

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cr- **20-80013-CR-MARRA**  
26 U.S.C §7201  
31 U.S.C. §§5314, 5322

UNITED STATES OF AMERICA

vs.

DUSKO BRUER,

Defendant.

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FACTUAL AGREEMENT

The parties agree that had this case proceeded to trial, the United States (hereinafter, “the Government”) would have proven the following facts beyond a reasonable doubt, which set forth a legal and factual basis for proving that DUSKO BRUER (hereinafter, “Defendant”) did attempt to evade or defeat tax for tax year 2008, in violation of Title 26, United States Code, Section 7201, and willfully failed to file a Report of Foreign Bank or Financial Account for calendar year 2014, in violation of 31 United States Code, Sections 5314, 5322.

BACKGROUND

The Defendant was a Croatian national and naturalized citizen of the United States. The Defendant resided in Alabama from 1979 through 1997 and Palm Beach County, Florida from 1998 to the present.

Company A was a distributor that bought U.S.-made agricultural machinery and parts and sold them throughout the world.

Company B was an Iowa-based manufacturer and refurbisher of agricultural machinery intended for the export market.



Person A was a Nicaraguan national and naturalized citizen of the United States who resided in Palm Beach County, Florida. From 2001 to the present, the Defendant employed Person A in various capacities, including as a bookkeeper for Company A and Company B as well as the Defendant's personal assistant.

Person B was a Nicaraguan national and naturalized citizen of the United States who resided in Palm Beach County, Florida. Person B was a relative of Person A.

Person C was a United States citizen who, at various times, resided in Alabama, Florida, and Nevada. Person C was a relative of the Defendant.

Person D was a United States citizen who resided in Alabama. Person D was a relative of the Defendant.

Person E was a Croatian national who resided in Dubrovnik, Croatia. Person E was a relative of the Defendant.

Person F was a United States citizen who resided in Palm Beach County, Florida. At times, between 2007 and 2019, Person F was involved in a personal relationship with the Defendant.

United States taxpayers who had income in excess of a certain amount were obligated to file an individual income tax return with the United States Internal Revenue Service ("IRS"). On said return, United States taxpayers were obligated to report their worldwide income. Additionally, United States taxpayers who have an interest in or signature or other authority over a financial account in a foreign country were required to disclose the existence of such account on Schedule B, Part III of their individual income tax return.

A Report of Foreign Bank and Financial Accounts, FinCEN Report 114 (formerly TD F 90.22-1) ("FBAR") was required to be filed with the Financial Crimes Enforcement Network, Department of the Treasury by each U.S. taxpayer with a financial interest in or signature authority

over one or more foreign financial accounts, the aggregate value of which exceeded \$10,000 at any time during the calendar year reported.

The Offshore Voluntary Disclosure Program ("OVDP") was a framework created by the IRS for resolving offshore voluntary disclosures. In order to avoid criminal prosecution, taxpayers were required to make a voluntary disclosure to IRS Criminal Investigation and file six years of delinquent or amended income tax returns as well as delinquent or amended FBARs. Besides paying back taxes, interest, and certain penalties on the six tax years in the disclosure period, taxpayers were required to pay a penalty on the highest aggregate account balance of their noncompliant offshore assets.

#### COMPANY A

In or around 1988, the Defendant and a partner founded Company A in Alabama with the partner named as President and the Defendant as Secretary, Agent and Incorporator. Each year, from 1988 through 1999, the Defendant or his partner filed an IRS Form 1120, U.S. Corporation Income Tax Return ("Form 1120"), on behalf of Company A on which the corporation reported its income. Furthermore, each year, from 1988 through 1998, the Defendant filed an IRS form 1040, U.S. Individual Income Tax Return ("Form 1040"), on which he reported his income.

In or around 1997, the Defendant divorced his spouse. Shortly thereafter, he left Company A to his business partner and moved to Palm Beach County, Florida. Beginning in 1999, the Defendant ceased either timely filing true and accurate Forms 1040 or paying federal income tax on his income. One year later, Company A stopped filing corporate income tax returns and paying tax on its income.

In or around 2003, the Defendant's former business partner retired and ceased operating Company A. The Defendant took over sole ownership of Company A and operated it from Palm Beach County, Florida.

From 2003 through 2009, the Defendant successfully operated Company A as his wholly owned business. Company A had a number of employees and reaped millions of dollars in gross receipts per annum. Despite the success, the Defendant never filed a corporate tax return for Company A in those years, nor did the corporation pay tax on its income. Further, during those years, the Defendant never filed IRS Forms 941, Employer's Quarterly Federal Tax Return, reporting wages that Company A paid to its employees. As a result, Company A never withheld and paid over the employees' share of federal income, Social Security and Medicare taxes; never paid over the employer's share of the Social Security and Medicare taxes; never filed an IRS Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return; and never paid federal unemployment tax.

From 2003 forward, Company A did not pay the Defendant a salary. Instead, the Defendant used millions of dollars from Company A's bank accounts to pay his personal expenses, make investments abroad, and make transfers to family and an employee, including, but not limited to:

- Between 2008 and 2011, the Defendant transferred a net total of \$460,500 to two relatives; Person C received \$182,000 and Person D received \$278,500;
- On or about April 30, 2008, the Defendant wire transferred \$255,000 to the domestic account of a business partner to purchase that partner's interest in real property they jointly owned in Serbia;
- On or about April 9, 2009, the Defendant purchased a home for \$263,865 that was titled in the name of Person A;

- In or around January 2010, the Defendant purchased a 54-foot Neptunus yacht called "Hawk's Nest" for \$235,000;
- Between 2010 and 2014, the Defendant spent approximately \$135,000 to service, register and dock his yachts;
- Between 2012 and 2013, the Defendant spent approximately \$21,000 to pay the condo fees for a New York City apartment that was owned by a family member; and
- Between 2011 and 2014, the Defendant transferred a net total of approximately \$540,000 from Company A to Company B.

In or about September 2009, the Defendant purportedly "gifted" Company A to Person A. Because Person A was embroiled in a contentious divorce at the time, and Person A did not wish to report the ownership of Company A to her spouse, the corporate records filed with the Florida Secretary of State identified Person B as the owner of a newly incorporated Company A. The Defendant, Person A and Person B knew that Person B would have no authority over the day-to-day operations of Company A. From 2009 through 2011, Person B filed false Forms 1040 on which Person B reported income and expenses from Company A on a Schedule C. On those returns, Person B falsely deducted as business expenses the Defendant's personal expenses, transfers to friends and families, and investments which were routinely paid with Company A's funds.

From 2012 through 2017, Person A filed Forms 1040 on which Person A reported income and expenses for Company A. The Forms 1040 were false in that Person A deducted as business expenses the Defendant's personal expenses which were routinely paid with Company A's funds.

## FOREIGN FINANCIAL ACCOUNTS

From at least 2005 through 2017, the Defendant owned and controlled a number of bank and financial accounts held at financial institutions in Croatia, Germany, Serbia and Switzerland. Between 2007 and 2011, the Defendant transferred a net total of \$5,817,038 in profits from Company A to his foreign financial accounts. He did so to conceal the income from the IRS. The Defendant never reported his ownership of the accounts to the Department of the Treasury by filing an FBAR with FinCEN. The Defendant neither reported the income earned on the assets in the accounts, nor his ownership of the accounts on a Form 1040. Furthermore, the Defendant never paid tax on the income earned on the assets in the accounts.

### Serbian Bank Account

Some time prior to 2005, the Defendant opened a financial account in his own name at Raiffeisen Bank in Belgrade, Serbia ("Serbia Account"). By October 2006, the assets in the Serbia Account exceeded \$5,400,000 in value. Among other things, the Defendant used the funds in the Serbia Account to purchase interests in two apartments in Belgrade, Serbia. The Defendant maintained the Serbia Account until at least 2013.

### Credit Suisse Account

In or around June 2006, the Defendant executed documents to open an account in his own name at Credit Suisse AG ("Credit Suisse Account") in Zurich, Switzerland. Although the Defendant signed account opening documents on which he falsely claimed that he resided in Croatia, he signed a separate document on which he acknowledged that he was a U.S. taxpayer but refused to permit Credit Suisse to disclose his name to the IRS.

The Defendant initially funded the Credit Suisse Account with a transfer of €2,900,000 (approximately \$3,691,700) from the Serbia Account. He substantially increased the assets in the

account through the net transfer of \$1,600,000 from Company A and a second transfer in or about July 2008 from the Serbia Account of over \$2,000,000. On or about December 31, 2008, the Credit Suisse Account reached a high year-end value of \$4,958,601.

The Defendant used the Credit Suisse Account to fund his lifestyle including the 2007 purchase of a 90-foot yacht called the "Free Spirit" for \$1,350,000 from a yacht broker in Fort Lauderdale, Florida.

#### Clariden Leu Account

In or about January 2009, the Defendant closed the Credit Suisse Account and transferred the assets into a new account that he opened in his own name at Clariden Leu Ltd. ("Clariden Leu Account") in Zurich, Switzerland.<sup>1</sup> The Defendant falsely represented to Clariden Leu that he resided in Croatia. Although the Defendant never explicitly acknowledged to Clariden Leu that he was a U.S. taxpayer, Clariden Leu had good cause to question his U.S. status. First, the Defendant opened the Clariden Leu Account through a referral from a banker at Credit Suisse's domestic private bank in Palm Beach, Florida. Second, at account opening, the Clariden Leu banker managing the account noted in a memorandum that the Defendant refused to execute a document titled "Declaration Regarding Non-US Status" in which he would have had to affirm that he was not a U.S. taxpayer. Third, the Defendant made repeated transfers from the Clariden Leu Account to the domestic account of Company B that he falsely characterized as belonging to Person C.

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<sup>1</sup> From 2009 through 2012, Clariden Leu was a Swiss private bank that was a wholly owned subsidiary of Credit Suisse but independently operated from the parent. In 2012, Clariden Leu merged into Credit Suisse and out of existence. Following the merger, the Clariden Leu Account was managed by Credit Suisse.



In addition to the assets transferred from the Credit Suisse Account, the Defendant transferred a net total of \$1,500,000 from Company A to the Clariden Leu Account in 2009. On or about December 31, 2010, the Clariden Leu Account reached a high year-end value of \$6,177,586.

The Defendant used the assets in the Clariden Leu Account to fund his lifestyle and make transfers. For example:

- On or about May 9, 2009, the Defendant wired €52,850 (approximately \$72,000) to an auto dealer in Zagreb, Croatia for the purchase of a 2009 Audi Q7 sports utility vehicle.
- On or about August 2, 2011, the Defendant transferred \$1.95 million to the escrow account of a Palm Beach attorney. The Defendant used \$1.625 million of this money to purchase a 3,200 square foot home in Lake Worth, Florida with 100 feet of frontage on the Intracoastal Waterway. The Defendant falsely represented to Clariden Leu that the money was intended as a "loan to a family member." The Defendant titled the home in the name of Person F. The Defendant intermittently resided in the home with Person F from purchase through approximately 2019.
- In or around August 2014, the Defendant transferred \$115,000 to the domestic account of Person F so that Person F could make an equity investment in the company for which Person F worked.

The Defendant closed the Clariden Leu Account in 2015 and transferred the assets to a domestic account.

#### Croatian Accounts

Between 2006 and 2017, the Defendant controlled multiple accounts at five different banks in Croatia. He held those accounts in his own name and that of Person E. Between 2008 and 2010,



the Defendant transferred a net total of \$2,335,000 from Company A to the Croatian Accounts.

The accounts are as follows:

**Raiffeisen Bank:** On or about February 16, 2006, the Defendant opened multiple accounts in multiple currencies in his own name at Raiffeisen Bank in Dubrovnik, Croatia with a deposit of HRK 1,800,000 (approximately \$293,159). On or about June 2, 2006, the Defendant further deposited HRK 20,900,021 (approximately \$3,720,768) into the Croatian Kuna account, at which time the value of the accounts at Raiffeisen reached their highest aggregate value. Those funds ultimately were transferred through the Serbian Account to the Credit Suisse Account. The Defendant also made deposits to an account at Raiffeisen Bank held in the name of Person E, over which the Defendant held signature authority.

**Erste & Steiermärkische Bank:** The Defendant opened a U.S. dollar account in his own name at Erste & Steiermärkische Bank in Dubrovnik, Croatia on or about December 29, 2008. On or about August 24, 2009, the Defendant caused Person C to become a signatory on the account. The Defendant deposited approximately \$76,000 in the account at opening and maintained that balance through the closure of the account on or about July 11, 2016.

**Privredna Banka Zagreb:** The Defendant opened U.S. dollar and Euro accounts in his own name at Privredna Banka Zagreb in Dubrovnik, Croatia on or about December 29, 2008. The Defendant deposited approximately \$76,000 into the accounts at account opening, which constituted the high value. The Defendant closed the accounts on or about July 11, 2016.

**Volksbank:** The Defendant opened U.S. dollar and Euro accounts in his own name at Volksbank (later Sberbank) in Dubrovnik, Croatia on or about December 29, 2008. On or about August 24, 2009, the Defendant caused Person C to become a signatory on the account. The

Defendant deposited approximately \$76,000 into the account at opening, which constituted the high value. The Defendant closed the accounts on or about May 5, 2014.

Zagrebačka Banka: The Defendant opened U.S. dollar and Euro accounts in his own name at Zagrebačka Banka in Dubrovnik, Croatia on or about December 29, 2008. The Defendant deposited approximately \$76,000 into the accounts at account opening, which constituted the high value. The Defendant used a credit card linked to the accounts. On or about August 24, 2009, the Defendant caused Person C to become a signatory on the accounts. The Defendant closed the accounts on or about July 8, 2016.

#### German Account

The Defendant held an account in his own name at UniCredit Bank AG (a/k/a Hypovereinsbank) no later than June 2010. The Defendant funded the account with a transfer of \$150,000 from Company A's domestic account. The Defendant used the account for, among other things, travel expenses. The Defendant closed the account in or about November 2016 and transferred the remaining assets, €130,237 (approximately \$137,738), to his account at Raiffeisen Bank in Croatia.

#### FALSE RETURNS FILED IN 2015

A relative of the Defendant passed away in New York, New York in 2010. Between December 2011 and November 2013, the Defendant received multiple distributions from the relative's estate totaling approximately \$800,000. In 2012, a life insurance company distributed \$41,498 to the Defendant, withheld \$2,161 as tax, and paid over that sum to the IRS.

On or about July 21, 2014, the IRS sent a notice to the Defendant advising him that he had failed to file a return for tax year 2012. On or about August 18, 2015, the Defendant filed an Income Tax Return for Single and Joint Filers with No Dependents, Form 1040EZ

("Form 1040 EZ"), for 2012, on which he falsely claimed that he resided in Dubrovnik, Croatia and falsely reported zero income for that year. Further, the Defendant attached a statement to the return on which he falsely claimed: "It is my belief that I do not owe any taxes for 2012. I have no earned income [ . . . ]". The Defendant requested and the next month received from the IRS a refund of the \$2,161 in tax previously withheld by the insurance company. On or about September 15, 2015, the Defendant mailed to the IRS false Forms 1040EZ for 2013 and 2014 on which he falsely claimed that he resided in Croatia and that he received zero income in those years.

#### QUIET DISCLOSURE

At about the same time that the Defendant mailed false Forms 1040EZ to the IRS, Credit Suisse sent a letter to the Defendant informing him that the Clariden Leu Account would be closed. The letter advised the Defendant that he may wish to enter the IRS's OVDP. On or about October 20, 2015, the Defendant contacted an attorney in Palm Beach County to discuss making a voluntary disclosure to the IRS. Though the attorney sent emails to Credit Suisse stating that he represented the Defendant, the Defendant never directed the attorney to complete his application to enter the OVDP. The Defendant spent the following months obtaining records of the Clariden Leu Account from Credit Suisse.

From March through July 2016, the Defendant communicated with the Palm Beach County attorney and the attorney's associate regarding a potential voluntary disclosure to the IRS. The Defendant retained a forensic accountant to calculate unreported income from the Credit Suisse Account and Clariden Leu Account and losses from Company B. The Defendant never told either the attorneys or the forensic accountant about the accounts he held in Croatia, Germany or Serbia.

The Defendant did not enter into the OVDP because he determined that the cost, including a penalty equal to 50% of the high balance in the Clariden Leu Account, would be too high.

Instead, the Defendant attempted to reduce his costs by making a “quiet” disclosure which involved filing delinquent tax returns in an attempt to address U.S. tax and information reporting obligations with respect to foreign financial assets without paying the taxes, penalties and interest that would be paid in OVDP.

Between 2015 and 2017, the Defendant filed Forms 1040 or Forms 1040EZ for 2007 through 2015 that were false as to a material matter in that he knowingly and intentionally failed to include income he received from Company A as well as the Croatian, German and Serbian accounts. The dates on which the Defendant filed his false returns for 2007 through 2014 were as follows:

Year	2007	2008	2009	2010
Date Filed	July 13, 2017	October 18, 2016	July 4, 2017	October 11, 2016

Year	2011	2012	2013	2014
Date Filed	October 11, 2016	August 18, 2015	September 15, 2015	September 15, 2015

The Defendant never filed an FBAR nor did he pay any penalty for his willful failure to file one.

#### SALE OF IOWA COMPANY

From 2011 to the present, the Defendant owned and operated Company B. The Defendant used assets that he concealed in the foreign financial accounts, assets that he inherited, and Company A’s profits to fund Company B. In or about January 2018, the Defendant retained a business broker in Palm Beach County to assist in the sale of Company B, as well as intellectual property that the Defendant jointly held with a former employee. In or around 2018 and 2019, the Defendant communicated with IRS Special Agents acting in an undercover capacity as potential buyers of Company B. In those communications, the Defendant claimed that, even though

Company B appeared unprofitable on paper, it effectively broke even as the Defendant used Company B's funds to pay many of his personal expenses.

#### TAX LOSS

The Defendant willfully evaded the assessment of taxes for tax years 2007 through 2014.

The unreported income and tax due and owing for those years is as follows:

Year	2007	2008	2009	2010
<b>Unreported Income</b>	\$ 1,667,494	\$ 2,592,849	\$ 1,910,540	\$ 1,076,715
<b>Tax Due and Owing</b>	\$ 613,552	\$ 960,042	\$ 708,546	\$ 395,944

Year	2011	2012	2013	2014
<b>Unreported Income</b>	\$ 104,260	\$ 84,426	\$ 60,481	\$ 229,448
<b>Tax Due and Owing</b>	\$ 31,699	\$ 14,980	\$ 8,548	\$ 56,227

#### FOREIGN BANK ACCOUNT REPORTING

The Defendant willfully failed to file FBARs for calendar years 2006 through 2015. During those years, the Defendant was the beneficial owner of financial accounts in Croatia, Germany, Serbia, and Switzerland. The aggregate year-end high values in the undeclared accounts were as follows:

Year	2007	2008	2009	2010	2011
<b>Aggregate Year-End High Value</b>	\$3,625,815	\$4,492,774	\$6,171,372	\$6,289,274	\$3,688,871

Year	2012	2013	2014	2015
<b>Aggregate Year-End High Value</b>	\$3,288,937	\$2,505,220	\$1,817,866	\$333,727

STATUTORY ELEMENTS

The elements of the crime of **Attempting to Evade or Defeat Tax** under the Internal Revenue laws, 26 U.S.C. §7201, are:

- First: That the Defendant committed an affirmative act or acts constituting an attempt to evade or defeat a tax or the payment thereof;
- Second: An additional tax was due and owing; and
- Third: The Defendant acted willfully.

The elements of the crime of **Willful Failure to File a Report of Foreign Bank or Financial Account** under the Bank Secrecy Act, 31 U.S.C. § § 5314, 5322, are:

- First: The Defendant was a U.S. person, that is, a U.S. citizen or resident alien, or an entity organized under Federal or state law;
- Second: The Defendant had a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country;
- Third: The aggregate value of all such accounts exceeded \$10,000 at any time during the calendar year;
- Fourth: The Defendant failed to report such account on FinCEN Form 114, a Report of Foreign Bank and Financial Accounts, by the annual deadline date (generally June 30th in the year following the reportable year); and
- Fifth: The Defendant willfully failed to report the account.
- Sixth: While violating another law of the United States or as a part of a pattern of illegal activity involving more than \$100,000 in a 12-month period (for the aggravated section pursuant to 5322(b))

Defendant DUSKO BRUER states that he has consulted with his attorney and has fully discussed with his attorney the evidence against him and any possible defenses. He further admits that the facts described above are true; that they support a finding that the elements of the offenses of attempting to evade or defeat a tax for tax years 2007 through 2014, in violation of Title 26, United States Code, Section 7201, and willful failure to file a report of foreign bank and financial account for 2007 through 2015, in violation of Title 31, United States Code, Sections 5314, 5322; have been met; that they support a factual basis for the entry of his pleas of guilty to counts 1 and 2 of the Information; and that he is in fact guilty of those crimes.

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AURORA FAGAN  
ASSISTANT UNITED STATES ATTORNEY

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MARK F. DALY  
SENIOR LITIGATION COUNSEL  
TAX DIVISION

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JOEL HIRSCHHORN, ESQ.  
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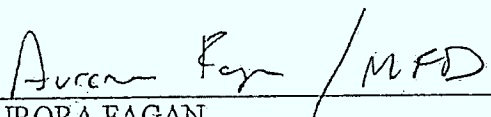
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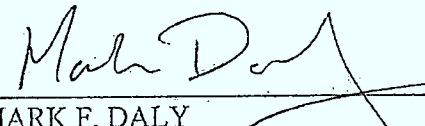


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