

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 22-cr-20290-BLOOM

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIC DEAN SHEPPARD,

Defendant(s).

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ORDER ON RESTITUTION

THIS CAUSE is before the Court upon the Government's Motion for Forfeiture and Restitution as to Defendant Eric Dean Sheppard. The Government filed Notices Requesting Forfeiture, ECF No. [289], and Restitution, ECF No. [291], to which Defendant responded with a Memorandum Regarding Restitution, ECF No. [290]. The Court held a hearing on forfeiture and restitution on August 23, 2024. The Court has reviewed the filings, the record in this case, and is otherwise fully advised. The Government's request for restitution is granted in part and denied in part.

The Government seeks restitution as part of the Court's Judgment and Sentence. It claims there are two victims, the Small Business Administration ("SBA") and Neil Cupersmith.

I. Restitution to SBA

The Court first addresses restitution on behalf of the SBA. During the hearing on August 23, 2024, the parties advised that Defendant agreed to pay the amount owed to the SBA, a total of \$170,211.80. That amount consists of: (1) the April 15, 2020 PPP loan of \$146,457.00, which was forgiven by the SBA, ECF No. [291-1]; (2) the interest, \$1,582.55, and processing fees,

\$7,322.85, on that loan, ECF No. [291-1]; and (3) the processing fees for the two PPP loans that Defendant paid prior to his sentencing on April 5, 2024. Those fees include (a) \$7,419.85 for the loan of \$148,397.00 underlying Counts 7 and 8, ECF No. [291-2], and (b) \$7,429.55 for the loan of \$148,591.00 underlying Count 9, ECF No. [291-3].

At the hearing, the Defendant tendered a check payable to the SBA for \$170,211.80. As a result, the Government agreed that Defendant is to receive credit for that amount toward restitution after his check clears.

II. Restitution to Neal Cupersmith

A. Cupersmith is a Victim and was Directly Harmed

The Government also seeks restitution on behalf of Neal Cupersmith. Specifically, the Government seeks lost income and attorneys' fees incurred by Cupersmith as part of his response to subpoenas and participation in the Government's investigation and prosecution of this case, as listed in ECF Nos. [291-4], [291-5]. ECF No. [291] at 2.

To be entitled to restitution under the Mandatory Victims Restitution Act, Cupersmith must qualify as a victim, so as:

a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

18 U.S.C. § 3663A(a)(2).

As the Court held during the August 23, 2024 hearing, Cupersmith qualifies as a victim under the Mandatory Victims Restitution Act, 18 U.S.C. § 3663A(a)(2). Defendant was convicted of four counts of wire fraud for "having devised or intending to devise any scheme or artifice to defraud." 18 U.S.C. § 1343. *See also* ECF Nos. [60], [190]. As part of that scheme, Defendant used Cupersmith's name on fraudulent tax forms for applications submitted by

Defendant to obtain PPP loans to which Defendant was not entitled. The record reflects that Cupersmith was initially suspected of participating in Defendant's criminal conduct, by virtue of having his name on the loan applications. Cupersmith was thereafter interviewed by the FBI, supplied documents in response to the Government's subpoenas, expended resources to cooperate with the Government, and incurred legal fees after seeking legal advice.

Cupersmith was required to expend resources and incur legal fees due to Defendant's fraudulent loan applications and Defendant's use of Cupersmith's name within them. Accordingly, the Court finds that Cupersmith was "directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern." 18 U.S.C. § 3663A(a)(2).

B. Lost Income Under 18 U.S.C. § 3663A(a)(4)(A)

The Court next turns to the amount of restitution to which Cupersmith is entitled.

In ordering restitution under [18 U.S.C. § 3663A], a court shall order the defendant to make restitution to a person who has assumed the victim's rights under paragraph (2) to reimburse that person's necessary and reasonable—

(A) lost income, child care, transportation, and other expenses incurred during and directly related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense;

18 U.S.C. § 3663A(a)(4)(A). "The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government." 18 U.S.C. § 3664(e). Because "[r]estitution is not designed to punish the defendant[,] ... the amount ... owed ... must be based on the amount of loss *actually* caused by the defendant's conduct." *United States v. Sheffield*, 939 F.3d 1274, 1277 (11th Cir. 2019) (citation omitted) (emphasis in original). The "'use of estimation' is permitted because 'it is sometimes impossible to determine an exact restitution amount[,]'" for instance in the absence of records. *Id.* (quoting *United States v. Futrell*, 209 F.3d 1286, 1291–92 (11th Cir. 2000)).

In its Notice of Restitution, the Government seeks \$93,350.00 for lost income related to

the Government's investigation and prosecution of this case. ECF No. [291] at 2. The Government attaches an invoice from Cupersmith's firm for \$93,350.00, that includes the lost income of Cupersmith, as well as the lost income of other employees, including Alex Zaslow, Mark Kravitz, and Tracey Shipton, ECF No. [291-5]. The Government cites no support for its request regarding lost income of Cupersmith's coworkers. Cupersmith is only entitled to recover his own "necessary and reasonable" lost income under the statute. *See* 18 U.S.C. § 3663A(a)(4)(A) ("a court shall order the defendant to make restitution to a person who has assumed the victim's rights under paragraph (2) to reimburse *that person's* necessary and reasonable—(A) lost income..." (emphasis added)). Following review of the supporting document provided by the Government, ECF No. [291-5], Cupersmith is entitled to recover \$58,000.00 of lost income for time he spent on the investigation or prosecution of the offense and for his attendance at proceedings, ECF No. [291-5] at 2. However, restitution is not recoverable for other colleagues' lost income.

Accordingly, the Court grants in part and denies in part the Government's request for Cupersmith's lost income. Restitution is proper for Cupersmith's lost income in the amount of \$58,000.00.

C. Attorneys' Fees Under 18 U.S.C. § 3663A(a)(4)(A)

Further, Cupersmith is entitled to recover "expenses incurred during and directly related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense[.]" 18 U.S.C. § 3663A(a)(4)(A). Those expenses include attorneys' fees. *See United States v. Battista*, 575 F.3d 226, 233 (2d Cir. 2009). In its Notice of Restitution, the Government seeks \$113,382.00 in attorneys' fees and represents that it removed from the billing summary sent by Cupersmith's attorneys, ECF No. [291-4], both (a) attorney travel time; and (b) court attendance time to get to that amount. ECF No. [291] at 2.

In properly awarding the amount of attorneys' fees that Cupersmith is entitled to, the Court determines the "amount of loss *actually* caused by the defendant's conduct[.]" *Sheffield*, 939 F.3d at 1277. The Court finds that because Cupersmith can only recover "necessary and reasonable ... expenses incurred during and directly related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense[.]" he is not entitled to a portion of the attorneys' fees sought by the Government. 18 U.S.C. § 3663A(a)(4)(A). Cupersmith is not entitled to costs incurred after the close of trial. The trial concluded on January 11, 2024. ECF No. [179]. Cupersmith did not attend any proceedings after that day, as he did not attend Defendant's sentencing, ECF No. [265], nor the restitution and forfeiture hearing held in this Court, ECF No. [292]. Accordingly, Cupersmith is not entitled to costs after January 11, 2024 for "attendance at proceedings related to the offense[.]" 18 U.S.C. § 3663A(a)(4)(A). Once the trial concluded and a verdict was reached on January 12, 2024, ECF No. [185], Cupersmith no longer participated "in the investigation or prosecution of the offense[.]" 18 U.S.C. § 3663A(a)(4)(A). Accordingly, Cupersmith cannot recover any attorneys' fees incurred after January 11, 2024. 18 U.S.C. § 3663A(a)(4)(A).¹

The Government attached two documents in support of its request for attorneys' fees: (1) an itemized invoice, submitted by the Government on June 5, 2024, which lists fees incurred by date and by attorney but redacts the fee description, and contains entries from August 2023 to January 2024 ("the itemized invoice"), ECF No. [258-1]; and (2) a billing summary, listing the monthly amount of attorneys' fees from September 2023 to February 2024, submitted by the

¹ The Court has additional reasons to be circumspect when considering the February 2024 attorneys' fees. The Court notes that although the billing summary seeks to recover time charged in February 2024, the previous attorney invoice submitted by the Government on June 5, 2024, did not include any attorneys' fees for February 2024, ECF No. [258-1]. Further, despite the billing summary including attorneys' fees for "11 hours of court attendance with a billing amount of \$3,795" for the month of February 2024, the record reflects that the Court did not hold any court hearings in February 2024 nor was the case on appeal as of that date. ECF No. [291-4].

Government on August 21, 2024 (“the billing summary”), ECF No. [291-4]. The Court notes there are discrepancies in the fee amounts listed in the itemized invoice, ECF No. [258-1], and the subsequently filed billing summary, ECF No. [291-4]. For certain months, the billing summary lists lower attorneys’ fees than the itemized invoice.² The Court relies on the lower amounts included in the billing summary to determine Cupersmith’s monthly attorneys’ fees, aware that “[t]he purpose of restitution is not to provide a windfall for crime victims but rather to ensure that victims, to the greatest extent possible, are made whole for their losses.” *United States v. Martin*, 803 F.3d 581, 594 (11th Cir. 2015) (citation and internal quotation marks omitted). The Court then deducts fees incurred in January 2024 but after the close of trial from the itemized invoice. This “‘use of estimation’ is permitted because ‘it is sometimes impossible to determine an exact restitution amount[.]’” *Sheffield*, 939 F.3d at 1277.

Next, the Court calculates the amount of attorneys’ fees to which Cupersmith is entitled. First, the Court removes attorneys’ fees expended during the month of February — after trial — from the billing summary, as well as attorneys’ court and travel time, as proposed by the Government. The monthly fees listed in the billing summary are as follows:

September – Total Hours 17.2 for a total invoice of \$11,832.50 || No court or travel time
 October – Total Hours 66.1 for a total invoice of \$39,919.00 || No court or travel time
 November – Total Hours 2.5 for a total invoice of \$1,556.00 || No court or travel time
 December – Total Hours 30.3 for a total invoice of \$19,767.00 || No court or travel time
 January -Total Hours 38.1 for a total invoice of \$25,786.50 || 7.7 hours of court attendance with a billing amount of \$7,315
 February – Total Hours 49.4 minus 6.1 hours or 43.3 for an invoice of \$25,630.50 || 11 hours of court attendance with a billing amount of \$3,795 (the billing summary indicates that the lawyers removed the travel time from this entry, which was the only entry containing travel time).

ECF No. [291-4]. After subtracting the fees incurred during the month of February 2024,

² For instance, the billing summary, ECF No. [291-4] at 2, lists a total of \$25,786.50 for January 2024, when the itemized invoice lists a total of \$27,735.00 for the same month, ECF No. [258-1] at 31. Similarly, the billing summary lists a total of \$11,382.50 for September 2023, ECF No. [291-4] at 1, and the itemized invoice lists a total of \$39,919.00 for the same month, ECF No. [258-1] at 10.

as well as court and travel time, Cupersmith's attorneys' fees are reduced to \$91,546.

Second, the Court turns to the itemized invoice to remove attorneys' fees incurred within the month of January but after the close of trial on January 11, 2024, ECF No. [258-1]. Those costs are listed by individual attorney, and include the following:

01/12/2024 COMISKY 0.4 \$380.00
01/12/2024 WASSER 1.0 \$510.00
01/17/2024 COMISKY 0.4 \$380.00
01/22/2024 COMISKY 0.4 \$380.00
01/24/2024 FIERRO 0.4 \$138.00

ECF No. [258-1] at 31. The January fees incurred after the close of trial total \$1,788.00. After subtracting the January 2024 fees incurred after the close of trial, Cupersmith is entitled to \$89,758.00 in attorneys' fees under 18 U.S.C. § 3663A(a)(4)(A).

Accordingly, the Court grants in part and denies in part the Government's request for attorneys' fees. Restitution for attorneys' fees payable to victim Cupersmith is awarded in the amount of \$89,758.00.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Government's Notice for Restitution, **ECF No. [291]**, is **GRANTED IN PART** and **DENIED IN PART**.
2. The Court **ORDERS RESTITUTION** for a total amount of **\$317,969.80**. This amount consists of:
 - a. Restitution to Victim SBA for a total of **\$170,211.80**.
 - b. Restitution to Victim Neal Cupersmith for a total of **\$147,758.00**, which includes \$58,000.00 of lost income and \$89,758.00 in attorneys' fees.
3. An Amended Judgment will follow.

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DONE AND ORDERED in Chambers at Miami, Florida, on August 27, 2024.

A handwritten signature in black ink, appearing to be 'JB' or 'JB' with a long horizontal stroke extending to the right.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record