

STATE OF ILLINOIS)
) ss.
COUNTY OF MCHENRY)

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
MCHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
vs.

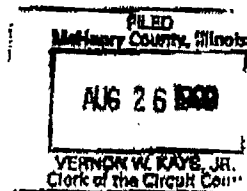
98 CF 1031

JAMES T. MICELI, Defendant

ORDER AND CERTIFICATE OF FELONY PROBATION

This matter appearing for purposes of negotiated plea of guilty, the parties present and represented by Legal Counsel, the Court having jurisdiction and being fully advised in the premises, the above-named defendant having been found guilty upon the factual basis recited to the Court, convictions are entered for the following crimes contained within the above-captioned Bill of Indictment:

Count 20:	Income Tax Evasion	Class 4 Felony
Count 21:	Income Tax Evasion	Class 4 Felony
Count 26:	Conspiracy to Commit Theft (Over \$300)	Class 4 Felony
Count 31:	Conspiracy to Commit Forgery	Class 4 Felony
Count 36:	Forgery	Class 3 Felony
Count 37:	Forgery	Class 3 Felony
Count 43:	Theft (Over \$100,000)	Class 1 Felony
Count 44:	Theft (Over \$10,000)	Class 2 Felony
Count 45:	Theft (Over \$10,000)	Class 2 Felony
Count 48:	Perjury	Class 3 Felony
Count 49:	Perjury	Class 3 Felony
Count 52:	Theft (Over \$10,000)	Class 2 Felony
Count 55:	Forgery	Class 3 Felony
Count 58:	Forgery	Class 3 Felony
Count 61:	Money Laundering	Class 1 Felony



The Court, pursuant to Illinois Compiled Statutes, Chapter 730, Act 5, Section 5-4-1, has

- Considered all of the evidence received upon the stipulation of facts or the factual basis for the adjudication of guilt;
- Considered the evidence and information offered by the parties, if any, in aggravation and mitigation;
- Heard arguments as to sentencing alternatives, if any;
- Considered the agreement, if any, of the parties to imposition of a specific sentence;
- Afforded the defendant an opportunity to make a statement in his own behalf;

And based upon an independent assessment of all of the above,

MICELI
1/17

THE COURT FINDS AS FOLLOWS:

- 1) In accordance with Illinois Compiled Statutes, Chapter 730, Act 5, Section 5-5-3.1, the following factors of mitigation are present:
 - a) The defendant's criminal conduct neither caused nor threatened serious physical harm to another person,
 - b) The defendant did not contemplate that his conduct would cause or threaten serious physical harm to another,
 - c) The Defendant has compensated or will compensate the victims for the damage or injury,
 - d) The defendant has no history of prior delinquency or criminality or he has led a law-abiding life for a substantial period of time before the commission of the present crimes,
 - e) The defendant is likely to comply with a period of probation.
- 2) In accordance with Illinois Compiled Statutes Chapter 730, Act 5, Section 5-5-3.2, the following factors of aggravation are present:
 - a) The defendant utilized his professional reputation in the community to commit the offense or to afford him an easier means of committing it,
 - b) The sentence is necessary to deter others from committing the same offenses.
- 3) The defendant, through his attorneys, has tendered a cashier's check in the amount of \$220,000.00 to the clerk of the court for purposes of restitution and has presented satisfactory representations that bond posted on his behalf is free of any claims or liens by any persons other than the defendant.

IT IS THEREFORE ORDERED AS FOLLOWS:

Having regard to the nature and circumstances of the offense and to the history, character, and conditions of the offender,

- 1) The defendant is sentenced to a term of 36 months probation for the class 1 and 2 felony offenses listed above, and a term of 30 months probation for the class 3 and 4 felony offenses listed above, with the exception of Count 55, for which the sentence is described in the attached order of this same date.
- 2)
 - a) The thirty month term of probation shall terminate on 2-26-2002 at 9:00A.M. and
 - b) The thirty-six month term of probation shall terminate on 8-26-2002 at 9:00A.M.
- 3) The conditions of said probation shall be as follows:
 - a) The defendant shall not violate any criminal statute of any jurisdiction.
 - b) The defendant shall not leave the State of Illinois without the permission of his probation officer, shall not leave the United States without the permission of the Court and shall surrender his passport to the Court during the term of this sentence.
 - c) The defendant shall not possess a firearm or other dangerous weapon.

- d) The defendant shall report immediately to the adult probation division of the McHenry County Department of Court Services and at all other times and places as his probation officer may direct, including Court appearances.
- e) The defendant shall pay through the office of the Circuit Clerk a fine of \$25,000.00 on Count 43, within six months of this sentence and court costs on all counts of *as determined by Clerk in order*, and a monthly probation fee of \$25.00 during each month he is required to report to a probation officer.
- f) The defendant shall permit the probation officer to visit him at his residence or elsewhere to the extent necessary to discharge the officer's duties and shall advise the probation officer of his residence and shall not change residence without the prior approval of the probation officer and shall advise the probation officer of employment and conduct and any other information relating to the conditions of probation as may be required by the probation officer and cooperate with programs outlined for his welfare by the probation officer under whose charge he has been placed. If the defendant is tardy to any degree in the payment of any fines, costs, fees or restitution required by this order, he shall provide the probation officer with an affidavit of all income, assets and liabilities and any information or releases to obtain information that the probation officer may request, including tax information.
- g) The Counts of the indictment not identified above are dismissed, nolle prosequi, on motion of the state, without prejudice to restitution.
- h) The cashier's check tendered by the defendant in the amount of \$220,000.00 shall be deposited by the Circuit Clerk, together with the defendant's bond, to a trust account for purposes of restitution and shall be distributed according to the "restitution schedule" which is incorporated by reference, within five working days. Defendant shall pay interest to persons listed on the restitution schedule at the statutory prejudgment interest rate for the period from January 21, 1998 to August 26, 1999. Payment shall be made within 12 months from the date of this order. Willful failure to pay the interest required shall be a violation of this probation. The defendant shall deposit within thirty days, additional funds into the trust account through the circuit clerk in the event that amounts due to the persons named in the restitution schedule exceed \$400,000.00. Any surplus in the account shall be applied to payment of restitution as ordered by the Arbitrator in the provisions described below. Any surplus after all payments ordered by the Arbitrator are satisfied shall revert to the defendant in equal share with the co-defendant, Samuel Miceli. All accounting or other records regarding the fund shall be available to the State's Attorney at any time.

If other persons come forward subsequent to the entry of the negotiated plea agreement with claims that they deposited money for the purchase of homes or land in Deerpointe from the Miceli's or their companies, real or fictitious as described below, and never acquired the home or land or a full refund of their deposits, they may submit to their claim to the arbitrator in the same fashion as subcontractors according to the procedure set out below. Awards to such claimants will take precedence over the payment of claims to subcontractors. Such claimants need not participate in the civil foreclosure case.

- i) The Defendant shall pay amounts owed by Allied Building Corporation, ABC, America's Building or any other company or individual, real or fictitious, through which the defendant and/or Samuel Miceli did business related to the purchase or sale of land

and/or the sale or building of homes in DeerPoint Development in Lake in the Hills, to subcontractors, or material suppliers for homes on which the sale was closed on or before the date of foreclosure by Parkway Bank and Trust Company. Such subcontractors or claimants shall submit claims to William Caldwell, ("Arbitrator"), of Woodstock, Illinois within 90 days of the date of this Order. Defendant shall have 21 days to object to any claim filed or it shall be considered uncontested. Notice of this arbitration and sentence shall be published for 21 consecutive days in the Northwest Herald newspaper at the cost of the defendant. Publication shall begin within 14 days of sentencing and shall include the name and address of the Arbitrator to which claims may be submitted and the deadline for submission.

by 12-31-99.
10-26-99

The defendant shall appear on 10-12-99 at 9:00 AM before this same court with a cashier's check for the tax liabilities, penalties and interest if payment was not earlier rendered to the Illinois Department of Revenue.

The defendant shall respond uniformly to each creditor claim either objecting or approving jointly.
10-26-99

For homes in the DeerPoint Development in Lake in the Hills on which work was performed but for which a closing did not take place before the date of foreclosure by Parkway Bank & Trust Company, monies received from the sale of those homes are being deposited with the Clerk of the Court of McHenry County for satisfaction of claims against the property, including claims of subcontractors and material suppliers. To the extent that any subcontractor or material supplier 1) supplied materials or performed work before the foreclosure by Parkway Bank & Trust Company, 2) is owed amounts by Allied Building Corporation, ABC, America's Building or any other company or individual, real or fictitious, through which the defendant and/or Samuel Miceli did business related to the purchase or sale of land and/or the sale or building of homes in DeerPoint Development in Lake in the Hills, 3) has made a good faith effort to collect monies owed from the funds deposited with the Clerk of the Court upon sale of the homes, and 4) is unable to collect all amounts due from the funds deposited with the Clerk of the Court upon the sale of the homes; the defendant shall pay amounts owed by Allied Building Corporation, ABC, America's Building or any other company or individual, real or fictitious, through which the defendant and/or Samuel Miceli did business related to the purchase or sale of land and/or the sale or building of homes in DeerPoint Development in Lake in the Hills. Subcontractors or claimants who have won judgments other than by default need not comply with the above stated conditions and shall be paid restitution in the amount of the judgment within 12 months of the date of this Order. The subcontractors or claimants shall submit claims to the Arbitrator within 60 days of a determination that monies owed them cannot be collected from funds held by the Clerk of the Court from sale of the homes or within 18 months from the date of this order, whichever is earlier. The Arbitrator will determine whether a subcontractor or claimant has met the conditions of this paragraph. Notice of this condition of probation and sentence shall be published for 21 consecutive days in the Northwest Herald newspaper at the cost of the defendant. Publication shall begin within 14 days of sentencing and shall include the name and address of the Arbitrator to which claims may be submitted and the deadline for submission.

k) If a subcontractor or claimant demand under paragraph (i) or (j) is contested, the claims shall be settled by arbitration before the Arbitrator. Discovery may be conducted at the sole discretion of the Arbitrator. Defendant shall be bound by the Arbitrator's decision on any claim. Willful failure to pay any uncontested claim or any amount awarded by the Arbitrator pursuant to this paragraph shall be a violation of the conditions of this probation. The defendant waives any objection to procedural or other defects in the

imposition of this sentence, including determination of restitution and enforcement of restitution orders or imposition of sentence relating to restitution. Claimant subcontractors must agree to be bound by the Arbitrator's decisions and waive any claims or liens against homeowners if they choose to participate in the arbitration process and are paid the amounts awarded in accordance with this paragraph. Payment of restitution determined by the Arbitrator shall be completed within 6 months of the Arbitrator's finding on each claim.

As the arbitrator forwards judgments to the Circuit Clerk for payment of restitution, payment from available funds shall be made in equal amounts to each recipient for whom the arbitrator has determined an award. Payment in this fashion shall continue until the award amount is satisfied for any particular recipient. Awards to homebuyers shall take precedence over all others and shall be satisfied by equal division of available assets, first to any homebuyers owed principal and second to any homebuyers owed interest.

- l) The defendant will satisfy any State of Illinois tax liabilities and associated penalties in the amount of \$ 17,356.77 within forty-five days of sentencing. The defendant shall appear on 10-12-99, at 9:00 AM before this same court with a cashier's check for the tax liabilities and penalties if payment was not earlier tendered to the Illinois Department of Revenue.
- m) The defendant is enjoined as a condition of this sentence from conducting any business activity, directly or indirectly in McHenry County, for a period of five years from the date of this order and any business activity associated with the construction of homes or sale of land in the State of Illinois for a period of five years from the date of this sentencing order.
- n) Fees of the Arbitrator shall be paid within thirty days of invoice by the Arbitrator. Failure to pay the Arbitrator within sixty days of billing shall require the defendant to satisfy any claims submitted without contest.
- o) Notice to the Defendant under this plea agreement shall be by mail as follows:

Samuel J. Miceli
584 Somerset
Crystal Lake, IL

James T. Miceli
35 Revere Drive
South Barrington, IL
- p) The defendant shall appear in court on the termination date set for probation in each case to determine compliance with the Court's sentence.
- q) The Defendant shall be subject to the Administrative Sanctions program of the Department of Court Services.

A true copy of this sentencing order shall be provided to the defendant as a certificate of probation, setting forth the terms hereof.

ENTERED at Woodstock, McHenry County, Illinois, this 26th day of August, 1999.

Ward Arnold
Ward Arnold, Circuit Judge

I, the above-named defendant, acknowledge the receipt of this document and understanding of its terms.

Jim Miceli
James T. Miceli

August 26, 1999