

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)
) File No. 16-CR-84
) (WMW/KMM)
 Plaintiff,)
)
 vs.) St. Paul, Minnesota
) October 21, 2016
 Diane L. Kroupa,) 1:33 p.m.
)
 Defendant.)
)

BEFORE THE HONORABLE WILHELMINA M. WRIGHT
UNITED STATES DISTRICT COURT JUDGE

(CHANGE OF PLEA HEARING)

APPEARANCES

For the Plaintiff: U.S. Attorney's Office
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Proceedings recorded by mechanical stenography;
transcript produced by computer.

EXAMINATION

1
2 BY THE COURT:

3 Q. Ms. Kroupa, you do now understand that you are under
4 oath. And because you are now under oath, if you say
5 anything at this hearing that is not true, you could be
6 prosecuted for a separate crime. That crime is perjury.
7 And the government could use any false statements that you
8 give under oath against you in that prosecution, so it's
9 very important for you to be truthful in everything that you
10 say today. Do you understand?

11 A. I understand, Your Honor.

12 Q. And the most important thing for you to understand is
13 that if you plead guilty and if I accept your guilty plea,
14 you will not be able to change your mind and take back your
15 guilty plea.

16 A. I understand, Your Honor.

17 Q. So if anything happens that confuses you or that worries
18 you, you should get help from your attorney or from me
19 before you plead guilty. Because after you plead guilty, it
20 may be too late for us to help you with those questions. Do
21 you understand, Ms. Kroupa?

22 A. I do, Your Honor.

23 Q. Now, if during the course of our proceeding today you
24 wish to speak with Mr. Kelly, your attorney, you're welcome
25 to do so. If I ask you a question and you're not certain

1 whether to answer it or how to answer it, just let me know
2 and you will be able to speak with Mr. Kelly privately and
3 confidentially and then you can let me know when you're
4 ready to proceed again. I don't mind waiting. This is an
5 important matter and I want you to be comfortable, I want
6 you to understand what's going on, and I want you to have
7 the benefit of your counsel's advice. Do you understand?

8 A. Yes. Thank you, Your Honor.

9 Q. You're welcome.

10 Now, I have to begin by asking you a few questions
11 to make certain that you're competent to enter a guilty
12 plea.

13 So will you please state your full name.

14 A. Diane Lynn Kroupa.

15 Q. And Ms. Kroupa, have you used any other name?

16 A. No.

17 Q. How old are you?

18 A. 61.

19 Q. And would you tell us how far you went in school.

20 A. I went through law school.

21 Q. Okay. Are you a United States citizen?

22 A. I am.

23 Q. And do you have any trouble speaking or understanding
24 the English language?

25 A. No.

1 Q. Okay. You're able to read well based on your
2 educational credentials, that's a correct assumption for me
3 to make?

4 A. Good assumption, Your Honor.

5 Q. Okay. And you're not under the influence of alcohol?

6 A. No alcohol.

7 Q. Have you had any alcohol in the past 24 hours?

8 A. No. I have two years being sober.

9 Q. Very good.

10 Now, I also have to ask you a few questions about
11 drug use. When I say "drug," I mean any drug, so that could
12 be prescription medication or over-the-counter medication
13 that you might take.

14 Are you under the influence of any drug or
15 medication at this time?

16 A. Yes, Your Honor.

17 Q. Okay. You've taken --

18 (Defense counsel and defendant confer)

19 A. Excuse me, Your Honor. I misunderstood. I am not under
20 the influence of any -- it's not -- my ability to understand
21 what I am doing is not impaired.

22 Q. Okay. I'm going to ask you a little bit about the
23 medication that you've taken over the past 24 hours. Would
24 you tell me what type of medication that is.

25 A. Yes. I'm being treated for anxiety, depression, and

1 bipolar II. I have six medications, prescribed medications,
2 that I take. They are Depakote, which is for my bipolar II
3 and my depression; Lamictal --

4 MR. KELLY: Maybe you should spell them.

5 A. Would it be helpful if I spelled the names of the drugs?

6 Q. It would be helpful.

7 A. Depakote is D-e-p-a-k-o-t-e. Lamictal, L-a-m-e-c-t-a-l
8 [sic], I'm taking that for anxiety, bipolar II, and mood
9 stabilizer. Wellbutrin, W-e-l-l-b-u-t-i-n [sic], it's for
10 depression. Propra -- I don't even know how to pronounce
11 this. I'm just going to spell it.

12 Q. You can just spell it.

13 A. P-r-o-p-r-a-n-o-l-o-l, which is for mood stabilizing and
14 anxiety. Seroquel, S-e-r-o-q-u-e-l, I take for bipolar II,
15 depression, and anxiety. And then Levothyroxine,
16 L-e-v-o-t-h-y-r-o-x-i-n-e, I take that for a thyroid issue.

17 Q. Okay. So you've described several medications. Will
18 any of that medication impair your ability to understand
19 what we're doing here today?

20 A. No, Your Honor.

21 Q. Okay. And are you generally in good health?

22 A. Yes, I am.

23 Q. Okay. And you're able to think clearly today; is that
24 correct?

25 A. I am.

1 Q. Now, you're represented by Mr. Kelly. Have you fully
2 discussed the charges against you with Mr. Kelly?

3 A. I have, Your Honor.

4 Q. And have you told Mr. Kelly everything that you want him
5 to know about this case?

6 A. I have, Your Honor.

7 Q. Are you fully satisfied with the services, the legal
8 services, that you've received from Mr. Kelly?

9 A. I am.

10 THE COURT: Mr. Kelly, have you had sufficient
11 time to investigate the law and the facts of Ms. Kroupa's
12 case and to discuss it with Ms. Kroupa?

13 MR. KELLY: I believe I have, Your Honor.

14 THE COURT: And based on your discussions, are you
15 satisfied that Ms. Kroupa understands the charges against
16 her and the range of punishments that she faces?

17 MR. KELLY: I believe Ms. Kroupa does understand,
18 Your Honor.

19 THE COURT: And based on your dealings with
20 Ms. Kroupa, are you satisfied that she's competent to make a
21 decision about whether to plead guilty today?

22 MR. KELLY: Quite satisfied.

23 BY THE COURT:

24 Q. Ms. Kroupa, you've told me that you wish to enter a
25 guilty plea today. If you do enter that guilty plea, you

1 will be giving up a number of very important rights. The
2 law requires me to review those rights with you before I
3 make a final -- before you make a final decision about
4 whether to plead guilty, and I'm going to review those with
5 you now.

6 Do you understand that you have the right to
7 continue to plead not guilty to the charges that have been
8 lodged against you?

9 A. I do, Your Honor.

10 Q. Do you understand that you have the right to be tried by
11 a jury that would be made up of 12 citizens of this
12 district?

13 A. I do, Your Honor.

14 Q. You have the right to a speedy trial, which means that
15 if you did want to take your case to trial, your trial would
16 begin in the next few months. In fact, your trial was
17 scheduled to begin December 5, 2016. You wouldn't have to
18 wait longer than that. Do you understand?

19 A. I do, Your Honor.

20 Q. And you also have the right to be represented by an
21 attorney at every stage of this proceeding, so that would be
22 before trial, during trial, and after trial. Do you
23 understand?

24 A. I do, Your Honor.

25 Q. You have the right to be represented by an attorney that

1 you hire; or if you could not afford an attorney or to hire
2 an attorney, you have the right to be represented by an
3 attorney who is appointed to represent you at no cost to
4 you. Do you understand?

5 A. I understand, Your Honor.

6 Q. At trial you would be presumed innocent and I would
7 instruct the jurors that they must presume that you are
8 innocent. Do you understand?

9 A. I understand, Your Honor.

10 Q. And the burden would be on the government to prove your
11 guilt, not on you to prove your innocence. You would not
12 have to prove anything at trial. Do you understand that?

13 A. I do, Your Honor.

14 Q. Not only would the burden be on the government to prove
15 your guilt, but the government would have to prove your
16 guilt beyond a reasonable doubt. Do you understand?

17 A. I do, Your Honor.

18 Q. I would instruct the jurors that unless they were
19 convinced of your guilt beyond a reasonable doubt, they
20 would have to find you not guilty if you went to trial. Do
21 you understand that?

22 A. I do.

23 Q. If you did go to trial the government would seek to
24 prove your guilt by calling witnesses, who would come here
25 to court and testify against you, and you would have the

1 right to confront those witnesses. That means that you
2 would have the right to be physically present here in the
3 courtroom whenever anyone testified against you so that you
4 could see and hear the testimony for yourself. Do you
5 understand?

6 A. I do, Your Honor.

7 Q. It also means that your attorney would have the right to
8 ask questions of anyone who testified at your trial to try
9 to show weaknesses in their testimony. Do you understand
10 that?

11 A. I do, Your Honor.

12 Q. You'd also have the right to remain silent at your
13 trial. No one could force you to testify, and whether to
14 testify or not to testify would be entirely your decision to
15 make. Do you understand?

16 A. I do, Your Honor.

17 Q. If you decided not to testify, your silence could not be
18 used against you. In fact, if you wanted me to, I would
19 instruct the jurors of that and tell them that when they are
20 deciding whether you had been proven guilty beyond a
21 reasonable doubt, they could not consider the fact that you
22 chose not to testify. Do you understand that?

23 A. I do, Your Honor.

24 Q. Although you would not have to testify at trial or call
25 any witnesses or present any evidence, you would have the

1 right to do any or all of those things if you wished. Do
2 you understand?

3 A. I do, Your Honor.

4 Q. You would have the right to take the stand and testify
5 before the jury on your own behalf and tell the jurors your
6 side of the story. Do you understand?

7 A. I do, Your Honor.

8 Q. You'd have the right to call others to testify on your
9 behalf and, in fact, you could subpoena witnesses. In other
10 words, you could get a court order from me forcing a witness
11 to testify at your trial whether that person wanted to or
12 not. Do you understand?

13 A. I do, Your Honor.

14 Q. And if you did testify or call witnesses or present any
15 evidence at your trial, that would not change the burden of
16 proof. The government would still have the burden of
17 proving your guilt beyond a reasonable doubt. Do you
18 understand, Ms. Kroupa?

19 A. I do, Your Honor.

20 Q. If you went to trial, you could not be convicted of any
21 charge unless every single member of the jury found that you
22 had been proven guilty of that charge beyond a reasonable
23 doubt. In other words, any guilty verdict would have to be
24 unanimous, all 12 jurors would have to agree. Do you
25 understand?

1 A. I do, Your Honor.

2 Q. And finally, if you plead guilty and if I accept your
3 guilty plea, you will be convicted of the charge to which
4 you plead guilty. You will not get a trial on that charge;
5 you will give up all of the other rights that I have just
6 described; and you will give up your right to file any
7 motions before trial, such as motions asking me to rule that
8 certain evidence cannot be used against you. Do you
9 understand that if you plead guilty and I accept your guilty
10 plea, you will be giving up all of these rights?

11 A. I do, Your Honor.

12 Q. So, Ms. Kroupa, have you received a copy of the
13 indictment, which is the written charges that the government
14 has made against you?

15 A. Yes, I received it at some point.

16 Q. Have you read that indictment?

17 A. I have, Your Honor.

18 Q. And has Mr. Kelly explained the charges against you in
19 the indictment?

20 A. I believe he has.

21 Q. Okay. Has Mr. Kelly answered all of your questions
22 about the charges in the indictment?

23 A. Yes.

24 THE COURT: Mr. Kelly, does Ms. Kroupa waive her
25 right to have the indictment read?

1 MR. KELLY: She does, Your Honor.

2 BY THE COURT:

3 Q. Ms. Kroupa, I'm going to now review with you the nature
4 of the charges. You've been charged with the following six
5 counts in the indictment:

6 Count 1 of the indictment charges you with
7 conspiracy to defraud the United States in violation of
8 Title 18, United States Code, Section 371. Under this
9 provision it is a crime for two or more people to commit a
10 crime. For you to be convicted of this charge -- I'm sorry.
11 It's a crime for two or more people to agree to commit a
12 crime. So the agreement is the material piece.

13 For you to be convicted of this charge the
14 government would have to prove beyond a reasonable doubt
15 four elements: First, that beginning on or before 2004 and
16 continuing at least until in or before 2012, in the state
17 and district of Minnesota, you and Robert Fackler reached an
18 agreement to commit the crime of evading the ascertainment
19 and computation of your joint income taxes as alleged in the
20 indictment; second, that you voluntarily and intentionally
21 joined in the agreement either at the time the agreement was
22 reached or at some later time while the agreement was still
23 in effect; third, that at the time you joined in the
24 agreement you knew the purpose of the agreement; and fourth,
25 while the government was -- while the agreement was in

1 effect, a person who had joined the agreement knowingly did
2 one or more acts for the purpose of carrying out or carrying
3 forward the agreement.

4 Counts 2 and 3 of the indictment charge you with
5 tax evasion in violation of Title 26, United States Code,
6 Section 7201. Count 2 alleges tax evasion for the calendar
7 year of 2009. Count 3 alleges tax evasion for the calendar
8 year of 2010.

9 For you to be convicted of these charges the
10 government would have to prove beyond a reasonable doubt as
11 to each count three elements: First, that you owed
12 substantial income tax in addition to the amounts reported
13 on your tax returns in calendar year 2009 and calendar year
14 2010; second, that you attempted to evade and defeat that
15 additional tax; and third, that you acted willfully and
16 within the state and district of Minnesota.

17 Counts 4 and 5 of the indictment charge you with
18 making and subscribing a false return in violation of
19 Title 26, United States Code, Section 7206(1). Count 4
20 alleges that you filed a false Form 1040 Individual Income
21 Tax Return in 2009 and Count 5 alleges that you filed a
22 false Form 1040 Individual Income Tax Return in 2010.

23 For you to be convicted of these charges the
24 government would have to prove beyond a reasonable doubt as
25 to each of five elements: First, that you made and signed a

1 Form 1040 Individual Income Tax Return for the years in
2 question that included false information regarding your
3 income; second, the returns contained written declarations
4 signed under the penalty of perjury; third, that you did not
5 return -- believe the return to be true and correct as to
6 reported net profits and income; fourth, that you acted
7 willfully and within the state and district of Minnesota;
8 and fifth, the false matter included in the Form 1040
9 Individual Tax Returns for the years in question was
10 material.

11 Count 6 of the indictment charges you with
12 obstruction of an Internal Revenue Service audit in
13 violation of Title 26, United States Code, Section 7212(a).

14 For you to be convicted of this charge the
15 government would have to prove beyond a reasonable doubt
16 three elements: First, that beginning in or about January
17 2012 and continuing until in or about November 2012, in the
18 state and district of Minnesota, you acted, that is,
19 endeavored, with the purpose to obstruct or impede the due
20 administration of the internal revenue laws, which includes
21 the Internal Revenue Service's lawful functions to ascertain
22 income and compute, assess, and collect income taxes;
23 second, that you acted corruptly, that is, with the purpose
24 to obtain an unlawful benefit for yourself or someone else,
25 regardless of success, by providing false information to the

1 IRS at a time when the IRS was conducting an audit of your
2 tax returns for the calendar years 2009 and 2010; and third,
3 that your efforts had a reasonable tendency to obstruct or
4 impede the due administration of the internal revenue laws.

5 Do you understand that these are the charges
6 against you?

7 A. I do, Your Honor.

8 Q. Under the plea agreement you would plead guilty to
9 Count 1 of the indictment. If you plead guilty to Count 1
10 of the indictment charging you with conspiring to defraud
11 the United States, you will be facing the following
12 penalties:

13 Imprisonment of up to a maximum of five years,
14 supervised release of up to a maximum of three years, a fine
15 of up to \$250,000, a mandatory special assessment of \$100
16 due at the time of sentencing. The government has requested
17 restitution in the total amount of the tax loss caused by
18 your conduct pursuant to Title 18, United States Code,
19 Section 3663(a)(3). And finally, I could order you to pay
20 the costs of prosecuting you.

21 Do you understand that these are the penalties
22 that can be imposed on you if you plead guilty?

23 A. I do, Your Honor.

24 Q. I want to address supervised release at this time.
25 Supervised release is what happens after you are released

1 from prison. I will decide how long you will serve on
2 supervised release and I will also decide what conditions
3 you must follow while you are on supervised release.

4 If you violate any of the conditions of your
5 supervised release, you could be sent back to prison and
6 kept in prison for up to three years, depending on the
7 length of your supervised release term, without getting
8 credit for the time that you already served on supervised
9 release. Do you understand that?

10 A. I do, Your Honor.

11 Q. I also must advise you that there is no parole in the
12 federal prison system. So if you're sentenced to prison,
13 you will serve your full sentence. You will not be released
14 early on parole. Do you understand, Ms. Kroupa?

15 A. I do, Your Honor.

16 Q. Also, because you are a United States citizen and
17 because you have been charged with a felony, if you plead
18 guilty you may lose your right to vote, to hold public
19 office, to serve on a jury, and to possess any kind of
20 weapon or ammunition. Do you understand?

21 A. I do, Your Honor.

22 Q. Now, Ms. Kroupa, I understand that you've entered into a
23 plea agreement with the government; is that correct?

24 A. I have, Your Honor.

25 Q. Have you read the plea agreement?

1 A. I have, Your Honor.

2 Q. Has Mr. Kelly, your attorney, carefully gone through the
3 plea agreement with you and explained all of its terms?

4 A. He has, Your Honor.

5 Q. Has Mr. Kelly answered all of your questions about the
6 plea agreement?

7 A. He has, Your Honor.

8 Q. Do you understand the terms of the plea agreement?

9 A. I do, Your Honor.

10 Q. Just to avoid any misunderstanding, I'm going to ask
11 counsel here from the United States Attorney's Office to
12 describe any important provisions in the plea agreement that
13 I have not already covered other than the factual basis,
14 which we'll go into shortly.

15 MR. LANGNER: Your Honor, would you like me to do
16 that as a colloquy with the defendant?

17 THE COURT: Yes, please.

18 MR. LANGNER: Would you like me to cover the
19 factual basis in detail at this time or wait until --

20 THE COURT: We'll wait on the factual basis.

21 **EXAMINATION**

22 BY MR. LANGNER:

23 Q. Ms. Kroupa, I'm going to ask you just a few questions
24 about the plea agreement that you've entered into or that
25 you intend to enter into with the government. Okay?

1 A. All right.

2 Q. And the purpose of this is to make sure that any terms
3 in here of significance, you both understand them and it's
4 clear to all the parties what those mean. Do you understand
5 that?

6 A. I do.

7 Q. And as the Court mentioned earlier, you will be pleading
8 guilty to Count 1 of the indictment, which charges you with
9 conspiring to defraud the United States, correct?

10 A. Yes.

11 Q. And in exchange, if at the time of sentencing you have
12 complied with this agreement, all of the remaining counts
13 against you will be dismissed at that time. Do you
14 understand that?

15 A. I understand.

16 Q. Moving on to the sentencing guidelines, you understand
17 the sentencing guidelines are a factor that the Court will
18 consider when deciding what sentence to impose?

19 A. I understand.

20 Q. And we've had some discussions with you and you've
21 agreed to the calculations under those sentencing
22 guidelines, correct?

23 A. Yes.

24 Q. And I'm going to recap those now. You've agreed and the
25 government has agreed that the base offense level should be

1 calculated under 2T1.1, which is the section related to tax
2 crimes. Do you understand that?

3 A. I understand.

4 Q. And the base offense level, the parties have agreed, is
5 18 because the tax loss resulting from your offense is more
6 than \$250,000 but less than \$550,000, correct?

7 A. I understand.

8 Q. And the parties have also agreed that the offense level
9 will be increased by two levels because you abused a
10 position of public trust in a manner that significantly
11 facilitated the commission or concealment of the offense.
12 Do you understand that?

13 A. I understand.

14 Q. The offense level will also be increased by two
15 additional levels because you willfully obstructed or
16 impeded the administration of justice with respect to the
17 investigation of the offense of conviction and any relevant
18 conduct. Do you understand that?

19 A. I understand.

20 Q. And the government has agreed, provided that you comply
21 with the conditions that are listed on page 11 under
22 Acceptance of Responsibility, that the offense level will be
23 reduced by three levels for your acceptance of
24 responsibility. Do you understand that?

25 A. I understand.

1 Q. And the parties have agreed that we don't believe any
2 other enhancements under the sentencing guidelines apply at
3 this time, correct?

4 A. I understand.

5 Q. And if all of those calculations are correct, we would
6 arrive at an offense level of 19. Do you understand that?

7 A. I understand.

8 Q. We believe that your Criminal History Category is a I,
9 which is the lowest level of criminal history. Do you
10 understand that?

11 A. I understand.

12 Q. And if those calculations are deemed to be correct, then
13 you would have an offense level of 19, a Criminal History
14 Category of I, which would provide an advisory sentencing
15 guidelines range of 30 to 37 months imprisonment. Do you
16 understand that?

17 A. I understand.

18 Q. And you understand that that range, it's an advisory
19 range? The Court will consider that, but it may enter a
20 sentence below that or even above that or within the range.
21 That's completely up to the Court.

22 A. I understand.

23 Q. One other fact that I just want to cover. You've agreed
24 to pay restitution in the amount of your tax loss in this
25 case, correct?

1 A. I have.

2 Q. Now, the amount of tax loss that's listed within the
3 factual basis in this case includes certain amounts that you
4 paid back after being audited, correct?

5 A. Yes.

6 Q. And the amount of restitution that you will owe, the
7 government has agreed, will deduct those amounts from the
8 amount of tax loss. So while the tax loss is a higher
9 number, around 500,000, you will receive credit for
10 restitution purposes for the amount that you paid as a
11 result of the audits in 2006 and 2012, correct?

12 A. I understand.

13 MR. LANGNER: Your Honor, I think those are the
14 significant terms in the plea agreement.

15 THE COURT: Thank you, Mr. Langner.

16 Mr. Kelly, are there any other provisions that
17 need to be reviewed at this time?

18 MR. KELLY: None, Your Honor.

19 **EXAMINATION**

20 BY THE COURT:

21 Q. Ms. Kroupa, are the terms of the plea agreement, those
22 that have been described to you, as you understand them?

23 A. They are, Your Honor.

24 Q. And so, Ms. Kroupa, the government has agreed that if
25 you plead guilty to Count 1, the government will move to

1 dismiss Counts 2 through 6 when you're sentenced on Count 1.
2 If I accept the plea agreement, the judgment in this case
3 will include a dismissal of Counts 2 through 6. Do you
4 understand that?

5 A. I understand, Your Honor.

6 Q. Other than what's contained in the plea agreement and
7 what I have told you, has the government or anyone else made
8 any promises to you in order to get you to plead guilty?

9 A. They have not, Your Honor.

10 Q. I want to make sure, Ms. Kroupa, that you understand the
11 impact of the plea agreement on me. First I want you to
12 understand that although the government and your attorney
13 can make a recommendation about your sentence, I don't have
14 to accept the recommendation. I do not have to sentence you
15 according to the plea agreement. Do you understand that?

16 A. I understand that, Your Honor.

17 Q. And as I sit here today, I do not know what sentence I
18 will impose on you. I will not even begin to consider the
19 sentence until a presentence investigation has been
20 completed and I get a presentence investigation report about
21 you. And because I have no idea what sentence I will
22 impose, neither the lawyers nor anyone else can know what
23 sentence I will impose. Do you understand?

24 A. I understand that, Your Honor.

25 Q. It is possible that I will give you a sentence that is

1 longer than you are expecting or hoping for. If I give you
2 a sentence that is longer than you are expecting or hoping
3 for, you will not be able to take back or withdraw your
4 guilty plea. You may be able to appeal the sentence, but no
5 matter what sentence I give you, your guilty plea will
6 stand. Do you understand that?

7 A. I understand that, Your Honor.

8 Q. And your plea agreement discusses the federal sentencing
9 guidelines and I want to emphasize a few things about those
10 guidelines.

11 I'm going to look at the federal sentencing
12 guidelines and decide for myself what they recommend in your
13 case. What your plea agreement says is not binding on me.
14 I will make my own decision. Do you understand?

15 A. I understand that, Your Honor.

16 Q. Here's what I will do. I will look to the sentencing
17 guidelines and I will decide what the sentencing guidelines
18 recommend in your case. I will then look further at the
19 guidelines because sometimes the guidelines themselves
20 recommend a sentence that is below or above the range, and
21 in that case that would be called a departure. And finally,
22 I will decide whether to follow the recommendation of the
23 sentencing guidelines. It is just a recommendation. It's
24 not binding on me . In fact, I'm required to consider many
25 things in addition to the recommendation of the guidelines

1 when I decide your sentence.

2 So you cannot count on receiving a guideline
3 sentence. You may get a sentence that's higher than the
4 guidelines recommend or one that's lower than the guidelines
5 recommend. Do you understand that?

6 A. I understand that, Your Honor.

7 Q. Your plea agreement provides that you have accepted
8 responsibility for your criminal conduct, which can entitle
9 you to a reduction in your guideline offense level. So as
10 long as you testify truthfully during the change of plea
11 hearing, you cooperate with Probation in the presentence
12 investigation, you commit no further acts inconsistent with
13 your acceptance of responsibility and you comply with this
14 agreement, fully identify all assets and make good-faith
15 efforts to make restitution to your victims, the government
16 has indicated that it will move for a two-level reduction so
17 long as you abide by those conditions and do not falsely
18 deny any offense or relevant conduct.

19 In addition, the plea agreement provides that the
20 government will move for an additional one-level reduction
21 because you timely notified the government of your intention
22 to plead guilty.

23 Do you understand that it is entirely up to the
24 government to decide whether to make a motion for the
25 reduction based on your acceptance of responsibility?

1 A. I understand that, Your Honor.

2 Q. And do you understand that even if you believe that you
3 satisfied the requirements for a reduction, the government
4 might disagree and choose not to move for that reduction?

5 A. I understand that, Your Honor.

6 Q. You understand that even if the government does move for
7 the reduction, I may deny the motion and decide not to
8 reduce your sentence? And, again, do you understand that no
9 matter what happens, you will not be able to withdraw your
10 guilty plea; do you understand that?

11 A. I understand that, Your Honor.

12 Q. After I impose the sentence, the government will have
13 the right to appeal the sentence if the government thinks
14 I've made a mistake or gave you a sentence that was too
15 short. Do you understand?

16 A. I understand that, Your Honor.

17 Q. Likewise, you will have the right to appeal the sentence
18 if you think I have made a mistake or if you think I gave
19 you a sentence that was too long. But I want to be clear
20 that it is only the sentence that you will be able to
21 appeal. You will not be able to appeal on the assertion
22 that you are innocent or that certain evidence should have
23 been suppressed. Do you understand that?

24 A. I understand that, Your Honor.

25 Q. Ms. Kroupa, before you can plead guilty pursuant to this

1 plea agreement, I must determine whether there is a factual
2 basis for your guilty plea. That means that I have to make
3 sure that you committed the crime to which you're pleading
4 guilty. I am now going to ask Mr. Langner to ask you some
5 questions about the crime.

6 **EXAMINATION**

7 BY MR. LANGNER:

8 Q. Ms. Kroupa, I'm going to ask you some questions about
9 the factual basis in this plea agreement. Okay?

10 A. All right.

11 Q. You understand that the factual basis in this plea
12 agreement are the facts that the government would prove, if
13 this case were to go to trial, in order to prove that you
14 were guilty; do you understand that?

15 A. I understand that.

16 Q. And you received a copy of this plea agreement and you
17 have gone over this with your attorney, correct?

18 A. I have.

19 Q. In fact, you have seen a few different versions of this
20 plea agreement and you have had the opportunity to make
21 corrections or edits as you needed to, correct?

22 A. I have.

23 Q. And some of those edits we incorporated and other ones
24 we did not, but we explained where we were not going to make
25 those edits, correct?

1 A. Correct.

2 Q. And as you've reviewed this plea agreement, are all of
3 the facts contained in paragraph 2 true and accurate to the
4 best of your knowledge?

5 A. Yes.

6 Q. I want to go through those facts in a little more
7 detail.

8 First of all, you were married to Robert Fackler,
9 correct?

10 A. Still am.

11 Q. Okay. During the period of the conspiracy, though, you
12 were married to him, correct?

13 A. Yes, correct.

14 Q. And beginning no later than the 2004 tax year and
15 continuing through the 2010 tax year, you and Mr. Fackler
16 filed your federal U.S. income tax returns with the IRS
17 under the designation married filing jointly, correct?

18 A. Correct.

19 Q. From 2003 until June of 2014 you were employed as a
20 United States tax court judge, correct?

21 A. Correct.

22 Q. And as a tax court judge you heard and decided cases
23 involving tax law issues, including what is required to be
24 reported as income and what constitutes proper business
25 deductions, correct?

1 A. I did.

2 Q. Your chambers were located in Washington, D.C.?

3 A. They were.

4 Q. During this time your husband, Mr. Fackler, was a
5 self-employed lobbyist and political consultant, correct?

6 A. Correct.

7 Q. Mr. Fackler owned and operated a Schedule C entity known
8 as Grassroots Consulting, correct?

9 A. Correct.

10 Q. The income of Grassroots Consulting was included as part
11 of your and Mr. Fackler's joint tax returns for the tax
12 years 2004 through 2010?

13 A. Yes.

14 Q. And through Grassroots Consulting Mr. Fackler provided
15 those lobbying and consulting services to three primary
16 clients, correct?

17 A. Correct.

18 Q. Mr. Fackler's clients paid him as an independent
19 contractor and reported those payments to him on a
20 Form 1099, correct?

21 A. Correct.

22 Q. And Mr. Fackler was typically reimbursed for meals by --
23 well, for meals, travel, and other expenses by his clients,
24 correct?

25 A. That's what I understand.

1 Q. Is it true, Ms. Kroupa, that there are some facts in
2 this plea agreement that you don't have direct knowledge of?

3 A. Correct.

4 Q. And you are agreeing that to the extent that you don't
5 have direct knowledge of any fact that I may cover, you are
6 acknowledging that that fact is true based on the evidence
7 you have seen or conversations with your lawyer, correct?

8 A. Correct, that's what I understand.

9 Q. Now, for most of the time between 2004 and 2013 you and
10 Mr. Fackler were residents of Minnesota, correct?

11 A. Correct.

12 Q. You owned a house in Plymouth, Minnesota?

13 A. Correct.

14 Q. And in addition, from about 2007 until about August of
15 2013 you and Mr. Fackler leased a second house in Easton,
16 Maryland, correct?

17 A. Correct.

18 Q. And that house is where you generally resided when you
19 were fulfilling your duties as a tax court judge in
20 Washington?

21 A. Correct.

22 Q. Is it true, Ms. Kroupa, that beginning no later than in
23 or about 2002 and continuing through 2012 you conspired with
24 your husband, Robert Fackler, to impede, impair, and
25 obstruct the Internal Revenue Service from correctly

1 ascertaining and computing your joint income taxes?

2 A. Yes.

3 Q. Is it true that in or about 2002 you and Mr. Fackler
4 began jointly inflating the purported business expenses
5 deducted by Grassroots Consulting?

6 A. Yes.

7 Q. And you did that in order to reduce your income, the
8 income claimed by Grassroots Consulting, which by extension
9 reduced the income taxes that you would owe, correct?

10 A. Correct.

11 Q. Is it true that each year Mr. Fackler collected numerous
12 personal expenses paid through his credit cards and
13 Grassroots Consulting's bank account and included them along
14 with his legitimate business deductions on a spreadsheet
15 that purported to summarize all of the business deductions?

16 A. He did.

17 Q. Is it true that you collected additional personal
18 expenses from your joint bank account and included them or
19 caused them to be included with the expenses that
20 Mr. Fackler compiled?

21 A. I did.

22 Q. Is it true that you and Mr. Fackler, sometimes one or
23 the other of you, then compiled those and provided them to
24 your tax preparer?

25 A. Yes.

1 Q. And neither you nor Mr. Fackler told the tax preparer
2 the amounts reflected in the information, spreadsheets, or
3 tax organizers that you gave him included personal expenses
4 that were disguised as business expenses?

5 A. No.

6 Q. That fact is true?

7 A. That fact is true, we did not provide that information.

8 Q. And by doing that, you thereby significantly and
9 fraudulently increased Grassroots Consulting's business
10 expenses, which then reduced the amount of taxes that you
11 jointly owed to the IRS?

12 A. Correct.

13 Q. And on page 4 and page 5 of this plea agreement there is
14 a list of descriptions of specific expenses that were
15 included supposedly as business expenses which were, in
16 fact, personal expenses, correct?

17 A. Correct.

18 Q. You've looked at this list and either you know that
19 these are ones that were included or else you have seen
20 evidence to that effect?

21 A. Correct.

22 Q. So in total from 2004 through 2010 did you and
23 Mr. Fackler fraudulently deduct at least 500,000 of personal
24 expenses as purported Schedule C business expenses?

25 A. Yes.

1 Q. Is it true that as part of the conspiracy, although
2 without your direct knowledge, Mr. Fackler also caused the
3 gross receipts attributable to Grassroots Consulting to be
4 falsely understated by fraudulently deducting the purported
5 business expenses, such as travel and meals, for which he
6 had already been reimbursed?

7 A. He did.

8 Q. And that amount totaled at least approximately \$450,000,
9 correct?

10 A. Correct.

11 Q. As part of the conspiracy is it true that you also
12 falsely reported certain personal expenses as unreimbursed
13 employee expenses incurred in connection with your job as a
14 United States tax court judge?

15 A. I did.

16 Q. And there are several examples on page 6 of the plea
17 agreement, such as Nantucket bags, purchases at Barnes &
18 Noble, and others, that you attempted or did deduct as
19 unreimbursed employee expenses, correct?

20 A. Correct.

21 Q. Is it also true that as part of the conspiracy you
22 purposely failed to report approximately \$44,520 that you
23 received in 2010 in connection with the sale of a parcel of
24 real estate located in South Dakota?

25 A. I did.

1 Q. Is it true also that as part of the conspiracy you
2 falsely claimed that approximately \$33,031 of cancelation of
3 indebtedness income that you and Mr. Fackler received from
4 Bank of America in 2008 was not taxable because you were
5 financially insolvent, correct?

6 A. I understand that, yes.

7 Q. And you actually purposely avoided calculating your net
8 worth, which would have shown that you were not insolvent
9 and therefore could not have taken that deduction, correct?

10 A. Correct.

11 Q. Now, in or about 2006 you understand and agree that
12 Mr. Fackler caused false and misleading representations to
13 be made to the IRS tax compliance officer who was conducting
14 an audit of your joint tax returns for the calendar years
15 2004 and 2005?

16 A. He did.

17 Q. Specifically, in response to inquiries and requests for
18 documentation relating to Grassroots Consulting, Mr. Fackler
19 caused your tax preparer to represent to the IRS tax
20 compliance officer that the expenses that had been incurred
21 were legitimate, but he simply kept poor records, correct?

22 A. Correct.

23 Q. And those representations were false, the expenses --
24 many of the expenses that were listed were personal in
25 nature, correct?

1 A. Correct.

2 Q. And you knew that some of the expenses that were
3 incurred in 2004 and 2005 that were deducted on Grassroots
4 Consulting were, in fact, personal expenses, correct?

5 A. Yes.

6 Q. And you also assumed that, in order to conceal those
7 crimes, Mr. Fackler would not provide the truth to the IRS,
8 correct?

9 A. Correct.

10 Q. Is it true that at the conclusion of the 2006 audit
11 Mr. Fackler and you acknowledged tax deficiencies in the
12 amount of approximately \$48,000?

13 A. Correct.

14 Q. And you were issued an inadequate records notice by the
15 IRS informing you that you had not been keeping adequate
16 records, correct?

17 A. Correct.

18 Q. Is it also true that in or about 2012 you were
19 audited -- your joint tax returns were audited a second
20 time?

21 A. Correct.

22 Q. And during that audit you and Mr. Fackler caused false
23 and misleading representations to be made and caused false
24 and misleading documents to be delivered to the IRS revenue
25 agent that was conducting the audit?

1 A. Yes.

2 Q. That audit was focused on the tax years 2009 and 2010,
3 correct?

4 A. Correct.

5 Q. Specifically, after learning of the audit you and
6 Mr. Fackler reviewed your tax files and removed certain
7 items that were requested by the revenue agent from the tax
8 files because they would reveal the fact that you had been
9 deducting personal expenses, correct?

10 A. Correct.

11 Q. And Mr. Fackler provided those documents to your tax
12 preparer knowing that they would then be provided to the IRS
13 as a substantiation of the expenses that you had incurred?

14 A. He did.

15 Q. Is it true that during the audit Mr. Fackler prepared
16 cut-and-pasted credit card statements that purported to
17 substantiate certain of the business expenses?

18 A. He did.

19 Q. And those cut-and-pasted credit card statements obscured
20 the fact that personal expenses had been deducted as
21 business expenses, correct?

22 A. Correct.

23 Q. And during the audit is it true that in response to an
24 inquiry from an IRS revenue agent regarding the \$44,520 you
25 received from the South Dakota land sale, you responded and

1 sent an e-mail to your tax preparer falsely and misleadingly
2 informing the tax preparer that the deposit was part of an
3 unrelated inheritance and not income that you received as
4 part of that land sale?

5 A. I did.

6 Q. Is it also true that when you and Mr. Fackler learned
7 that the 2012 audit might progress into a criminal
8 investigation, you told Mr. Fackler to maintain, falsely,
9 that he did his taxes and you did yours?

10 A. I did.

11 Q. Believing that the investigation would focus solely on
12 the false business deductions, you told Mr. Fackler to tell
13 investigating authorities that you didn't have any role in
14 organizing and preparing Grassroots Consulting's tax
15 returns, correct?

16 A. Correct.

17 Q. Now, each year from 2004 through 2010, through the means
18 that we just discussed, you caused your adjusted gross
19 income, taxable income, and total tax to be grossly
20 underinflated, correct?

21 A. Correct.

22 Q. And through the means that we just went through, from
23 2004 to 2010 you purposely understated your taxable income
24 by approximately \$1 million and purposely understated the
25 amount of tax that you owed by approximately \$450 [sic],

1 correct?

2 A. Correct.

3 Q. And there's a table listed on page 10 of this plea
4 agreement which lists the approximate federal tax loss and
5 state tax loss for each year from 2004 through 2010. You
6 acknowledge that those numbers are accurate to the best of
7 your knowledge?

8 A. To the best of my knowledge.

9 MR. LANGNER: Your Honor, I believe that's the
10 factual basis for this plea.

11 **EXAMINATION**

12 BY THE COURT:

13 Q. I have a bit of a follow-up, Ms. Kroupa.

14 You voluntarily and intentionally joined in the
15 agreement that has been referenced here; is that correct?

16 A. I did, Your Honor.

17 Q. And you knew the purpose of the agreement when you
18 joined it?

19 A. I did, Your Honor.

20 THE COURT: Mr. Kelly, is there anything further
21 you would like to add or clarify for the record?

22 MR. KELLY: No, Your Honor.

23 THE COURT: Mr. Langner, is there anything further
24 that you would like to add or clarify at this time?

25 MR. LANGNER: No, Your Honor. I do have a signed

1 copy of the plea agreement if you would like me to hand that
2 up.

3 THE COURT: Okay.

4 (Document handed to the Court)

5 BY THE COURT:

6 Q. And Ms. Kroupa, on page 13, this is your signature?

7 A. It is, Your Honor.

8 Q. Ms. Kroupa, are you making this plea of guilty
9 voluntarily and of your own free will?

10 A. I am, Your Honor.

11 Q. Has anyone forced you or threatened you or coerced you
12 or done any harm to you or any other person to get you to
13 plead guilty?

14 A. No.

15 Q. Are you going to plead guilty because you are, in fact,
16 guilty of the crime charged?

17 A. I am, Your Honor.

18 THE COURT: Mr. Kelly, is there anything else that
19 you would like me to cover with Ms. Kroupa before she enters
20 her guilty plea?

21 MR. KELLY: No, Your Honor.

22 THE COURT: Mr. Langner, is there anything else
23 that you would like me to cover with Ms. Kroupa before she
24 enters her guilty plea?

25 MR. LANGNER: No, Your Honor.

1 BY THE COURT:

2 Q. Ms. Kroupa, do you have any questions for me or for
3 Mr. Kelly before I ask for your plea?

4 A. I do not, Your Honor.

5 Q. Do you understand all of the constitutional rights that
6 I have gone through today and gone over with you?

7 A. I do, Your Honor.

8 Q. Do you knowingly, intelligently, and voluntarily give up
9 those rights?

10 A. I do, Your Honor.

11 Q. And I have the plea agreement that has been signed.

12 This is indeed your signature on the plea agreement, the
13 middle signature, Diane Kroupa?

14 A. It is, Your Honor.

15 Q. Diane L. Kroupa, how do you plead to Count 1 of the
16 indictment, which alleges that you conspired to defraud the
17 United States in violation of Title 18, United States Code,
18 Section 371, do you plead guilty or not guilty?

19 A. I am guilty.

20 THE COURT: I find that the defendant, Diane L.
21 Kroupa, is mentally competent and capable of entering an
22 informed plea.

23 I find that Ms. Kroupa is aware of the nature of
24 the charges against her, the nature of these proceedings,
25 and the consequences of her guilty plea.

1 I find that Ms. Kroupa's guilty plea is free,
2 voluntary, knowing, and informed.

3 I find that the guilty plea is supported by
4 independent facts in the record establishing all of the
5 elements of the offense listed in Count 1 of the indictment.

6 Therefore, Diane L. Kroupa, I accept your guilty
7 plea and I adjudge you guilty as charged in Count 1 of the
8 indictment.

9 I want to explain to you, Ms. Kroupa, what will
10 happen next. The probation officer is going to conduct an
11 investigation and prepare a report that will help me decide
12 your sentence. We refer to that as a presentence
13 investigation report.

14 The probation officer will interview you as part
15 of that investigation and you will be required to give
16 information for the report. Your attorney, Mr. Kelly, may
17 be present when you are interviewed.

18 After the report is prepared, you will have a
19 chance to read it and to discuss it with your attorney. If
20 there's anything in that report that you think is incorrect
21 or unfair or if something has been left out of the report
22 that you want me to know, you will have a chance to file
23 objections to the report.

24 Before I decide on your sentence, I will read not
25 only the report, but any objections that you or the

1 government have made, as well as any other papers that you
2 or the government have filed.

3 We will then have a sentencing hearing, and during
4 that sentencing hearing I will impose your sentence. Before
5 I do that I will give both you and your attorney a chance to
6 speak.

7 Do you understand?

8 THE DEFENDANT: I do, Your Honor.

9 THE COURT: Does the government have any objection
10 to Ms. Kroupa remaining free under the present conditions of
11 release?

12 MR. LANGNER: No, Your Honor.

13 THE COURT: Ms. Kroupa, all of the conditions that
14 you previously were released on will continue to apply. You
15 must follow those conditions. If I learn that you have
16 violated any of those conditions, I may order that you be
17 incarcerated until sentencing. Do you understand?

18 THE DEFENDANT: I do, Your Honor.

19 THE COURT: Ms. Kroupa, you will be informed of
20 the date of your sentencing hearing. You're legally
21 required to attend that hearing. Failure to appear at your
22 sentencing hearing is itself a crime for which you could be
23 prosecuted. Do you understand?

24 THE DEFENDANT: I understand.

25 THE COURT: Is there anything further that we need

1 to take up at this time, Counsel?

2 MR. LANGNER: I don't believe so, Your Honor.

3 MR. KELLY: Nothing, Your Honor.

4 THE COURT: Okay. Then, Ms. Kroupa, I wish you
5 good luck and you will be reached by the appropriate
6 authorities to continue with the proceedings in this matter.

7 THE DEFENDANT: Thank you, Your Honor.

8 THE COURT: We are in recess.

9 (Court adjourned at 2:23 p.m.)

10 * * *

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14 I, Lori A. Simpson, certify that the foregoing is a
15 correct transcript from the record of proceedings in the
16 above-entitled matter.

17

18 Certified by: s/ Lori A. Simpson

19 Lori A. Simpson, RMR-CRR

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