

CH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

<p>United States of America,</p> <p>v.</p> <p>Beny Garneata,</p> <p>Defendant.</p>	<p>MAY 14 2009 MAY 14 2009 JUDGE JOAN H. LEFKOW UNITED STATES DISTRICT COURT</p> <p>No. 08 CR 398</p> <p>Judge Joan Lefkow</p> <p>Magistrate Judge Marvin C. Ashman</p>
--	---

PLEA DECLARATION

The defendant, BENY GARNEATA, after extensive consultation with his attorney, SEAN BERKOWITZ, acknowledges and states the following:

GOVERNMENT'S ALLEGATIONS

1. Mr. Garneata has been charged by indictment with participating in a conspiracy to pay certain sums of money to City of Chicago Inspector defendant Mario Olivella with the intent to influence and reward defendant Olivella in connection with any business, transaction, and series of transactions of the City of Chicago involving things of value of \$5,000 or more, involving the City of Chicago, a local government that received in excess of \$10,000 in federal funding in a twelve month period from June 1, 2007, through May 31, 2008, in violation of Title 18, United States Code, Section 666(1), all in violation of Title 18, United States Code, Section 371 (Count Two).

Mr. Garneata has also been charged with corruptly giving, offering and agreeing to give money to defendant Olivella, an agent of the City of Chicago, with intent to influence and reward agents of the City of Chicago, in connection with any business, transaction, and series of transactions involving things of value of \$5,000 or more, that is, a favorable plumbing inspection on the Granville property, involving the City of Chicago, a local government that received in

excess of \$10,000 in federal funding in a twelve month period from June 1, 2007, through May 31, 2008, in violation of Title 18, United States Code, Sections 666(a)(2) and 2 (Count Five).

2. Mr. Garneata has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

3. Mr. Garneata fully understands the nature and elements of the crimes with which he has been charged.

4. At this time, Mr. Garneata will enter a voluntary plea of guilty to Counts Two and Five of the indictment.

FACTUAL BASIS

5. Mr. Garneata is pleading guilty because he is in fact guilty of the charges in Counts Two and Five of the indictment. In pleading guilty, Mr. Garneata admits the following facts and that those facts establish his guilt beyond a reasonable doubt. The following is not an exhaustive recitation of every fact that Mr. Garneata knows and that relates to this situation but rather provides sufficient facts to form a basis for Mr. Garneata's plea of guilty.

A. Bribery Case – 08 CR 398

In the late fall of 2007, Mr. Garneata received a telephone call from defendant Vasile Fofiu. Mr. Fofiu informed Mr. Garneata that his friends, defendants Dumitru Curescu and Lavinia Curescu, needed a new plumber to perform work at 1637-1639 West Granville, Chicago ("the Granville property"). Mr. Garneata was told that a new plumber was needed because the Granville property had previously failed a City of Chicago plumbing inspection. Mr. Garneata agreed that his company, M3 Plumbing, could perform any remediation work.

On December 14, 2007, Mr. Garneata called defendant Olivella, a City of Chicago plumbing inspector. Mr. Olivella told Mr. Garneata that whatever plumbing was installed at the Granville property needed to be removed. Mr. Garneata expressed his mistaken

belief that concrete had been poured over the pipes¹ and told Mr. Olivella that they would speak after the weekend. On December 19, 2007, Mr. Garneata told Mr. Olivella that City Plumbing Inspector Pat Haran had been at the Granville Property. Mr. Garneata and Mr. Olivella agreed to meet at the Granville property the following day. On December 20, 2007, Mr. Olivella met with Mr. Garneata and others at the Granville property. Mr. Olivella told Mr. Garneata what changes to the plumbing M3 Plumbing needed to perform to bring the plumbing up to code. In exchange, Mr. Garneata agreed, consistent with prior dealings between Mr. Garneata and Mr. Olivella, to provide Mr. Olivella with an unidentified sum of money in the future. Mr. Olivella then filled out the Granville Building Permit and noted, "met with owner and new plumbing contractor M3. Agreed to remove [pipes] underground, north end, and reinstall." At no time did Mr. Olivella "approve" the plumbing. That same day, Mr. Garneata called Mr. Fofiu to tell him that "it will cost him \$7000; that's how much 'he' wants." Mr. Garneata was conveying to Mr. Fofiu that Mr. Olivella wanted \$7000 for the inspection and that Mr. Fofiu should tell Mr. Curescu that amount. Mr. Garneata was not being entirely truthful in this conversation.

Thereafter, plumbers from M3 Plumbing performed considerable work at the Granville property, removing the pipes identified by Mr. Olivella as deficient, and reinstalling the pipes consistent with City of Chicago building code. On December 21, 2007, Mr. Garneata met with defendant Vasile and Vasile gave him \$7000 in cash, which Mr. Garneata understood to be from defendant Curescu, consistent with the earlier telephone call. Also on December 21, 2007, Mr. Garneata met with Mr. Olivella and provided him \$1000 for Mr. Olivella's prompt attention to Mr. Garneata after Mr. Garneata called Mr. Olivella inquiring as to the plumbing issues at the Granville property. Further, Mr. Garneata paid Mr. Olivella \$1000 for his assistance in visiting the Granville property, identifying the deficiencies in the plumbing, and

¹ In fact, concrete was poured over the pipes *after* M3 performed its plumbing services between January 7, 2008 and January 14, 2008.

arranging for a post-remedial work inspection.

On December 28, 2007, City Plumbing Inspector A traveled to the Granville property and inspected the plumbing work done by M3 Plumbing. City Plumbing Inspector A, someone who has not been charged with any crime, wrote on the Granville permit, "underground OK" and signed his initials. Thus, City Plumbing Inspector A "approved" the plumbing.

Mr. Garneata acknowledges that the government could prove that Olivella is an agent of the City of Chicago based upon his position as a City of Chicago Plumbing Inspector. Mr. Garneata also acknowledges that the City of Chicago website reflects that it is a local government that receives more than \$10,000 of Federal money on an annual basis and further that the government could prove the same beyond a reasonable doubt at trial. Mr. Garneata further admits that Mr. Olivella accepted something of value from Mr. Garneata (\$1000) so that Mr. Garneata would (at the Granville property) and could continue to receive favorable treatment by the City of Chicago plumbing inspectors. Mr. Garneata acknowledges that the value of the transactions related to his payment to Mr. Olivella exceeded \$5,000 in that the renovations at the Granville Property that were completed by Mr. Garneata's company alone exceeded \$20,000 in value.

B. Labor Case – 08 CR 1064

Mr. Garneata further admits the following stipulated conduct, pursuant to Guideline § 1B1.2(c), charged by indictment in case 08 CR 1064, pending in front of Judge Lindberg.

COUNT ONE: Mr. Garneata was the president and owner of M3 Plumbing, Inc. ("M3"). Mr. Garneata, on behalf of M3, entered into and agreed to be bound by certain collective bargaining agreements with the Chicago Journeymen Plumbers' Union Local 130 ("Local 130"). Mr. Garneata admits that as a part of his agreement with Local 130, M3 was

required to pay particular amounts in employer contributions to the employee benefit plans each month on behalf of the employees covered by the collective bargaining agreement with Local 130. Mr. Garneata also prepared a monthly remittance report to the employee benefit plans identifying each individual employee, the number of hours worked by each employee, and the amount owed to the employee benefit plans in employer contributions for each employee based on the number of hours worked. Mr. Garneata signed the monthly remittance reports, certifying that the information was accurate, and submitted the monthly remittance reports to Local 130.

Beginning in January 2007 and through April 2008, Mr. Garneata knowingly and intentionally under-reported the amount of hours worked by M3 employees and accordingly under paid contributions owed to the employee benefit plans. In order to do so, Mr. Garneata instructed one of his employees to pay a portion of a particular employee's hours in cash and a portion by M3 payroll check. Mr. Garneata also paid M3 employees in cash for overtime, weekend and regular hours worked and failed to report these hours to the employee benefit plans. Because of Mr. Garneata's actions, Mr. Garneata paid the employee benefit plans an employer contribution based on a false number of employee hours worked. Mr. Garneata's actions caused a loss to the employee benefit plans of Local 130, a welfare benefit plan or employee pension benefit plan, subject to Title I of ERISA, in violation of 18 U.S.C. § 664.

COUNT TWO: Mr. Garneata was the president and owner of M5 Electrical Contractors, Inc. ("M5"). Mr. Garneata, on behalf of M5, entered into and agreed to be bound by certain collective bargaining agreements with the International Brotherhood of Electrical Workers Union Local 134 ("Local 134"). Mr. Garneata admits that as a part of his agreement with Local 134, M5 was required to pay particular amounts in employer contributions to the employee benefit plans each month on behalf of the employees covered by the collective bargaining agreement with Local 134. Mr. Garneata also prepared a monthly remittance report

to the employee benefit plans identifying each individual employee, the number of hours worked by each employee, and the amount owed to the employee benefit plans in employer contributions for each employee based on the number of hours worked. Mr. Garneata signed the monthly remittance reports, certifying that the information was accurate, and submitted the monthly remittance reports to Local 134.

Beginning in January 2004 and through April 2008, Mr. Garneata knowingly and intentionally under-reported the amount of hours worked by M5 employees and accordingly under paid contributions owed to the employee benefit plans. In order to do so, Mr. Garneata instructed one of his employees to pay a portion of a particular employee's hours in cash and a portion by M5 payroll check. Mr. Garneata also paid M5 employees in cash for overtime, weekend and regular hours worked and failed to report these hours to the employee benefit plans. Because of Mr. Garneata's actions, Mr. Garneata paid the employee benefit plans an employer contribution based on a false number of employee hours worked. Mr. Garneata's actions caused a loss to the employee benefit plans of Local 134, a welfare benefit plan or employee pension benefit plan, subject to Title I of ERISA, in violation of 18 U.S.C. § 664.

COUNTS THREE – SIX:

Mr. Garneata also admits that on about the following dates, he made false statements and representations of fact, knowing them to be false, by submitting to the Chicago Journeymen Plumbers' Union Local 130's employee benefit plans and to the International Brotherhood of Electrical Workers Local 134's employee benefit plans, monthly remittance reports for the months of June 2007, September 2007, and December 2005, which reports Mr. Garneata knew falsely reported the number of hours worked by his employees and which he knew falsely reported the amounts of money due and owing to Local 130 and Local 134, in violation of Title 18, United States Code, Section 1027.

POTENTIAL PENALTIES

6. Mr. Garneata understands that Count Two of the Indictment carries a maximum term of incarceration of five years and a maximum fine of up to \$250,000, along with a term of supervised release of not more than three years. Mr. Garneata also understands that Count Five of the Indictment carries a maximum term of incarceration of ten years and a maximum fine of up to \$250,000, along with a term of supervised release of not more than three years.

7. Mr. Garneata understands that consistent with federal law, 18 U.S.C. § 3013, upon entry of judgment of conviction, he will be assessed \$100 on each count to which he has pled guilty for a total of \$200, in addition to any other penalty imposed.

APPLICABILITY OF THE SENTENCING GUIDELINES

8. Mr. Garneata understand that the advisory guidelines promulgated by the United States Sentencing Commission pursuant to 28 U.S.C. § 994 will apply to his case in conjunction with any applicable mandatory minimums.

9. Mr. Garneata reserves the right to request a downward departure or variance on any grounds he deems appropriate. Mr. Garneata understands that any decision to depart or vary from the applicable guidelines lies solely within the discretion of the Court.

PRELIMINARY NATURE OF CALCULATIONS

10. Mr. Garneata and his attorney acknowledge that any guideline calculations he may have made at this point are preliminary in nature and based on facts known to him and his attorney at the time of this Plea Declaration. Mr. Garneata understands that the probation office and the government will conduct their own investigations and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculations.

TRIAL RIGHTS

11. Mr. Garneata understands that by pleading guilty he surrenders certain rights, including the following:

a. If the defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial

by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government and the judge all must agree that the trial be conducted by the judge without a jury.

b. If the trial is a jury trial, the jury would be comprised of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where action bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict him unless, after hearing all of the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt, and that it was to consider each count of the indictment separately.

c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence and considering each count separately, whether or not she was persuaded of defendant's guilt beyond a reasonable doubt.

d. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. He would be under no obligation to do so, however, because he is presumed to be innocent and thus need not prove his innocence. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

e. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

12. Mr. Garneata understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Mr. Garneata's attorney has explained those rights to him, and the consequences of his waiver of those rights. Mr. Garneata further understands that he is waiving all appellate issues that might have been available if he had exercised his right to trial, and only

may appeal the validity of this plea of guilty or the sentence.

LIMITATIONS AND CONSEQUENCES OF THIS PLEA DECLARATION

13. Mr. Garneata understands that the United States Attorney's Office will inform the District Court and the United States Probation Office of the nature, scope and extent of his conduct regarding the charges against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing. Mr. Garneata further understands that he will be able to present evidence in mitigation for sentencing.

14. Mr. Garneata understands that at the time of sentencing, the government and the defendant will be free to make their respective recommendations to the Court as they believe appropriate.

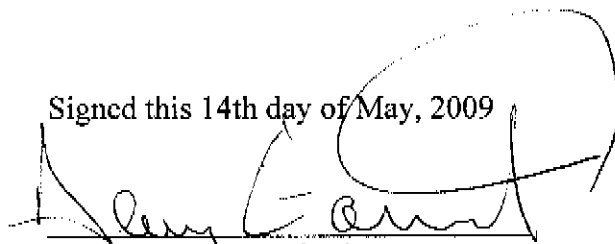
15. Mr. Garneata understands that the sentencing guidelines are no longer mandatory, and that this Court's decision as to what sentence constitutes a sentence "sufficient, but not greater than necessary" to comply with the purposes set forth in 18 U.S.C. § 3553(a) may result in a sentence either within, greater, or less than the applicable sentencing guideline range. Mr. Garneata understands that the applicable sentencing guideline range is one factor which this Court is required to take into consideration under 18 U.S.C. § 3553(a)(4), along with the other required factors under § 3553(a).

16. Should this Court refuse to accept Mr. Garneata's plea of guilty, this Plea Declaration shall become null and void and Mr. Garneata will not be bound thereto. It is Mr. Garneata's position that, should the Court decline to accept his plea, this Plea Declaration and the ensuing court proceedings are inadmissible in later court proceedings pursuant to Federal Rule of Evidence 410.

17. Mr. Garneata agrees that this Plea Declaration shall be filed and become part of the record of this case.

18. Mr. Garneata and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, to induce him to plead guilty. Mr. Garneata further acknowledges that he has read this Plea Declaration and carefully reviewed each provision with his attorney.

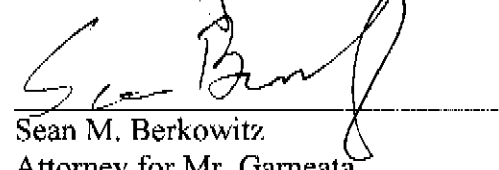
Signed this 14th day of May, 2009



Beny Garneata, Defendant

LATHAM AND WATKINS, LLP

By:



Sean M. Berkowitz
Attorney for Mr. Garneata

Sean M. Berkowitz
Deborah L. Steiner
233 South Wacker Drive
Sears Tower
Suite 5800
Chicago, Illinois 60606
Counsel for Beny Garneata