

RECEIVED

04 DEC 22 PM 3:04

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
SOUTHERN DISTRICT OF IA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal No. 4:04-CR-306
)	
v.)	
)	<u>INFORMATION</u>
AMANDA KEMMER,)	T. 29, U.S.C. § 501(c)
)	
Defendant.)	

THE UNITED STATES ATTORNEY CHARGES:

COUNT 1

Between on or about January 1, 2000, through in or about April, 2004, in the Southern District of Iowa, the defendant, AMANDA KEMMER, while an employee of Bricklayer's AFL-CIO Local 3, a labor organization engaged in an industry affecting commerce, did embezzle, steal, and unlawfully and willfully abstract and convert to her own use and the use of another, the moneys, funds, securities, property and other assets of Local 3, in an approximate amount of \$209,383.67.

This is a violation of Title 29, United States Code, Section 501(c)

Matthew G. Whitaker
United States Attorney

By: Mary C. Luxa
Mary C. Luxa
Assistant United States Attorney

RECEIVED

04 DEC 22 PM 3:04

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal No. 4:04-CR-306
)	
v.)	
)	PLEA AGREEMENT
AMANDA KEMMER,)	
)	
Defendant.)	

IT IS HEREBY AGREED by and between the United States of America, the Defendant, Amanda Kemmer, and the respective counsel, as follows:

A. CHARGES

1. **Subject Offense.** Defendant will waive Indictment and plead guilty to a one-count Information charging her with embezzlement from a labor union, a violation of Title 29, United States Code, Section 501(c).

2. **No Further Prosecution.** The Government agrees that the Defendant will not be charged in the Southern District of Iowa with any other federal criminal offense under Titles 18 or 29, United States Code, arising from or directly relating to this investigation, except for any crimes of violence. This paragraph and this plea agreement do not apply to any offense committed or completed after the date of this agreement.

B. CONSEQUENCES OF PLEA

3. **Statutory Penalties.** Count 1 is punishable by a maximum term of imprisonment of not more than five (5) years, and a fine of not more than \$250,000.00, or both. A special assessment of \$100 must be imposed by the sentencing court. The sentencing court must impose

a term of supervised release of between two (2) and three (3) years. If the Defendant violates any condition of supervised release following imprisonment, the Defendant may be returned to prison for all or a part of the term of supervised release.

C. SENTENCING CONSIDERATIONS

4. **Application of Sentencing Guidelines.** The Defendant understands that her sentence will be determined by the Federal Sentencing Guidelines. Defendant further understands that the Court may depart upwards from the guideline range, under certain limited circumstances, and if this occurs, Defendant will not be able to withdraw her plea of guilty. The Defendant further understands that the Court may depart downward from the guideline range, under certain limited circumstances.

5. **Sentencing Recommendation.** At time of sentencing, the Government will make no recommendation as to what sentence within the applicable range of the Federal Sentencing Guidelines ought to be imposed; however, the Government reserves its right to:

- (a) insure that the facts are correctly presented;
- (b) argue for a particular guideline computation; and
- (c) oppose departure below the applicable guideline range.

6. **Acceptance of Responsibility.** At time of sentencing, the Government will recommend to the Court that Defendant receive a two-level reduction for acceptance of responsibility pursuant to Federal Sentencing Guideline § 3E1.1(a). In addition to recommending the two-level reduction, the Government will move at sentencing that Defendant's offense level be reduced by one additional level pursuant to Federal Sentencing

Guideline 3E1.1(b), to reflect Defendant's prompt assistance to the authorities in the investigation and prosecution of her own misconduct. However, in the event that the Government is presented with information which indicates that Defendant has willfully obstructed or impeded proceedings as defined in Federal Sentencing Guideline § 3C1.1, the Government reserves the right to withdraw any recommendation that Defendant receive a three-level reduction for acceptance of responsibility and reserves the right to argue for a two-level increase for obstruction of justice pursuant to Federal Sentencing Guideline § 3C1.1.

7. **No Promises.** The Government makes no representations or promises as to the sentence to be imposed, as this is solely within the District Court's discretion. Although the parties may have discussed the possibilities of various factors impacting on the sentence and the possibility of a certain sentencing range, the parties agree that no discussion resulted in any express or implied promise or guarantee concerning the actual sentence to be imposed.

8. **No Right to Withdraw Plea.** The Defendant understands that she will have no right to withdraw her plea if the sentence imposed, or the application of the United States Sentencing Guidelines is other than that which the Defendant anticipated.

9. **Evidence at Sentencing.** The parties may make whatever comment and evidentiary offer they deem appropriate at the time of the guilty plea, sentencing, or any other proceeding related to this case, provided such offer or comment does not violate any other provision of this agreement. The parties are also free to provide all relevant information to the U.S. Probation Office for use in preparing a presentence report. The parties agree that either party may present evidence by way of telephone or deposition transcript, and to this extent Defendant agrees to

waive any right of face-to-face confrontation at the sentencing hearing.

10. **Restitution.** Defendant agrees to make restitution to the victim of her crime, Bricklayers Local 3, in the approximate amount of \$209,383.67. A plan of restitution shall be formulated with the United States Probation Office and shall be approved by the Court.

11. **Fines/ Costs.** Issues relating to fines and/or costs of incarceration are not dealt with in this agreement, and the parties are free to argue their respective positions at sentencing.

12. **Special Assessment.** The Defendant agrees to pay to the Government a special assessment of \$100.00 as required by Title 18, United States Code, § 3013. The Defendant agrees to make such payment (by cashiers check or money order payable to "Clerk, U.S. District Court") to the U.S. Clerk of Court within two weeks (14 days) of the execution of this agreement or by the time of the entry of guilty plea, whichever first occurs.

D. GENERAL MATTERS

13. **Voluntariness of Plea.** The Defendant acknowledges that she is entering into this Plea Agreement and is pleading guilty because she is guilty. The Defendant further acknowledges that she is entering into this agreement without reliance upon any discussions between the Government and the Defendant (other than those described in this Plea Agreement), without promise of benefit of any kind (other than those described in this Plea Agreement), and without threats, force, intimidation, or coercion of any kind. The Defendant further acknowledges that she understands the nature of the offense to which she is pleading guilty, including the penalties provided by law.

14. **Waiver of Rights.** In connection with the Defendant's plea of guilty pursuant to this agreement, the Defendant acknowledges that she has been informed of, and understands, the following:

- (A) the Government's right, in a prosecution for perjury or false statement, to use against the Defendant any statement that the Defendant gives under oath;
- (B) the right to plead not guilty, and to persist in that plea;
- (C) the right to a jury trial;
- (D) the right to be represented by counsel - and if necessary to have the Court appoint counsel - at trial and at every other stage of the proceedings;
- (E) the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; and
- (F) the Defendant will waive these trial rights if the Court accepts the Defendant's plea of guilty.

15. **Limited Scope of Agreement.** This agreement does not limit, in any way, the right or ability of the Government to investigate or prosecute Defendant for crimes occurring outside the scope of this agreement. Additionally, this agreement does not preclude the Government from pursuing any civil or administrative matters against the Defendant, including, but not limited to, civil tax matters and civil forfeiture which arise from, or are related to, the facts upon which this investigation is based. This Plea Agreement binds only the parties hereto. It does not bind any prosecuting authority other than the United States Attorney for the Southern District of

Iowa.

16. **Entire Agreement.** This Plea Agreement, and any attachments, constitute the entire agreement between the parties. No other promises of any kind, express or implied, have been made to the Defendant by the Government or by its agents.

17. **Factual Stipulations.** Attached hereto as Attachment "A", and incorporated by reference herein, are factual stipulations entered into between the parties, including the factual stipulations of the Defendant's offense conduct relating to the subject offense.

18. **Venue.** Defendant agrees that the offense conduct relating to the subject offense was committed, in whole or in part, in the Southern District of Iowa, and that the United States District Court for the Southern District of Iowa may exercise venue over this case.

19. **Public Interest.** The Government and the Defendant state that this Plea Agreement is in the public interest and takes into account the benefit to the public of a prompt and certain disposition of the case and furnishes adequate protection to the public interest, is in keeping with the gravity of the offense and the promotion of respect for the law.

20. Execution/Effective Date. This Plea Agreement does not become valid and binding until executed by each of the individuals below, or their designated representatives.

The undersigned hereby accept and agree to the terms and conditions set forth in this Plea Agreement.

11-21-04

Date

11-21-04

Date

Amanda Kemmer

Amanda Kemmer

Defendant

Matthew M. Boles

Matthew Boles

2910 Grand Avenue

Des Moines, Iowa 50312

Tel: (515) 284-5737

Fax: (515) 284-1704

Matthew G. Whitaker
United States Attorney

11-21-04

Date

By: Mary C. Luxa SPO

Mary C. Luxa

Assistant United States Attorney

U.S. Courthouse Annex, 2nd Floor

110 E. Court Avenue

Des Moines, Iowa 50309

Tel: (515) 284-6279

Fax: (515) 284-6281

Email: mary.luxa@usdoj.gov

STIPULATION OF FACTS

Attachment "A"

1. At all times material, Bricklayers Local 3 was a chartered subordinate of the Bricklayers International Union, AFL-CIO. Local 3 represents members who are employed as bricklayers in the construction industry throughout the state of Iowa. The employers of Local 3's members are engaged in interstate commerce, as defined by the Labor-Management Reporting and Disclosure Act. Local 3 currently represents approximately 800 members throughout the state of Iowa.
2. A substantial portion of Local 3's income is derived from working dues which are withheld from members' paychecks and transmitted directly along with their fringe benefit contributions by the employers to a "lockbox" which is controlled by Wells Fargo Bank. The bank in turn deposits the working dues check-off portion directly into Local 3's general fund checking account. Local 3 also receives money directly from members in the form of monthly dues, initiation fees, and miscellaneous receipts from the sale of union apparel. These additional receipts are also deposited into the local's general fund checking account.
3. In addition to the general fund checking account, Local 3 has a mortuary fund checking account, also at the Wells Fargo Bank. The mortuary fund checking account is designated to make death benefit payments for beneficiaries of deceased members.
4. The defendant, Amanda Kemmer, was employed as an office secretary/manager for Local 3 from June, 1997 through April, 2004.
5. As the office secretary/manager for Local 3, Kemmer had full responsibility for maintaining the local's financial records including check stubs, disbursement and receipt ledgers, monthly financial reports and payroll records. She was also responsible for collecting dues and other receipts, issuing duplicate receipts, and making deposits.
6. **Unauthorized Salary Payments - \$17,885.42**
 - a. Kemmer was responsible for preparing the payroll checks for the appropriate officer's signature.
 - b. Any salary or benefit increases for Kemmer were required to be approved by the local's management committee.
 - c. Between 2001 and 2004, Kemmer received \$17,885.42 in unauthorized and inflated salary payments.

d. Kemmer falsified her pay stub, which remained attached to her paycheck when signed by the local's officers. She did so by failing to include her hourly rate on the stubs, and falsified the amount of withholding to hide her unauthorized increase in salary.

7. Unauthorized Pension Contributions - \$2,576.44

a. Beginning in 1999, Kemmer was authorized to receive a monthly pension contribution paid on her behalf by the local into the international union's pension plan. Any pension contributions were to be based on Kemmer's authorized gross salary.

b. Kemmer caused \$2,576.44 in unauthorized pension contributions on her behalf by inflating her gross salary.

8. Checks Payable to Kemmer - \$174,714.31

a. Between January, 2000 and April, 2004, Kemmer wrote 54 unauthorized checks from the local's general fund, payable to herself, totaling \$167,789.31.

b. Between January, 2000 and April, 2004, Kemmer wrote unauthorized checks from the local's mortuary fund, payable to herself, totaling \$6,925.00.

c. Kemmer either changed the name of the payee after local officers signed the check, forged the officers' signatures, misused the Secretary-Treasurer's signature stamp, or used a bogus or non-existent officer as a co-signature.

9. Cash Receipts - \$14,207.50

a. Between January, 2002 through April, 2004, Kemmer embezzled \$14,207.50 in Local 3 cash receipts.

b. The local's Secretary-Treasurer and Apprenticeship Coordinator collected monthly dues, initiation fees and other miscellaneous receipts from members either at union meetings or in the field. All monies so collected were recorded on a handwritten duplicate receipt, noting whether the payment was by cash or check. These funds were then given to Kemmer, for deposit into the local's general fund.

c. A comparison between the duplicate receipts and the actual cash deposited revealed a shortage of \$14,207.50, which Kemmer took for her personal use.

d. Kemmer was not authorized or entitled to withhold these cash receipts.

10. Kemmer knowingly embezzled a total of \$209,383.67 in Local 3 funds.

I certify that the above-statements are true and correct.

11-21-04
Date

Amanda Kemmer
Amanda Kemmer
Defendant

11-21-04
Date

Matthew M. Boles
Matthew Boles
Attorney for Defendant

11-21-04
Date

Mary C. Luxa
Mary C. Luxa
Assistant United States Attorney