

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
PROVISIONAL RELEASE OF AN OFFENDER

DEFERRED PROSECUTION

TO: Milton Balkany
a/k/a "Yehoshua Balkany,"

Magistrate Court
Docket No. 03-1387

On August 26, 2003, a criminal Complaint (Dkt. No. 03-1387) was issued by a United States Magistrate Judge in the Southern District of New York, in which you were accused of committing offenses against the United States, to wit, theft of government property, in violation of Title 18 United States Code, Section 641; submitting a false claim to the Department of Housing and Urban Development ("HUD") in connection with your application for a \$700,000 Economic Development Initiative ("EDI") grant in violation of Title 18, United States Code, Section 287; wire fraud in violation of Title 18, United States Code, Section 1343; and obstruction of a HUD investigation in violation of Title 18, United States Code, Section 1505. However, after a thorough investigation it has been determined that the interest of the United States and your own interest will best be served by deferring prosecution in this District. Prosecution will be deferred during the term of your good behavior and satisfactory compliance with the terms of this agreement for the period of 6 months from the signing of this agreement. The term and conditions constituting your good behavior and satisfactory compliance are as follows:

- (1) You shall refrain from violation of any law (federal, state and local). You shall immediately contact your U.S. Pretrial Services Officer if arrested or questioned by a law-enforcement officer.
- (2) You shall associate only with law-abiding persons.
- (3) You shall work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. When out of work you shall notify your supervising U.S. Pretrial Services Officer at once. You shall consult him or her prior to job changes.
- (4) You shall not leave New York, Connecticut, New Jersey, Pennsylvania and Florida without permission of your supervising U.S. Pretrial Services Officer.
- (5) You shall notify your supervising U.S. Pretrial Services Officer immediately of any change in your place of residence.
- (6) You shall follow your supervising U.S. Pretrial Services Officer's instructions and advice.

(7) You shall report to your supervising U.S. Pretrial Services Officer as directed.

As a further condition you hereby consent to permit disclosure to the supervising Pretrial Services Officer, consistent with Section 408 of Public Law 92-255 of New York State and regulations issued pursuant thereto, of such medical and treatment records as may be relevant to deferral of prosecution in this case.

The defendant agrees that with respect to any and all charges in the Complaint, he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

In connection with this agreement, you have agreed to a statement, attached as Exhibit A, relating to your conduct in this case. You understand that in the event you fail to comply with the terms of the deferred prosecution agreement, and you are prosecuted for the conduct in Complaint No. 03-1387, in such a prosecution the Government may offer all or part of this statement at any stage of the criminal proceeding for any purpose. You agree that you shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that such statement (or any leads therefrom) should be suppressed. You understand that you are waiving any and all rights in the foregoing respects.

Special conditions are as follows:

As a special condition, henceforth you shall not contact or lobby, or cause any other person to contact or lobby, any official or employee of the United States Bureau of Prisons with regard to any matter, including, but not limited to, any matter involving a federal inmate or any other person charged or convicted of a federal crime.

As a further special condition, henceforth you shall not seek or cause any other person or entity to seek, any loan, grant or other form of assistance (financial or otherwise) from the United States Government or any department or agency thereof.

As a further special condition, you shall pay voluntary restitution to HUD in the aggregate amount of \$700,000, as follows: (a) you shall make a payment of \$100,000 on or before February 20, 2004; (b) you shall make a payment of \$300,000 on or before August 20, 2004; and (c) you shall execute or cause to be executed a mortgage against the Bais Yaakov Property at 1362 49th Street, Brooklyn, New York in favor of HUD in the amount of \$300,000 on or before February 20, 2004.

The restitution payments shall be made to:

Dorothy A. Baker
Texas State Office
CFO National Accounting Center
Post Office Box 901013
Fort Worth, TX 76101

If upon completion of your supervision a written report from your supervising U.S. Pretrial Services Officer is received to the effect that you have complied with all the rules, regulations and conditions, if any, above mentioned, no further prosecution will be instituted in this District for the above offense unless you violate one of the special conditions.

Dated: New York, New York
February 23, 2004

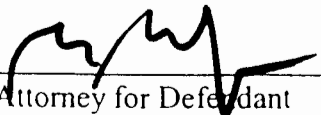
DAVID N. KELLEY
United States Attorney

By:  _____

Evan T. Barr
Paul B. Radvany
Assistant United States Attorneys

The undersigned hereby consents to the foregoing and expressly waives any and all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161(h)(2) and the Rules of the District Court of the Southern District of New York, or other pertinent provisions and consents to the adjournment of all pending proceedings in this case. It is further agreed that should you violate any of the above special conditions, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be commenced or reinstated against you, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

Dated: New York, New York
February 23, 2004



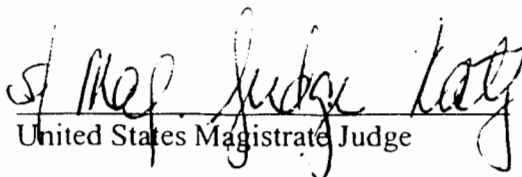
Attorney for Defendant



Defendant

The foregoing waiver of the defendant's right to a speedy trial is approved pursuant to Rule 5(b) of the Second Circuit Plan for Achieving Prompt Disposition of Criminal Cases and the Rules of the District Court for the Southern District of New York.

Dated: New York, New York
February 2, 2004


United States Magistrate Judge

The undersigned hereby consents to the foregoing and will accept supervision of the above-named defendant on the conditions set forth herein.

Dated: New York, New York
February 2, 2004

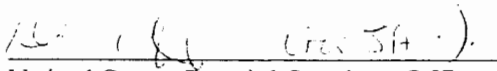

United States Pretrial Services Officer

Exhibit A
Deferred Prosecution Statement By Rabbi Milton Balkany

I am the Dean of the Bais Yaakov of Brooklyn, a religious day school located in Boro Park, New York. In connection with my efforts to develop a program for the benefit of learning disabled children, I helped found the Children's Center of Brooklyn as an adjunct of Bais Yaakov.

In 1999, in my capacity as the Dean of the Children's Center of Brooklyn, and on behalf of that institution, I applied for and received an Economic Development initiative grant from the United States Department of Housing and Urban Development (HUD). The grant was specifically intended to assist the Children's Center of Brooklyn "for construction of a facility to house educational and therapeutic programs for disabled preschool children" and also allowed for payments towards a mortgage against the Bais Yaakov school property.

Contrary to my understanding with HUD, I authorized the use of the grant to pay for general administrative and operational expenses of both Bais Yaakov and the Children's Center of Brooklyn, even though I knew that the specific terms of the grant did not permit me to use the funds in this manner.

As a result of the filings made by me and others at my direction to HUD on behalf of the Children's Center of Brooklyn, funds were authorized by HUD that would not have been authorized if the representatives of HUD had been aware that those funds would be used to pay administrative expenses of that program as well as of the Bais Yaakov.

I recognize that, by using the funds in the manner I did, I did not comply with my specific agreement with HUD, and that doing so was wrong. Although motivated by my desire to provide educational opportunities for learning disabled children, I fully recognize that strict compliance with the mandatory federal regulations that govern programs of this nature was required. Accordingly, I have agreed to accept responsibility for my actions and also agreed to repay the funds.