UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-CR-80141-Middlebrooks

UNITED STATES OF AMERICA

v.

EMMANUEL BULLY, JR.,

Defendant.

GOVERNMENT'S RESPONSE TO OBJECTIONS TO PRESENTENCE REPORT

The United States respectfully responds to defendant Emmanuel Bully, Jr.'s objections (D.E. 23) to the presentence report (D.E. 21).

MB Tax Services

Paragraph 17 of the presentence report states that, "[o]n April 29, 2020, the defendant submitted a PPP loan application on behalf of MB Tax Services Consultants, LLC . . . claiming that . . . it had a principal place of business in Delray Beach, Florida[,]" whereas in fact "MB Tax Services Consultants, LLC was not an active business with an office in Delray Beach." The defendant objects that "MB Tax Consultants was reinstated with the Florida Division of Corporations on February 24, 2020." D.E. 23 ¶ 1.

The defendant applied for three Paycheck Protection Program loans on behalf of MB Tax Consultants. He submitted these applications on May 6, 2020, January 19, 2021, and April 3, 2021. According to the records of the Florida Department of State, Division of Corporations, MB Tax Consultants LLC was incorporated on May 9, 2018, failed to file an annual report in 2019, was reinstated on February 24, 2020, and remains active. Therefore, the defendant's representation in his objection about the reinstatement of MB Tax Consultants is accurate. However, paragraph 17 of the presentence report describes a different loan application, submitted on April 29, 2020. The name of the applicant, as written on that application, was "MB Tax *Services* Consultants[,]" (emphasis added) not MB Tax Consultants. According to the records of the Florida Department of State, Division of Corporations, no business with the name MB Tax Services Consultants has ever been registered in Florida. Therefore, the presentence report is correct. In fact, the defendant conceded that MB Tax Services Consultants was not an active business in the factual proffer that supported his plea agreement. D.E. 17 at 3. The language in the presentence report to which the defendant now objects is taken verbatim from the factual proffer. Therefore, the defendant's objection should be denied.

Furthermore, even assuming that the defendant intended to submit the application on behalf of MB Tax Consultants and made a mistake writing the name of his company, the application made material false statements regarding the business's average monthly payroll. Again, the defendant conceded this material falsehood in the factual proffer and it is reported in the presentence report. D.E. 17 at 3; D.E. 21 ¶ 17. Therefore, the defendant's objection regarding reinstatement of the corporation, even if well taken, would not affect his offense level.

Intended Loss

In the plea agreement, the defendant agreed to jointly recommend that the Court find that "the relevant loss amount resulting from the defendant's participation in the offense is $1,394,427 . . . ." D.E. 16 ¶ 8(b). Consistent with this concession, paragraph 25 of the presentence report stated that, "the defendant attempted to obtain $1,394,427 and succeeded in receiving

$503,235 in CARES Act funds." Based on a loss of more than $550,000, but not more than $1,500,000, paragraph 32 of the report applies a 14-level adjustment to the defendant's offense level.

The defendant objects to paragraph 25 of the report on the basis that "he did not intend, and could not have had such intention, to attempt to obtain '$1,394.27' because the applications did not specify any amount sought or requested, and the Defendant did not know what if any funds were going to be provided in connection with any application . . . ." D.E. 23 ¶ 2.

In the first place, the defendant has not objected to paragraph 32 of the report, which adjusts his offense level based on the loss in the case, nor could he do so in light of paragraph 8(b) of the plea agreement, quoted above. Accordingly, the Court does not have to rule on the defendant's objection to paragraph 25. However, to the extent that the Court reaches the objection, it is meritless.

When a business applied for either a Paycheck Protection Program loan or an Economic Injury Disaster Loan, the size of the loan for which the applicant qualified was calculated based on the information in the application. The defendant is correct that his loan applications did not state the size of the loans for which he would qualify if the loan was approved. Nevertheless, the defendant had notice of the scale of the loans for which he was applying.

The defendant applied for 13 Paycheck Protection Program loans, of which 2 were funded. The loans are as follows:

Application date	Applicant business	Loan amount	Funded?
4/29/2020	MB Tax Services Consultants	$20,835	Yes
5/6/2020	MB Tax Consultants LLC	$62,500	Yes
5/16/2020	EBJ Financial Group LLC	$15,000	No
1/19/2021	MBJ Property Holdings LLC	$65,000	No

Application date	Applicant business	Loan amount	Funded?
1/19/2021	EBJ Financial Group LLC	$94,250	No
1/19/2021	MB Tax Consultants LLC	$106,250	No
1/27/2021	EBJ Financial Group LLC	$20,832	No
2/1/2021	EBJ Financial Group LLC	$20,832	No
2/12/2021	EBJ Financial Group LLC	$20,832	No
2/18/2021	EBJ Financial Group LLC	$20,832	No
2/20/2021	EBJ Financial Group LLC	$20,832	No
2/24/2021	EBJ Financial Group LLC	$20,832	No
4/3/2021	MB Tax Consultants LLC	$18,000	No

As the Court can see, the defendant received his two funded loans first, then applied for eleven more loans, which were declined. Similarly, the defendant applied for eight Economic Injury Disaster Loans, of which six were funded. Those loans are as follows:

Application date	Applicant business	Loan amount	Funded?
5/22/2020	MB Tax Services LLC	$36,900	Yes
5/22/2020	MB Tax Services LLC	$3,000	Yes
6/18/2020	MB Tax Consultants LLC	$8,000	Yes
6/19/2020	MB Tax Consultants LLC	$134,400	Yes
7/17/2020	EMMANUEL B	$47,800	Yes
9/7/2021	EMMANUEL B	$195,400	No
9/18/2020	MBJ Property Holdings LLC	$90,300	No
9/27/2021	MB Tax Services LLC	$189,800	Yes

The pattern is similar: the defendant received five funded loans before he submitted the loan applications that were declined. Therefore, by the time the defendant submitted the loan applications that were declined, he had more than enough experience to understand the financial ramifications of his actions. Even if he did not know how to calculate exactly what loans he would qualify for, he had fair warning of the approximate values of the loans. Therefore, he is responsible for the intended loss to which he agreed to in the plea agreement.

Criminal History

Paragraph 42 of the presentence report describes a conviction for driving under the influence for which the defendant has received one criminal history point. The defendant objects that the conviction "is wholly unrelated to" his instant COVID-loan fraud and that the conviction occurred almost ten years before the instant offense. The government does not believe the Court will have to resolve this objection, because the defendant has been assigned only one criminal history point total, placing him in criminal history category I. D.E. 21 ¶ 44. That is the same category applicable to defendants with no criminal history. Therefore, even if the Court assigned no points to the defendant's prior conviction, his criminal history would not change.

To the extent that the Court chooses to address the defendant's objection further, the Probation Officer has properly included this conviction in the report, because the Probation Department is required to include "any prior criminal record" in a presentence report. Fed. R. Crim. P. 32(d)(2)(A)(i). Furthermore, the Probation Officer has properly assigned a criminal history point to this conviction, notwithstanding its age. If a defendant receives a sentence of less than 13 months' incarceration, that sentence will receive at least one criminal history point if the sentence "was imposed within 10 years of the defendant's commencement of the instant offense . . . ." U.S.S.G. § 4A1.2(e)(2). The defendant commenced the instant offense on April 29, 2020, when he submitted his first fraudulent Paycheck Protection Program loan application. D.E. 21 ¶ 17. He was sentenced for driving under the influence on September 4, 2011, less than nine years earlier. Therefore, the defendant's objection regarding this conviction is meritless.

Other Objections

The government defers to the Probation Officer regarding defendant's objections 4 (relating to his medical history); 5 and 6 (relating to his educational history); and 7 (relating to his vehicle ownership).

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WHEREFORE, the government respectfully opposes the defendant's objections to the presentence report in part.

Respectfully submitted,

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