



U.S. Department of Justice

ORIGINAL

*United States Attorney  
Southern District of New York*

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*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

March 16, 2009

Laura Gavioli, Esq.  
Sonnenschein Nath & Rosenthal, LLP  
2000 McKinney Avenue  
Suite 1900  
Dallas, Texas 75201-1858

**Re: Adrian Dicker**

Dear Ms. Gavioli:

This prosecution and the protection against prosecution set forth below have been approved by the Tax Division, Department of Justice.

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Adrian Dicker ("the defendant") to a two-count criminal information charging him with violations of Title 18, United States Code, Section 371 (Count One), and Title 26, United States Code, Section 7201 (Count Two). Count One charges the defendant based on his involvement, between in or about 1998 and 2003, in a conspiracy to defraud the United States, commit tax evasion, aid and assist the preparation of false and fraudulent income tax returns, and obstruct and impede the due administration of the internal revenue laws, all in connection with the design, marketing, and implementation of tax shelter transactions while acting as a partner of BDO Seidman LLP. Count Two charges the defendant with tax evasion with respect to the tax liabilities of a client of BDO Seidman LLP who engaged in, during the 1999 tax year, a tax shelter transaction marketed and implemented by BDO and others. Count One carries a maximum sentence of 5 years' imprisonment, a maximum term of 3 years' supervised release, a maximum fine under 18 U.S.C. § 3571(d) of the greatest of \$250,000, or twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to the United States, and a mandatory \$100 special assessment. In addition, the Court must enter an order of restitution pursuant to Title 18, United States Code, Sections 3663, 3663A, and 3664, as a result of pecuniary losses to the United States, in the form of any unpaid taxes and interest, stemming from the conspiracy offense charged in Count One. Count Two carries a maximum sentence of 5 years' imprisonment, a maximum term of 3 years' supervised release, a maximum fine under 18 U.S.C. § 3571(d) of the greatest of \$250,000, or twice the gross pecuniary gain derived from the offense, or

twice the gross pecuniary loss to the United States, a mandatory \$100 special assessment, and costs of prosecution. The defendant also stipulates and agrees that, pursuant to Title 18, United States Code, Section 3663(a)(3), the sentencing Court may impose an order of restitution as a result of pecuniary losses to the United States, in the form of any unpaid taxes and interest, stemming from the tax evasion offense charged in Count Two.

The defendant agrees to, and hereby does, waive any statute of limitations challenge with respect to Count Two of the Information, which charges him with aiding, assisting, and causing a BDO Seidman client to commit tax evasion for the 1999 tax year.

It is understood that Adrian Dicker (a) shall truthfully and completely disclose all information with respect to the activities of himself and others concerning all matters about which this Office inquires of him, which information can be used for any purpose; (b) shall cooperate fully with this Office, the IRS, and any other law enforcement agency designated by this Office; (c) shall attend all meetings at which this Office requests his presence; (d) shall provide to this Office, upon request, any document, record, or other tangible evidence relating to matters about which this Office or any designated law enforcement agency inquires of him; (e) shall truthfully testify before the grand jury and at any trial and other court proceeding with respect to any matters about which this Office may request his testimony; (f) shall bring to this Office's attention all crimes that he has committed, and all administrative, civil, or criminal proceedings, investigations, or prosecutions in which he has been or is a subject, target, party, or witness; and, (g) shall commit no further crimes whatsoever. Moreover, any assistance Adrian Dicker may provide to federal criminal investigators shall be pursuant to the specific instructions and control of this Office and designated investigators.

If Adrian Dicker complies fully with the understandings specified in this Agreement, he will not be further prosecuted criminally by this Office, and, with respect to tax offenses, the Tax Division, Department of Justice, for any crimes related to his participation in a conspiracy to defraud the United States, commit tax evasion, aid and assist the preparation of false and fraudulent income tax returns, and obstruct and impede the due administration of the internal revenue laws, all in connection with the design, marketing, and implementation of tax shelter transactions while acting as a partner and director of BDO Seidman LLP, including substantive offenses stemming from the aforementioned conspiracy, to the extent that he has disclosed such participation to this Office as of the date of this Agreement. In addition, the defendant will not be prosecuted for claiming tax shelter losses or results on his own U.S. Individual Income Tax Returns for the tax years 2000, 2001, and 2004. This Agreement does not provide any protection against prosecution for any crimes except as set forth above.

It is understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office and, to the extent set forth above, the Tax Division, Department of Justice. This Office will, however, bring the cooperation of Adrian Dicker to the attention of other prosecuting offices, if requested by him.

It is understood that the sentence to be imposed upon Adrian Dicker is within the sole discretion of the Court. This Office cannot, and does not, make any promise or representation as to what sentence Adrian Dicker will receive, and will not recommend any specific sentence to the Court. However, this Office will inform the Probation Department and the Court of (a) this Agreement; (b) the nature and extent of Adrian Dicker's activities with respect to this case and all other activities of Adrian Dicker that this Office deems relevant to sentencing; and (c) the nature and extent of Adrian Dicker's cooperation with this Office. In so doing, this Office may use any information it deems relevant, including information provided by Adrian Dicker both prior to and subsequent to the signing of this Agreement. In addition, if this Office determines that Adrian Dicker has provided substantial assistance in an investigation or prosecution, and if he has fully complied with the understandings specified in this Agreement, this Office will file a motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, requesting the Court to sentence Adrian Dicker in light of the factors set forth in Section 5K1.1(a)(1)-(5). It is understood that, even if such a motion is filed, the sentence to be imposed on Adrian Dicker remains within the sole discretion of the Court. Moreover, nothing in this Agreement limits this Office's right to present any facts and make any arguments relevant to sentencing to the Probation Department and the Court, or to take any position on post-sentencing motions. Adrian Dicker hereby consents to such adjournments of his sentence as may be requested by this Office.

It is understood that, should this Office determine that Adrian Dicker has not provided substantial assistance in an investigation or prosecution, or has violated any provision of this Agreement, such a determination will release this Office from any obligation to file a motion pursuant to Section 5K1.1 of the Sentencing Guidelines, but will not entitle Adrian Dicker to withdraw his guilty plea once it has been entered.

It is understood that, should this Office determine, subsequent to the filing of a motion pursuant to Section 5K1.1 of the Sentencing Guidelines and/or 18 U.S.C. § 3553(e), that Adrian Dicker has violated any provision of this Agreement, this office shall have the right to withdraw such motion.

It is understood that, should Adrian Dicker commit any further crimes or should it be determined that he has given false, incomplete, or misleading testimony or information, or should he otherwise violate any provision of this Agreement, Adrian Dicker shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against Adrian Dicker, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is understood that in the event that it is determined that Adrian Dicker has committed any further crimes, given false, incomplete, or misleading testimony or information, or otherwise violated

any provision of this Agreement, (a) all statements made by Adrian Dicker to this Office or other designated law enforcement agents, and any testimony given by Adrian Dicker before a grand jury or other tribunal, whether prior to or subsequent to the signing of this Agreement, and any leads from such statements or testimony shall be admissible in evidence in any criminal proceeding brought against Adrian Dicker; and (b) Adrian Dicker shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

This Agreement supersedes any prior understandings, promises, or conditions between this Office, the Tax Division, Department of Justice, and Adrian Dicker. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

LEV L. DASSIN  
Acting United States Attorney

By: Stanley J. Okula, Jr.  
Stanley J. Okula, Jr./Nanette L. Davis  
Assistant United States Attorneys  
(212) 637-1585/(212) 637-1117

APPROVED:

Shirah Neiman  
Shirah Neiman  
Chief Counsel to the U.S. Attorney

AGREED AND CONSENTED TO:

Adrian Dicker  
Adrian Dicker

3/16/09  
DATE

APPROVED:

Laura Gavioli, Esq.  
Laura Gavioli, Esq.  
Attorney for Adrian Dicker

3-16-09  
DATE