

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,)	CRIMINAL NO. 03-1591 MV
)	
Plaintiff,)	29 U.S.C. § 501(c):Unlawful Taking
)	of Union Assets
vs.)	
)	
ELIZABETH MARTIN,)	
)	
Defendant.)	

INFORMATION

The United States Attorney charges:

From on or about August, 1998, to on or about January, 2000, in the State and District of New Mexico, the defendant, **ELIZABETH MARTIN**, while employed by the New Mexico Building and Construction Trades Council, a labor organization as defined in 29 U.S.C. § 402, did knowingly, willfully, and unlawfully embezzle, steal, abstract, and convert to her own use and the use of another, moneys, funds, securities, property, and other assets of the above-named labor organization in the approximate amount of \$57,143.

In violation of 29 U.S.C. § 501(c).

DAVID C. IGLESIAS
United States Attorney

DEAN TUCKMAN
Assistant U.S. Attorney

COPY

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UNITED STATES OF AMERICA,)	
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Plaintiff,)	
)	
vs.)	CRIMINAL NO. 03-1591 MV
)	
ELIZABETH MARTIN,)	
)	
Defendant.)	

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties hereby notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the defendant, ELIZABETH MARTIN, and the defendant's counsel, Edmund J. Lang, Esq.:

REPRESENTATION BY COUNSEL

1. The defendant understands her right to be represented by an attorney and is so represented. The defendant has thoroughly reviewed all aspects of this case with her attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The defendant further understands her rights:
 - a. to be charged and prosecuted by indictment;
 - b. to plead not guilty;
 - c. to have a trial by jury;
 - d. to confront and cross-examine witnesses, to call witnesses in her defense, and to decide whether or not to testify in her own defense; and

- e. against compelled self-incrimination.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The defendant hereby agrees to waive these rights and to plead guilty to an Information charging a violation of 29 U.S.C. § 501(c), that being unlawful taking of union assets.

SENTENCING

4. The defendant understands that the maximum penalty the Court can impose is:
- a. imprisonment for a period of not more than five (5) years;
 - b. a fine not to exceed \$250,000;
 - c. a term of supervised release of not more than three (3) years. (If the defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the defendant's supervised release could be revoked--even on the last day of the term--and the defendant could then be returned to another period of incarceration and a new term of supervised release.);
 - d. a mandatory special penalty assessment of \$100.00; and
 - e. restitution as may be ordered by the Court and as discussed in paragraph 6.e. below.

5. Sentencing is pursuant to the Sentencing Reform Act of 1984, making the sentencing guidelines applicable. The defendant has reviewed the application of the guidelines with her attorney but understands that no one can predict with certainty what guideline range will be applicable in this case until after a presentence investigation has been completed and the Court has ruled on the results of that investigation. The defendant will not be allowed to withdraw her guilty plea if the applicable guideline range is higher than expected or if the Court departs from the applicable guideline range. **The defendant fully understands that determination of the**

sentencing range or guideline level, as well as the actual sentence imposed, is solely in the discretion of the Court.

6. It is expressly understood and agreed by and between the defendant and the United States that:

a. The United States has made, and will make, **NO AGREEMENT** to approve, to oppose, or not to oppose pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) any request made by the defendant or on behalf of the defendant for a particular sentence in this case.

b. The United States has made, and will make, **NO AGREEMENT** to approve, to oppose, or not to oppose pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B) any request made by the defendant or on behalf of the defendant for a particular sentence in this case.

c. The United States hereby expressly reserves the right to make known to the United States Probation Office, for inclusion in the presentence report prepared pursuant to Rule 32, Fed. R. Crim. P., any information that the United States believes may be helpful to the Court.

d. The defendant agrees that she will not seek a downward departure from the applicable sentencing guideline range as determined by the Court after resolution of any objections by either party to the presentence report to be prepared in this case. If the defendant, in violation of this paragraph, should nevertheless seek a downward departure, the United States shall have the right to treat this plea agreement as null and void and to proceed to trial on all charges before the Court.

e. The defendant agrees and acknowledges, pursuant to law, including 18 U.S.C. § 3663(a)(3), that the Court is not limited to ordering restitution only to the amount of the

particular offense(s) to which the defendant is entering a plea of guilty, but may order restitution to include all amounts resulting from all of the defendant's criminal conduct related to this case.

STIPULATIONS

7. The defendant stipulates to the following facts:

a. With respect to the facts and other relevant conduct related to the charges contained in the Information filed in this case, from on or about August, 1998, to on or about January, 2000, in the State and District of New Mexico, while I was employed by the New Mexico Building and Construction Trades Council, a labor organization as defined in 29 U.S.C. § 402, I did knowingly, willfully, and unlawfully embezzle, steal, abstract, and convert to my own use and the use of another, moneys, funds, securities, property, and other assets of that labor organization in the approximate amount of \$57,143.

b. During the time period referenced above, I was employed by the New Mexico Building and Construction Trades Council ("NMBCTC") as an administrative assistant/bookkeeper. In that position, I had unique access to, among other things, NMBCTC's checks and credit cards issued to certain officers of NMBCTC.

c. While employed at NMBCTC, I illegally, and without authorization, used NMBCTC credit cards to acquire cash advances and to pay for purchases made for the benefit of myself and my family. I also illegally forged authorized signatures on NMBCTC checks, putting the proceeds of the checks to my own use.

d. As a result of my illegal use of NMBCTC credit cards and my forging NMBCTC checks, I stole approximately \$57,143 from NMBCTC.

e. While I was working at NMBCTC, I was also employed at another labor organization, the International Brotherhood of Iron Workers AFL-CIO Local Union 495 ("Local 495"). One of my duties at Local 495 was to collect dues from members and deposit that money into Local 495's bank account. Instead of depositing the dues payments, I simply kept the cash, stealing from Local 495 approximately \$11,600 in dues. I also forged several Local 495 checks, totaling approximately \$3,906, using the proceeds from those checks to try to cover up my crimes against NMBCTC by paying off a portion of the NMBCTC credit card bills that resulted from my illegal action.

8. The United States and the defendant stipulate as follows:

a. Pursuant to U.S.S.G. §3E1.1, the defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for her criminal conduct. Consequently, the defendant is entitled to a reduction of two (2) (if the offense level is less than 16) or three (3) (if the offense level is 16 or greater) levels from the offense level as calculated under the sentencing guidelines. This reduction is contingent upon the defendant providing an appropriate oral and written statement to the United States Probation officer who prepares the presentence report in this case in which the defendant clearly establishes her entitlement to this reduction. This reduction is also contingent on the defendant appearing in Court as required and obeying all conditions that the Court may set at any time.

b. In exchange for the United States entering into this plea agreement, the defendant agrees that, upon the defendant's signing of this plea agreement, the facts set forth in paragraph 7 of this plea agreement shall be admissible against the defendant under Fed.R.Evid. 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the defendant

expressly waives her rights under Fed.R.Crim.P. 11(f) and Fed.R.Evid. 410 with regard to the facts set forth in paragraph 6 of this plea agreement.

c. For purposes of calculating the defendant's sentencing offense level, as well as calculating the amount of money the defendant should pay in restitution, the parties stipulate and agree that the principal overall dollar value of the fraud caused by the defendant for the events related to the Information was approximately \$68,743 (\$57,143 from NMBCTC, plus \$15,506 from Local 495, less \$3,906 stolen from Local 495 but used to partially repay NMBCTC).

9. The United States and the defendant understand that the above stipulations are not binding on the Court and that whether the Court accepts these stipulations is a matter solely within the discretion of the Court after it has reviewed the presentence report. The defendant understands and agrees that if the Court does not accept any one or more of the above stipulations, the defendant hereby waives the right to appeal the Court's rejection of such stipulations.

DEFENDANT'S ADDITIONAL OBLIGATIONS

10. The defendant understands her obligation to provide the United States Probation Office with truthful, accurate, and complete information. The defendant hereby represents that she has complied with and will continue to comply with this obligation.

UNITED STATES' AGREEMENT

11. Provided that the defendant fulfills her obligations as set out above, the United States agrees that it will not bring additional charges against the defendant arising out of the

defendant's conduct now known to the United States Attorney's Office for the District of New Mexico.

12. This plea agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

WAIVER OF APPEAL RIGHTS

13. The defendant is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging that, the defendant knowingly waives the right to appeal her conviction and/or any sentence within the applicable guideline range as determined by the Court after resolution of any objections by either party to the presentence report to be prepared in this case, and the defendant specifically agrees not to appeal the determination of the Court in resolving any contested sentencing factor. In other words, the defendant waives the right to appeal the sentence imposed in this case except to the extent, if any, that the Court may depart upwards from the applicable sentencing guideline range as determined by the Court.

VOLUNTARY PLEA

14. The defendant agrees and represents that this plea of guilty is freely and voluntarily made and not the result of force or threats or of promises apart from those set forth in this plea agreement.

VIOLATION OF PLEA AGREEMENT

15. The defendant understands and agrees that if she violates any provision of this plea agreement, the United States may declare this plea agreement null and void, and the defendant will thereafter be subject to prosecution for any criminal violation including, but not

limited to, any crime(s) or offense(s) contained in or related to the Information filed in this case, as well as perjury, false statement, and obstruction of justice.

ENTIRETY OF AGREEMENT

16. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

AGREED TO AND SIGNED this ____ day of _____, 2003.

DAVID C. IGLESIAS
United States Attorney

Dean Tuckman
Assistant United States Attorney
P.O. Box 607
Albuquerque, New Mexico 87103
(505) 346-7274

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand the plea agreement and voluntarily sign it.

ELIZABETH MARTIN
Defendant

EDMUND J. LANG
Attorney for Defendant