

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 UNITED STATES OF AMERICA,

5 v.

(LBS)

6 Defendant.  
7 -----x

8 New York, N.Y.  
9 April 2012  
10 11:15 a.m.

11 Before:

12 HON. LEONARD B. SAND,

13 District Judge

14 APPEARANCES

15 PREET BHARARA  
16 United States Attorney for the  
17 Southern District of New York

18 DAVID LEVINE  
19 Attorney for Defendant

20 ALSO PRESENT:  
21  
22  
23  
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25

(In open court)

DEPUTY CLERK: Matter of the United States of America  
versus Counsel, please state your name for the  
record.

Good afternoon, your Honor,  
for the government. I'm standing in for  
And with me at counsel table is from  
Pretrial Services.

MR. LEVINE: David Levine for the defendant, standing  
on my left, your Honor.

THE COURT: I have been a judge for over 30 years,  
this is the first deferred prosecution application I have ever  
entered. Somebody tell me what this is all about.

Certainly, your Honor. The defendant  
was charged by indictment last year, and based on an  
application from his counsel, and discussions with the  
government, the government has decided that, assuming that the  
defendant complies with the terms of the agreement that we have  
put before you for the next six months, that after that  
six-month period, the government will dismiss the charges  
against him.

And so the purpose of this proceeding is for your  
Honor to review the agreement, which has already been  
reviewed -- which was prepared by the government, has been  
reviewed and signed by the pretrial services officer and has

1 also been reviewed and signed by the defendant and defense  
2 counsel. And if your Honor could review it and discuss it  
3 briefly on the record with the defendant to ensure that he  
4 understands it and then sign it, and then the defendant will be  
5 bound by it. And it's everyone's hope that he will comply with  
6 the terms of the agreement for the next six months, at which  
7 time the government will submit paperwork to your Honor to  
8 dismiss the indictment.

9 THE COURT: All right. I gather the charge here is  
10 that in connection with a loan application the defendant made  
11 false statements with respect to his income from employment.

12 That's correct, your Honor.

13 THE COURT: And were you the attorney who was involved  
14 in negotiations which led to this deferred prosecution?

15 No, your Honor, I'm not. The  
16 prosecutor is , who unfortunately cannot be  
17 here today. Although I have reviewed the materials and I have  
18 reviewed the submission that was put in by defense counsel, so  
19 I have a general understanding of the reasons for the deferred  
20 prosecution agreement.

21 THE COURT: Now there are many, many cases in which  
22 these charges are brought. Is there some unusual circumstance?

23 Yes, your Honor, there were two  
24 primary reasons. Let me just explain how the process works in  
25 our office. Defense counsel always in every case has the

1 opportunity to put in an application for a deferred  
2 prosecution; that's a written submission that is prepared by  
3 defense counsel and presented to the prosecutor assigned to the  
4 case. The prosecutor then reviews the materials, usually  
5 discusses them, and I know in this case discussed them with the  
6 case agents, the law enforcement agents who were working on the  
7 investigation, and together they come up with a recommendation  
8 about whether they think a deferred prosecution is appropriate  
9 or not.

10 In this case, the prosecutor and the agents thought  
11 that deferred prosecution was appropriate. The application  
12 then goes to a three-person panel at the U.S. Attorney's  
13 Office, which includes the supervisor of the unit that is  
14 handling the case and two of the deputy chiefs of the criminal  
15 division, they all review the application as well and they vote  
16 on it. And if at least two out of the three members of that  
17 panel vote in favor of deferred prosecution, then the case goes  
18 to pretrial services who also reviews the facts of the case and  
19 the defendant's compliance with any bail conditions and  
20 pretrial services requirements that are in place, and pretrial  
21 services will either approve or not approve the deferred  
22 prosecution. And if all of those people agree it's  
23 appropriate --  
24  
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