

## Petition for reconsideration and approval of Applicants eligibility to the State of Florida Elmore Program

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 FLORIDA HOUSING  
 FINANCE CORPORATION

The Petitioner, Marika Tolz ( Tolz) herewith files her appeal to the decision of the Florida Housing Coalition and the National Foundation for Debt Management making Tolz ineligible to receive Elmore Program benefits . This is as stated in ( exhibit 7) letter dated December 4, 2018 “ ....your conviction falls within the parameters of a fraud that is in connection with a real estate transaction.”

Tolz disputes the denial decision and states that she disputes a material fact that can easily be concluded by reading the documents provided or the court files.

### STANDARD OF REVIEW

The agency’s reviews should have been based on factual allegations for denying the petitioner’s application. The cause for the denial is stated to be because she was convicted of a mortgage related crime. A proper review and understanding of the case would disclose that at NO time was there a mortgage or a mortgage related transaction involved or referenced in the case. Enclosed are the hearing transcripts ( exhibit 1 ) and the sentencing judgments ( exhibit 2 ) .

The petition for assistance should not be denied as the agency cannot establish that Tolz was involved in a mortgage transaction of any sort. The documents selected and attached to this appeal support the claim that there was no mortgage or real estate of any sort involved. Here, the agency, cannot meet the actual or legal standard for denial, and as such the denial should be vacated and the petition should be approved to go forward.

### BACKGROUND

In early 2017 Tolz began her application with the National Foundation of Debt Management. At that time, she was asked whether her conviction was related in any way with a mortgage transaction. The answer was “ NO “. The sentencing judgments were provided at the time as additional support. The sentences had to do with trust account violations and did not involve transactions involving anyone else or mortgages . The case involved 6-7 victims, all of whom have been repaid for their losses.

There was, at the time of application for an Elmore grant ,an open chapter 7 ( 2011 ) Bankruptcy case in the Southern District of Florida. That case was finally closed in November, 2018 which gave rise to allowing Tolz to go forward with her application. Prior to that time, Tolz

had continued to provide requested updated documents to complete the file for submission . Tolz also requested that the application be processed expeditiously as her mortgage foreclosure action on her home of over 40 years was eminent.

On November 6, 2018 a final hearing was conducted on the pending foreclosure action which was continued to allow Tolz the time to complete her Elmore application . The hearing was continued to February 2019.

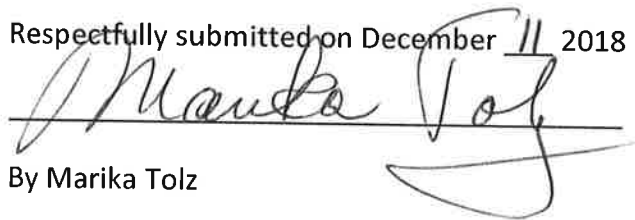
Accordingly, Tolz asks that this appeal either be granted based on the evidence presented or set for hearing .

Attached are the hearing transcripts and sentencing orders. If those are not sufficient to grant the relief requested, additional documents can be obtained from the court records.

There are two cases. The federal case # 11-20160 CR Martinez and a State case # 11-005301 CF 10A. The State case is a derivative of the Federal case for a portion of the same offense as reflected in the transcript and acknowledged by the Court. The State case has no independent investigative report , as also reflected in the transcript. The offense is called " Wire Fraud" and deals with trust account checks ( same in both cases ) . No checks were ever involved in any mortgage transactions. Both cases were for the same sentence period and ran concurrently .

**Wherefore,** it is herewith requested that her application denial be vacated and that she be granted the opportunity to obtain the assistance she needs through the State of Florida Elmore Program for assistance to save her home of over 40 years. Tolz is 72 year old, and has nowhere else to go.

Respectfully submitted on December 11 2018

A handwritten signature in black ink, appearing to read "Marika Tolz", is written over a horizontal line. The signature is fluid and cursive.

By Marika Tolz

1229 Polk Street

Hollywood , Fla. 33019

(954) 200 9734

## Exhibit List

1. Federal sentencing transcript
2. State Sentencing transcript
3. Federal sentencing Order
4. State sentencing order
5. Published Elmore guidelines
6. first denial letter from National Foundation for Debt Management
7. Second denial letter from Florida Housing Coalition
8. List of representatives whom handled the application and their company affiliations

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 11-20160-CR-JEM

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

Miami, Florida  
July 27, 2011

MARIKA TOLZ,  
Defendant.

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TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE JOSE E. MARTINEZ  
UNITED STATES DISTRICT JUDGE

REPORTED BY: DAWN M. WHITMARSH, RPR  
Official Court Reporter  
400 N. Miami Avenue, 10s03  
Miami, Florida 33128  
Telephone: 305-523-5598

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 *United States Attorney's Office*  
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5 BY: EVELYN BALTODANO-SHEEHAN, A.U.S.A.  
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8 FOR THE DEFENDANT:

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19

20

P-R-O-C-E-E-D-I-N-G-S

21

COURTROOM DEPUTY: Case number

22

11-20160-criminal-Martinez, United States of America versus

23

Marika Tolz.

24

Counsel, please state your appearance.

25

MR. PEREZ: Good afternoon, Your Honor. Luis Perez

26

appearing on behalf of the State.

27

And also with me is Evelyn Sheehan, also Assistant

28

United States Attorney.

29

THE COURT: Good afternoon. What state? Are you still

30

over at the State Attorney's Office?

31

MR. PEREZ: Oh sorry, Judge. I missed by 21 years if I

1 remember correctly.

2 THE COURT: It's only been a while. Okay.

3 MR. KUEHNE: Good afternoon, Judge Martinez. Ben  
4 Kuehne and Alan Weinstein, we represent Marika Tolz, she's  
5 present.

6 With us is Manny Farach who represents Marika Tolz, not  
7 directly in this case, but in connection with one of the  
8 bankruptcy proceedings.

9 THE COURT: Good afternoon, gentlemen.

10 All right. We're here on the sentencing on Ms. Tolz.  
11 I have reviewed the factual basis supporting the change of plea,  
12 the written -- let me get an appearance from probation.

13 THE PROBATION OFFICER: Good afternoon, Your Honor.  
14 Tracy Webb with US probation.

15 THE COURT: Good afternoon, Ms. Webb.

16 All right. We're here on the sentencing on Ms. Tolz.  
17 I have reviewed the factual basis supporting the change of plea  
18 and the written plea agreement. I have reviewed the presentence  
19 investigation.

20 I have noted that the defendant will request that any  
21 term of imprisonment be served at FCI Coleman. Defendant has  
22 also requested a voluntary surrender to the place of  
23 designation.

24 Note that there has been an adjustment for acceptance  
25 of responsibility. Note that there has been an addendum to the

1 PSI, objections and response by the defendant.

2 Mr. Kuehne and Mr. Weinstein, I just want to tell you  
3 that when you file objections directly with the Probation Office  
4 and do not file them with CM/ECF, I don't get them. I don't see  
5 them. I prepare for sentencings well in advance. I start  
6 reading usually a week or two ahead. And yesterday, I got the  
7 objections and the discussion by the Probation Office. You need  
8 to do those through CM/ECF so I get a copy of them right away.  
9 Even if I don't get a copy, I can at least pull them up from the  
10 computer.

11 I noted the defendant's objections and comments to the  
12 PSI, the Government's objections and comments to the PSI, and  
13 the defendant's statement of acceptance of responsibility.

14 Note that the payment -- the special assessment has  
15 been paid.

16 I've reviewed the second addendum, the defendant's  
17 objections and requests for downward variance, Government's  
18 opposition, sentencing memorandum of the defendant Marika Tolz,  
19 numerous letters on behalf of the defendant, a preliminary order  
20 of forfeiture which was entered by this Court, and I'm ready to  
21 proceed at this time.

22 We have an hour set aside for this. I am in the middle  
23 of a three or four week trial, and so I need to get back to that  
24 trial, but I'm ready to proceed at this time.

25 Mr. Kuehne -- well, let me ask the Government first, if

1 there are objections that have not been dealt with by the  
2 probation office to your satisfaction, raise them now or  
3 consider them to have been waived.

4 MR. PEREZ: Yes, Your Honor. The one objection is a  
5 reference that I've indicated to post traumatic stress disorder  
6 as a consideration for the Court. As I've indicated in my  
7 response, I do not know how counsel is going to, if he's going  
8 to, address that or not. It may or may not be a consideration  
9 for the Court.

10 As to another issue in one of my objections, the  
11 defense has indicated prior to court today that he is not going  
12 to proceed on his objection that has to do with the two versus  
13 four on the manager role.

14 THE COURT: Okay. All right. Well, I can deal with  
15 that. Just remind me before we actually impose sentence. All  
16 right.

17 Mr. Kuehne? Same thing, if you have any objections  
18 that have not been dealt with by the defense. I am troubled by  
19 the number of victims. I am aware of the Government's position  
20 on it. I want to try to be as consistent as possible.

21 You know, it seems to me that we're talking about  
22 generally a lot less victims than has shown up in this thing. I  
23 think that the trusteeship or the receivership is the victim and  
24 however many she defalcated from would be the issue, you know,  
25 the number. Not however many sub-people are within those



1 categories.

2 I don't know. Let me hear from you, Mr. Kuehne.

3 MR. KUEHNE: Your Honor, thank you. You've zeroed in  
4 on the single objection to the PSI that Marika Tolz is  
5 presenting.

6 And let me make this clear, Judge, I apologize that we  
7 didn't follow best practices. Our intention --

8 THE COURT: You followed the practices that are  
9 required by the Court. I'm just telling you as a practical  
10 matter, if you file them directly with the Probation Office,  
11 which is what the rule requires, I don't get to see them.

12 MR. KUEHNE: And what we had thought we would be saving  
13 you and the Court time, because actually the objections with Ms.  
14 Webb resulted in, I think, seven of her resolutions. So we  
15 thought that's terrific, they never even need to get to you.

16 THE COURT: I understand, but I need to see those --

17 MR. KUEHNE: We do understand, Judge.

18 THE COURT: -- because sometimes I don't agree with  
19 her. Okay?

20 MR. KUEHNE: That's good information. Thank you,  
21 Judge.

22 The specific item is paragraph 44 of the PSI amended.

23 THE COURT: I got it.

24 MR. KUEHNE: That deals with the amount of victims.  
25 That's the issue.

1 THE COURT: Six extra.

2 MR. KUEHNE: Correct. We believe it should be zero.  
3 No adjustment. The plea agreement took the position at the  
4 time, based on full knowledge of this case with the parties,  
5 that there was no adjustment. The original PSI preparation done  
6 by the Probation Office had no adjustment. It was just with the  
7 addendum to the PSI that we believe the facts got a bit muddled  
8 to deal with underlying victims of the Rothstein fraud when in  
9 fact, Your Honor, the number of victims are fewer than ten for  
10 no adjustment based on the thefts and defalcations admitted that  
11 come from discreet, known entities, essentially the receivers or  
12 the trusts. That amounts to far fewer than ten, we believe it's  
13 three, and that would result in, as the parties' contemplated at  
14 the time of the change of plea, although not binding on the  
15 Court of course for factual purposes, the adjustment of zero.

16 That would result in the defense and the Government  
17 going to this Court proceeding at sentencing with an agreement  
18 as to what the guideline level is and the sentencing guideline  
19 range.

20 And to make certain, Your Honor, that the record is  
21 clean and clear on this, there are a couple other housekeeping  
22 matters I want to inform the Court that we are waiving from our  
23 written objections to the PSI, but I'll do that either now --

24 THE COURT: Let me hear from Mr. Perez as to that.

25 MR. PEREZ: Your Honor, on that issue, I want to be

1 clear, the Government did not ask for that six point adjustment.  
2 At the time -- it's not in our plea agreement, we didn't ask for  
3 it before, we're not asking for it now.

4 At the time when we negotiated the plea, we had come  
5 off the heels of a somewhat, although not precisely, but similar  
6 case where another court in this district found a similar --  
7 made a finding consistent with what our position was in the plea  
8 agreement. We're not asking for the six point adjustment.

9 THE COURT: Okay. Well, then I will instruct the  
10 probation officer to take off the six point adjustment. All  
11 right. Next?

12 MR. KUEHNE: Having said that, Judge, the rest is  
13 simply to clear the record so the Court has a clean comment.

14 THE COURT: Go for it. Tell me.

15 MR. KUEHNE: First Judge, quickly, the --

16 THE COURT: It's your hour, I don't care how quickly  
17 you do it. Just go ahead.

18 MR. KUEHNE: Yes, Judge. The objection we had  
19 previously raised as to role in the offense, we were suggesting  
20 too, the parties had agreed in the plea agreement, is between  
21 two and four. We are waiving and abandoning any objection to  
22 the Probation Officer's assessment and the Government position  
23 of a four level enhancement. It's included in the amended PSI.

24 THE COURT: All right.

25 MR. KUEHNE: And next, Judge, the remaining discussion

1 on the PSI has nothing to do with the calculation of the  
2 guidelines.

3 THE COURT: Okay.

4 MR. KUEHNE: So we've completed what we'll call the  
5 formal PSI objection process.

6 THE COURT: All right. Then, let me ask the Probation  
7 Officer, Ms. Webb, if you would tell me now, based upon my  
8 rulings and the total offense level now is what?

9 THE PROBATION OFFICER: Thirty, Your Honor.

10 THE COURT: What does that result in as far as the  
11 advisory guideline provisions?

12 THE PROBATION OFFICER: The guideline imprisonment  
13 range is 97 to 121 months, the supervised release range remains  
14 the same as two to three years, and the fine range is 15,000 to  
15 \$150,000.

16 THE COURT: All right. Does everybody agree that those  
17 are the applicable guidelines?

18 MR. KUEHNE: The defense does agree, Your Honor.

19 MR. PEREZ: The United States concurs.

20 THE COURT: Okay. Thank you. Let's move on then.  
21 What else you got?

22 MR. KUEHNE: Judge, the next item is simply an  
23 augmentation. Page 16, paragraph 71 of the PSI reflects  
24 correctly Ms. Tolz's use of alcohol and prescription drugs. The  
25 information is accurate. We simply ask the Court to augment, as

1 we've stated in our PSI comments, that she has tried to cope  
2 with her dependence on both alcohol and prescription drugs and  
3 has done well but she's dealt with that problem for quite some  
4 time.

5 We say that, Judge because number one it's factually  
6 accurate, and number two, it should be accurate that she has  
7 complied with all the conditions of her pretrial release but  
8 nonetheless coping with the stress has been difficult and  
9 breaking the dependence from alcohol and prescription drugs has  
10 been a problem for her. But she's doing the best she can.

11 THE COURT: All right. Mr. Perez, do you have any  
12 problem with inserting a sentence to that effect in this --

13 MR. PEREZ: No, Your Honor. No objection from the  
14 United States.

15 THE COURT: All right. Could you add a sentence to  
16 that effect, Ms. Webb?

17 THE PROBATION OFFICER: Yes, Your Honor.

18 THE COURT: All right. Go ahead.

19 MR. KUEHNE: Your Honor, the final area goes more into  
20 what we would term the sentencing allocution, but it does deal  
21 with sentencing guideline determinations. We have asked in the  
22 in our sentencing presentation for the Court to find fit that  
23 certain circumstances in this case warrant a variance from the  
24 guidelines or a departure from the guidelines.

25 THE COURT: Tell me what they are.

1 MR. KUEHNE: The materials found at page six of our  
2 objections and comments identifies age and health status as an  
3 allowable factor under the sentencing statute and the guidelines  
4 for the Court to consider.

5 THE COURT: It is, and I've considered it. I will  
6 listen. Tell me about it.

7 MR. KUEHNE: Next, Your Honor, if I could just  
8 summarize the first --

9 THE COURT: Go ahead.

10 MR. KUEHNE: Then we have the content of extraordinary  
11 restitution. Restitution that is far unusual for fraud cases,  
12 particularly fraud cases of significant magnitude.

13 THE COURT: Tell me what that restitution has been.

14 MR. KUEHNE: Judge, the parties agree that the  
15 restitution amount by Ms. Tolz is at least \$1.4 million, that  
16 the parties agree.

17 The reason I say "at least", the defense has submitted  
18 to the Court that full property and dollars amounting to  
19 reasonable value of \$2.4 million, the complete dollar loss in  
20 this case, has been tendered by Ms. Tolz. We agree with the  
21 Government as to the specific items that have been tendered.  
22 There is some uncertainty as to the value of some of those real  
23 estate properties. The Government has submitted their good  
24 faith valuation of those properties, we have our good faith  
25 valuation of those properties. It is difficult for this Court

1 to decide what the value is going to be in the future. Those  
2 properties are going to be monetized because there is a section  
3 of cash -- we know what that amount is, \$400,000 in cash -- the  
4 rest is properties. The properties range from over a million  
5 dollars to \$2 million, depending on what is then the value of  
6 those properties when monetized, when sold, and what the status  
7 of some mortgages are on the property that have been paid off,  
8 but the satisfaction documents have not been properly connected  
9 to the mortgages for title insurance policies. That runs to  
10 about 300 to \$400,000 of matching up the satisfactions which  
11 would increase the Government's estimate of the value of those  
12 mortgages. And the rest of the difference, Judge, really comes  
13 in how the Marshal's Service appraises versus an MAI appraisal,  
14 but the appraisals are relatively close and the handling charges  
15 for the monetization of those properties.

16 Having said that, Judge, with regard to Marianna Tolz  
17 and the factual information that we're submitting to the Court,  
18 and has been presented in the materials including the PSI, Ms.  
19 Tolz has submitted properties to the Court, the Court has  
20 entered forfeiture orders, preliminary, forfeiture orders on  
21 those properties, turning title to the United States, and cash.  
22 Those properties and cash essentially are everything Marika Tolz  
23 has been able to gather, all of her properties and including,  
24 fortunately for Ms. Tolz, and you'll hear more about this a  
25 little bit later, the assistance of her family members who have

1 pledged and deeded and turned over some of their properties.

2 In addition to that work on extraordinary restitution  
3 -- and the reason it's called extraordinary, Judge, is based on  
4 the cases, it goes over and beyond what seems to be the  
5 practical aspect of restitution. Marika Tolz making not only  
6 every effort by her own efforts to make the victims whole, but  
7 either doing it if the values are accurately stated or coming  
8 very, very close to doing it. But the agreement between the  
9 parties, I believe, Judge, is that she has made substantial and  
10 significant efforts towards restitution.

11 With regard to the Court recognizing that restitution  
12 is a requirement of sentencing, and ultimately money will be  
13 paid to victims, not directly due to Marika Tolz's submission of  
14 properties, the Government has essentially tracked down  
15 additional assets that are part of the orders of forfeiture that  
16 are substantial in monetary value already. So it's clear from  
17 this case, Your Honor, different from any other case or I would  
18 say most other cases, that not only was there a hope by Ms. Tolz  
19 that the victims will be made whole and that she will replenish  
20 all of those funds, we have, as a matter of fact, that full  
21 payment is going to be made through Ms. Tolz's own individual  
22 extraordinary restitution efforts and the Government's efforts  
23 to track down some of the additional cash accounts.

24 That's why we request, under the sentencing factors of  
25 3553(a)(7), that the Court consider extraordinary restitution,



1 above and beyond what might be expected in the ordinary case and  
2 going to Ms. Tolz doing everything she possibly could.

3 Part of that process, Your Honor, is another factor we  
4 ask the Court to consider, and that is the assistance to  
5 authorities in gathering the relevant assets and providing and  
6 explanation for a trailing of how this unfortunate series of  
7 deeds occurred, and she has done that.

8 And finally, Judge, we would ask this Court to  
9 recognize that given Ms. Tolz's modest means and lifestyle,  
10 without any effort to offer an explanation for her misconduct  
11 because there is none, but by way of offering her apology for  
12 what she has done, we believe it's significant in this case that  
13 the motivation for this was a sad motivation but was not  
14 motivated by personal greed but by things that she felt called  
15 upon her to make the judgments that led to the stealings of  
16 monies in this case. But she's done everything she can to  
17 restore those funds and monies.

18 And finally, Judge, we would ask this Court to consider  
19 when you do sentencing that Ms. Tolz has fallen from a very high  
20 perch by her own doing and her substantial loss of position and  
21 reputation is also a factor that the Court should consider when  
22 imposing sentence and we believe it's a proper factor for a  
23 variance from the guidelines.

24 THE COURT: But that one cuts both ways.

25 MR. KUEHNE: It of course does, Judge. And the

1 sentencing memorandum addresses both of those, both concerns for  
2 the Court.

3 For purposes, Judge of the remainder of our  
4 presentation, we have what we call the traditional allocution  
5 portion. Mr. Weinstein is going to handle that. But it may be  
6 appropriate for this Court to hear from the Government on the  
7 dollar issues before we go to Ms. Tolz making her comments and a  
8 few of our sentencing witnesses.

9 THE COURT: He's not shy. I'm sure he'll come and  
10 talk. But I do want to tell you, I don't want to hear from  
11 anybody I've read a letter from. I don't want to read a letter  
12 and hear from them at the same time. You know, it's redundantly  
13 repetitious.

14 MR. KUEHNE: The family and friends have spent a lot of  
15 their heart and effort in providing letters to the Court that  
16 the Court has read.

17 THE COURT: I have read every one. More than 75, I  
18 think.

19 MR. KUEHNE: Yes, Judge. More than 75. Thank you,  
20 Judge.

21 THE COURT: Let me have Mr. Perez, what do you say on  
22 the extraordinary restitution?

23 MR. PEREZ: Your Honor, as to --

24 THE COURT: Now, it's my understanding that a lot of  
25 this is because nothing is worth now what it was worth some time

1 -- a couple years ago, six years ago or something. Is that part  
2 of it?

3 MR. PEREZ: Yes, Your Honor. As you can see from the  
4 charging document and the defendant's statement of facts  
5 indicated at Exhibit 2, at document entry 37 which the Court  
6 separately indicated at her change of plea, the defendant bought  
7 these properties or bought into certain properties from fraud  
8 amounts, from money taken from these people at a better market  
9 than we are now trying to make these victims whole. As a  
10 result, just like any car you drive off the lot, more so now  
11 because of the condition of the economy now vis-a-vis three,  
12 four years ago, or further when the properties were taken, the  
13 fact of the matter is the property is, I believe, over a million  
14 off of what she anticipated they were going to be worth.

15 The fact of the matter is the practice in this district  
16 and every other district that I know federally is the Marshals  
17 have teams of experts and other persons that work with the  
18 Marshals in conjunction with them in order to valuate the  
19 property for purposes of sale, precisely for this and other  
20 purposes.

21 The Marshals, not affiliated with us, the Marshals have  
22 determined the valuation of the property. The person that works  
23 with the Marshals is here if the Court has any queries but I  
24 would fully anticipate that is what is going to be her answer.  
25 And also, I don't believe that the parties are in disagreement

1 in terms of the amount of the difference. Basically I think the  
2 disagreement is in the intent or the value of the attempt.

3 I submit to the Court then that the issue is not how  
4 much she thought she gave, but the fact of the matter is there  
5 is still restitution, she gave what she thought would reach X  
6 amount. The Government, that is the asset forfeiture section of  
7 the US Attorney's Office, in conjunction with other persons,  
8 have found additional funds that is on the effort of the US  
9 Attorney's Office and the effort of the Department of Justice,  
10 to make those people whole. The defendant should not benefit by  
11 that. That is a civil proceeding or a civil/criminal proceeding  
12 separate and apart.

13 Separate and apart from that, she does not get the  
14 benefit of getting there by other people's efforts in making  
15 these victims whole. What she did is she found what she thought  
16 she had, the Government found more. Now, the notion of  
17 extraordinary restitution is a term that has been put on a case  
18 which, if I remember, was several years ago and that is a person  
19 that knew that they had committed an offense and paid  
20 restitution before the offense had been discovered.

21 That is not what happened in this case. Ms. Tolz made  
22 zero effort to repay one victim, either in criminal court or in  
23 civil court, before somebody from the US Trustee's Office tapped  
24 her on the shoulder and told her this is wrong and then they  
25 began an entire one year process, actually six month process of

1 tearing apart her books and determining what was lost.

2 The US Trustee determined what the notice of the loss  
3 was. Many months later she was hit with an agreed restitution  
4 amount based on what the trustees found out. The fact of the  
5 matter is when she was tapped on the shoulder, and I have a  
6 presentation here which shows exactly what she took over a  
7 period of time, she had no idea because she was not going to  
8 keep a record of what she had taken.

9 But she should not get credit for valuation. She  
10 shorted the amount, to make even the people that are at the end,  
11 and I'm referring -- we're referring to making people whole,  
12 we're referring to victims. And the definition of victims in  
13 the criminal statute, which means victims which are still being  
14 owed money at the time of the offense, and the guidelines there  
15 are defined differently than perhaps victims in other scenarios.  
16 Those victims are going to come close to being made whole but  
17 there is not going to be a full payment of damages or losses in  
18 this case.

19 THE COURT: Ever?

20 MR. PEREZ: The ramifications of the criminal actions  
21 of the defendants have had dynamics on the civil side which is  
22 difficult for me to quantify. There is somebody from the civil  
23 side who is going to talk about it, but the fact of the matter  
24 is there are a lot of people that are victims as part of a civil  
25 matter because -- the way that it was laid out to the Court and

1 as we've explained and actually opposing counsel has agreed,  
2 this is essentially a Ponzi. As she got in real estate, she  
3 would pay the wholes from the money she had taken in the old  
4 estate. So there are years of accounts that were made whole.  
5 However, at the end when she ran out of money, everybody that  
6 was paid by her unlawfully has a lawsuit against successor  
7 trustee, successor estates. So in terms of attorneys' fees,  
8 depositions, costs, court reporters, courtrooms, that can never  
9 be valued.

10 On the criminal side which is a much smaller figure,  
11 the two point -- approximately \$2.4 million figure, we're going  
12 to come close to that figure.

13 THE COURT: Okay. I understand what you're saying.

14 Now why don't -- rather than you guys tell me what  
15 you're going to tell me, why don't you go ahead and tell me  
16 because we've already gone through 25 minutes of the hour that  
17 you have. So who wants to go first? Who wants to do what?  
18 Whatever it is, get going.

19 MR. KUEHNE: Your Honor, defense will proceed. In  
20 brief response to Mr. Perez's comment, answering your question  
21 "ever"? The Court needs to be aware that when you factor in  
22 criminal plus civil, it brings together a whole new array of  
23 considerations for the Court, none of which we think are  
24 critical for purposes of sentencing. But there is, with regard  
25 to the Court's question "ever", there is a bond that has been

1 the subject of placement in federal court, I believe it's Judge  
2 Moreno's division, although I'm not positive, Mr. Farach is more  
3 familiar with it, of \$3.6 million that is there and without a  
4 doubt, Judge, is going to be there and utilized by the various  
5 civil litigants for many of the things that Mr. Perez  
6 appropriately mentioned.

7 We point that out, Judge, because it's not the  
8 consideration for purposes of the taking and the restitution in  
9 this case. Lots of the other factors, court reporters I think  
10 he said, those matters, that's the kind of matter that would be  
11 appropriately handled in the civil litigation and the bond of  
12 \$3.6 million over and above any of the dollars that we're  
13 talking about is there to satisfy all of those concerns.

14 THE COURT: All right, sir.

15 MR. KUEHNE: Thank you, Judge.

16 THE COURT: All right. Mr. Weinstein?

17 MR. WEINSTEIN: May it please the Court.

18 THE COURT: Yes, sir.

19 MR. WEINSTEIN: Your Honor, it had been our intent,  
20 until I heard your announcement, to present brief testimony from  
21 two individuals, both of whom have written letters to you.

22 THE COURT: I've read them.

23 MR. WEINSTEIN: I understand that. Their presentment  
24 would be a little different, but I'll take the liberty of  
25 summarizing it. However --

1 THE COURT: I believe you, Mr. Weinstein. You've never  
2 lied to me and we've known each other for many years. More than  
3 I care to admit.

4 MR. WEINSTEIN: I think I had hair when I first met.

5 THE COURT: I don't think so.

6 MR. WEINSTEIN: That's cruel.

7 THE COURT: I don't remember it that way.

8 MR. WEINSTEIN: Your Honor, Rabbi Zeller, can you stand  
9 please? Curtis, would you stand? These gentlemen are both  
10 requested, and they were the only ones we were going to present  
11 --

12 THE COURT: I remember their letters actually.

13 MR. WEINSTEIN: Okay. Thank you, gentlemen.

14 MR. WEINSTEIN: Rabbi Zeller flew in from Philadelphia  
15 and he was going to explain in more detail than in the letter  
16 the very pertinent and difficult situation that Marika's life  
17 had.

18 She was born in Romania. She was born the child of two  
19 Holocaust survivors. Their story is amazing. It should --

20 THE COURT: It is an amazing story. Unfortunately, I'm  
21 very familiar with it. I've read it. I'm very -- and I'm  
22 appreciative of what she's been through.

23 MR. WEINSTEIN: The reason that that becomes important  
24 is because it shows the underlying motivation of how this  
25 terrible mistake started. And I'll get to that in a few



1 moments.

2 Mr. Major is important because it shows who Marika Tolz  
3 is. Mr. Major is just like many of us, just another ordinary  
4 person. He has told you in his letter, and would tell you  
5 today, that he would not be here, he would be another victim of  
6 the ghetto but for Marika. Not that she did it for any purpose,  
7 for her own benefit, not that she did it because she was rich  
8 and famous, but he needed help. And she helped lift him from  
9 the gutter, she provided him food, she pushed him to get an  
10 education, she gave him job opportunity, all of which saved his  
11 life. In the words in the letter and in the words he would say  
12 to you, she is his best friend. She is the reason the man today  
13 is a successful human being rather than another ghetto victim.

14 That said, Your Honor, personally, as I stand before  
15 the Court this afternoon, I find myself in an extremely unusual  
16 position. We mentioned how long we know each other, in the 42  
17 years I've been in practice as a defense lawyer, I've really  
18 never gotten to like or admire one of my clients. People I  
19 represent I represent zealously, but by and large they're  
20 serious criminals. I'm really proud to say to this Court that I  
21 both like and admire Marika Tolz.

22 Let me be very clear about this. I don't admire what  
23 she did. It was a terrible mistake. But I do admire the person  
24 who I have come to learn she really is. I did not know her  
25 before being retained to represent her with Mr. Kuehne. I

1 admire her willingness to immediately accept complete  
2 responsibility. I admire her willingness to step up and say  
3 these were my actions and not run from them or make excuses. I  
4 admire her absolutely unrestrained commitment to do everything  
5 in her power to make certain that every single victim is fully  
6 repaid. And I seriously admire what I've come to learn about  
7 her as a human being and her past life of good deeds, of strong  
8 moral fiber.

9 Today, she is before this Court totally destitute,  
10 having insisted to me and to Mr. Kuehne that every single asset  
11 she owned or could get her hands on be given to the Government  
12 for purposes of restitution. I fully well understand that  
13 restitution is a matter of law, but I also understand it is so  
14 rare that an individual makes the overwhelmingly serious efforts  
15 that were made by Marika to get that restitution done and see  
16 that nobody ultimately is hurt. Indeed, she even convinced  
17 family members to give up some of their properties so that  
18 ultimately the right thing could be done and victims get their  
19 money back.

20 I've never asked a Court to ignore the seriousness of  
21 what brings a client before them for sentencing. And I  
22 certainly do not ask Your Honor to ignore what Marika did.  
23 Rather, I truly beseech you, Judge, to take into account that  
24 what occurred was not done for the typical reason that brings  
25 people before you and before the bench for sentencing.

1 Her motivation was not greed. Her motivation was not  
2 self luxury. She lives and has lived a very, very simple  
3 lifestyle. There are no fancy watches, there's no expensive  
4 clothing. There were no boats, no expensive cars, no upscale  
5 and expensive homes. Her car is a 1993 vehicle, 18 years old.  
6 Her home she's lived in since 1974, it's a modest little home.  
7 And it's now the Government's. There was no attempt to use  
8 someone else's money to make big charitable gifts as you've  
9 heard and seen in too many instances so that she gets lauded and  
10 celebrated.

11 Rather, this terribly bad choice she made was really  
12 motivated by a pure reason, and we get back to being the  
13 daughter of Holocaust survivors. It was explained to you in  
14 detail, I believe by the letter you read from Rhoda Daniels, the  
15 social security lawyer from California who I think also sent you  
16 even a CD-ROM. Her motivation, what began this terrible spiral  
17 was to meet the expense created by attempting to do everything  
18 possible to save the life of her critically ill and dying  
19 mother. And that is indeed very symptomatic of the children of  
20 Holocaust survivors. They do everything to envelop and love and  
21 care for their parents.

22 This everything was wrong. I understand that. More  
23 importantly Marika understands that. But once the spiral began,  
24 she couldn't extricate herself from it. Ultimately, it was the  
25 rob Peter to pay Paul syndrome.

1           The choice she made, Judge Martinez, was clearly,  
2 clearly wrong. But I ask you on behalf of myself and  
3 Mr. Kuehne, and more importantly on behalf of Ms. Tolz, to  
4 consider this woman's entire life of good deeds, her honest  
5 living, and her essence as a human being when you fashion what I  
6 know will be an appropriate sentence.

7           Her long life -- and she's 63, 64 years old, facing  
8 clearly prison -- but her long life of honesty and caring for  
9 others, including ordinary people, not just her family or the  
10 rich and famous, has got to count for something. Ultimately,  
11 her good life and her good deeds will count in the ultimate  
12 judgment rendered by the highest authority. I'm certain of  
13 that.

14           I ask you, Judge, to make it count today also. To make  
15 it count now. Please be merciful. Consider the entirety of the  
16 person that stands before you when you pass sentence.

17           Thank you for the opportunity to speak to you.

18           THE COURT: Thank you, Mr. Weinstein.

19           Mr. Perez, do you have any comment before I --

20           MR. PEREZ: Your Honor, I have a victim that wants to  
21 testify, and a brief witness if I may, and then I just have  
22 argument if it's acceptable to the Court. But we're well within  
23 schedule.

24           Mr. Gebhardt?

25           THE COURT: I didn't get a letter from him, did I?

1 MR. PEREZ: No.

2 THE COURT: I didn't think so.

3 MR. WEINSTEIN: I'm sorry. I don't mean to interrupt,  
4 Judge, but when the government is done, Ms. Tolz would like --

5 THE COURT: Of course. I'll give her an opportunity.

6 Come forward and just speak from there. Speak from up there.

7 Yes, sir. Please tell us your name.

8 THE WITNESS: May it please the Court, my name is Guy  
9 Gebhardt.

10 THE COURT: Yes, sir. What did you want to say to me?

11 THE WITNESS: I'm an Assistant United States Trustee in  
12 Atlanta, Georgia. I am part of the United States Trustee system  
13 which is part of the United States Department of Justice.

14 THE COURT: I never have understood exactly what they  
15 are, but I've heard a lot about it lately, so tell me.

16 THE WITNESS: Your Honor, the United States Trustee was  
17 charged by Congress and placed in the United States Department  
18 of Justice in order to supervise the administration of  
19 bankruptcy cases. We supervise Chapter 11, Chapter 12, Chapter  
20 13 and Chapter 7 cases.

21 THE COURT: That explains why I don't know. I'm  
22 allergic to bankruptcy.

23 THE WITNESS: In connection with the Chapter 7 cases,  
24 Your Honor, the United States Trustee appoints and supervises a  
25 panel of Chapter 7 Trustees.

1 Your Honor --

2 MR. PEREZ: Sir, when you spoke, did we ask -- I asked  
3 you a question I was going to ask you in court and you promised  
4 you would do it in less than five minutes, right?

5 THE WITNESS: That's correct. I can do it in much less  
6 than that, Your Honor.

7 THE COURT: Go.

8 MR. PEREZ: Don't make a promise like that.

9 THE COURT: Wait. I think he wants --

10 MR. PEREZ: Sir, the role of the Trustee program, let  
11 me focus you on this. What impact has there been on the Trustee  
12 program when someone such as the defendant steals from its  
13 various fiduciary accounts?

14 THE WITNESS: Your Honor --

15 THE COURT: Excuse me. Before you speak, Mr. Perez,  
16 ask your question sitting down. Unless you're one of those  
17 lawyers that can't talk when you're sitting down because I am  
18 not that formal.

19 MR. PEREZ: I did not want to give the appearance of  
20 disrespect.

21 THE COURT: I do not mind. All right? Go ahead.

22 THE WITNESS: Your Honor, debtors, creditors and the  
23 Court expect nothing but the highest degree of honesty,  
24 integrity from Bankruptcy Trustees including Chapter 7 Trustees.  
25 The bankruptcy code, the rules and the Court expects

1 full, complete and honest disclosure from debtors when they file  
2 their schedules, from creditors when they file proofs of claim.  
3 Debtors, creditors, all those who surrender their property to  
4 Chapter 7 Trustees who are fiduciaries have the right to expect  
5 nothing but the highest degree of honesty and integrity from  
6 those who administer assets. When a fiduciary, a Chapter 7  
7 Trustee steals, it erodes confidence in the entire Federal  
8 Bankruptcy system. The honesty and integrity of the people who  
9 administer assets, the Chapter 7 trustees, is the absolute  
10 linchpin of the United States Bankruptcy system.

11 THE COURT: All right, sir.

12 MR. PEREZ: Thank you, sir. Tender the witness. Did  
13 the defense have any questions?

14 MR. KUEHNE: We do not, Your Honor. We respect the  
15 role of the United States Trustee and thank him for his  
16 attendance.

17 MR. PEREZ: Government calls Ann Burke Spalding, Your  
18 Honor, and she is an actual victim in the case.

19 THE COURT: All right.

20 MR. PEREZ: Thank you, sir.

21 THE COURT: Yes, ma'am. Please come to the lectern.

22 THE WITNESS: Your Honor, Ann Spalding from the law  
23 firm of Gunster Yoakley, I represent Linda Connahan who is the  
24 curator of the estate of James Christensen. Ms. Connahan  
25 apologized for not being able to attend today.

1 Ms. Connahan was appointed to serve as the curator of  
2 the estate --

3 THE COURT: Back in the olden days, I think I was a  
4 partner of Ms. Connahan for about three years. In the 1980s.

5 THE WITNESS: At English, McCohn and O'Brien, yes.  
6 That is the exact same person.

7 Basically, Judge Grossman removed Ms. Tolz last summer  
8 when Ms. Tolz took the 5th Amendment in answer to his questions  
9 concerning where the estate funds were located and how much was  
10 still in effect. Ms. Connahan, thereafter, took over as the  
11 curator of the estate. And during the course of the time she  
12 has taken over, we learned that Ms. Tolz had misappropriated the  
13 sum of \$965,002.51, of which she did return \$250,000 prior to  
14 the time she was caught.

15 In our case, it's a particularly sad estate because  
16 Mr. Christensen was in his early 30s when he passed away leaving  
17 behind three minor children and that's who we're talking about  
18 in our case, that's the face of our case.

19 In the case, Ms. Tolz has been ordered to pay back  
20 \$223,246.20 that she was paid during the course of the estate in  
21 personal representatives fees. She has not paid those back as  
22 yet, so that is a fee that is on top of the money that was  
23 misappropriated that the estate is out of that fee.

24 I do want to just make one very brief point, and that  
25 is that there has been a lot of talk about her cooperation in



1 the civil case and in the bankruptcy case and that is not what  
2 we encountered. Rather, we encountered a situation where she  
3 was ordered to produce documents, to produce accountings, to  
4 produce an inventory, she did not, resulting in multiple motions  
5 for contempt, multiple motions for sanctions. She inserted the  
6 attorney-client privilege, we had hearings on that. You know,  
7 we have faced some obstruction all along, Your Honor, and that  
8 has caused an increase in the attorneys' fees that the estate  
9 has to bear as a result of that situation.

10 And Your Honor mentioned something a little earlier  
11 about making victims whole. And in our case, we were able to  
12 recover a certain sum from funds that she had misappropriated  
13 and put into a bankruptcy estate that had no relationship to the  
14 Christensen estate, but there are other funds that I don't know  
15 that this estate will be able to recover. We are hopeful we can  
16 recover them but for example, they've mentioned the bankruptcy  
17 bond, and I don't know that Ms. Tolz's \$223,000 in personal  
18 representatives fees that she obtained will be covered by that  
19 bond. I don't know that the attorneys' fees that the estate of  
20 Christensen has incurred in connection with chasing down the  
21 money and just trying to figure out what happened to the money  
22 and then recover some of it. It will be covered by that bond. I  
23 don't know that they will be recovered in connection with the  
24 forfeiture of these assets. I hope that somehow our estate can  
25 be made whole, but I don't know that that's going to be the

1 case, Your Honor.

2 And I want Your Honor to be aware of what has gone on  
3 on the civil side, what we've encountered and the true losses,  
4 dollar losses that have been incurred by the estate. And I  
5 think that this is a particularly difficult situation where you  
6 have somebody who was entrusted by the courts, put into a  
7 position as a fiduciary where judges relied on her, creditors  
8 relied on her, attorneys relied on her, beneficiaries, children  
9 relied on her and she used that position to move money around  
10 and to take that money away from people like our children in our  
11 estate, Your Honor.

12 And that's just what I wanted to say on behalf of --

13 THE COURT: I appreciate it.

14 Mr. Perez, do you have anything further?

15 MR. PEREZ: Yes, Your Honor.

16 THE COURT: No, I meant with this witness.

17 MR. PEREZ: No, not for this witness.

18 THE COURT: All right. Does the defense have any  
19 questions?

20 MR. KUEHNE: Judge, I have just a few.

21 THE COURT: Go right ahead.

22 MR. KUEHNE: Thank you, Ms. Spalding, for being here.

23 You have submitted a claim on behalf of the estate in  
24 the bankruptcy court, haven't you?

25 THE WITNESS: We have put Mrs. Tolz into an involuntary

1 bankruptcy.

2 MR. KUEHNE: Correct. And that's an effort to try as  
3 you can within the allowance of the law to recover as much as  
4 you are able to --

5 THE COURT: Ms. Spalding, back up a little bit this way  
6 -- back up on this side of the lectern. And then can you pull  
7 the microphone over in front of you. Thank you.

8 MR. KUEHNE: And that's an effort to have the courts  
9 assist you in trying to be made as whole as you can.

10 THE WITNESS: That is correct. We have filed an  
11 involuntary proceeding, along with two other creditors, against  
12 Ms. Tolz.

13 MR. KUEHNE: And as you understand it, that essentially  
14 puts somebody else, a Trustee, in control of all of Ms. Tolz's  
15 assets.

16 THE WITNESS: It's my understanding that a Trustee has  
17 been appointed in connection with that bankruptcy, that's  
18 correct.

19 MR. KUEHNE: So whatever assets Ms. Tolz has are going  
20 to be utilized by the court to help you, or any other creditors,  
21 be made whole.

22 THE WITNESS: It is our hope that that's the case. I  
23 don't know that at the end of the day we will recover those  
24 funds.

25 MR. KUEHNE: Ms. Tolz turned over a copious amount of

1 documents when requested by you even before a court order. 60  
2 boxes of documents that she had compiled over the course of ten  
3 years of handling the Christensen estate, hadn't she?

4 THE WITNESS: No. What happened was the court had  
5 ordered her to produce those documents. We had to file a motion  
6 to compel to obtain those documents. The morning of the hearing  
7 on the motion to compel, the documents -- a large portion of  
8 documents were transferred to our office. That's correct.

9 MR. KUEHNE: I arranged that as her counsel.

10 THE WITNESS: That is correct. And we had filed a  
11 motion to compel to obtain those documents. That's correct.

12 MR. KUEHNE: And Ms. Tolz provided an accounting of her  
13 handling of the estate. Although you disagree with the  
14 completeness, she did do that within compliance with the Judge  
15 Grossman order, didn't she?

16 THE WITNESS: After we filed a motion to compel an  
17 accounting, Ms. Tolz produced an accounting that indicated that  
18 these funds went somewhere. There was no indication of where  
19 the funds had been transferred to. They were taken out. But  
20 the account number or any information as to where the account  
21 funds were put was not included, and therefore it was an  
22 incomplete accounting having not stated where about a million  
23 dollars went.

24 MR. KUEHNE: That was done while Ms. Tolz was receiving  
25 the assistance of counsel, my office, wasn't it?

1 THE WITNESS: That is correct.

2 MR. KUEHNE: Thank you. Nothing further, Judge.

3 MR. PEREZ: Nothing from the United States as to this  
4 witness, Your Honor.

5 THE COURT: Thank you very much, Ms. Spalding.

6 MR. PEREZ: Your Honor, since I knew I was going to be  
7 time limited, I submit for the Court's consideration this  
8 document. Make it an exhibit. It's a compilation of the  
9 movement of funds. Although it is on the screen, I have issue  
10 with the size of the print.

11 THE COURT: Has the other side seen it?

12 MR. PEREZ: Yes, of course. I'll submit a notice of  
13 filing this so you can follow along.

14 THE COURT: All right. Exhibit Number One I'm looking  
15 at.

16 Go ahead. What else you got? I can multitask.

17 MR. PEREZ: Your Honor, this is my, if the Court can  
18 tell, my first slide show presentation. But I have 10 minutes  
19 so I will -- no, I'm only kidding, Judge.

20 The fact of the matter is, Judge, the US Trustees did  
21 this analysis of all, they call them defalcations, here they are  
22 more correct or properly called misappropriations, but the  
23 reality of it is beginning in 1999 these are the defendant's  
24 thefts. And much like the attorney that just left that I had  
25 not spoken to or met before today indicated --

1 THE COURT: She's sitting right there. She hadn't  
2 left.

3 MR. PEREZ: Yes. Some of the money in the first years  
4 as you can see in '99 that she took, we don't know where it  
5 went. We just know it went out of those accounts and was  
6 replaced later on.

7 The significance of 1999 is that that's as far back as  
8 they're to go. But there's also another significance. I too  
9 read all of the letters submitted by many of these kind people  
10 that have known the defendant for many years in the capacity as  
11 a human being, as a mother and a child -- as the child of  
12 Holocaust survivors. And all of those, many of those talked  
13 about the fact that she must have committed this offense as a  
14 result of the illness of her mother. And even in prior  
15 pleadings I'd indicated that I couldn't tag when the mother, who  
16 I know died in '09, when in fact she had gotten ill because it  
17 indicated this was the motivation, the primary motivation for  
18 her offense.

19 In the letters we see letters from both her husband, I  
20 believe also her son and definitely her daughter talking about  
21 the fact that she mother was diagnosed in 2002. And the  
22 importance of this, which is just the beginning, it goes all the  
23 way through, all of her misappropriations or thefts, is the fact  
24 that in 1999, three years before her mother was diagnosed with  
25 cancer or at least before her own children or her husband

1 believed she was diagnosed with cancer, she is already stealing  
2 from fiduciary accounts which she has sworn to protect.

3 This is by no means a commentary on the sincerity of  
4 the people that wrote those letters, it is a commentary on what  
5 excuses defendants make for what they've done. The fact of the  
6 matter is that the primary foundation argument is, Judge, feel  
7 bad for her for all these reasons and because she's never been  
8 in trouble with the law.

9 The fact of the matter is, Judge, she has been stealing  
10 and in trouble with the law since 1999 and she got caught in  
11 2010.

12 THE COURT: You mean in violation of the law, not in  
13 trouble with the law.

14 MR. PEREZ: Yes, Your Honor. Excuse me. I stand  
15 corrected

16 THE COURT: To my knowledge she's never been charged  
17 with anything before this. Is that correct?

18 MR. PEREZ: I'm sorry?

19 THE COURT: To my knowledge, she's never been charged  
20 with anything.

21 MR. PEREZ: She's never been charged with anything.  
22 I'm sorry. I apologize. I misspoke there and I'd also  
23 identified the husband who passed away. I meant to refer to a  
24 daughter.

25 THE COURT: I know who you meant. I thought you meant

1 her mother's husband.

2 MR. PEREZ: Right. I apologize, Judge. I got three  
3 letters from the family members which indicate 2002.

4 THE COURT: I knew what you meant before you did.

5 MR. PEREZ: We looked, Your Honor, and this chart is  
6 helpful because it shows that notwithstanding the fact that I  
7 cannot work it, okay, if we look at the middle on the left side  
8 it shows the ongoing cumulative loss. That is added from the  
9 previous year to the next year. Because as I indicated, as  
10 we've charged, as we've alleged, as she has pled guilty, this is  
11 essentially a Ponzi. As each new account came in that she could  
12 take from, she paid off the previous account.

13 But when you talk about thefts, each individual taking  
14 is a theft, although she did not get caught throughout all these  
15 years and she gets in the hole. So what happens is she can't  
16 pay and she has to keep stealing.

17 So when we are looking at this chart, every year it  
18 gets greater and greater.

19 THE COURT: That's generally what happens with  
20 cumulative totals, isn't it?

21 MR. PEREZ: Right. And when she gets tapped on the  
22 shoulder in 2010, the loss that she actually took, it's not the  
23 2.4 that the US Sentencing Guidelines mandate as a starting  
24 point for the sentence which is what the law mandates.

25 THE COURT: But 16.6.



1 MR. PEREZ: But at 16.6 million that she's stolen. So  
2 I submit to the Court that in terms of being not involved in  
3 offenses, that doesn't apply. In terms of the source of her  
4 crime being that's debts that she didn't have to pay, that  
5 didn't apply.

6 And I'll also indicate, although it's clear from the  
7 record, that notwithstanding the picture that she's somehow a  
8 pauper, or was a pauper, the fact of the matter is the  
9 forfeiture properties indicated in the forfeiture which she  
10 agreed to were her properties, at least partially paid for by  
11 the offense.

12 And to make a slight correction to Mr. Weinstein's  
13 comment, we took two of her houses. We didn't take the one that  
14 she was still be able to live in. So she had three. We  
15 attempted to make the victims whole by taking properties,  
16 including at least two. But she is still living in the property  
17 that -- one of the properties that was the subject of the  
18 offense here. So to follow-up on Mr. Weinstein's comment, she  
19 did make bad choices. Not a single bad choice as he discussed,  
20 but she did nothing but bad choices since 1999.

21 And to give Mr. Kuehne and Mr. Weinstein an opportunity  
22 to -- for her to give a statement, I will close and allow the  
23 defendant the last word, but I'll close with this: The  
24 defendant was not a regular fraud defendant as we do -- I'm a  
25 white collar prosecutor -- we do every day. Of all the people

1 that have access to money, okay, she was considered above those.  
2 she had a fiduciary obligation, she took care of the money of  
3 people that were already in a bad place. She took care of the  
4 money of people that were bankrupt; she took care of the money  
5 that were already victims of offenses; she took the money of  
6 families of the deceased, and as the previous attorney  
7 mentioned, she took money from orphans. As opposed to being in  
8 the highest place, she did the worst thing.

9 She talks about protecting interests of people, wanting  
10 to make them whole. She talks about all the fine things that  
11 she did, those are the people that now she is being prosecuted  
12 for. The people she's supposed to help are the ones that she  
13 stole from. She stole from them, she stole from a lot of them  
14 and she stole for a long, long period of time. And I submit,  
15 I'd ask the Court to consider that in their sentencing and I  
16 will turn it over now so the defendant, if he wishes to, can  
17 have the last word.

18 THE COURT: Thank you. Mr. Weinstein.

19 MR. WEINSTEIN: Please, a brief response. May we  
20 approach the podium?

21 THE COURT: It's a lectern. You behind a lectern, you  
22 stand on a podium. It's a lectern. I read that in the *New York*  
23 *Times*, so it must be true.

24 MR. WEINSTEIN: Your Honor, despite the fact that  
25 Mr. Perez is one of the most decent and honest prosecutors I've

1 ever had the pleasure to deal with, he misspoke about the  
2 illness issue. Let's clear that up right away.

3 In 1997, Marika's mother was diagnosed with breast  
4 cancer. She subsequently, in addition to the breast cancer, got  
5 a brain tumor. In 2002, she was diagnosed with that, which  
6 tumor then proceeded down her spine as I understand it. Those  
7 facts are reflected in the PSI. There's nothing new about this,  
8 in Paragraph 62 and 65.

9 And we reassert, and as an officer of the Court I don't  
10 hesitate to reassert that the defalcation started as a result of  
11 the need of Marika, emotional need, whatever, to take care of  
12 the expense of her critically ill and dying mother. That's not  
13 an excuse, but it is what caused this terrible situation to  
14 begin.

15 I never said that Marika was a pauper before, she's a  
16 pauper now. If I misspoke about the house she lives in, and it  
17 looks like I did, they took some other houses of hers. We  
18 offered --

19 THE COURT: Two.

20 MR. WEINSTEIN: We offered the third house. We offered  
21 the house she lives in, but it has a reverse mortgage on it. So  
22 my understanding is that it's encumbered by full debt and the  
23 Government wasn't interested in it.

24 As for the Christensen estate, those children are not  
25 orphans. Orphans is an inciteful word, it's not, they're not

1 orphans. Their mother, as I understand it, is alive and now  
2 they're adults. So nobody took the bread out of the mouths of  
3 starving children.

4 All that said, all that said, neither I nor Mr. Kuehne  
5 nor our client has suggested once that what she did was right.  
6 We only hope and pray and beseech this Court to understand that  
7 this was not truly the typical fraudster. And I agree with  
8 Mr. Perez in that regard. Yes, she had a responsibility as a  
9 Trustee. Unfortunately in her mind, she had a higher  
10 responsibility to her mother. I don't condone that, but it says  
11 and explains a lot.

12 My client would like to address the Court.

13 THE COURT: Be happy to hear from her.

14 THE DEFENDANT: Your Honor, thank you for allowing me  
15 to address the Court.

16 I just want to say that I'm sorry for my actions. I  
17 take full responsibility for them. I know they were wrong and  
18 if I could undue them, I would. And that's why I surrendered  
19 properties that I've had since 1974 in the early '80s, long  
20 before I even became a Trustee.

21 When my parents moved down here, they were in good  
22 health and providing for themselves. When my mother got sick,  
23 it was three or four years later that she was diagnosed with the  
24 tumor. I had to take her to all kind of doctors and  
25 specialists. And I know that's not an excuse and Your Honor has

1 heard and looked at the letters, but I couldn't do my work and I  
2 had a divided loyalty, so I had to take care of my mother.

3 Today I have to take care of my father. He's a 97 year  
4 old man sitting in the back who depends on me a great deal, and  
5 I don't know how he's going to provide for himself.

6 Your Honor, I want to apologize to the Court for what I  
7 did and to my family and to the community and my colleagues and  
8 thank them for the help they've given me over this pending time.

9 Thank you, sir.

10 THE COURT: Thank you, Ms. Tolz.

11 Anything further from the defense and/or the defendant?

12 MR. KUEHNE: No, Your Honor.

13 MR. WEINSTEIN: No, sir.

14 THE COURT: Mr. Perez?

15 MR. PEREZ: Nothing from the United States, Your Honor.

16 THE COURT: All right. Can I see the probation  
17 officer? Why don't you come on around this way. Give me just a  
18 moment please.

19 MR. KUEHNE: Should we remain here at the lectern, Your  
20 Honor.

21 THE COURT: Wherever you want. You can go back. I'll  
22 address her from her seat. All right.

23 I will remind everyone that we now are working with a  
24 total offense level of 30, criminal history category of one  
25 which results in advisory guideline provisions of custody of 97

1 to 121 months, probation is not authorized, supervised release  
2 of two to three years, fine of 15 to 150,000, restitution is not  
3 yet determined, special assessment of \$100.

4 I never cease to be amazed by, I really am, I expect  
5 and I want to hear from the lawyers, but golly, I know some of  
6 this stuff. I've read all these things. I've read everything  
7 that is in this PSI. You know, I know when -- frankly, I knew a  
8 little bit more about when her mother got sick than some of the  
9 lawyers involved in the case, but that's fine. I understand all  
10 of that.

11 It's a very difficult case. It's very difficult  
12 because you had a position of trust. You had a position, Ms.  
13 Tolz, you had a responsibility. I fully expect that if I ever  
14 get in trouble, and I don't plan on it and I don't think I will,  
15 that I'll get in a lot of trouble because I have a position of  
16 responsibility. I expect that if Mr. Perez messes up, he's  
17 going to get in an awful lot of trouble, because he's  
18 representing the United States of America, just as your lawyers  
19 have duties and if they mess up, will get in a lot of trouble.

20 Unfortunately for you, you are in a lot of trouble  
21 because you were in a position of trust and it cannot be -- it  
22 cannot even appear that we think there is an excuse for what you  
23 did. It cannot even appear that we believe that there are  
24 reasons to do what you did.

25 A very good friend of mine was sentenced, what, a year,

1 two years ago here in this court. Not by me fortunately, but by  
2 Judge Huck. A man that I know very well and like very much.  
3 But he messed up and he did very similar and he ended up with, I  
4 believe, ten years in jail as a result of his activities.

5 I'm very sorry for your situation, Ms. Tolz. You have  
6 to know at this point in your life that you are a very lucky  
7 person to have the support of the people that you have behind  
8 you right now. People who have come to show you that they are  
9 behind you and not just physically, but in every way. There are  
10 some people that go through life and never have friends like  
11 that. Never have acquaintances that will stand up for them in  
12 their time of need. Never have anybody that will come and say I  
13 know they did something wrong, but I want you to know what a  
14 good person you're dealing with. You're very lucky in that you  
15 have that.

16 Because of your situation, I do not believe that it's  
17 reasonable to give you a break so to speak. I do think that  
18 there are certain factors that I believe need to be considered.  
19 One of those factors is your age. I don't think that you need  
20 to spend the rest of your life behind bars. I don't think that  
21 does anybody any good. But at the same time, I do not see that  
22 a substantial -- I always get mixed up as to whether, which is  
23 the variance and which is the whatever it is, but to go below  
24 the guideline provisions I don't think is reasonable either  
25 because of your special circumstances.

1           The Court has considered the statements of all the  
2 parties, the presentence report which contains the advisory  
3 guidelines and the statutory factors. A sentence of  
4 imprisonment below the advisory guideline range, slightly below  
5 the advisory guideline range will be sufficient, I believe, to  
6 punish and deter the defendant from future criminal conduct. I  
7 will combine a prison sentence and home confinement so that you  
8 have more than the minimum advisory guideline provisions but  
9 that some of it will be at your home. I think that is  
10 sufficient to punish and deter you from future criminal conduct.

11           It is the finding of the Court that the defendant is  
12 not able to pay a fine as well as make restitution.

13           It is the judgment of the Court that the defendant,  
14 Marika Tolz, is committed to the Bureau of Prisons to be  
15 imprisoned for 81 months.

16           It is further ordered that pursuant to 18 USC section  
17 3664(d) (5), the victim's losses are not yet totally  
18 ascertainable, therefore the Court shall set a date and I have  
19 it here, the Court shall set a date of Thursday, September 15th  
20 at 1:30 p.m. for a final restitution hearing to determine -- to  
21 make a final determination of the victim's losses.

22           Upon release from imprisonment, the defendant shall be  
23 placed on supervised release for a term of three years. Within  
24 72 hours of release, the defendant shall report in person to the  
25 probation office in the district where released.



1 while on supervised release, the defendant shall not  
2 commit any crimes, shall be prohibited from possessing a firearm  
3 or other dangerous device, shall not possess a controlled  
4 substance, shall cooperate in the collection of DNA and shall  
5 comply with the standard conditions of supervised release  
6 including the following special conditions:

7 18 months home confinement, mental health treatment,  
8 financial disclosure requirement and permissible search as noted  
9 in Part G of the presentence report.

10 The defendant shall immediately pay or has paid already  
11 to the United States a special assessment of \$100.

12 The total sentence: 81 months imprisonment, three years  
13 supervised release including a term of 18 months of home  
14 confinement, \$100 special assessment.

15 Forfeiture of the defendant's right, title and interest  
16 in certain property is hereby ordered consistent with the plea  
17 agreement. United States shall submit a proposed final order of  
18 forfeiture within three business days of this sentencing.

19 Now that sentence has been imposed, does the defendant  
20 or her counsel object to the Court's finding of fact or to the  
21 manner in which sentence was pronounced?

22 MR. KUEHNE: The defense, including Ms. Tolz, does not  
23 object to any of the Court's findings or conclusions.

24 THE COURT: All right. Mr. Perez?

25 MR. PEREZ: Your Honor, one thing, the order of

1 forfeiture has already been entered.

2 THE COURT: Okay. I thought I entered a preliminary  
3 order of forfeiture. I need to enter a final order of  
4 forfeiture, don't I? Okay. Give me a final order of  
5 forfeiture.

6 MR. PEREZ: Number two, I have only a query as to the  
7 technical aspect. Are you making the 18 months home confinement  
8 a special condition of her supervised release?

9 THE COURT: Yes.

10 MR. PEREZ: It's really -- I did not know --

11 THE COURT: When she gets out after -- when she gets  
12 out after her 81 months confinement, she will then do 18 months  
13 home confinement. I am not ordering her to have an electrical  
14 whatever you call it, the woman will be in her 70s at that time  
15 and I don't think she's going to have a lot of luck evading the  
16 Marshals.

17 MR. PEREZ: I understand she's not going to run, Judge.

18 So from a technical point of view, I just want to make  
19 sure, the home confinement is going to be a special condition of  
20 the supervised release and that's how --

21 THE COURT: Yes.

22 MR. PEREZ: Thank you, Your Honor.

23 THE COURT: Yes. So she'll have 81 months plus the 18  
24 months home confinement.

25 MR. PEREZ: Thank you.

1 THE COURT: I will also put in my formal order of  
2 incarceration that the defendant be incarcerated at Coleman  
3 Florida, or as close thereto as is possible commensurate with  
4 her background and the offense of which she stands convicted.

5 Is there anything else that was requested?

6 MR. WEINSTEIN: The voluntary surrender, Your Honor.

7 THE COURT: Okay. Is there any objection to voluntary  
8 surrender? Then I will order that.

9 MR. PEREZ: No objection, and also as to substance  
10 abuse I think was an issue.

11 THE COURT: I will also order that she surrender on  
12 Tuesday, September 27, 2011, to the second floor of the US  
13 Marshals lock-up, 301 North Miami Avenue, across the street  
14 unless a place has been designated. If there has been a  
15 designation, she may surrender to the place of designation.

16 You have the right to appeal the sentence imposed. Any  
17 notice of appeal must be filed within 14 days after the entry of  
18 the judgment. If you're unable to pay the cost of an appeal,  
19 you may apply for leave to appeal in forma pauperis.

20 Good luck to you, Ms. Tolz.

21 MR. KUEHNE: Your Honor, you did not mention, although  
22 we had asked would the Court consider including in the  
23 sentencing order a recommendation that if eligible, Ms. Tolz  
24 could participate in a drug or alcohol rehabilitation program.

25 THE COURT: Sure. Court will recommend the defendant

1 be screened for substance abuse problems and be referred to  
2 participate in an appropriate drug education treatment program  
3 by the Bureau of Prisons. This may include placement in the  
4 residential drug abuse treatment program, that is the 500 hour  
5 program at a designated Bureau of Prisons institution.

6 Anything further?

7 MR. PEREZ: Nothing from the United States. I beg the  
8 Court's leave.

9 THE COURT: Thank you. You're excused. Thank you.

10 (PROCEEDINGS CONCLUDED)  
\* \* \* \* \*

11

C E R T I F I C A T E

12 I certify that the foregoing is a correct transcript from the  
13 record of proceedings in the above-entitled matter.

14

15

\_\_\_\_\_ Date

/s/ Dawn M. Whitmarsh  
DAWN M. WHITMARSH, RPR

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IN THE CIRCUIT COURT  
OF THE 17th JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA  
CRIMINAL DIVISION

CASE NO.: 11-5301 CF 10 A

STATE OF FLORIDA,

vs

MARIKA TOLZ,

Defendant,

-----/  
SENTENCING HEARING

The above-entitled case came on for hearing before the Honorable Judge Matthew I. Destry, Presiding Judge, at the U.S. Federal Courthouse, Fort Lauderdale, Florida, on the 12th day of December, 2011 commencing at 9:15 a.m.

APPEARANCES:

ON BEHALF OF THE PLAINTIFF:

LAW OFFICES OF THE STATE ATTORNEY

BY: AL GUTTMANN, ASA

FORT LAUDERDALE, FLORIDA

ON BEHALF OF THE DEFENDANT:

LAW OFFICES OF BENEDICT P. KUEHNE

BY: BENEDICT P. KUEHNE, ESQUIRE

MIAMI, FLORIDA

LAW OFFICES OF ALAN E. WEINSTEIN

BY: ALAN E. WEINSTEIN, ESQUIRE

MIAMI, FLORIDA

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I N D E X

WITNESS                      DIRECT      CROSS      REDIRECT      RECROSS

Marika Tolz                      3

BE IT REMEMBERED that the following testimony and proceedings were taken in the above matter before the HONORABLE Judge Matthew I. Destry, judge of the above-styled court, at the U.S. Federal Courthouse, in the City of Fort Lauderdale, Florida beginning at 9:15 a.m on December 12, 2011 to wit.

- - - - -

(Whereupon, the following proceedings had commenced.)

THE COURT: Okay.

Folks, please have a seat.

Thank you very much.

Bear with me, I have got to get used to these surroundings.

But we are here in State versus Marika Tolz.

I see Ms. Tolz is present along with Counsel, Mr. Weinstein, and I also see Mr. Kuehne hiding behind the screen over there.

We have Mr. Guttman from the State Attorney's Office.

Thank you all for making the trip.

I very much appreciate it and I want to thank

1 my staff, too, for having made the trip over here  
2 to the federal courthouse so we could simplify  
3 these proceedings.

4 All right.

5 Mr. Weinstein, Mr. Kuehne, I think we really  
6 have got to do this plea all over again; right?

7 I have a plea form, if you would like -- do  
8 you want to go ahead and use this one?

9 MR. WEINSTEIN: Is that the one we executed  
10 before?

11 THE COURT: Yes, sir, it is the same one.

12 MR. WEINSTEIN: Perfectly acceptable.

13 THE COURT: I think maybe perhaps you should  
14 fill it out a new since we vacated the one.

15 MR. WEINSTEIN: I thought it was a filled out  
16 one. I apologize.

17 THE COURT: I took the liberty of putting the  
18 style of the case and the case number at the top.

19 MR. WEINSTEIN: Certainly, that really helps  
20 us. Thanks, Judge.

21 THE COURT: Ms. Tolz, this will just take your  
22 lawyers a minute or two.

23 And while they are doing this, if I can put  
24 you under oath.

25 Would you raise your right hand for me,

1 please?

2 (Whereupon, the witness, Marika Tolz, was  
3 sworn.)

4 MS. TOLZ: I do.

5 THE COURT: State your full name for the  
6 record please.

7 MS. TOLZ: Marika Tolz.

8 THE COURT: Thank you, Ms. Tolz.

9 MR. KUEHNE: Judge, if we could just have a  
10 moment to have Ms. Tolz execute this document.

11 THE COURT: Certainly, Mr. Kuehne.

12 I see there are folks in the audience.

13 Does anyone here wish to be heard before I  
14 pass sentence?

15 We had a full hearing in state court and this  
16 is really, if you will, pro forma here today,  
17 because in as much as she was charged both in state  
18 and federal court, while I sentenced her  
19 previously, I vacated that plea and sentencing so  
20 that the federal authorities could take over and  
21 entertain her plea and sentencing at the federal  
22 level.

23 Now, we are coming back and doing it at the  
24 state level as well.

25 But if any of you folks wish to be heard, I'm



1 happy to do that now.

2 I'm not seeing any hands.

3 So, all right.

4 MR. WEINSTEIN: May I approach, Your Honor?

5 THE COURT: Please do.

6 Gentlemen, I had a figure for restitution of  
7 \$705,000; is that still accurate?

8 MR. GUTTMANN: Yes, sir, Judge.

9 From our standpoint that should be the number  
10 again.

11 THE COURT: Okay.

12 Mr. Kuehne, Mr. Weinstein, is that still  
13 accurate?

14 MR. KUEHNE: It is, Your Honor.

15 That is the amount that Ms. Tolz and Counsel  
16 agreed to when we were last before the court at a  
17 proceeding.

18 I will inform the court as we did previously  
19 that District Judge Martinez found a restitution  
20 amount and just today he entered an order of  
21 restitution.

22 It is our understanding that that federal  
23 court restitution order does encompass the same  
24 restitution that the Court is ordering.

25 I only mention that because as Ms. Tolz

1 understands, she will not be required to double pay  
2 any of the restitution as long as restitution is  
3 full and complete.

4 But for purposes of the state court sentence  
5 she acknowledges the Court's intention to impose  
6 restitution in the amount of \$705,000.

7 THE COURT: It is my understanding that the  
8 federal charges were, I guess, broader and  
9 encompassed many more victims than the state  
10 charges do.

11 MR. KUEHNE: Yes, Judge.

12 This victim in our particular case was  
13 encompassed in the federal proceeding.

14 The federal proceeding did encompass other  
15 conduct as well.

16 THE COURT: Okay.

17 So, \$705,000 in restitution then.

18 And it was 81 months in Florida State Prison  
19 to be followed by ten years of probation; right?

20 MR. WEINSTEIN: That was the sentence that was  
21 previously imposed.

22 THE COURT: Are we okay with that,  
23 Mr. Guttman?

24 MR. GUTTMANN: Yes, sir, Judge.

25 THE COURT: All right.

1           And this, of course, is concurrent with any  
2 federal sentence that she is presently serving and  
3 will allow her to serve her time in federal  
4 custody.

5           I think that is sum and substance of the  
6 agreement; correct?

7           MR. WEINSTEIN: It was, Your Honor.

8           THE COURT: Mr. Guttman, yes?

9           MR. GUTTMANN: That was.

10          THE COURT: Sum and substance?

11          MR. GUTTMANN: Yes, sir, Judge.

12          THE COURT: Okay.

13          So Ms. Tolz, you're under oath.

14          So, at this point I do not believe that you  
15 would be entitled to a presentence investigation  
16 but I still have to ask you some questions here  
17 this morning to be sure that you understand what  
18 you are doing and you are doing this freely and  
19 voluntarily.

20          Okay?

21          MS. TOLZ: Yes, sir.

22          THE COURT: My first question is do you  
23 understand this charge?

24          There was originally three counts of grand  
25 theft in the first degree, in other words, a theft

1 in the amount of \$100,000 or more.

2 Two of those charges or two of those counts  
3 were nolle prossed or dropped by the state.

4 The remaining charge is one of grand theft in  
5 the first degree and it is my understanding that  
6 you would like to enter a guilty plea to that  
7 charge; is that right?

8 MS. TOLZ: Yes, sir.

9 THE COURT: Well, my first question is do you  
10 understand this charge of grand theft in the first  
11 degree?

12 Do you understand what it is you are accused  
13 of?

14 MS. TOLZ: Yes.

15 THE COURT: Well, it is a first degree felony.  
16 That means it is punishable by up to thirty years  
17 in Florida State Prison; do you understand that?

18 MS. TOLZ: Yes, sir.

19 THE COURT: Now, that is the maximum sentence  
20 you could receive.

21 The minimum or least restrictive sentence that  
22 you can receive pursuant to the Criminal Punishment  
23 Code that we call the guidelines is 21 months in  
24 Florida State Prison; do you understand that?

25 MS. TOLZ: Yes, sir.

APEX REPORTING GROUP

1 THE COURT: Now, the agreement as I understand  
2 it is that you would be adjudicated on this charge  
3 so you would become a convicted felon on this  
4 charge and I would sentence you to 81 months in  
5 Florida State Prison, this to be followed of 10  
6 years of probation.

7 As a special condition of that probation I  
8 would order that you make restitution in the amount  
9 of \$705,000.

10 This sentence would run concurrent or at the  
11 same time with the federal sentence that you are  
12 presently serving and we would allow you to serve  
13 your time in federal custody.

14 Now, was that your understanding of the  
15 agreement?

16 MS. TOLZ: Yes, sir.

17 THE COURT: Mr. Kuehne, Mr. Weinstein, that  
18 was the agreement?

19 MR. WEINSTEIN: That was, Your Honor, with one  
20 additional minor matter and that is we would want  
21 credit for all time previously served, and she has  
22 been in custody since -- I can give you the exact  
23 date, 9/16/11.

24 THE COURT: I don't know.

25 How does the state feel about this?

1 Federal custody and state custody is not  
2 necessarily the same thing.

3 Now, she gets credit for all time served in  
4 state custody on these charges automatically by  
5 state law.

6 MR. WEINSTEIN: Right.

7 THE COURT: If she were to get time for the  
8 federal custody -- see, when you folks came around  
9 and asked me to vacate my plea and sentencing, she  
10 was released outright so she was not in custody at  
11 that point or at least not in ours.

12 Now, it is my understanding that you  
13 surrendered her to the federal authorities right  
14 away but I don't know that she would necessarily be  
15 entitled to credit for that time.

16 MR. WEINSTEIN: All we are asking for is the  
17 credit that she is entitled to under the state  
18 system for the purposes of this hearing.

19 THE COURT: She will get that, Mr. Weinstein,  
20 by law.

21 MR. WEINSTEIN: Okay.

22 THE COURT: Anything else, gentlemen?

23 MR. GUTTMANN: Judge, so the record is clear,  
24 number one, I think she waived -- I mean, she is  
25 entitled to a PSI. I believe she waived it.

1 THE COURT: Right.

2 But at this point I don't think she is because  
3 she has now be convicted and sentenced on the  
4 federal side so she has a prior felony conviction.

5 MR. GUTTMANN: That is correct, Judge.

6 Fair enough.

7 I guess the other point, again, not to  
8 nitpick, this was an open plea.

9 Your Honor indicated the agreement.

10 There really wasn't an agreement with the  
11 state, I mean.

12 THE COURT: Fair enough.

13 You raise a good point, Mr. Guttman.

14 Was that the sentence I previously imposed?

15 MR. GUTTMANN: Yes, sir, Judge.

16 That was the sentence that the court felt was  
17 appropriate. That is what she would be sentenced  
18 to again.

19 THE COURT: And to be fair, this is over  
20 state's objection; is that right?

21 MR. GUTTMANN: Absolutely, Judge.

22 As you recall, I think I recall, we had a  
23 fairly lengthy hearing and we put forth evidence  
24 and defense did and Your Honor made your decision  
25 and we respect it but just in fairness, it was an

1 open plea.

2 THE COURT: Understood.

3 All right.

4 So Ms. Tolz, other than this proposed

5 sentence, has anybody made you any promises or

6 guarantees as to what would happen if you pled to

7 this charge?

8 MS. TOLZ: No, sir.

9 THE COURT: Has anybody threatened you,  
10 coerced you or forced you in any way to get you to  
11 plea to this charge?

12 MS. TOLZ: No, sir.

13 THE COURT: Is either the state or the defense  
14 aware of any physical evidence which if tested for  
15 DNA would exonerate Ms. Tolz?

16 MR. GUTTMANN: No, sir, Your Honor, not from  
17 the state.

18 MR. WEINSTEIN: No, Your Honor.

19 THE COURT: Thank you, gentlemen.

20 Ms. Tolz, I want you to listen carefully  
21 because these are the rights you are giving up by  
22 entering this plea of guilty to this charge here  
23 today.

24 First and foremost you are giving up the right  
25 to a trial before a judge or a judge and a jury; do



1 you understand that?

2 MS. TOLZ: Yes, sir.

3 THE COURT: You are giving up the right to  
 4 have a judge or a jury consider all of the evidence  
 5 and determine if the state has proved you guilty of  
 6 this charge and to the exclusion of every reasonable doubt;  
 7 and to the exclusion of every reasonable doubt; do  
 8 you understand that?

9 MS. TOLZ: Yes, sir.

10 THE COURT: You are giving up the right to be  
 11 presumed innocent and require the state to prove  
 12 this charge against you beyond and to the exclusion  
 13 of every reasonable doubt; do you understand?

14 MS. TOLZ: Yes, sir.

15 THE COURT: You are giving up the right to  
 16 confront and Cross Examination all witnesses  
 17 against you and to call witnesses of your own and  
 18 if they won't come for court voluntarily to use the  
 19 subpoena power of the court to make them; do you  
 20 understand that?

21 MS. TOLZ: Yes, sir.

22 THE COURT: At trial you would have the right  
 23 to remain silent and anything you say can be used against you  
 24 by either the judge or the jury; do you understand  
 25 that?

1 MS. TOLZ: Yes, sir.

2 THE COURT: You would also have an absolute  
3 right to testify on your own behalf and in your own  
4 defense and to have your testimony recorded and  
5 treated like that of any other witness; do you  
6 understand that?

7 MS. TOLZ: Yes, sir.

8 THE COURT: Okay.

9 By entering this plea of guilty here this  
10 morning, you are waiving or giving up your right to  
11 raise any defenses that you might have to this  
12 charge of grand theft in an amount of \$100,000 or  
13 more; do you understand that?

14 MS. TOLZ: Yes, sir.

15 THE COURT: Ms. Tolz, it is going to be  
16 difficult to see from back there but I'm holding up  
17 the plea form; do you recognize it from afar?

18 MS. TOLZ: Yes, sir, I do.

19 THE COURT: Is this the one that you initialed  
20 and signed?

21 MS. TOLZ: Yes, sir.

22 THE COURT: Are those your initials next to  
23 each and every paragraph?

24 MS. TOLZ: Yes, sir.

25 THE COURT: And that is your signature at the

1 bottom?

2 MS. TOLZ: Yes.

3 THE COURT: Are you swearing to me under oath  
4 that you have read everything on this form, front  
5 and back, and that you understand every single  
6 provision?

7 MS. TOLZ: Yes, sir.

8 THE COURT: Ms. Tolz, it is never polite to  
9 ask but I have to, as you know, how old are you?

10 MS. TOLZ: Sixty-five.

11 THE COURT: And how far have you gone in  
12 school?

13 MS. TOLZ: I have a Masters Degree in  
14 Economics.

15 THE COURT: Okay.

16 So you can read and write the English  
17 language; right?

18 MS. TOLZ: Yes, sir.

19 THE COURT: I have to ask these questions.

20 Have you had enough time to discuss this  
21 charge and this case in general with your  
22 attorneys, Mr. Kuehne and Mr. Weinstein?

23 MS. TOLZ: Yes, sir.

24 THE COURT: Are you satisfied with their  
25 advice and representation?

1 MS. TOLZ: Yes, sir.

2 THE COURT: Is there anything else you are  
3 going to need either of them to do for you at this  
4 time?

5 MS. TOLZ: No, sir.

6 THE COURT: Okay.

7 Are you under the influence of any drugs or  
8 alcohol here today?

9 MS. TOLZ: No, sir.

10 THE COURT: Are you taking any medications?

11 MS. TOLZ: I take blood pressure medication.

12 THE COURT: Are any of the medications that  
13 you are taking affecting your ability to understand  
14 or make a decision?

15 MS. TOLZ: No, sir.

16 THE COURT: Have you ever been treated for any  
17 mental illness?

18 MS. TOLZ: No, sir.

19 THE COURT: Are you under the care of a  
20 psychiatrist or psychologist?

21 MS. TOLZ: Not presently. I was in the past.

22 THE COURT: So you have seen a psychiatrist or  
23 a psychologist for some treatment then?

24 MS. TOLZ: Yes, sir.

25 THE COURT: Is that correct?

1 MS. TOLZ: Yes, sir.

2 THE COURT: Mr. Weinstein, Mr. Kuehne, are you  
3 satisfied, gentlemen, that your client is competent  
4 to proceed?

5 MR. KUEHNE: We are fully satisfied that Ms.  
6 Tolz is competent to proceed and wants to move  
7 forward with this change of plea.

8 THE COURT: Understood.  
9 Mr. Weinstein, you concur?

10 MR. WEINSTEIN: Yes.

11 THE COURT: Okay.

12 Ms. Tolz, you understand that if you are not a  
13 United States citizen your plea to these charges  
14 will subject you to deportation?

15 MS. TOLZ: Yes, sir.

16 THE COURT: Do you understand that your plea  
17 to this charge may be a factor in determining your  
18 punishment for future criminal offenses and may  
19 subject you to harsher punishment for future  
20 offenses?

21 MS. TOLZ: Yes, sir.

22 THE COURT: If any of the charges to which you  
23 are pleading are sexually violent offenses or  
24 sexually motivated offenses or if you have  
25 previously been convicted of such an offense, your

1 plea may subject you to involuntary civil  
2 commitment upon completion of your sentence and may  
3 require you to register as a sex offender; do you  
4 understand that?

5 MS. TOLZ: Yes, sir.

6 THE COURT: If you are currently on probation,  
7 community control or out on parole anywhere, your  
8 plea to this charge may violate that probation,  
9 community control or parole; do you understand  
10 that?

11 MS. TOLZ: Yes, sir.

12 THE COURT: Ms. Tolz, we are talking about a  
13 period of supervision here, ten years of probation  
14 to follow your incarceration.

15 Do you understand that if you violate that  
16 supervision, you may be facing harsher penalties?

17 MS. TOLZ: Yes, sir.

18 THE COURT: Will Counsel stipulate that the  
19 probable cause affidavit makes out a sufficient  
20 factual basis for the charge as pled?

21 MR. WEINSTEIN: Yes, Your Honor.

22 MR. GUTTMANN: Yes, sir, Judge.

23 THE COURT: All right.

24 Gentlemen, Ms. Tolz, I have reviewed the  
25 probable cause affidavit in this case and I do find

1 a sufficient factual basis for a charge of grand  
2 theft in an amount of \$100,000 or more.

3 Ms. Tolz, how do you wish to plead to the  
4 charge, guilty or no contest?

5 MS. TOLZ: I'm sorry.

6 THE COURT: How do you wish to plead to this  
7 charge?

8 MS. TOLZ: Guilty, Judge.

9 THE COURT: Well, I will accept your plea.

10 I find that you have freely, voluntarily and  
11 intelligently waived your rights and an knowingly  
12 entered your plea, understanding both the nature of  
13 the charge and the consequences of your plea.

14 So in accordance with my offer, I hereby  
15 adjudicate you on the underlying charge of grand  
16 theft in the amount of \$100,000 or more, and I  
17 sentence you as follows, 81 months in Florida State  
18 Prison, and is to be followed by ten years of  
19 probation.

20 A special condition of that probation is that  
21 you make restitution in the amount of \$705,000 and  
22 I assume the state will be presenting a restitution  
23 order which I will sign.

24 MR. GUTTMANN: Yes, sir.

25 THE COURT: Of course, with credit for all

1 time served.

2 This sentence is to run concurrent or at the  
3 same time with any federal sentence that you are  
4 presently serving, and I will also specify on the  
5 disposition that the state does not object -- when  
6 I say the state, I mean this court does not object  
7 to you serving your time in federal custody.

8 I don't know, Mr. Guttman, what your position  
9 was on that.

10 I want Madam Clerk to indicate on the  
11 disposition that we do not object to her serving  
12 her time in federal custody.

13 MR. GUTTMANN: That is correct, Judge.

14 That is what was done by the court the last  
15 time around.

16 We want to do whatever we did the last time  
17 this time.

18 THE COURT: Fair enough.

19 Anything else on this, Mr. Kuehne and  
20 Mr. Weinstein?

21 MR. WEINSTEIN: No, Your Honor.

22 MR. KUEHNE: No. We are very appreciative of  
23 the court working with the U.S. District Court to  
24 finalize this matter.

25 Thank you, Judge.



1 THE COURT: Can I just tell you, gentlemen,  
2 that this wouldn't be happening at all were it not  
3 for Judge Martinez.

4 He is the one that made these facilities, if  
5 you will, available, and also made it where Ms.  
6 Tolz could be transported here for sentencing.

7 We are very appreciative of that.

8 MR. GUTTMANN: Obviously, this was done over  
9 state's objection. We understand.

10 THE COURT: Understood.

11 Was there anything further from anybody on  
12 this matter?

13 MR. KUEHNE: The court had mentioned the  
14 federal/state cooperation and sometimes that is  
15 underplayed but this is certainly a very strong  
16 indication of the willingness of the judiciaries of  
17 both jurisdictions to work together to achieve an  
18 appropriate end to two interrelated cases and we  
19 are very appreciative, Your Honor.

20 THE COURT: Well, thank you for that, Mr.  
21 Kuehne.

22 I am going to have that transcribed.

23 MR. KUEHNE: We might do an article about  
24 this, Judge.

25 THE COURT: Fair enough.

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All right.

Mr. Tolz, look, you have the right to appeal the judgment and sentence of this court and a right to an attorney to prosecute such an appeal. If you can't afford an attorney for such an appeal, one will be appointed for you.

If you wish to appeal, you must file your notice of appeal with the Clerk of Court within 30 days; do you understand?

MS. TOLZ: Yes, sir.

THE COURT: Okay.

So we have some paperwork to complete here and we will get you on your way, and I wish you good luck, Ms. Tolz?

MS. TOLZ: Thank you, Your Honor.

MR. KUEHNE: Your Honor, thank you very much. We appreciate it.

THE COURT: Thank you, Mr. Kuehne.

(At 10:00 a.m. the proceedings concluded.)

posas /Court Clerk

CIRCUIT COURT DISPOSITION ORDER IN AND FOR BROWARD COUNTY, FLORIDA

Case Number 11005301CF10A Arrest Number MJ11000646 BCCN # 0791286

State of Florida VS Tolz, Marika AKA

Age Matthew I. Destry Cash bond / Return to depositor / Surety bond / IC

- Charges 1 Grand Theft in the 1st Degree
2 Grand Theft in the 1st Degree
3 Grand Theft in the 1st Degree

( ) REMANDED (X) REMAIN IN CASH BOND ( ) UNTIL PICKED UP BY BED AVAILABLE AT OR

- ( ) Arraignment (X) Change of Plea (X) Guilty ( ) No Contest ( ) PSI/PDR ( ) Sentencing / Re-Sentencing
( ) Trial by Jury ( ) Trial by Court ( ) First VOP/VOCC ( ) Final VOP/VOCC ( ) Admits Allegations
( ) Convicted by Jury/Court ( ) Acquitted by Jury/Court ( ) Dismissed ( ) Speedy
( ) Discharged (X) Nolle Prosequi 2-3 ( ) Found Incompetent/Committed to Child/Family Services
(X) Adj. Guilty ( ) Adj. Withheld ( ) Adj. Delinquent
( ) Committed to DJJ/Level ( ) Sentence Withheld ( ) Previous Sentence Vacated
( ) PSI Ordered
Adj. and Sentence deferred to

Type of probation / Community Control:
( ) Youthful Offender ( ) Drug Offender ( ) Sexual Offender ( ) Habitual Offender ( ) Mental Health ( ) County
PROBATION/COMM. CONTROL: ( ) Revoked ( ) Reinstated ( ) Modified ( ) Terminated
Extended ( ) All previous special conditions apply
ARRANT: ( ) Dismissed ( ) Withdrawn ( ) Served in open court

SENTENCE: (PROBATION / COMM. CONTROL)

COUNT(S):
( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control ( ) Followed by
( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control
( ) each count concurrent/consecutive ( ) Concurrent ( ) Consecutive to case number
COUNT(S):
( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control ( ) Followed by
( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control
( ) each count concurrent/consecutive ( ) Concurrent ( ) Consecutive to case number

SENTENCE: (INCARCERATION)

COUNT(S):
( ) One year plus one day ( ) 81 ( ) Years (X) Months ( ) Days
( ) BCJ (X) FSP, w/credit for days T/S
(X) Followed by 10 (X) Years ( ) Months ( ) Days (X) Probation ( ) Community Control
( ) Each count concurrent/consecutive (X) Concurrent/consecutive ( ) To case number
(X) Any other sentence ( ) Work release ( ) Prison sentence suspended Federal Sentence
COUNT(S):
( ) One year plus one day ( ) Years ( ) Months ( ) Days
( ) BCJ ( ) FSP, w/credit for days T/S
( ) Followed by ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control
Each count concurrent/consecutive ( ) Concurrent/consecutive ( ) To case number
Any other sentence ( ) Work release ( ) Prison sentence suspended

JUDGE

DEPUTY CLERK

DATE

**SPECIAL CONDITIONS OF PRISON SENTENCE:**

- Habitual Violent Offender mandatory minimum \_\_\_\_\_ years Ct(s)
- Violent Career Criminal mandatory minimum \_\_\_\_\_ years Ct(s)
- Prison Release Reoffender mandatory minimum \_\_\_\_\_ years Ct(s)
- Firearm mandatory minimum \_\_\_\_\_ years Ct(s)
- Other mandatory minimum \_\_\_\_\_
- Habitual Offender Ct(s) \_\_\_\_\_ ( ) Youthful Offender ( ) Sexual Predator/Offender ( ) Boot Camp
- To be given credit for all time previously served in prison, to be calculated by Department of Corrections *by the State of Florida*

*\*\* Self is entitled to any/all additional time served once calculated by the State of Florida*

**SPECIAL CONDITIONS OF PROBATION:**

- \_\_\_\_\_ days BCJ w/credit for \_\_\_\_\_ days T/S ( ) Electronic Monitor
- SAP 30 days ( ) AA/NA 30 days ( ) AFTER CARE 30 days (out of custody) ( ) LIFE SKILLS 30 days
- Upon successful completion of drug program jail sentence shall be terminated.

- \_\_\_\_\_ hours of Community Service
- \$ \_\_\_\_\_ COS waived/ imposed
- Anger Management Program
- Blood draw per F.S. 943.325 - 2 samples for conviction of sexual assaults; lewd or indecent acts; homicides (782.04) aggravated battery; home invasion robbery or carjacking
- Curfew \_\_\_\_\_
- Drug / Alcohol evaluation and treatment recommended
- Forfeit weapon / firearm
- Make Donation of \$ \_\_\_\_\_ to \_\_\_\_\_
- May transfer probation to \_\_\_\_\_
- May travel \_\_\_\_\_ for work purposes
- No contact with minor children without adult supervision
- No contact directly or indirectly with victim(s) or victim's family or others listed
- No driving without valid driver's license
- No drugs or alcohol
- Enter and successfully complete \_\_\_\_\_
  - BARC
  - IRT ( ) followed by \_\_\_\_\_
  - HOUSE OF HOPE/STEPPING STONES
  - SPECTRUM
  - FOLLOWED BY \_\_\_\_\_
- Other *Self may have served the sentence imposed in Federal State Prison.*
- Drug Ct Monitoring/Hearing set \_\_\_\_\_
- Obtain GED or High School diploma
- Psychological/Psychiatric evaluation and treatment necessary
- Random drug/alcohol testing
- 2 year Driver's License Suspension
- Restitution ordered \$ *705,000.00* amount reserved *seven hundred and five thousand dollars*
- Restitution converted to a civil lien
- Upon successful completion of jail sent. probation to automatically terminate
- Pay investigative costs:
  - Crime Lab \_\_\_\_\_
  - Expert Witnesses \_\_\_\_\_
  - Supp. Cost of Prosecution \_\_\_\_\_
  - Toxicology \_\_\_\_\_
  - Law Enforcement Agency
    - Agency #1 \_\_\_\_\_ \$ \_\_\_\_\_
    - Agency #2 \_\_\_\_\_ \$ \_\_\_\_\_

- \$225 Trust Fund
- \$50 VC
- \$5 Assessment each count
- \$50 SN1 Per Felony count
- \$100 Cost of prosecution
- \$50 PD application fee waived / imposed ( ) \$ \_\_\_\_\_ PD fee imposed
- \$ \_\_\_\_\_ fine plus \$ \_\_\_\_\_ surcharge count(s) \_\_\_\_\_
- \$ \_\_\_\_\_ Court Costs misd count(s) \_\_\_\_\_
- Pay balance of previously imposed costs ( ) Waive all court costs
- Balance of court costs and fees converted to a civil lien ( ) Other \_\_\_\_\_
- \$100 OTF count(s) \_\_\_\_\_
- \$20 CSTF count(s) \_\_\_\_\_
- \$2 T.C. each count
- \$65 AC each count
- \$10 Article V Assessment
- \$201 DVC count(s) \_\_\_\_\_
- \$151 RCP count(s) \_\_\_\_\_
- \$151 CAM count(s) \_\_\_\_\_
- \$20 SN1 Per Misd count
- \$30 CFF count(s) \_\_\_\_\_
- PD fee converted to civil lien
- Extradition costs \$ \_\_\_\_\_

DGE \_\_\_\_\_

DEPUTY CLERK \_\_\_\_\_

DATE *12/2/2011*

CLOCK IN

17th Judicial Circuit in and for Broward County

DIVISION:  
Criminal

SENTENCE

as to Count 1

THE STATE OF FLORIDA VS.

CASE NUMBER

*Marika J. Tolz aka  
Marika Cziter  
Tolz*  
DEFENDANT

*11-5301*

*10  
CF/A*

The Defendant, being personally before this court, accompanied by his attorney, *B. Kuehne* and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he sentenced as provided by law, and cause shown,

Check One

- and the Court having on \_\_\_\_\_ deferred imposition of sentence until this date.
- and the Court having previously entered a judgment in this case on the defendant now resentsences the defendant.
- and the Court having placed the Defendant on Probation/Community Control and having subsequently revoked the Defendant's Probation/Community Control.

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of \$ \_\_\_\_\_, pursuant to section 775.083, Florida Statutes, plus \$ \_\_\_\_\_ as the 5% surcharge required by section 938.04, Florida Statutes.

- The Defendant is hereby committed to the custody of the Department of Corrections.
- The Defendant is hereby committed to the custody of the Sheriff of Broward County, Florida.
- The Defendant is hereby sentenced as a youthful offender in accordance with F.S. 958.04.

TO BE IMPRISONED (check one: unmarked sections are inapplicable)

- For a term of Natural Life.
- For a term of *8 months*
- Said SENTENCE IS SUSPENDED for a period of \_\_\_\_\_ subject to conditions set forth in this Order.

If "split" sentence, complete either paragraph.

Followed by a period of *10 years* on Probation/Community Control under the supervision of the Department of Correction according to the terms and conditions of supervision set forth in separate order entered herein.

However, after serving a period of \_\_\_\_\_ imprisonment in \_\_\_\_\_ the balance of such sentence shall be suspended and the defendant shall be placed on Probation/Community Control for a period of \_\_\_\_\_ under supervision of the Department of Corrections according to the terms and conditions of the Probation/ Community Control set forth in a separate order entered herein.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by:  Hand delivery  U.S. Mail and to the Defense Attorney by:  Hand delivery  U.S. Mail this *12* day of *Dec*, 20*11*.

DIVISION:  
CRIMINAL

FY

SENTENCE  
(AS TO COUNT 1)

CASE NUMBER

11-5301 CF 11

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision term.

**SPECIAL PROVISIONS**  
(As to Count 1)

By appropriate notation, the following provisions apply to the sentence imposed:

**MANDATORY/MINIMUM PROVISIONS:**

BATTERY ON THE  
ELDERLY

It is further ordered that the three (3) year mandatory minimum imprisonment provisions of F.S. 784.08(1) are hereby imposed for the sentence specified in this court.

DRUG TRAFFICKING

It is further ordered that the \_\_\_\_\_ mandatory minimum imprisonment provisions of Florida Statute 893.135(1) are hereby imposed for the sentence specified in this court.

CONTROLLED  
SUBSTANCE WITHIN  
1000 FEET OF SCHOOL

It is further ordered that the three (3) year minimum imprisonment provision of Florida Statute 893.13(1)(e)1, are hereby imposed for the sentence specified in this court.

HABITUAL FELONY  
OFFENDER

The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in this sentence in accordance to the provisions of Florida Statute 775.084(4). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

HABITUAL VIOLENT  
OFFENDER

The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in this sentence in accordance to the provision of Florida Statute 775.084(4). A minimum term of \_\_\_\_\_ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

LAW ENFORCEMENT  
PROTECTION ACT

It is further ordered that the Defendant shall serve a minimum of \_\_\_\_\_ years before release in accordance with Florida Statute 775.0823.

CAPITOL OFFENSE

It is further ordered that the Defendant shall serve no less than 25 years in accordance with the provisions of Florida Statute 775.082(1).

VIOLENT CAREER  
CRIMINAL

The defendant is adjudicated a violent career criminal offender and has been sentenced to a term in accordance with the provision of Florida Statute 775.084(4)(c). A minimum term of \_\_\_\_\_ year(s) must be served prior to release. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

PRISON RELEASEE  
REOFFENDER

The defendant is sentenced as a prison releasee reoffender and must serve a term of imprisonment of \_\_\_\_\_ years in accordance with the provisions of Florida Statute 775.082(8)(a)2.

HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by [ ] Hand delivery [ ] U.S. Mail and to the Defense Attorney by: [ ] Hand delivery [ ] U.S. Mail this 12 day of Dec, 2011

1012

<b>DIVISION:</b> <b>CRIMINAL</b> <i>FY</i>	<b>SENTENCE</b> ( AS TO COUNT <u>1</u> )	<b>CASE NUMBER</b> <i>11-5301 CF101</i>
--	---	--

**OTHER PROVISIONS**


- FIREARM/DESTRUCTIVE DEVICE  
 It is further ordered that the \_\_\_\_\_ year mandatory minimum imprisonment provision of Florida Statute 775.087(2) and (3) is hereby imposed for the sentence specified in this count
- THREE-TIME VIOLENT FELONY OFFENDER  
 The Defendant is adjudicated a three-time violent felony offender and has been sentenced to an extended term in accordance with the provisions of Florida Statute 775.084. The requisite findings by the court are set forth in a separate order or as stated on the record in open court.
- SHORT-BARRELED RIFLE, SHOTGUN, MACHINE GUN  
 It is further ordered that the five-year minimum provisions of Florida Statute 790.22(2) are hereby imposed for the sentence specified in this count.
- CONTINUING CRIMINAL ENTERPRISE  
 It is further ordered that the 25 year mandatory minimum sentence provisions of Florida Statute 893.20 are hereby imposed for the sentence specified in this count.
- RETENTION OF JURISDICTION  
 The court retains jurisdiction over the defendant pursuant to Florida Statutes 947.16 (3).
- JAIL CREDIT  
 It is further ordered that the defendant shall be allowed a total of \_\_\_\_\_ days as credit for time incarcerated prior to imposition of this sentence.
- PRISON CREDIT  
 It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to re-sentencing.
- CONSECUTIVE CONCURRENT AS TO OTHER COUNTS  
 It is further ordered that the sentence imposed by this court shall run \_\_\_\_\_ consecutive to \_\_\_\_\_ concurrent with (check one) the sentence set forth in count \_\_\_\_\_ of this case.
- CONSECUTIVE CONCURRENT AS TO OTHER CONVICTIONS  
 It is further ordered that the composite term of all sentences imposed for the courts specified in this order shall run \_\_\_\_\_ consecutive to \_\_\_\_\_ concurrent with (check one) the following:  
 Any active sentence being served.  
 Specific Sentences: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**PSI ORDERED** YES  NO

In the event the above sentence is to the Department of Corrections, the Sheriff of Broward County, Florida, is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the Department together with a copy of this Judgment and Sentence and any other documents specified by Florida Statutes.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the Defendant's right to assistance of counsel in taking said appeal at the expense of the State upon showing of indigence.

In imposing the above sentence, the court further recommends *Def't may serve this imposed sentence in Federal Prison.*

DONE AND ORDERED in Open Court at Broward County, Florida, this 12 day of Dec, 20 11  
  
 JUDGE *DeVry*

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was served on the State Attorney by:  Hand Delivery  U.S. Mail and to the Defense Attorney by:  Hand Delivery  U.S. Mail this 12 day of Dec, 20 11

*Cheney*

RULE 3.5 CRIMINAL PUNISHMENT CODE RESHEET

1. DATE OF SENTENCE	2. PREPARER'S NAME <input type="checkbox"/> DC <input checked="" type="checkbox"/> SAO ASA TenBrook	3. COUNTY Broward	4. SENTENCING JUDGE Destry
5. NAME (LAST, FIRST, M.I.) Tolz, MariKa J.	6. DOB 6/18/46	8. RACE <input type="checkbox"/> B <input checked="" type="checkbox"/> W <input type="checkbox"/> OTHER	10. PRIMARY OFF. DATE 6/29/08
	7. DC #	9. GENDER <input type="checkbox"/> M <input checked="" type="checkbox"/> F	11. PRIMARY DOCKET # 11-5301 CF10A
			12. PLEA <input checked="" type="checkbox"/> TRIAL <input type="checkbox"/>

I. PRIMARY OFFENSE: If Qualifier, please check  A  S  C  R (A=Attempt, S=Solicitation, C=Conspiracy, R=Reclassification)

FELONY DEGREE	F.S.#	DESCRIPTION	OFFENSE LEVEL	POINTS
1st	812.014(2)(a)(i)	Grand Theft 200,000 or more	7	56

(Level - Points: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=116)

Prior capital felony triples Primary Offense points

FILED IN OPEN COURT, CLERK OF THE CIRCUIT COURT I. ON DEC 12 2011

II. ADDITIONAL OFFENSE(S): Supplemental page attached

DOCKET#	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY A S C R	COUNTS	POINTS	TOTAL
				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		x	=
				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		x	=
				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		x	=

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

Prior capital felony triples Additional Offense points

Supplemental page points II. 0

III. VICTIM INJURY:

	Number	Total		Number	Total
2nd Degree Murder	240 x	=	Slight	4 x	=
Death	120 x	=	Sex Penetration	80 x	=
Severe	40 x	=	Sex Contact	40 x	=
Moderate	18 x	=			

III. 0

IV. PRIOR RECORD: Supplemental page attached

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		X		=
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		X		=
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		X		=
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		X		=
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		X		=
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		X		=
			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		X		=

(Level - Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)

Supplemental page points

IV. 0

Page 1 Subtotal: 56



- V. Legal Status violation = 4 Points
- VI. Community Sanction violation before the court for sentencing
  - 6 points x each successive violation OR
  - New felony conviction = 12 points x each successive violation OR
  - 12 points x each successive violation for a violent felony offender of special concern OR
  - New felony conviction = 24 points x each successive violation for a violent felony offender of special concern

V. 0

VI. 0

VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 Points

VII. 0

VIII. Prior Serious Felony - 30 Points

VIII. 0

Subtotal Sentence Points \_\_\_\_\_

IX. Enhancements (only if the primary offense qualifies for enhancement)

Law Enforcement Protection	Drug Trafficking	Grand Theft Motor Vehicle	Street Gang	Domestic Violence <small>(offenses committed on or after 10-1-97)</small>
_____ x 1.5 _____ x 2.0 _____ x 2.5	_____ x 1.5	_____ x 1.5	_____ x 1.5	_____ x 1.5

Enhanced Subtotal Sentence Points \_\_\_\_\_

IX. 0

**TOTAL SENTENCE POINTS** 56

### SENTENCE COMPUTATION

If total sentence points are less than or equal to 44, the lowest permissible sentence is any non-state prison sanction.

If total sentence points are greater than 44:

56 total sentence points minus 28 = 28 x .75 = 21 lowest permissible prison sentence in months

The maximum sentence is up to the statutory maximum for the primary and any additional offenses as provided in s. 775.082, F.S., unless the lowest permissible sentence under the Code exceeds the statutory maximum. Such sentences may be imposed concurrently or consecutively. If total sentence points are greater than or equal to 363, a life sentence may be imposed.

30  
maximum sentence  
in years

### TOTAL SENTENCE IMPOSED

Years	Months	Days
_____	<u>81</u>	_____
_____	_____	_____
<u>10</u>	_____	_____

- State Prison
- County Jail
- Community Control
- Probation
- Life
- Time Served

Please check if sentenced as  habitual offender,  habitual violent offender,  violent career criminal,  prison releasee reoffender, or a  mandatory minimum applies.

Mitigated Departure  Plea Bargain

Other Reason \_\_\_\_\_

E'S SIGNATURE

17<sup>th</sup> JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY

DIVISION:  
CRIMINAL

DIVISION: F4

**JUDGMENT**

THE STATE OF FLORIDA VS.

CASE NUMBER

DEFENDANT Marika J. Toiz 11-5301 CF 10A

Probation Violator aka Marika Elizabeth Toiz State Attorney Goodman

Court Reporter S. Sugden

The Defendant, Marika J. Toiz being personally before this Court represented by B. Kuehne aka Marika Elizabeth Toiz, his attorney of record, and having:

(Check applicable provisions)

- Been tried and found guilty of the following crime(s)
- Entered a plea of guilty to the following crime(s)
- Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	ADD'L MONIES IMPOSED
<u>1</u>	<u>grand theft</u>	<u>812.0140(a)</u> <u>812.0140(b)</u> <u>812.0142(a)</u>	<u>1F</u>	

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

The Defendant is hereby ordered to pay the sum of Fifty dollars (\$50.00) pursuant to F.S. 960.20 (Crimes Comp. Trust Fund). The Defendant is further ordered to pay the sum of Five Dollars (\$5.00) as court costs pursuant to P.S. 943.25(4). Fines imposed as part of a sentence pursuant to F.S. 777.083 are to be recorded on the Sentence page(s).

(Check if applicable)

- Stayed & Withheld Imposition of Sentence  The court hereby stays and withholds the imposition of sentence as to count(s) \_\_\_\_\_ and places the Defendant on probation for a period of \_\_\_\_\_ under the supervision of the Department of Corrections (conditions of probation set forth in a separate order)
- Sentence Deferred Until Later Date  The court hereby defers imposition of sentence until \_\_\_\_\_ (Date)
- Pay \$225.00 Trust Fund pursuant to F.S. 938.05 (1) (b) (c)

Count(s) \_\_\_\_\_; \_\_\_\_\_ DAYS/MONTHS BROWARD COUNTY JAIL W/CREDIT \_\_\_\_\_ DAYS TIME SERVED.

The Defendant in open court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing indigence.

JUDGE [Signature]

I hereby certify that a true and correct copy of the above and foregoing was served on the State Attorney by:  hand delivery  U.S. mail and to the Defense Attorney by:  hand delivery  U.S. mail this 12 day of Dec 2011

[Signature]  
Deputy Clerk

SPECIAL CONDITIONS OF PRISON SENTENCE:

- Habitual Violent Offender mandatory minimum \_\_\_\_\_ years Ct(s) \_\_\_\_\_
- Violent Career Criminal mandatory minimum \_\_\_\_\_ years Ct(s) \_\_\_\_\_
- Prison Release Reoffender mandatory minimum \_\_\_\_\_ years Ct(s) \_\_\_\_\_
- Firearm mandatory minimum \_\_\_\_\_ years Ct(s) \_\_\_\_\_
- Other mandatory minimum \_\_\_\_\_
- Habitual Offender Ct(s) \_\_\_\_\_ ( ) Youthful Offender ( ) Sexual Predator/Offender ( ) Boot Camp
- To be given credit for all time previously served in prison, to be calculated by Department of Corrections *State of Florida*

*\*\* Sett is entit to any/all additional time served once calculated by the state of Florida*

SPECIAL CONDITIONS OF PROBATION:

- \_\_\_\_\_ days BCJ w/credit for \_\_\_\_\_ days T/S ( ) Electronic Monitor
- SAP 30 days ( ) AA/NA 30 days ( ) AFTER CARE 30 days (out of custody) ( ) LIFE SKILLS 30 days
- Upon successful completion of drug program jail sentence shall be terminated.

- \_\_\_\_\_ hours of Community Service
- \$ \_\_\_\_\_ COS waived/ imposed
- Anger Management Program
- Blood draw per F.S. 943.325 - 2 samples for conviction of sexual assaults; lewd or indecent acts; homicides (782.04) aggravated battery; home invasion robbery or carjacking
- Curfew \_\_\_\_\_
- Drug / Alcohol evaluation and treatment recommended
- Forfeit weapon / firearm
- Make Donation of \$ \_\_\_\_\_ to \_\_\_\_\_
- May transfer probation to \_\_\_\_\_
- May travel \_\_\_\_\_ for work purposes
- No contact with minor children without adult supervision
- No contact directly or indirectly with victim(s) or victim's family or others listed
- No driving without valid driver's license
- No drugs or alcohol
- Enter and successfully complete \_\_\_\_\_
  - BARC
  - IRT ( ) followed by \_\_\_\_\_
  - HOUSE OF HOPE/STEPPING STONES
  - SPECTRUM
  - FOLLOWED BY \_\_\_\_\_
- Drug Ct Monitoring/Hearing set \_\_\_\_\_
- Obtain GED or High School diploma
- Psychological/Psychiatric evaluation and treatment necessary
- Random drug/alcohol testing
- 2 year Driver's License Suspension
- Restitution ordered \$ *705,000.00* amount reserved *seven hundred*
- Restitution converted to a civil lien *five thousand*
- Upon successful completion of jail sent. probation to automatically terminate *dollars*
- Pay investigative costs:
  - Crime Lab \_\_\_\_\_
  - Expert Witnesses \_\_\_\_\_
  - Supp. Cost of Prosecution \_\_\_\_\_
  - Toxicology \_\_\_\_\_
  - Law Enforcement Agency
    - Agency #1 \_\_\_\_\_ \$ \_\_\_\_\_
    - Agency #2 \_\_\_\_\_ \$ \_\_\_\_\_

*Other Sett may serve the sentence imposed in Federal State Prison.*

- \$225 Trust Fund
- \$50 VC
- \$5 Assessment each count
- \$50 SN1 Per Felony count
- \$100 Cost of prosecution
- \$50 PD application fee waived / imposed ( ) \$ \_\_\_\_\_ PD fee imposed
- \$ \_\_\_\_\_ fine plus \$ \_\_\_\_\_ surcharge count(s) \_\_\_\_\_
- \$ \_\_\_\_\_ Court Costs misd count(s) \_\_\_\_\_
- Pay balance of previously imposed costs ( ) Waive all court costs
- Balance of court costs and fees converted to a civil lien ( ) Other \_\_\_\_\_
- \$100 OTF count(s) \_\_\_\_\_
- \$20 CSTF count(s) \_\_\_\_\_
- \$2 T.C. each count
- \$65 AC each count
- \$10 Article V Assessment
- \$201 DVC count(s) \_\_\_\_\_
- \$151 RCP count(s) \_\_\_\_\_
- \$151 CAM count(s) \_\_\_\_\_
- \$20 SN1 Per Misd count
- \$30 CFF count(s) \_\_\_\_\_
- PD fee converted to civil lien
- Extradition costs \$ \_\_\_\_\_

DGE \_\_\_\_\_

DEPUTY CLERK \_\_\_\_\_

*Galkner*

DATE \_\_\_\_\_

*12/12/2011*

CIRCUIT COURT DISPOSITION ORDER IN AND FOR BROWARD COUNTY, FLORIDA

Case Number 11005301CF10A Arrest Number MJ11000646 BCCN # 0791286

State of Florida VS Tolz, Marika AKA

Matthew I. Destry Cash bond / Return to depositor Surety bond / IC bond number(s)

Charges 1 Grand Theft in the 1st Degree

~~Grand Theft in the 1st Degree~~  
~~Grand Theft in the 1st Degree~~

REMANDED ( ) REMAIN IC ( ) UNTIL PICKED UP BY BED AVAILABLE AT OR

( ) Arraignment ( ) Change of Plea ( ) Guilty ( ) No Contest ( ) PSI/PDR  Sentencing / Re-Sentencing  
( ) Trial by Jury ( ) Trial by Court ( ) First VOP/VOCC ( ) Final VOP/VOCC ( ) Admits Allegations  
( ) Convicted by Jury/Court ( ) Acquitted by Jury/Court ( ) Dismissed ( ) Speedy  
( ) Discharged ( ) Nolle Prosequi ( ) Found Incompetent/Committed to Child/Family Services  
 Adj. Guilty ( ) Adj. Withheld ( ) Adj. Delinquent  
( ) Committed to DJJ/Level ( ) Sentence Withheld ( ) Previous Sentence Vacated  
( ) PSI Ordered  
Adj. and Sentence deferred to

Type of probation / Community Control:  
( ) Youthful Offender ( ) Drug Offender ( ) Sexual Offender ( ) Habitual Offender ( ) Mental Health ( ) County  
PROBATION/COMM. CONTROL: ( ) Revoked ( ) Reinstated ( ) Modified ( ) Terminated  
Extended ( ) All previous special conditions apply  
WARRANT: ( ) Dismissed ( ) Withdrawn ( ) Served in open court

SENTENCE: (PROBATION / COMM. CONTROL)  
COUNT(S):  
( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control ( ) Followed by  
( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control  
( ) each count concurrent/consecutive ( ) Concurrent ( ) Consecutive to case number  
COUNT(S):  
( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control ( ) Followed by  
( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control  
( ) each count concurrent/consecutive ( ) Concurrent ( ) Consecutive to case number

SENTENCE: (INCARCERATION)  
COUNT(S): ~~1~~ ( ) One year plus one day  81 ( ) Years  Months ( ) Days  
( ) BCJ (  ) FSP, w/credit for days T/S  
( ) Followed by ~~10~~ ( ) Years ( ) Months ( ) Days  Probation ( ) Community Control  
( ) Each count concurrent/consecutive ( ) Concurrent/consecutive ( ) To case number  
( ) Any other sentence ( ) Work release ( ) Prison sentence suspended  
COUNT(S):  
( ) One year plus one day ( ) Years ( ) Months ( ) Days  
( ) BCJ ( ) FSP, w/credit for days T/S  
( ) Followed by ( ) Years ( ) Months ( ) Days ( ) Probation ( ) Community Control  
( ) Each count concurrent/consecutive ( ) Concurrent/consecutive ( ) To case number  
( ) Any other sentence ( ) Work release ( ) Prison sentence suspended

JUDGE Deputy Clerk DATE 9.16.11

**SPECIAL CONDITIONS OF PRISON SENTENCE:**

- Habitual Violent Offender mandatory minimum \_\_\_\_\_ years Ct(s) \_\_\_\_\_
- Violent Career Criminal mandatory minimum \_\_\_\_\_ years Ct(s) \_\_\_\_\_
- Prison Release Reoffender mandatory minimum \_\_\_\_\_ years Ct(s) \_\_\_\_\_
- Firearm mandatory minimum \_\_\_\_\_ years Ct(s) \_\_\_\_\_
- Other mandatory minimum \_\_\_\_\_
- Habitual Offender Ct(s) \_\_\_\_\_  Youthful Offender  Sexual Predator/Offender  Boot Camp
- To be given credit for all time previously served in prison, to be calculated by Department of Corrections

**SPECIAL CONDITIONS OF PROBATION:**

- \_\_\_\_\_ days BCJ w/credit for \_\_\_\_\_ days T/S  Electronic Monitor
- SAP 30 days  AA/NA 30 days  AFTER CARE 30 days (out of custody)  LIFE SKILLS 30 days
- Upon successful completion of drug program jail sentence shall be terminated.

- \_\_\_\_\_ hours of Community Service
- \$ \_\_\_\_\_ COS waived/imposed
- Anger Management Program
- Blood draw per F.S. 943.325 - 2 samples for conviction of sexual assaults; lewd or indecent acts; homicides (782.04) aggravated battery; home invasion robbery or carjacking
- Curfew \_\_\_\_\_
- Drug / Alcohol evaluation and treatment recommended
- Forfeit weapon / firearm
- Make Donation of \$ \_\_\_\_\_ to \_\_\_\_\_
- May transfer probation to \_\_\_\_\_
- May travel \_\_\_\_\_ for work purposes
- No contact with minor children without adult supervision
- No contact directly or indirectly with victim(s) or victim's family or others listed
- No driving without valid driver's license
- No drugs or alcohol
- Enter and successfully complete \_\_\_\_\_
  - BARC
  - IRT  followed by \_\_\_\_\_
  - HOUSE OF HOPE/STEPPING STONES
  - SPECTRUM
  - FOLLOWED BY \_\_\_\_\_
- Other Not to hold any position of trust  
appear & testify truthfully
- Drug Ct Monitoring/Hearing set \_\_\_\_\_
- Obtain GED or High School diploma
- Psychological/Psychiatric evaluation and treatment necessary
- Random drug/alcohol testing
- 2 year Driver's License Suspension
- Restitution ordered \$ Seven Hundred & Fifty thousand dollars  
705,000.00
- Restitution converted to a civil lien
- Upon successful completion of jail senta probation to automatically terminate
- Pay investigative costs:
  - Crime Lab \_\_\_\_\_
  - Expert Witnesses \_\_\_\_\_
  - Supp. Cost of Prosecution \_\_\_\_\_
  - Toxicology \_\_\_\_\_
  - Law Enforcement Agency
    - Agency #1 \$ \_\_\_\_\_
    - Agency #2 \$ \_\_\_\_\_

- \$225 Trust Fund
- \$50 VC
- \$5 Assessment each count
- \$50 SN1 Per Felony count
- \$100 Cost of prosecution
- \$50 PD application fee waived / imposed
- \$ \_\_\_\_\_ fine plus \$ \_\_\_\_\_ surcharge count(s) \_\_\_\_\_
- \$ \_\_\_\_\_ Court Costs misd count(s) \_\_\_\_\_
- Pay balance of previously imposed costs  Waive all court costs
- Balance of court costs and fees converted to a civil lien  Other \_\_\_\_\_
- \$100 OTF count(s) \_\_\_\_\_
- \$20 CSTF count(s) \_\_\_\_\_
- \$2 T.C. each count
- \$65 AC each count
- \$10 Article V Assessment
- \$ \_\_\_\_\_ PD fee imposed  PD fee converted to civil lien
- \$201 DVC count(s) \_\_\_\_\_
- \$151 RCP count(s) \_\_\_\_\_
- \$151 CAM count(s) \_\_\_\_\_
- \$20 SN1 Per Misd count
- \$30 CFF count(s) \_\_\_\_\_
- Extradition costs \$ \_\_\_\_\_

JUDGE \_\_\_\_\_  
 DEPUTY CLERK \_\_\_\_\_  
 DATE 09.16.11



**Date of Original Judgment:** JULY 27, 2011  
(Or Date of Last Amended Judgment)

**Reason for Amendment:**

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive to the Sentencing Guidelines (18 U.S.C. § 3582(e)(2))
- Direct Motion to District Court  28 U.S.C. § 2255 or  18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

X Clerical error on special conditions  
page 4 of 6

**United States District Court**  
**Southern District of Florida**  
MIAMI DIVISION

**UNITED STATES OF AMERICA**

**AMENDED  
JUDGMENT IN A CRIMINAL CASE**

v.

**Case Number - 1:11-20160-CR-MARTINEZ-1**

**MARIKA TOLZ**

USM Number: 96459-004

Counsel For Defendant: Benedict Kuehne; Alan Weinstein  
Counsel For The United States: Luis Perez  
Court Reporter: Dawn Whitmarsh

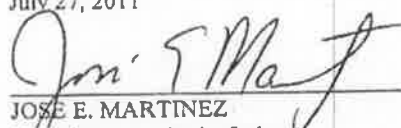
The defendant pleaded guilty to Count(s) 1 of the Information.  
The defendant is adjudicated guilty of the following offense(s):

<u>TITLE/SECTION NUMBER</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 U.S.C. § 1349	conspiracy to commit wire fraud	May 20, 2010	One

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of any material changes in economic circumstances.

Date of Imposition of Sentence:  
July 27, 2011

  
JOSE E. MARTINEZ  
United States District Judge

July 28, 2011

DEFENDANT: MARIKA TOLZ  
CASE NUMBER: 1:11-20160-CR-MARTINEZ-1

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 81 months.

The Court makes the following recommendations to the Bureau of Prisons:

This defendant shall be designated to FCI, Coleman, Florida or as close as possible, consistent with defendants background and the offense in which the defendant is convicted of.

The Court also recommends that the defendant be screened for substance abuse problems and be referred to participate in an appropriate drug education/treatment program as deemed appropriate by the Bureau of Prisons. This may include placement in the Residential Drug Abuse Treatment Program (i.e. 500-hour drug treatment program) at a designated Bureau of Prisons institution.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons or at the Atkins Building, 301 N. Miami Avenue, Miami, Florida by 1:30 P.M. on September 27, 2011.

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By: \_\_\_\_\_  
Deputy U.S. Marshal



DEFENDANT: MARIKA TOLZ  
CASE NUMBER: 1:11-20160-CR-MARTINEZ-1

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

If this judgment imposes a fine or a restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment;
7. The defendant shall refrain from the excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: MARIKA TOLZ  
CASE NUMBER: 1:11-20160-CR-MARTINEZ-1

### **SPECIAL CONDITIONS OF SUPERVISION**

The defendant shall also comply with the following additional conditions of supervised release:

**Home Confinement** - The defendant shall participate in the Home Confinement for a period of 18 months. During this time, the defendant shall remain at her place of residence except for employment and other activities approved in advance, and provide the U.S. Probation Officer with requested documentation.

**Financial Disclosure Requirement** - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

**Mental Health Treatment** - The defendant shall participate in an approved inpatient/outpatient mental health treatment program. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

**Permissible Search** - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

DEFENDANT: MARIKA TOLZ  
CASE NUMBER: 1:11-20160-CR-MARTINEZ-1

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on the Schedule of Payments sheet.

<u>Total Assessment</u>	<u>Total Fine</u>	<u>Total Restitution</u>
\$100.00	\$	\$

**Restitution with Imprisonment -**

It is further ordered that the defendant shall pay restitution in the amount of \$ . During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

The determination of restitution is deferred until September 15, 2011. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such a determination.

\*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MARIKA TOLZ  
CASE NUMBER: 1:11-20160-CR-MARTINEZ-1

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A. Lump sum payment of \$100.00 due immediately, balance due

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE  
ATTN: FINANCIAL SECTION  
400 NORTH MIAMI AVENUE, ROOM 8N09  
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Forfeiture of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed order of forfeiture within three days of this proceeding.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



NATIONAL FOUNDATION  
FOR DEBT MANAGEMENT

11/27/2018

Marika Tolz  
1229 Polk St.  
Hollywood, FL 33019

Dear Marika Tolz

Thank you for your application for assistance under the Florida Hardest Hit Fund (HHF) program. Based on the information you provided in your application and any other documentation you submitted, it has been determined that you are ineligible for program funding or your application has been cancelled due to the reason(s) listed on the attached page.

If you believe that this determination has been made in error, you may ask for additional review of your application by contacting:

NFDM - ELMORE  
14104 58th Street North  
Clearwater, FL 33760  
(877) 751-8076

Sincerely,

Amy M. Bolt

**Reasons for Ineligibility**

1. **Ineligible Mortgage.** We are unable to offer you HHF payment assistance because your loan did not meet one or more of the following basic eligibility criteria of the Hardest Hit Program:

- Your mortgage is not a reverse mortgage.
- Your reverse mortgage is not serviced by a HUD-approved HECM Servicer or a regulated financial institution.
- There is current pending legal action against the property not initiated by your reverse mortgage lender.
- Servicer ineligible due to Servicer not participating in the HHF Program, investor declined participation.
- You do not currently have an arrearage for taxes and insurance. (Servicer has not advanced funds on your behalf to pay for outstanding property taxes, hazard insurance or required flood insurance.)

2. **Ineligible Borrower.** We are unable to offer you an HHF payment assistance because:

- Your total income is higher than 140% of the area median income (AMI).
- You do not have a qualifying hardship resulting in your inability to repay amounts advanced by your mortgage loan servicer for the payment of Property Charges
- You have filed for bankruptcy protection and the case has not been discharged or dismissed.
- You are not a legal US Resident or a Florida Resident.
- You have been convicted of a mortgage related felony within the past 10 years.
- You have not demonstrated a reasonable likelihood of hardship recovery so as to afford the Property Charges on an ongoing, sustainable basis.
- Your cash value of your assets (including retirement accounts) exceeds \$48,000.

3. **Ineligible Property.** We are unable to offer you HHF payment assistance because your property:

- Is not your primary residence.
- Is vacant or abandoned.
- Has been condemned.

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**Reasons for Cancellation**

- You cancelled your application on \_\_\_\_\_.
- There has been no activity on the application for a period of 30 days or more, or because the following information necessary to process your application which we first requested from you more than 30 days ago has not been provided:

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## NATIONAL FOUNDATION FOR DEBT MANAGEMENT

11/27/18

Marika Tolz  
1229 Polk St  
Hollywood, FL 33019

Dear Ms. Tolz,

Thank you for your application for assistance under the Florida Hardest Hit Fund program. Based in the information you provided in your ELMORE application and any other documentation you submitted, it has been determined that you are ineligible for program funding due to:

The law provides that no person shall be eligible to receive assistance from Making Home Affordable Program, authorized under the Emergency Economic Stabilization Act of 2008 or any other mortgage assistance program authorized or funded by that Act, if such person, in connection with a mortgage or real estate transaction has been convicted, within the last 10 years of any one of the following: (A) felony larceny, theft, fraud or forgery, (B) money laundering or (C) tax evasion.

If you believe that this determination has been made in error, you may ask for additional review of your application by contacting the Florida Housing Coalition. Send your request for a second appeal to:

EMAIL: [chaney@flhousing.org](mailto:chaney@flhousing.org)  
MAIL: Florida Housing Coalition  
1367 E. Lafayette Street, Suite C  
Tallahassee, FL 32303  
Attn: Stan Fitterman or Michael Chaney

Sincerely,

  
Heidi Hardy-Gorrow



December 4, 2018

Marika Tolz  
1229 Polk Street  
Hollywood, FL 33019

Dear Ms. Tolz,

Thank you for your application for assistance under the Florida Hardest Hit Fund (HHF) program. Based on the information you provided, you are ineligible for ELMORE assistance from Hardest Hit.

You are ineligible because HHF prohibits assisting an applicant "if such person, in connection with a mortgage or real estate transaction, has been convicted, within the last 10 years." Your case was submitted to legal counsel at Florida Housing Finance Corporation. The legal staff wrote an opinion that your conviction falls within the parameters of a fraud that is in connection with a real estate transaction and you should be disqualified. You do not qualify for the program based on this section of the Dodd Frank Act which includes fraud in relation to a real estate transaction.

Your case has now been reviewed by your advisor, by a supervisor, by me, and the staff at Florida Housing Finance Corporation. I work at the Florida Housing Coalition, a statewide nonprofit that provides training to the Hardest Hit agencies.

Any further questions you have about your Hardest Hit application should be directed to your advisor and any further appeals should go to [Lainie Lowery](mailto:Lainie.Lowery@floridahousing.org) at the Florida Housing Finance Corporation. Email [lainie.lowery@floridahousing.org](mailto:lainie.lowery@floridahousing.org).

Sincerely,  
  
Michael Chaney  
Florida Housing Coalition

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**Reasons for Ineligibility**

1. **Ineligible Mortgage.** We are unable to offer you HHF payment assistance because your loan did not meet one or more of the following basic eligibility criteria of the Hardest Hit

Program:

- Your mortgage is not a reverse mortgage.
- Your reverse mortgage is not serviced by a HUD-approved HECM Servicer or a regulated financial institution.
- There is current pending legal action against the property not initiated by your reverse mortgage lender.
- Servicer ineligible due to Servicer not participating in the HHF Program, investor declined participation.
- You do not currently have an arrearage for taxes and insurance. (Servicer has not advanced funds on your behalf to pay for outstanding property taxes, hazard insurance or required flood insurance.)

2. **Ineligible Borrower.** We are unable to offer you an HHF payment assistance because:

- Your total income is higher than 140% of the area median income (AMI).
- You do not have a qualifying hardship resulting in your inability to repay amounts advanced by your mortgage loan servicer for the payment of Property Charges
- You have filed for bankruptcy protection and the case has not been discharged or dismissed.
- You are not a legal US Resident or a Florida Resident.
- You have been convicted of a mortgage related felony within the past 10 years.
- You have not demonstrated a reasonable likelihood of hardship recovery so as to afford the Property Charges on an ongoing, sustainable basis.
- Your cash value of your assets (including retirement accounts) exceeds \$48,000.

3. **Ineligible Property.** We are unable to offer you HHF payment assistance because your property:

- Is not your primary residence.
- Is vacant or abandoned.
- Has been condemned.

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**Reasons for Cancellation**

- You cancelled your application on \_\_\_\_\_.
- There has been no activity on the application for a period of 30 days or more, or because the following information necessary to process your application which we first requested from you more than 30 days ago has not been provided:

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## PART II HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT

### 28-106.201 Initiation of Proceedings.

- (1) Unless otherwise provided by statute, initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.
- (2) All petitions filed under these rules shall contain:
- (a) The name and address of each agency affected and each agency's file or identification number, if known;
  - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
  - (c) A statement of when and how the petitioner received notice of the agency decision;
  - (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
  - (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
  - (f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
  - (g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.
- (3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.
- (4) A petition shall be dismissed if it is not in substantial compliance with subsection (2) of this rule or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.
- (5) The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.



## NOTICE OF RIGHTS

If your substantial interests are affected by Florida Housing Finance Corporation's (Florida Housing) action(s) in this matter, you have the right to request an administrative hearing on that action pursuant to Section 120.569, Florida Statutes. You may request either a formal or an informal hearing by filing a petition within 21 days of the date of your receipt of this Notice of Rights in the manner provided below.

Petitions are deemed filed upon receipt of the original documents by Florida Housing's Clerk at the following address:

Corporation Clerk  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

Petitions or other requests for hearing will not be accepted via telefax or other electronic means.

**Formal Administrative Hearing:** If a genuine issue(s) of material fact is in dispute, you may seek a formal administrative hearing by filing a petition for hearing pursuant to Sections 120.569 and 120.57(1), Florida Statutes, within said 21 day period. Petitions must substantially comply with the requirements of Rule 28 – 106.201(2), Florida Administrative Code, a copy of which is attached to this Notice of Rights.

**Informal Administrative Hearing:** If there are no issues of material fact in dispute, you may seek an informal administrative hearing by filing a petition for hearing pursuant to Sections 120.569 and 120.57(2), Florida Statutes, within said 21 day period. Petitions must substantially comply with the requirements of Rule 28 – 106.301(2), Florida Administrative Code, a copy of which is attached to this Notice of Rights.

Mediation under Section 120.573, Florida Statutes, is not available.

Your petition must be received by Florida Housing within 21 days of the date of your receipt of this Notice of Rights. FAILURE TO FILE A PETITION WITHIN 21 DAYS WILL CONSTITUTE A WAIVER OF YOUR RIGHT TO REQUEST A HEARING IN THIS MATTER.

Please be governed accordingly.

**Attachments:** Copies of Rules 28 – 106.201(2) and 28 – 106.301(2), Florida Administrative Code.

**PART III PROCEEDINGS AND HEARINGS NOT INVOLVING DISPUTED**

**ISSUES OF MATERIAL FACT**

**28-106.301 Initiation of Proceedings.**

(1) Initiation of a proceeding shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document which requests a proceeding. Each petition shall be legible and on 8 1/2 by 11 inch white paper or on a form provided by the agency. Unless printed, the impression shall be on one side of the paper only and lines shall be doubled-spaced.

(2) All petitions filed under these rules shall contain:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- (e) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and
- (f) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(3) If the petition does not set forth disputed issues of material fact, the agency shall refer the matter to the presiding officer designated by the agency with a request that the matter be scheduled for a proceeding not involving disputed issues of material fact. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

(4) A petition shall be dismissed if it is not in substantial compliance with subsection (2) of this Rule or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured.

(5) The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable.

*Specific Authority 120.54(5) FS. Law Implemented 120.54(5), 120.569, 120.57 FS. History--New 4-1-97, Amended 9-17-98.*

SENT VIA FEDERAL EXPRESS

December 5, 2018

Ms. Marika Tolz  
1229 Polk St  
Hollywood, FL 33019

Re: Hardest Hit Fund (HHF) Program Determination

Dear Ms. Tolz:

We have received an appeal request dated December 4, 2018. In accordance with the request, Florida Housing Hardest Hit Fund staff performed a review of your HHF file and the documentation within. We found that the ineligibility determination was correctly made and upheld for the reasons stated in the ineligibility notice and subsequent appeal determination letters provided. Additionally, Florida Housing's Office of Inspector General reviewed the appeal determination and supporting documentation and concurred with HHF staff that the determination was made correctly and in accordance with program policy and procedures. Attached to this letter you will find your Notice of Rights.

Sincerely,



David R. Westcott  
Director of Homeownership Programs

Enclosure

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Rick Scott, Governor

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Julie Dennis, Florida Department of Economic Opportunity

Harold "Trey" Price, Executive Director

List of agencies

Florida Housing Coalition

Michael Chaney

1376 East Lafayette Street

Suite C

Tallahassee, Fla. 32301

File no: none

National Foundation for Debt Management

Amy M. Bolt

Heidi Hardy Gorrow

14104 58<sup>th</sup> Street North

Clearwater , Fla. 33760

Account # 766453

Champion Mortgage

PO Box 619093

Dallas, Texas 75261-9093

Account # 0000766453

Tolz appeal

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by mail on December 11 2018. To

Florida Housing Coalition

Michael Chaney

1376 East Lafayette Drive

Suite C

Tallahasee, Fla. 32301

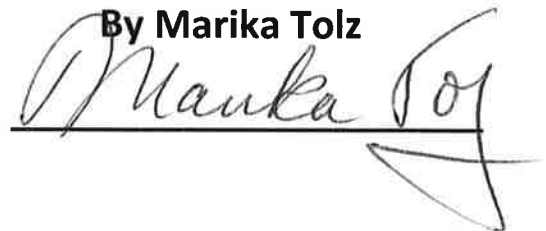
National Foundation for Debt management

Amy M. Bolt, Heidi Hardy Gorrow

14104 58<sup>th</sup> St North

Clearwater, Fla. 33760

By Marika Tolz

A handwritten signature in black ink, appearing to read "Marika Tolz", is written over a horizontal line. The signature is cursive and includes a large, stylized flourish at the end.