States Attorney for the Southern District of Ohio filed a one count Information against Kristine Neff on October 15, 2003 in case number CR 1-03-130. Neff entered a plea of guilty to the one count Information on December 17, 2003. She is presently awaiting sentencing before the Honorable Susan J. Dlott, U.S. District Judge.
11. The United States Attorney for the Southern District of Ohio filed a one count Information against Lisa Holderman-Powers on October 15, 2003 in case number CR 1-03-131. Holderman-Powers entered a plea of guilty to the one count Information on December 18, 2003. She is presently awaiting sentencing before the Honorable Susan J. Dlott, U.S. District Judge.
12. The United States Attorney for the Southern District of Ohio filed a three count Information against Steven J. Minger on May 20, 2005 in case number CR 1-05-074. Minger entered pleas of guilty to all three counts of the Information on June 9, 2005. He is presently awaiting sentencing before the Honorable Susan J. Dlott, U.S. District Judge.

The Offense Conduct

13. The prosecution of this case was the result of a joint investigation conducted by the Federal Bureau of Investigation (FBI), the Internal Revenue Service's Criminal Investigation Division (IRS-CID), and the United States Postal Inspection Service.
14. In early 2003, a confidential source advised a special agent with the FBI that numerous individuals, title agencies, and mortgage brokers were involved in a mortgage fraud scheme, known as mortgage flipping, in the Greater Cincinnati, Ohio area. As a result, the FBI along with IRS-CID and the United States Postal Inspection Service initiated an investigation. During the course of the investigation, agents executed search warrants at the offices of title agencies and mortgage brokers. They also reviewed loan files obtained from lenders, physically viewed flipped properties, and interviewed numerous individuals.
15. The investigation revealed the mortgages on approximately 800 properties were flipped from January 2000 to July 2003. The majority of these properties were located in very low socioeconomic or high crime neighborhoods. Participants who were involved in the scheme can be described as one of the following: buyer; seller; title agent; mortgage broker; appraiser; or contractor. To initiate the flipping scheme, a person (hereafter referred to as the original buyer) would buy a piece of property at its true value. Subsequently, participants in the scheme would recruit a buyer for the property. The individual who was recruited as the buyer was typically someone who did not have the ability to purchase the property but had a good credit history.
16. If the buyer did not have the ability to purchase the property but had a good credit history, a mortgage broker, who was involved in the scheme, would cause false documents, including pay stubs, wage earning statements, bank statements, and employment verification forms to be created for the buyer. The false documents were created to make the buyer look like someone who could afford to purchase the property. The buyer was aware that the false documents were being created on his/her behalf.
17. Once a buyer was secured, the original buyer of the property would typically have a contractor make some very minor cosmetic repairs to the property to give it the appearance that the property was remodeled. On some of the properties, there was no repair work completed. The original buyer or some other participant in the scheme would then have an appraiser, who was involved in the scheme, appraise the property at an inflated value.
18. After the buyer was secured and the inflated appraisal was completed, a loan package was submitted to a lender. The buyer would request a loan amount based on the inflated appraisal. As part of the loan package, the buyer indicated he/she was going to make a down payment. In reality, the original buyer or someone else involved in the scheme provided the recruited buyer with the funds to make the down payment. It was important to give the impression that the recruited buyer was making the

down payment because the lender was more inclined to approve the loan since the buyer had some interest in the property. If the lender approved the loan request, a closing was scheduled with a title company.

19. At the closing, the title agent knew the buyer was not making the down payment and that the down payment was typically provided by the original buyer. Even though the title agent was aware the buyer was not making the down payment, the title agent indicated on a Department of Housing and Urban Development Form (HUD-1 settlement statement) that the down payment was being paid by the buyer. The false settlement statement was then submitted to the lender and the lender would approve a loan in an amount that was overinflated for the property.
20. For participating in the scheme, the recruited buyer would receive a cash payment, known as a kickback. The original buyer, who was ultimately the seller of the property, received the greatest financial benefit from this scheme because he/she received the balance of the loan minus the cost for the minor cosmetic repairs and the cash payments to the recruited buyers. Title companies and mortgage brokers financially benefitted from the scheme by receiving fees from the numerous loans they processed. The title agents who worked for the title companies and the processors who worked for the mortgage brokers did not receive any financial benefit for participating in this scheme other than their salaries.
21. As previously indicated, agents identified mortgages on over 800 properties being flipped from January 2000 to July 2003. Since November 2003, 136 of these properties have gone into foreclosure. Out of the 136 properties that have gone into foreclosure, 115 of them have sold at auctions and were bought by the lenders, who held the mortgages on the properties. The lenders bought the properties because they have to own the properties in order for them to pursue civil action against the title insurance companies.
22. In reference to the 136 properties that have gone into foreclosure, various lenders initially approved loans that totaled \$10,758,740.60. The initial loan amount approved on the 115 properties that have been sold at auction was \$8,959,490.60. The lenders purchased the 115 properties for \$4,986,000, which represents the true value of all 115 properties. Based on these numbers, lenders will lose, on average, 44.35% of the value of each loan. Since all of the loans approved during this scheme were 30 year loans, the total number of victims and their respective losses will not be known until all of these loans mature.
23. Individuals who own property in the neighborhoods where properties were flipped were also victimized by this offense because they now own property in neighborhoods that contain foreclosed property. Many of the foreclosed properties are abandoned which leaves them prone to vandalism and crime. Additionally, property taxes in certain neighborhoods were increased due to the sale of properties at inflated prices.
24. One particular title company that was involved in this scheme was Premier Land Title Agency, located at 5 Village Square in Glendale, Ohio. Premier Land Title Agency was owned by Lisa and Donald Powers, who is a licensed attorney with the State of Ohio, from September 2000 to July 2003. Based on loan documents and interviews with other participants in this scheme, there is a

preponderance of the evidence to prove that 310 loans were closed at Premier Title that were a part of the mortgage flipping scheme. Of these, Lisa Powers closed 45 loans and Kristine Neff closed an additional 77 loans from September 2000 to July 2003 where it was falsely indicated that the buyer made the down payment at the time of closing. The remainder of the loans were closed by other title agents. Donald Powers was accountable for all the loans because he was the owner and operator of the title agency. On the 310 loans, Donald Powers knew that lenders were being advised that the buyers made down payments totaling \$3,492,217.59.

25. Of the loans closed at Premier Title Agency, 79 of the properties have gone into foreclosure. Therefore, lenders have been victimized by Donald Powers' actions.
26. Additionally, on five of the properties, Donald Powers served as the seller as well as the title agent. For instance, on September 5, 2001, Donald Powers bought the property at 1794 Carll St. in Cincinnati, Ohio for \$37,000. A few months later, on December 11, 2001, he sold the property to Patrick Goedde for \$78,000. Goedde was purported to have brought \$11,659.67 as a down payment for the purchase. Powers knew that the buyer had not provided the down payment for the loan. However, he signed the HUD-1 knowing it contained false information. The loan package was submitted to First Union Mortgage Corp. where it was approved.
27. On November 6, 2001, Powers purchased 2283 Loth in Cincinnati, Ohio for \$6,000. He sold it on May 17, 2002 for \$110,000 to William Graham. The buyer was alleged on the HUD-1 to have provided a down payment of \$11,808.46. However, he did not bring the down payment to the closing, a fact that of which Powers was aware. This transaction defrauded ABN Amro, a mortgage company. These two properties were part of the 310 loans described earlier.
28. Kristine Neff worked as a closing agent for Premier Land Title Agency from September 2000 to early 2003. During this employment, Neff closed 77 loans where she knew the buyer did not make the down payment. She also falsely indicated on the settlement statements involving these loans that the buyers made down payments totaling \$847,299.50. Lisa Powers taught Neff how to falsify the settlement statements. Neff also knew Powers was falsifying settlement statements when she closed loans. However, there is not sufficient evidence to prove Neff knew how frequently Powers was engaging in this practice. Neff knew the loan packages submitted by mortgage brokers contained false wage earning statements, bank statements, pay stubs, and employment verification forms. There is no evidence to prove Neff knew the appraisals on the properties were inflated.
29. In this case, the Government could prove that Donald Powers, Lisa Powers and Kristine Neff knew that buyers were not making down payments as they indicated on the settlement statements. The Assistant United States Attorney further noted he does not believe he can prove that either Donald or Lisa Powers or Neff intended to cause a loss to the lenders in an amount equal to the total value of the loans the lenders approved.

Victim Impact

30. The lenders that approved loans that were closed by Premier Land Title Agency and eventually went into foreclosure were victimized by this offense. These lenders include the following: ABN AMRO Mortgage Group; Accredited Home Lenders; Aegis Mortgage; Associates Home Equity Services; Citifinancial Mortgage; Community Bank of Virginia; D & M Financial Corporation; Entrust Mortgage; First Franklin Financial; First NLC Financial Services; First Union Mortgage Corporation; Fremont Investment and Loan; Indy Mac Bank; Ivanhoe Financial Corporation; Mortgage Bankers Service; North American Mortgage; Pinnacle Direct Funding; Shasta Financial Services; Sun American Mortgage; Wachovia Mortgage Corporation; and Washtenaw Mortgage Company. Premier Land Title Agency also closed loans for Midas Mortgage. Midas Mortgage was not victimized by this offense because it sold the majority of the loans closed by Premier Land Title Agency to Trustcorp Mortgage Company. After Trustcorp purchased the loans from Midas Mortgage, some of loans went into foreclosure. Thus, Trustcorp was victimized by this offense. The President of Trustcorp submitted an Affidavit which indicated Trustcorp extended 27 mortgage loans on properties that were closed by Premier Land Title Agency and Global Title Agency, Incorporated. The President further noted that all 27 of the loans are in default and Trustcorp has instituted or will be instituting foreclosure actions. Due to attorney fees and expenses incurred in investigating the mortgage fraud scheme, the President estimated that Trustcorp's loss will exceed \$2,300,000. It was noted this figure is subject to change since foreclosures and other actions are ongoing.
31. The exact loss suffered by each lender is unknown because some of the lenders approved other loans in this case which were not closed by Premier Land Title Agency. Furthermore, the exact number of victims and their respective losses will not be known until all of the loans in this scheme mature which will not be until 2030 or later. Due to the uncertainty of the number of victims and their losses, an order of restitution should not be ordered.
32. Individuals who own property in the neighborhoods where properties were flipped were victimized by this offense because they now own property in neighborhoods that contain foreclosed property. Many of the foreclosed properties are abandoned which leaves them prone to vandalism and crime. Additionally, property taxes in certain neighborhoods were increased due to the sale of properties at inflated prices.

Adjustment for Obstruction of Justice

33. There is no indication the defendant obstructed the administration of justice in this case.

Adjustment for Acceptance of Responsibility

34. According to the defendant, he originally had a title company called Global Title with three or four law partners. However, the defendant wasn't making enough money to support himself and his wife. He and his wife left and formed their own title company, Premier Land Title. His wife was a hard worker and she brought in customers and did most of the work. He was the contact with underwriters because he was the license holder. Soon after they started the company, they were

approached by a real estate investor, Steve Minger, who ended up being a 1/3 partner in Premier Title. He agreed to close 10 loans at Premier. After that, they began to do properties together. Minger brought in buyers to purchase properties that he had for sale. The buyers were represented to the defendant as having good credit scores. Minger also told the defendant that the buyers were bringing the down payment to closing.

35. However, the defendant learned that the buyers were not providing the down payment. The defendant allowed a number of properties to be "flipped" at his title company. He admitted that he used his title company to defraud lenders. Money that he received at closing he split with Steve Minger. The defendant also admitted under reporting his income on his tax returns for 2001 and 2002.

Offense Level Computation

36. Consistent with the Supreme Court holding in *United States v. Booker* and *United States v. Fanfan* (125 S. CT. 738), the Sentencing Guidelines are advisory. Accordingly, the guideline calculations contained in the Presentence Report are to assist the Court in exercising its discretion under 18 U.S.C. §§ 3553(a)(1) through (a)(7).
37. U.S.S.G. § 1B1.11 states the Court should use the Guidelines Manual in effect on the date a defendant is sentenced unless to do so would create problems with ex post facto issues. United States Sentencing Commission Guidelines Manual, effective November 1, 2002, has been used in calculating the offense level in this case. United States Sentencing Commission Guidelines Manual, effective November 1, 2004, which is the most current, was not used due to ex post facto issues.
38. According to §3D1.1(a)(1), when a defendant has been convicted of more than one count, the Court shall group the counts resulting in conviction into distinct groups of closely related counts by applying the rules specified in §3D1.2. Count 2 cannot be grouped with Count 1 as the behavior is not connected to the activities in Count 1. Therefore, the offense level will be determined separately.
39. **Base Offense Level:** The sentencing guideline for a violation of 18 U.S.C. § 1014 is located at U.S.S.G. § 2B1.1. U.S.S.G. § 2B1.1(a) establishes a base offense level of six. 6
40. **Specific Offense Characteristic:** From September 2000 to early 2003, 310 loans were closed at Premier Land Title Agency where it was falsely indicated the buyers paid the down payment. Documentation was obtained by investigators which proves Powers falsely indicated on settlement statements that buyers made down payments totaling \$3,492,217.59. Pursuant to U.S.S.G. § 2B1.1(b)(1)(J), the offense level is increased by 18 levels because the loss was more than \$2,500,000. +18

41. **Specific Offense Characteristic:** From September 2000 to July 2003, Premier Land Title Agency closed a total of 310 loans where the closing agent falsely indicated the buyer paid the down payment. As a result of the fraudulent actions of the defendant in this case, 42 lenders have been victimized. Pursuant to U.S.S.G. § 2B1.1(b)(2)(A), the offense level is increased by two levels since the offense involved more than 10 but less than 50 victims. +2
42. **Victim Related Adjustment:** None 0
43. **Adjustment for Role in the Offense:** During the commission of this offense, Powers was the part owner of Premier Land Title Services. He allowed illegal activity to take place at his agency and signed HUD-1 forms that contained false information. However, there is no evidence that he directed the actions of others or occupied a leadership role. Therefore, no role adjustment is applicable. 0
44. **Adjustment for Obstruction of Justice:** None 0
45. **Adjusted Offense Level (subtotal):** 26
- Count 3
46. **Base Offense Level:** The sentencing guideline for a violation of 26 U.S.C. § 7206 is located at U.S.S.G. § 2T1.1. Note A under U.S.S.G. § 2T1.1, states that if the offense involved filing a tax return in which gross income was under reported, the tax loss shall be treated as equal to 28 percent of the unreported gross income plus 100% of any false credits claimed against taxes, unless a more accurate determination of the tax loss can be made. In this case, the Internal Revenue Service calculated the tax loss as \$34,217. U.S.S.G. § 2T1.1(a)(1) indicates the base offense level is determined by the corresponding tax loss found at the tax table located at U.S.S.G. § 2T4.1. Pursuant to U.S.S.G. § 2T4.1, the base offense level is 14 because the tax loss was more than \$30,000. 14
47. **Specific Offense Characteristic:** Pursuant to U.S.S.G. § 2T1.1(b)(1), the offense level is increased by two levels if the defendant failed to report or correctly identify the source of income exceeding \$10,000 in any year from criminal activity. In this offense, Powers failed to report income of \$38,657 in 2001 and \$53,094 in 2002. Therefore, the offense level is increased by two levels, pursuant to U.S.S.G. § 2T1.1(b)(1). +2
48. **Victim Related Adjustment:** None 0
49. **Adjustment for Role in the Offense:** None 0
50. **Adjustment for Obstruction of Justice:** None 0
51. **Adjusted Offense Level (subtotal):** 16

52. Multiple Count Adjustment (see U.S.S.G. § 3D1.4):

	<u>Adjusted Offense Level</u>	<u>Units</u>
Count 1	26	1
Count 3	16	0
Total Number of Units:		1
Greater Adjusted Offense Level:	26	
Increase in Offense Level:	0	

53. Pursuant to U.S.S.G. § 3D1.4, Application Note Two, the procedure for calculating the combined offense level when there is more than one group of closely related counts is as follows: 1) identify the offense level applicable to the most serious group and assign it one unit; 2) determine the number of units that the remaining groups represent; 3) increase the offense level of the most serious group by the number of levels indicated in the table corresponding to the total number of units.

54. Combined Adjusted Offense Level: Pursuant to U.S.S.G. § 3D1.4, no increase is made. 26

55. Adjustment for Acceptance of Responsibility: The defendant admitted the Statement of Facts read in Court at the time he entered his plea of guilty is an accurate summary of his involvement in the instant offense. He accepted responsibility for her criminal conduct. The Assistant United States Attorney indicated the defendant entered a timely plea of guilty. Therefore, pursuant to U.S.S.G. §§ 3E1.1(a) and (b), the offense level is decreased by three levels. -3

56. Total Offense Level: 23

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudications

57. None

Adult Criminal Convictions

58. None

Criminal History Computation

59. The defendant has zero criminal history points. According to the Sentencing Table in Chapter Five, Part A, zero or one criminal history point results in a criminal history category of I.

PART C. OFFENDER CHARACTERISTICSPersonal and Family Data

60. Donald Powers, Jr. was born on April 26, 1963 on Clark Air Force Base in the Philippines. He is the youngest child of Donald Powers, Sr., age 78 and Ruth Powers, age 74. The defendant's father was a Department of Defense employee stationed at the Clark Air Force Base in the Philippines. The defendant's parents still live in Philippines. They enjoy travel and come to the United States to visit their children when they can. Mr. Powers underwent a bypass operation a few years ago. He travels to the United States for treatment of prostate cancer. The defendant has two sisters, Elizabeth Mitts, age 49, who resides in Cincinnati, Ohio and works for the Children's Law Center in mediation; and Jane Price, age 56, who lives in Greenville, South Carolina and works with her husband who is an attorney. They work with troubled children. The defendant's sister, Elizabeth Mitts, previously verified the defendant's social information.
61. The defendant reported that during childhood his parents hired local persons to act as domestics in their home. These employees lived in the house and helped raise him and his sisters. The defendant recalled that a Philippino dialect was spoken in his house. The family lived on base and off base, but in general he enjoyed living in the Philippines.
62. The defendant married Sheila Clausen in 1989. They divorced in 1996 in Covington, Kentucky. Shortly thereafter, he met Lisa Holderman. She had two sons from a previous relationship. The defendant had never had children of his own. He became an instant parent to Lisa's children. They were together for eight years marrying on December 3, 2000 in Fort Recovery, Ohio. The defendant stated that he and Lisa were happy despite being from two different worlds. The defendant was more worldly than his wife. Their marriage started to change after they started their title company. They drifted apart and Lisa began to party a good deal of the time.
63. On October 30, 2003, a Complaint for Divorce was filed by Donald Powers, Jr. in Hamilton County, Ohio. Donald Powers, Jr. indicated in his Complaint that he was filing for divorce because his wife was in violation of her marital duties and obligations and has been guilty of gross neglect of duty. He also noted he and his wife were incompatible. Lisa Powers stated Donald Powers, Jr. filed for

a divorce because she found out that he was viewing pornographic material and was going to strip clubs. This marriage produced one child. Daughter, Abigail Powers, age 3 1/2, is currently in the custody of Donald Powers, Jr.

64. On October 30, 2003, Donald Powers, Jr. filed an Affidavit with the Hamilton County, Ohio Domestic Relation Court requesting that he be the residential parent and legal custodian of Abigail Powers. In his Affidavit, Donald Powers, Jr., noted that on June 14, 2003, Abigail Powers placed a five milligram tablet of Valium in her mouth while she was under the supervision and control of Lisa Powers. As a result of this incident, Lisa Powers took Abigail Powers to Children's Hospital Medical Center. Abigail Powers was discharged on June 14, 2003 in good condition. Donald Powers, Jr. also noted in his Affidavit that he was seeking custody of Abigail Powers because Lisa Powers had a cocaine addiction. On November 24, 2003, a Magistrate Judge designated Donald Powers, Jr. as the residential parent of Abigail Powers. Lisa Powers indicated Donald Powers, Jr. over-exaggerated the incident that occurred with Abigail on June 14, 2003 so that he could get custody of Abigail. Powers maintains Abigail found a Valium pill on the floor and placed it into her mouth. Powers stated she took Abigail to the hospital as a precautionary measure. The couple now shares parenting of Abigail. She spends equal amounts of time with each parent.
65. Donald Powers is residing at 11651 Norbourne Dr. Apt. 515 in Forest Park, Ohio. A home inspection was conducted at this residence. The apartment was adequately furnished for the needs of the defendant and his daughter. The defendant has expressed that he would like to be sentenced prior to his ex-wife in this case, so they will not have to be in prison at the same time.

Physical Condition

66. The defendant stands 6' tall and weighs 225 pounds. He has brown eyes and brown hair. He has a scar on his chin and in left eyebrow. The defendant suffers from diverticulitis. He is being treated by Dr. Steven Fessler. According to his records, the defendant was encouraged to pursue a health fitness plan to combat his symptoms rather than taking medications.
67. Dr. Joseph Barrocas is his primary physician. According to his records, the defendant has been depressed as a result of the instant case and concerns regarding visitation with his daughter. Dr. Barrocas prescribed Lexapro in December of 2004 and subsequently Paxil in January of 2005. He has also prescribed Valium to be taken as needed for anxiety. The defendant is also seeing a therapist. Additionally, he has a large thyroid nodule that will need to be removed through surgery.

Mental and Emotional Health

68. The defendant has been in therapy with Craig Mankin at Family Services for a year. He helps the defendant manage stress and combat substance abuse. Mankin provided that the defendant has been in therapy with him since November 3, 2003. The defendant suffers from post-traumatic stress disorder related to his legal situation. He also has adjustment disorder with depression, anxiety, and social phobia. The defendant has also consulted with Dr. Leah Casuto, a psychiatrist with Family Services regarding medication.

Substance Abuse

69. The defendant began to use drugs when he was 15 years old living in the Philippines. He related that drugs were readily available. He smoked marijuana and used pharmaceuticals. For a time, he was addicted to cough syrup and valium. It seemed to be normal to him at the time. Later he realized that he was using drugs because he had not dealt with being molested by a house boy when he was 9 years old. He was sexually abused for one and one-half years. At the time he was using drugs, his parent's marriage was in trouble because of his mother's gambling. Consequently, the other drug users became his family. He continued to use into adulthood. Finally, in 1982, his parents brought him to Cincinnati, Ohio where his sister lived and forced him to stay. They had discovered that he was using drugs and were afraid for his welfare.
70. The defendant presently drinks alcohol in the evenings to go to sleep and to combat anxiety.

Education and Vocational Skills

71. The defendant reported that he graduated from Wagner High School at Clark Air Force Base in 1981. He stated that he was the student body vice president.
72. On March 19, 1989, the defendant received a Bachelor of Arts Degree in International Affairs from University of Cincinnati, according to university records. His grade point average was 3.095 out of 4.0.
73. On December 14, 1996, the defendant was awarded a juris doctor degree from Salman P. Chase College of Law in Highland Heights, Kentucky. His grade point average was 3.157 out of 4.0. The defendant reported that he has allowed his law license to lapse.

Employment Record

74. Since August of 2003, the defendant has been employed as a consultant with Magee Title Agency in Cincinnati, Ohio. He underwrites and examines titles for real estate transactions. The defendant's salary is \$2,000 per month plus health insurance and use of the company car. James McGee verified the defendant's employment and that he was aware of the defendant's case. Deborah Profitt was

interviewed regarding the defendant's employment. She stated that the defendant is a great employee. He takes care of researching and clearing titles so the attorneys can concentrate on closings. The defendant does not participate in closings in any way.

75. From September 2000 to June 2003, Powers owned Premier Land Title Agency with his wife, Lisa Powers. This business was the subject of the instant case. Internal Revenue Service records indicated that in 2000, the defendant's income was \$39,842.00; in 2001, the defendant and his wife had a joint income of \$69,829.00. In 2002, the defendant had an income of \$159,643.00. Finally, in 2003, the defendant's income had grown to \$346,332.00.
76. The defendant was part owner of Global Title, Incorporated in Cincinnati, Ohio from 1996 until 1999. He remarked that he started this company with a couple of friends from law school. He described his partners as "trust fund babies". They didn't care if they made money from the business. The defendant finally left the company to start his own because of this situation. According to IRS records, the defendant had wages of \$4,766.00 in 1999.
77. From 1984 until 1995, the defendant was a property manager for the Schott Co. earning \$20,000. A request for employment verification was returned as the company has moved.

Financial Condition: Ability to Pay

78. The following information was provided in the form of documentation and a financial statement submitted by the defendant. According to his credit report, a number of the accounts have been turned over to a collection agency. Additionally, he has three Federal tax liens against him.

Assets

Fifth Third Bank checking account	\$540.00
US Bank checking account	\$10.00

Equity in Other Assets

1999 Mercedes E320	\$10,000.00
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TOTAL ASSETS	\$10,550.00
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The defendant also owns 33% of Lisa Holderman-Powers, Inc. and 50% of Premier Land Title Services, Inc. However, the value of these holdings is zero.

Liabilities

Capital One Mastercard	\$1,030.00
American Express	\$19,000.00

TOTAL LIABILITIES	\$20,030.00
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NET WORTH (\$9,480.00)

The defendant reported that he owes taxes to the IRS, the State of Ohio, the city of Cincinnati, and the city of Forest Park. He was unable to provide totals for these debts.

Monthly Income

Defendant's Wages \$5,000.00

TOTAL MONTHLY INCOME \$5,000.00

Necessary Monthly Expenses

Rent \$799.00

Groceries \$400.00

Electric \$100.00

Gas \$50.00

Water/Sewer \$50.00

Renter's Insurance \$7.50

Clothing \$100.00

Medical \$160.00

Child's Therapist \$140.00

Tax Payments \$2,050.00

TOTAL MONTHLY EXPENSES \$3,856.50

CASH FLOW \$1,143.50

79. If the defendant is incarcerated, he will not have the income to pay a fine in addition to his tax obligation.

PART D. SENTENCING OPTIONS

Custody

80. The Supreme Court held in *United States v. Booker* and *United States v. Fanfan* (125 S. CT. 738), the Sentencing Guidelines are advisory. The guideline provisions contained in this section of the report are submitted to assist the Court in exercising its discretion under 18 U.S.C. §§ 3553(a)(1) through (a)(7).
81. **Statutory Provisions: Count 1:** The maximum term of imprisonment is up to 30 years, pursuant to 18 U.S.C. § 1014.

82. **Count 2:** The maximum term of imprisonment of imprisonment is up to 5 years, pursuant to 26 U.S.C. 7206(1).

83. **Guideline Provisions:** Based on a total offense level of 23 and a criminal history category of I, the guideline imprisonment range is 46 to 57 months. This range falls in Zone D of the Sentencing Table. U.S.S.G. § 5C1.1(f) provides if the applicable guideline range is in Zone D of the Sentencing Table, the minimum term shall be satisfied by a sentence of imprisonment.

Impact of Plea Agreement

84. The plea agreement has no impact on the guideline imprisonment range as all relevant conduct has been considered.

Supervised Release

85. **Statutory Provisions: Count 1:** Pursuant to 18 U.S.C. § 3583(b)(1), the authorized term of supervised release is not more than five years.

86. **Count 2:** The authorized term of supervised release is up to three years, pursuant to 18 U.S.C. § 3583(b)(2).

87. If a term of supervised release is ordered, the Court must order a condition the defendant not commit another federal, state, or local crime during the time of supervised release, and the defendant shall not possess illegal controlled substances, pursuant to 18 U.S.C. § 3583(d).

88. The Court must also order the defendant to refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release, and at least two periodic drug tests thereafter. This condition may be ameliorated or suspended if the presentence report, or other reliable sentencing information, indicates a low risk of future substance abuse on the part of the defendant, pursuant to 18 U.S.C. § 3583(d). Additionally, the defendant shall cooperate in the collection of a DNA sample at the direction of the probation officer. [18 U.S.C. 3583(d)]

89. Pursuant to 18 U.S.C. 3624(e), terms of supervised release must run concurrently with each other and any other term of community supervision.

90. **Guideline Provisions:** Pursuant to U.S.S.G. § 5D1.1(a), the Court shall order a term of supervised release to follow imprisonment when a sentence of more than one year is imposed or required by statute. The Court may order a term of supervised release to follow imprisonment in any other case. **Count 1:** The authorized term of supervised release for this offense is at least three years but not more than five years, pursuant to U.S.S.G. § 5D1.2(a)(1). **Count 2:** The authorized term of supervised release for this offense is at least two but not more than three years, pursuant to U.S.S.G. § 5D1.2(a)(2).

Probation

91. **Statutory Provisions: Counts 1 and 2:** A pursuant to 18 U.S.C. § 3561(a)(1), the defendant is not eligible for a term of probation in Count 1 because the offense is a Class B felony. Since the defendant is not eligible for probation in Count 1, he is not eligible for probation in Count 2; pursuant to 18 U.S.C. § 3561(a)(3).

Fines

92. **Statutory Provisions: Count 1:** The maximum fine is not more than \$6,984,435.18, pursuant to 18 U.S.C. § 3571(b)(1). **Count 2:** The maximum fine is \$250,000 plus the cost of prosecution, pursuant to 18 U.S.C. § 3571.
93. A special assessment of \$100 is mandatory for each count for a total of \$200, pursuant to 18 U.S.C. § 3013.
94. **Guideline Provisions: Counts 1 and 2:** According to U.S.S.G. § 5E1.2(c)(3) and (4), the fine range for this offense is \$10,000 to \$6,984,435.18.
95. The Court, in imposing a fine, should consider, among other criteria, the expected cost of any term of imprisonment, probation, or supervised release, according to U.S.S.G. § 5E1.2(d). The most recent advisory from the Administrative Office of the United States Courts, dated April 15, 2005, suggests monthly costs for imprisonment is \$1,933.80; for community confinement is \$1,675.23; and \$287.73 for probation or supervised release.
96. The cost of home confinement/electronic monitoring is \$3.26 per day.
97. U.S.S.G. § 5E1.3 states a special assessment must be imposed on a convicted felon in the amount prescribed by statute. Since the defendant was convicted of a felony, a \$100 special assessment is owed, on each count.

Restitution

98. **Statutory Provisions: Count 1:** Due to the complex nature of this case, the amount of loss suffered by each financial institution is still under investigation. Trust Mortgage Corporation has submitted an estimate of their loss, but has not provided a final figure. Thus, the amount of restitution is undetermined at this time. Pursuant to 18 U.S.C. § 3664 (d)(5), if the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the Court, and the Court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the Court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

99. **Count 2:** Pursuant to 18 U.S.C. §3563, restitution may be ordered. If the defendant is sentenced to a term of probation or supervised release, restitution shall be a condition of supervision. In this case, the defendant has a tax obligation of \$34,217.00.

100. **Guideline Provisions:** Pursuant to §5E1.1, restitution shall be ordered.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

101. No departure issues have been identified.

PART F. FACTORS THAT MAY WARRANT DEVIATION FROM THE ADVISORY SENTENCING GUIDELINES

102. There are no factors that would warrant a variance from the guideline imprisonment range in this case.

Reviewed and Approved By:

Respectfully Submitted By,



John C. Cole, Supervising
United States Probation Officer



Laura S. Jensen
United States Probation Officer

ADDENDUM TO THE PRESENTENCE REPORT

OF

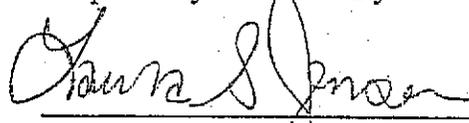
DONALD POWERS, JR. [CR 1-05-011]

The probation officer certifies herewith transmitted is the true and accurate final Presentence Report and there are no unresolved objections. The Presentence Report has been disclosed to the parties.

Reviewed and Approved By:


John C. Cole, Supervising
United States Probation Officer

Respectfully Submitted By:


Laura S. Jensen
United States Probation Officer

United States District Court Southern District of Ohio at Cincinnati

UNITED STATES OF AMERICA
v.
DONALD M. POWERS, JR.

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:05cr11

USM Number: 04113-061

Jack Rubenstein
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s): 1 and 2.
- pleaded nolo contendere to counts(s) ___ which was accepted by the court.
- was found guilty on count(s) ___ after a plea of not guilty.

The defendant is adjudicated guilty of these offense(s):

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 1014	Making a material false statement in a loan application	09/2001	1
26 USC 7206(1)	Filing a false Income Tax Return	10/2003	2

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on counts(s) ___ and is discharged as to such count(s).
- Count(s) ___ (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and the United States Attorney of material changes in the defendant's economic circumstances.

October 24, 2005

Date of Imposition of Judgment

Susan J. Dlott
Signature of Judicial Officer

SUSAN J. DLOTT, United States District Judge

Name & Title of Judicial Officer

October 31, 2005
Date

I certify that this is a true and correct copy of the original filed in my Office on 10-31-2005.
 JAMES BONINI, CLERK
 BY: Mercedee Lee
 Deputy Clerk
 DATE: 11-8-2005

EXHIBIT
 C

United States District Court Southern District of Ohio at Cincinnati

UNITED STATES OF AMERICA
v.
DONALD M. POWERS, JR.

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October 24, 2005

Date of Imposition of Judgment

Susan J. Dlott
Signature of Judicial Officer

SUSAN J. DLOTT, United States District Judge

Name & Title of Judicial Officer

October 31, 2005
Date

I certify that this is a true and correct copy of the original filed in my Office on 10-31-2005.
 JAMES BONINI, CLERK
 BY: Mercedes Lee
 Deputy Clerk
 DATE: 11-8-2005

CASE NUMBER: 1:05cr11
DEFENDANT: DONALD M. POWERS, JR.

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 38 Months on Count 1 and 36 Months on Count 2, to be served concurrently.

The defendant shall participate in the Bureau of Prison's Inmate Financial Responsibility Program. The defendant shall participate in the Bureau of Prison's Residential Substance Abuse Treatment Program.

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be placed at Morgantown FCI or the closest appropriate facility with the Residential Substance Abuse Treatment Program to Cincinnati, Ohio.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district.
 at ___ on ____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2:00 p.m. on January 9, 2006.
 as notified by the United States Marshal but no sooner than
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

CASE NUMBER: 1:05cr11
 DEFENDANT: DONALD M. POWERS, JR.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 Years on Count 1 and 3 Years on Count 2, to be served concurrently.

He must undergo mental health and substance abuse assessments and comply with any recommended treatment. The defendant shall not be permitted to open any new lines of credit or make purchases on existing lines of credit without permission from his probation officer. He must disclose all financial information requested by his probation officer. The defendant shall serve 800 hours community service. Wherever possible, community service should be for a charity that serves the neighborhoods affected by this scheme and that is dedicated to restoring property values, promoting better housing conditions, or expanding home ownership, such as Habitat for Humanity. Specific assignments will be at the discretion of the probation office, after conferring with the Court. Pursuant to the Court's authority under 18 U.S.C. § 3583(d), the Court orders that the defendant be barred from working in real estate lending or sales for the entire term of the defendant's supervised release. The Court further orders that, if the defendant has a real estate license in any state, notice of the defendant's conviction and sentence be reported to that state's real estate licensing agency.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependants and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

CASE NUMBER: 1:05cr11
 DEFENDANT: DONALD M. POWERS, JR.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 200.00	\$ 150,000.00	\$ 1,643,883.00

- The determination of restitution is deferred until January 20, 2005 at 11:00 a.m. An amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment unless specified otherwise in the priority order of percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>*Total Loss</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Internal Revenue Service	34,217.00	34,217.00	
Trustcorp Mortgage	1,609,666.00	1,609,666.00	
<u>TOTALS:</u>	<u>\$ 1,643,883.00</u>	<u>\$ 1,643,883.00</u>	

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- The interest requirement is waived for the fine restitution.
- The interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

CASE NUMBER: 1:05cr11
 DEFENDANT: DONALD M. POWERS, JR.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ due immediately, balance due
 not later than or
 in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C D, or F below); or
- C Payment in equal installments of \$ over a period of , to commence days after the date of this judgment; or
- D Payment in equal installments of \$ over a period of , to commence days after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The Court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
- If the defendant, while incarcerated, is working in a non-UNICOR or grade 5 UNICOR job, the defendant shall pay \$25.00 per quarter toward defendant's restitution obligation. If working in a grade 1-4 UNICOR job, defendant shall pay 50% of defendant's monthly pay toward defendant's restitution obligation. Any change in this schedule shall be made only by order of this Court.
 - After the defendant is release from imprisonment, and within 30 days of the commencement of the term of supervised release, the probation officer shall recommend a revised payment schedule to the Court to satisfy any unpaid balance of the restitution. The Court will enter an order establishing a schedule of payments.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several (Defendant name, Case Number, Total Amount, Joint and Several Amount and corresponding payee):

to be determined at the hearing on January 20, 2005

- The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment; (2) restitution principal; (3) restitution interest; (4) fine principal; (5) community restitution; (6) fine interest; (7) penalties; and (8) costs, including cost of prosecution and court costs.

**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

In Re:	:	
Complaint against	:	Case No. 06-012
Donald M. Powers, Jr.	:	Findings of Fact,
Attorney Reg. No. 0067728	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Cincinnati Bar Association	:	the Supreme Court of Ohio
	:	
Relator	:	
	:	

This matter was heard on February 26, 2007 and on November 14, 2007, before a panel consisting of Jean M. McQuillan of Cleveland, Ohio, Francis E. Sweeney, Jr. of Cleveland, Ohio and Jana E. Emerick, Chair, of Lima, Ohio. None of the panel members resides in the judicial district from which the complaint arose or served as a member of the probable cause panel that certified this matter to the Board.

Relator was represented by attorneys Franklin A. Klaine, Jr. and E. Hanlin Bavelly. Respondent was represented by attorney Edward G. Marks. Respondent was not present at the February 26, 2007 hearing, as he was incarcerated at that time in federal prison. Due to respondent's incarcerated status and a complete lack of cooperation from federal prison authorities, efforts to obtain respondent's deposition were unsuccessful. This resulted in a continuation of the hearing until November 14, 2007, at which time respondent had been granted early release from prison and was able to attend the hearing.

The complaint in this matter was filed on February 13, 2006. The complaint alleged that respondent had violated the disciplinary rules as a result of actions he engaged in while the owner of a title agency located in the Cincinnati area. The complaint alleged that, as a result, respondent had been convicted in federal court upon a plea of guilty to a charge of making a material false statement in a loan application, in violation of 18 U.S.C. 1014, and to a charge of filing a false income tax return, in violation of 26 U.S.C. 7206(1).

The complaint alleged that respondent's conduct amounted to a violation of DR 1-102(A)(3) [engaging in illegal conduct involving moral turpitude], DR 1-102(A)(4) [engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation], and DR 1-102(A)(6) [engaging in conduct adversely reflecting on a lawyer's fitness to practice law].

To establish its case, the relator presented a set of stipulated facts and joint exhibits, a copy of which are attached to this report. Relator presented no other evidence. The respondent testified and presented the testimony of two other witnesses.

FINDINGS OF FACT

Based upon the stipulations of the parties and the evidence presented at the hearing, the panel finds the following facts to have been proven by clear and convincing evidence:

Respondent was admitted to the practice of law in Ohio in 1997. From 2000 through 2003, respondent and his wife owned and operated Premier Land Title Agency in Glendale, Ohio. During this time period, employees of that agency and business associates of respondent's engaged in an illegal scheme of "flipping" low value homes in

the greater Cincinnati area. This “flipping” scheme involved buying a piece of real estate for low value, obtaining a falsely inflated appraisal of the property, and submitting a fraudulent loan package to a bank or lender in order to sell the property to a buyer who would obtain a highly inflated loan. As the owner of the title agency involved, respondent signed documents that served to perpetuate this scheme, although the documents had been prepared by others in respondent’s employ.

Respondent, along with other persons, did partner in the purchase of two residential properties in Cincinnati. Those homes were purchased for fairly low cost and sold within just a few months at a rather large profit. Respondent failed to accurately report the income obtained from these sales to the Internal Revenue Service.

These actions came under investigation by state and federal law enforcement agencies, although the investigation initially focused on persons other than respondent. From the time respondent was made aware that such an investigation had begun, respondent cooperated with law enforcement in the investigation. As the investigation continued, respondent himself became a focus of the same investigation.

In the case *sub judice*, respondent testified, and the panel believed and therefore finds as factual, that respondent’s involvement in the day to day affairs of the title agency was very limited. Respondent employed numerous persons, including his then wife, who handled the actual paperwork and loan transactions involved in the flipping scheme. Respondent relied, ultimately to his detriment, on those persons to do a thorough and honest job in the work handled by the title agency. Because respondent was the owner and overseer of all others working at the agency, respondent accepted – and still accepts – full responsibility for their misconduct in the course of their employment.

Due to this fact, and also due to the fact that mounting a trial defense in a complicated conspiracy case in federal court was completely cost prohibitive and therefore an option unavailable to respondent, respondent ultimately opted to take advantage of a negotiated plea deal offered by the federal prosecutors and agreed to plead guilty to two substantially lesser charges than those involved in the original case.

Therefore, on February 1, 2005, respondent pled guilty in United States District Court, Southern District of Ohio, Western Division, to making a material false statement in a loan application, in violation of 18 U.S.C. 1014, and to a charge of filing a false income tax return, in violation of 26 U.S.C. 7206(1).

On October 31, 2005, respondent was sentenced to a term of 38 months in prison for the first count, and to 36 months in prison for the second count, to be served concurrently. The Supreme Court of Ohio suspended Respondent from the practice of law on an interim basis as a result of the felony conviction on January 27, 2006.

Respondent was paroled from prison on August 7, 2007 and, at the time of the disciplinary hearing, was living in a halfway house in the Cincinnati area, where he had obtained employment in a computer repair shop.

CONCLUSIONS OF LAW

Based upon the stipulations of the parties and the evidence presented at the hearing, the panel unanimously finds by clear and convincing evidence that the conduct of respondent violated DR 1-102(A)(3) [engaging in illegal conduct involving moral turpitude], DR 1-102(A)(4) [engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation], and DR 1-102(A)(6) [engaging in conduct adversely reflecting on a lawyer's fitness to practice law].

PANEL RECOMMENDATION

It is the position of the relator that the respondent should be disbarred.

Respondent urges that a sanction of indefinite suspension be imposed, so that respondent may perhaps someday regain the privilege of practicing law.

The panel acknowledges that the disciplinary rules violated by respondent involve misconduct of the most serious nature, particularly the violations of DR 1-102(A)(3) and DR 1-102(A)(4). At first glance, upon considering respondent's criminal conviction and the general facts surrounding it, disbarment seems the only appropriate sanction.

However, upon careful examination of the facts in evidence as to the particular misconduct of the respondent, contrasted with that of all persons engaged in the criminal acts at issue, and upon consideration of the credibility of respondent's testimony, the panel concludes that respondent should be indefinitely suspended.

In preparation of this report, countless decisions of the Supreme Court of Ohio involving criminal conduct and/or fraudulent or dishonest behavior on the part of attorneys were considered. That caselaw contains, of course, numerous decisions where disbarment was ordered as a result of DR 1-102(A)(3) and DR 1-102(A)(4) violations. However, that same body of caselaw also contains numerous decisions where sanctions short of disbarment were ordered. The research results are so mixed that, unfortunately, citation to relevant cases becomes essentially useless when attempting to support a recommendation in any particular set of facts, such as this case.

Accordingly, the panel will simply note that it found respondent's testimony extremely compelling and credible. Given the lack of specific evidence otherwise, the

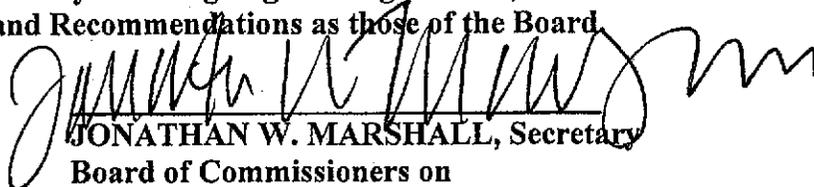
panel finds that respondent had a limited involvement in the criminal and fraudulent conduct involved in the federal case, notwithstanding the general acknowledgements made on the record in federal court in order that respondent's negotiated plea would be accepted. Respondent expressed a great deal of remorse and took complete responsibility for his actions, as well as those of his employees and business associates. Respondent has no prior disciplinary action and has clearly already been subject to serious sanctions for the same misconduct involved in this case, through having been sentenced to federal prison.

For all of these reasons, it is the recommendation of the hearing panel that respondent be indefinitely suspended from the practice of law in Ohio.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on February 8, 2008. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Donald m. Powers, Jr., be indefinitely suspended on from the practice of law in the State of Ohio with no credit for time served. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



JONATHAN W. MARSHALL, Secretary

Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO



In re:

DONALD M. POWERS JR. (0067728)

Respondent

CINCINNATI BAR ASSOCIATION

Relator

Case No. 06-012

STIPULATION

Now come the parties through their respective counsel and stipulate the following facts and documents.

FACTS

1. Respondent, Donald M. Powers, Jr. is an attorney duly admitted to the practice of law in the State of Ohio in 1997.
2. Respondent currently is not registered as an attorney with the Supreme Court of Ohio.
3. Respondent and his wife operated Premier Land Title Agency in Glendale, Ohio, from September 2000 to July 2003.
4. During this period, Respondent was a participant (along with several others) in a scheme involving "flipping" low value homes in the greater Cincinnati, Ohio area.
5. The "flipping" scheme involved buying a piece of real estate for a low value, recruiting a buyer for the property who may not otherwise be able to afford property, and creating false documents, including pay stubs, W-2 forms, bank statements and employment

verification for the potential buyer. Next, a falsely inflated appraisal of the property would be obtained, and a false loan package would be submitted to the bank or lender in order to obtain a highly inflated loan.

6. Premier Land Title Agency, of which Respondent was an owner, participated in the closing of 310 loans involved in this scheme. Respondent was aware of some of the fictitious and/or fraudulent appraisals that were submitted to financial institutions in furtherance of this scheme.

7. Additionally, Respondent and/or Premier Land Title Agency took part in acts which defrauded various federally insured financial institutions in the execution of the "flipping" scheme by knowingly submitting false Housing and Urban Development (HUD) forms to the financial institutions in support of a loan application. In signing numerous HUD forms, Respondent falsely certified that the buyer had brought a down payment to the closing, which he knew not to be true.

8. Respondent further participated by acting as both the title agent and the seller in connection with five properties involved in the "flipping" scheme. Respondent purchased one such property located at 1794 Carll Street in Cincinnati for \$37,000 and sold it three months later for \$78,000. Also, in furtherance of the conspiracy, Respondent purchased property located at 2283 Loth in Cincinnati for \$6,000 and sold it six months later for \$110,000. In both of these transactions, Respondent signed HUD statements certifying that the buyers brought over \$11,000 to each of the closings as down payments, but in fact, the buyers did not provide any funds as down payments.

9. Respondent has admitted that due to his and Premier's fraudulent activity, various financial and lending institutions have suffered an actual or intended loss of

\$3,492,217.59.

10. Respondent additionally willfully filed false individual income tax returns with the Internal Revenue Service for the years 2001 and 2002. He failed to report portions of the payments received from the fraudulent loan proceeds and from others involved in the "flipping" scheme.

11. On February 1, 2005, Respondent pled guilty in United States District Court, Southern District of Ohio, Western Division, to making a material false statement in a loan application in violation of 18 U.S.C. § 1014, and to filing a false income tax return, in violation of 26 U.S.C. § 7206(1).

12. On October 31, 2005, Respondent was sentenced to imprisonment for 28 months on the first count and 36 months on the second count, to be served concurrently, and he is currently imprisoned.

13. The filing of this Stipulation will not preclude either party from presenting witnesses or legal arguments at the hearing of this matter.

In addition to the above stipulated facts, the parties hereto stipulate to the authenticity of the following documents which were filed as copies to this Stipulation as exhibits thereto.

A. In the United States District Court, Southern District of Ohio, Western Division, Criminal Case No. CR 1-05-011-001 being *United States of America v. Donald Powers* Plea Agreement Exhibit A.

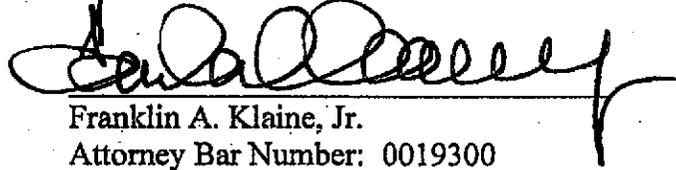
B. In the United States District Court, Southern District of Ohio, Western Division, *United States of America v. Donald M. Powers, Jr.*, Docket No. CR1-05-011-001, Presentence Investigation Report dated June 28, 2005 Exhibit B.

C. In the United States District Court, Southern District of Ohio, Western Division,

United States of America v. Donald M. Powers, Jr., Case No. CR 1-05-011-001, Judgment in a
Criminal Case Exhibit C.

Respectfully submitted,

STRAUSS & TROY



Franklin A. Klaine, Jr.

Attorney Bar Number: 0019300

On behalf of Relator, Cincinnati Bar
Association

The Federal Reserve Building

150 East Fourth Street

Cincinnati, OH 45202

Telephone: (513) 621-2120

Facsimile: (513) 241-8259

faklaine@strausstroy.com



Edward G. Marks

Attorney Bar Number: 0001251

Attorney for Respondent, Donald M.
Powers, Jr.

30 Garfield Place, Suite 915

Cincinnati, OH 45202

Telephone: (513) 421-4400

Facsimile: (513) 721-7008

emarks@hlmlaw.com



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

I certify that this is a true and correct copy of the original filed in my Office on 2-1-2005.
JAMES BONINI, CLERK
BY: Mercedes Payne
Deputy Clerk
DATE: 2-21-2007

UNITED STATES OF AMERICA

: CRIMINAL NO.

v.

: **1:05CR00011**
: PLEA AGREEMENT

DONALD POWERS

: HONORABLE SUSAN J. DLOTT

FILED
JAMES BONINI
CLERK
FEB 1 2007

The United States Attorney for the Southern District of Ohio and the defendant, **Donald Powers**, also called "the parties" herein, agree that:

1. **Donald Powers** will waive Indictment by the Federal Grand Jury and will enter a plea of guilty before the United States District Judge to a two-Count Information charging him with Making a Material False Statement in a Loan Application, in violation of 18 U.S.C. § 1014 and Filing a False Income Tax Return, in violation of 26 U.S.C. § 7206(1). Making a Material False Statement carries a maximum penalty of up to thirty (30) years imprisonment, a fine of up to \$1,000,000.00, a five (5) year term of supervised release, restitution, and a \$100.00 special assessment. Filing a False Income Tax Return carries a maximum penalty of up to five (5) years imprisonment, a \$250,000 fine, the costs of prosecution, restitution, and a mandatory \$ 100 special assessment.

2. The defendant understands that this Agreement permitting a guilty plea to the above-listed counts requires that the defendant abide by each term of this Agreement. The defendant understands that if the defendant makes any statement that is materially false in whole or in part or otherwise fails to comply with any term of this Agreement, the United States has the right to declare this Agreement

void and to prosecute the defendant to the full extent of the law. If this Plea Agreement or the defendant's conviction upon his guilty plea is voided for any reason, the defendant waives any statute of limitations with respect to the United States prosecuting him for any offense arising from his conduct in this case.

3. The defendant will give complete cooperation to law enforcement authorities and others regarding his activities and those of others in relation to the offense of conviction and other matters on the following terms and conditions:

(a) Mr. Powers shall cooperate fully, truthfully, completely and forthrightly with the United States Attorney's Office for the Southern District of Ohio and other Federal, state and local law enforcement authorities identified by this Office in any and all matters as to which the Government deems the cooperation relevant. Mr. Powers acknowledges that his cooperation may include, but will not necessarily be limited to: answering questions; providing sworn written statements; taking government administered polygraph examination(s); and participating in covert law enforcement activities. Any refusal by Mr. Powers to cooperate fully, truthfully, completely and forthrightly as directed by this Office and other Federal, state and local law enforcement authorities identified by this Office in any and all matters in which the Government deems his assistance relevant will constitute a breach of this agreement by Mr. Powers, and will relieve the Government of its obligations under this agreement or any other agreement (such as an agreement under Section 5K1.1 of the United States Sentencing Guidelines) between the parties whether entered before or after this agreement. Mr. Powers agrees, however, that such breach by him will not constitute a basis for withdrawal of his plea of guilty or otherwise relieve him of his obligations under this agreement.

(b) Mr. Powers shall promptly turn over to the Government or other law enforcement authorities or direct such law enforcement authorities to any and all evidence of crime; all contraband and proceeds of crime; and all assets traceable to such proceeds of crime. Mr. Powers agrees to the forfeiture of all assets which are proceeds of crime or traceable to such proceeds of crime and all instruments that he used to aid him in committing the crimes.

(c) Mr. Powers shall submit a full and complete accounting of all of his financial assets, whether such assets are in his name or in the name of a third party.

(d) Mr. Powers shall testify fully, completely and truthfully before any and all Grand Jury(ies) in the Southern District of Ohio, and elsewhere, and at any and all trials of cases or other court proceedings in the Southern District of Ohio and elsewhere, at which his testimony may be deemed relevant by the Government.

(e) Mr. Powers understands and acknowledges that nothing in this agreement allows him to commit any criminal violation of local, state or Federal law during the period of his cooperation with law enforcement authorities or at any time prior to the sentencing in this case. The commission of a criminal offense during the period of Mr. Powers' cooperation or at any time prior to sentencing will constitute a breach of this plea agreement and will relieve the Government of all of its obligations under this agreement or under any other agreement between the parties (including any potential Section 5K1.1 of the Sentencing Guidelines and/or 18 U.S.C. § 3553(e) agreement). Mr. Powers acknowledges, however, and agrees that such a breach of this agreement will not entitle him to withdraw his plea of guilty or relieve him of his obligations under this agreement. Mr. Powers further understands that, to establish a breach of this agreement, the Government need only prove his commission of a criminal offense by a preponderance of the evidence.

(f) Finally, Mr. Powers' cooperation also includes making restitution in this matter in a schedule and amount to be determined by the Court.

4. While no substantial assistance motion has been promised by the United States, the parties have discussed that Mr. Powers could qualify for such a motion if he provides the United States with substantial assistance. Mr. Powers agrees to and understands the following: that only the United States Attorney, in its sole discretion, may apply for a downward departure from the Guideline sentence pursuant to Sentencing Guideline § 5K1.1 and that only the United States Attorney may, within one year of sentencing and at the sole discretion of the United States Attorney, file a motion for reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, to reflect substantial assistance to the United States subsequent to sentencing. The defendant understands that the determination of whether he has provided substantial assistance pursuant to Section 5K1.1 of the Sentencing Guidelines, Rule 35(b), or 18 U.S.C. § 3553(e), is within the sole discretion of the United States Attorney's Office for the Southern District of Ohio and is not reviewable by the Court. The defendant agrees that in the event the United States files such a motion, he will not contest the recommendation of the government as to the sentencing level and will not seek to go below the sentencing level recommended by the government. The defendant further understands that if the Government does not file a motion for downward departure the Court has no authority to grant a downward departure, under Section 5K1.1 of the Sentencing Guidelines, Rule 35(b) or 18 U.S.C. § 3553(e). In any event, the defendant agrees not to seek a downward departure, without Government motion, based on any assistance provided in the investigation(s) or prosecution(s) of another person(s) who has committed a Federal, state, local or any other offense. The defendant agrees and acknowledges that if this Office chooses not to file a substantial assistance

departure motion it shall not be grounds for the defendant to move to withdraw his plea of guilty in this case or otherwise relieve him of his obligations under this agreement.

5. In exchange for the defendant's plea of guilty and complete cooperation, the United States Attorney for the Southern District of Ohio agrees that, after sentence has been imposed on the information, he will not file any additional charges against the defendant based on the defendant's conduct as described in the Information and Statement of Facts. This Agreement does not protect the defendant from prosecution for perjury, false statement, obstruction, or any other such charge for conduct after the date of this Agreement.

6. No promises have been made to the defendant that he will receive probation or that he will receive a lighter sentence on account of his plea of guilty.

7. The defendant understands and agrees that the sentence will be imposed in conformity with the Federal Sentencing Guidelines and Policy Statements (hereinafter "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 applicable guideline range and impose a sentence that is either more severe or less severe than the guideline range. Defendant waives any constitutional challenge to the Sentencing Guidelines, waives indictment and trial by jury on all findings relevant to sentencing, and agrees that the Court may make all such findings by a preponderance of the evidence based on any reliable evidence, including hearsay. Defendant understands and acknowledges that the Court has the authority to impose any sentence up to the statutory maximum authorized by law and that the defendant may not withdraw the plea solely as a result of the sentence imposed. Defendant

acknowledges that he has discussed this waiver and its consequences fully with his attorney and that he understands the nature and consequences of the waiver.

8. The parties hereby state, pursuant to Sentencing Guideline § 6B1.2(a), that the charge to which the defendant is pleading guilty adequately reflects the seriousness of the readily provable actual offense behavior and that the acceptance of the Agreement by the Court will not undermine the statutory purposes of sentencing.

9. The defendant understands that the matter of sentence is reserved solely to the District Court and that the Court could impose the maximum penalty. No promises or representations have been made to the defendant as to what sentence the Court will impose.

10. The defendant agrees to pay the \$100.00 special assessment to the Clerk of the United States District Court for each count to which he pleads guilty no later than the date of his sentencing.

11. By signing this document, the defendant acknowledges the truth of the attached Statement of Facts.

12. The United States agrees that it will recommend that the defendant be provided credit for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. The United States, however, will not be required to make these sentencing recommendations if any of the following occurs: (1) defendant fails or refuses to make a full, accurate and complete disclosure to this office or the probation office of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) defendant is found to have misrepresented facts to the government prior to entering his plea agreement; (3) defendant 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 a false statement or misrepresentation to any government entity or official; or (4) defendant fails to comply with any of the terms of this plea agreement. If the defendant continues to accept responsibility through the time of sentencing and continues to comply with all the terms of this agreement including the aforementioned provisions of this paragraph, the United States will file a motion pursuant to U.S.S.G. § 3E1.1(b) stating to the District Court that the defendant has timely notified authorities of his intention to plead guilty.

13. The United States and the defendant stipulate and recommend that the Court adopt the following calculation under the Sentencing Guidelines:

Bank Fraud

The applicable Guideline is § 2B1.1 (Guidelines effective November 1, 2002). The base offense level under § 2B1.1 is six; plus eighteen levels because the intended loss was over \$2,500,000 (§2B1.1(b)(1)(J)); plus two levels because there were more than 10, but less than 50 victims (§2B1.1(b)(2)(A)), causing a final level of 26.

Tax Evasion

The applicable Guideline is § 2T1.1 (Guidelines effective November 1, 2002). The base offense level for more than \$30,000 Tax Loss is 14 (2T4.1); causing a final level of 14.

Combined Offense Level

To determine the combined offense level, the parties have applied § 3D1.4 of the Guidelines. Under § 3D1.4, the Bank Fraud (level 26) counts as one-unit group because it has the highest offense level. The tax evasion (level 14) is disregarded because it is more than nine levels "less serious than the Group with the highest offense level. Thus, there is one-unit, which means there is no increase in offense level under § 3D1.4 causing a final offense level of 26.

The parties stipulate and recommend that no other upward or downward adjustments or departures apply. There is no stipulation or recommendation about the defendant's criminal history. The defendant fully understands that, after investigation and review, the Court may determine that the

offense factors and recommendations listed anywhere in this plea agreement are not appropriate and is not obligated to accept such. In that event, the defendant fully understands that he shall not have the right to withdraw his guilty plea.

14. In the event that the defendant does not plead guilty, the defendant agrees and understands that he thereby waives any protection afforded by Section 1B1.8(a) of the Sentencing Guidelines and Rule 11(f) of the Federal Rules of Criminal Procedure, and that any statements made by him as part of the plea discussions or as part of his cooperation with the government will be admissible against him without any limitation in any civil or criminal proceeding.

15. The defendant is aware that Title 18, United States Code, Section 3742, affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742, to appeal any sentence imposed, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute. This appeal waiver includes a waiver of the right to appeal the sentence on the ground that the sentencing guidelines are in any respect unconstitutional, or on the grounds that any fact found by the Court at sentencing was not alleged in the indictment, admitted by the Defendant, found by a jury, or found beyond a reasonable doubt. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. The defendant understands that, although the defendant will be sentenced in conformity with the Sentencing

Guidelines, by this agreement the defendant waives the right to appeal the sentence on the basis that the sentence is the result of an incorrect application of the Sentencing Guidelines.

16. This Agreement does not resolve any civil liability of the defendant for tax, interest, and penalties relating to income from the offense of conviction or any other source. The defendant acknowledges that as part of the complete cooperation promised by him in this Agreement, he is obligated to give complete cooperation to Federal, state, and local tax authorities in the determination of his taxable income and determination and payment of any applicable tax, interest, and penalties. The defendant agrees as part of his complete cooperation to file accurate tax returns for himself, amending returns if necessary, by April 30, 2005. Additionally, the defendant agrees, as part of his complete cooperation, that he will cooperate fully with the Internal Revenue Service as follows:

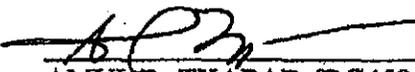
a. Defendant agrees to pay restitution of the tax due and owing, together with any interest and penalties finally determined to the Department of Treasury, Internal Revenue Service.

The defendant agrees to pay all Federal, state and local taxes due and owing for tax years 2000, 2001, and 2002. The defendant agrees, as a term of his supervised release, to make all reasonable efforts to pay the tax liability due and owing to the Internal Revenue Service as a result of the offenses to which he is pleading guilty, including any relevant conduct amounts. Such payments will be completed within the period of his supervised release. In the event the defendant is unable to completely pay the tax liability prior to termination of the supervised release period, he agrees to make regular monthly payments toward such liability in an amount to be determined by the Court at sentencing. Such amount will be set in accordance with the defendant's financial ability.

- b. Defendant agrees to provide the IRS Examination Division, prior to sentencing, with all requested documents and information for the purpose of a civil audit.
- c. Defendant agrees that subparagraphs a and b are appropriate conditions of supervised release.
- d. Defendant agrees that he will make no objection to the entry of an order under Fed.R.Crim.P. 6(e)(3) permitting the IRS Criminal Investigation Division to disclose to the IRS Examination Collection Divisions (for purposes of a civil audit) all of the documents obtained, and the IRS reports produced, during the criminal investigation, whether or not such documents or reports are considered to be grand jury material within the meaning of Rule 6(e)(3).
- e. Nothing in this agreement shall limit the Internal Revenue Service in its collection of any taxes, penalties or interest due from the defendant.

17. This written Agreement embodies all of the agreements and understandings between the United States Attorney for the Southern District of Ohio and the defendant. No conversations, discussions, understandings, or other documents extraneous to the Agreement shall be considered part of this Agreement.

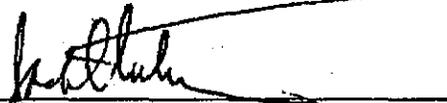
GREGORY G. LOCKHART
United States Attorney


AMUL R. THAPAR (DC459489)
Assistant United States Attorney
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
(513) 684-3711

1/11/05
DATE


DONALD POWERS
Defendant

October 26, 2004
DATE


JACK RUBENSTEIN
Attorney for the Defendant
7 West Seventh Street
Suite 1850
Cincinnati, Ohio 45202

10-26-04
DATE

STATEMENT OF FACTS

UNITED STATES v. DONALD POWERS

Between on or about January 1, 2000, and on or about July 22, 2003, Donald Powers aided others in a scheme to defraud various federally insured financial institutions by, among other things, knowingly submitting false Housing and Urban Development forms to those financial institutions in support of a loan application. The scheme involves the "flipping" of low-value homes located in the greater Cincinnati, Ohio, area.

A brief summary of the scheme is as follows: (1) a person would purchase a piece of real estate at a low value, e.g., \$20,000; (2) he/she, or someone else involved in the scheme, would then recruit a buyer for that property, usually someone that could not afford to otherwise purchase real estate, or an individual interested in properties as an investor; (3) after finding the buyer, one of the co-conspirators would create false documents, including pay stubs, W-2 forms, bank statements, and employment verifications; (4) the co-conspirators would then obtain a falsely inflated appraisal for the subject property; and (5) the co-conspirators would then submit the false loan package to the bank or lender for that same property in order to obtain a highly inflated loan, e.g. \$85,000 (for the property that was usually sold only months before for \$20,000).

Mr. Powers furthered this scheme by serving as the owner of a Title Company that closed many of these loans. Mr. Powers also served as the seller of several "flipped" properties. Mr. Powers purchased properties at market value, or allowed the properties to be purchased and placed in his name, and then sold them at artificially inflated values. During these transactions, he was aware that fictitious and/or fraudulent appraisals were submitted to the financial institutions in furtherance of this scheme. In addition, during several of the closings, Mr. Powers signed various forms

containing false information, including a Department of Housing and Urban Development Form known as a HUD-1 Settlement Statement. That form usually indicated that the buyer brought the down payment to closing. Mr. Powers knew that the buyer did not bring the down payment, but rather someone else involved in the scheme brought the down payment. Moreover, Mr. Powers was aware that the buyer often received a "kickback" outside of the closing, which was not disclosed to the lender. Thus, Mr. Powers aided others in a scheme to defraud financial institutions.

In furtherance of this conspiracy, on or about September 5, 2001, Donald Powers purchased the property located at 1794 Carl Street in Cincinnati, Ohio, for \$37,000. On December 11, 2001, Mr. Powers sold the property to Patrick Goedde for \$78,000. According to the HUD-1 Settlement Statement, Mr. Goedde brought a down payment of \$11,659.67 to the closing. In reality, Mr. Goedde did not provide the funds used to make the down payment on this property. Mr. Powers signed the HUD-1 as the seller of the property knowing the document was false. The loan packages were submitted to First Union Mortgage Corporation, which at the time was a division of First Union Bank, whose deposits were insured by the Federal Deposit Insurance Corporation (First Union Bank has since merged with Wachovia Corporation, whose deposits are also federally insured). Mr. Powers' actions were committed in furtherance of a scheme to defraud First Union.

Also in furtherance of this conspiracy, on or about November 6, 2001, Donald Powers purchased the property located at 2283 Loth in Cincinnati, Ohio for \$6,000. On May 17, 2002, Mr. Powers sold the property to William Graham for \$110,000. According to the HUD-1 Settlement Statement, Mr. Graham brought a down payment of \$11,808.46 to the closing. In reality, Mr. Graham did not provide the funds used to make the down payment on this property. Mr. Powers signed the HUD-1 as the seller of the property knowing the document was false. The loan package

was submitted to ABN Amro whose deposits were then insured by the Federal Deposit Insurance Corporation. Mr. Powers' actions were committed in furtherance of a scheme to defraud ABN Amro.

The United States and Mr. Powers agree that, as a result of his fraud, he caused an actual and/or intended loss to various financial and lending institutions of \$3,492,217.59.

In addition, Mr. Powers willfully filed false individual income tax returns with the Internal Revenue Service for the years 2001 and 2002. During these years, Mr. Powers received payoffs from the fraudulent loan proceeds and from others involved in the scheme. Mr. Powers failed to provide his return preparer with complete and accurate information regarding all of the payments he received. As a result, Mr. Powers failed to report a substantial amount of income on his individual tax returns, thereby causing his taxable income to be understated by \$38,657 in 2001 and \$53,094 in 2002. Thus, Mr. Powers willfully understated his tax liability in the aggregate amount of \$34,217 for the years 2001 and 2002.

All of the aforementioned conduct occurred in the Southern District of Ohio.

I have reviewed the above statement of facts with my attorney. I agree to the accuracy of the statement of facts and acknowledge the truth of the statement of facts as detailed above.


DONALD POWERS

October 26, 2004
DATE

United States District Court
Southern District of Ohio at Cincinnati



UNITED STATES OF AMERICA
v.
DONALD M. POWERS, JR.

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:05cr11

USM Number: 04113-061

Jack Rubenstein
Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s): 1 and 2.
- pleaded nolo contendere to counts(s) ___ which was accepted by the court.
- was found guilty on count(s) ___ after a plea of not guilty.

The defendant is adjudicated guilty of these offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC 1014	Making a material false statement in a loan application	09/2001	1
26 USC 7206(1)	Filing a false Income Tax Return	10/2003	2

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on counts(s) ___ and is discharged as to such count(s).
- Count(s) ___ (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and the United States Attorney of material changes in the defendant's economic circumstances.

October 24, 2005

Date of Imposition of Judgment

Susan J. Dlott
Signature of Judicial Officer

SUSAN J. DLOTT, United States District Judge
Name & Title of Judicial Officer

October 31, 2005
Date

I certify that this is a true and correct copy of the original filed in my Office on 10-31-2005.

JAMES BONINI, CLERK

BY: *Mercedis Payne*
Deputy Clerk

DATE: 2-21-2007

AO 245B (Rev. 12/03) Sheet 2 - Imprisonment

CASE NUMBER: 1:05cr11
DEFENDANT: DONALD M. POWERS, JR.

Judgment - Page 2 of 5

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 38 Months on Count 1 and 36 Months on Count 2, to be served concurrently.

The defendant shall participate in the Bureau of Prison's Inmate Financial Responsibility Program. The defendant shall participate in the Bureau of Prison's Residential Substance Abuse Treatment Program.

The court makes the following recommendations to the Bureau of Prisons:
That the defendant be placed at Morgantown FCI or the closest appropriate facility with the Residential Substance Abuse Treatment Program to Cincinnati, Ohio.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district.

at ___ on ___.

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2:00 p.m. on January 9, 2006.

as notified by the United States Marshal but no sooner than

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

CASE NUMBER: 1:05cr11
 DEFENDANT: DONALD M. POWERS, JR.

Judgment - Page 3 of 5

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 Years on Count 1 and 3 Years on Count 2, to be served concurrently.

He must undergo mental health and substance abuse assessments and comply with any recommended treatment. The defendant shall not be permitted to open any new lines of credit or make purchases on existing lines of credit without permission from his probation officer. He must disclose all financial information requested by his probation officer. The defendant shall serve 800 hours community service. Wherever possible, community service should be for a charity that serves the neighborhoods affected by this scheme and that is dedicated to restoring property values, promoting better housing conditions, or expanding home ownership, such as Habitat for Humanity. Specific assignments will be at the discretion of the probation office, after conferring with the Court. Pursuant to the Court's authority under 18 U.S.C. § 3583(d), the Court orders that the defendant be barred from working in real estate lending or sales for the entire term of the defendant's supervised release. The Court further orders that, if the defendant has a real estate license in any state, notice of the defendant's conviction and sentence be reported to that state's real estate licensing agency.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependants and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 200.00	\$ 150,000.00	\$ 1,643,883.00

The determination of restitution is deferred until January 20, 2005 at 11:00 a.m. An amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment unless specified otherwise in the priority order of percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>*Total Loss</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Internal Revenue Service	34,217.00	34,217.00	
Trustcorp Mortgage	1,609,666.00	1,609,666.00	
TOTALS:	\$ 1,643,883.00	\$ 1,643,883.00	

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2500, unless the restitution or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

The interest requirement is waived for the fine restitution.

The interest requirement for the fine restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A Lump sum payment of \$ due immediately, balance due
 not later than or
 in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C D, or F below); or
- C Payment in equal installments of \$ over a period of , to commence days after the date of this judgment; or
- D Payment in equal installments of \$ over a period of , to commence days after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The Court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
- If the defendant, while incarcerated, is working in a non-UNICOR or grade 5 UNICOR job, the defendant shall pay \$25.00 per quarter toward defendant's restitution obligation. If working in a grade 1-4 UNICOR job, defendant shall pay 50% of defendant's monthly pay toward defendant's restitution obligation. Any change in this schedule shall be made only by order of this Court.
- After the defendant is release from imprisonment, and within 30 days of the commencement of the term of supervised release, the probation officer shall recommend a revised payment schedule to the Court to satisfy any unpaid balance of the restitution. The Court will enter an order establishing a schedule of payments.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several (Defendant name, Case Number, Total Amount, Joint and Several Amount and corresponding payee):

to be determined at the hearing on January 20, 2005

- The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment; (2) restitution principal; (3) restitution interest; (4) fine principal; (5) community restitution; (6) fine interest; (7) penalties; and (8) costs, including cost of prosecution and court costs.