U.S. Department of Justice

United States Attorney
Eastern District of New York

CWE
F. #2020R00955

271 Cadman Plaza East
Brooklyn, New York 11201

February 15, 2023

By Email and ECF

The Honorable Frederic Block
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Charlene Wint
Criminal Docket No. 21-477 (FB)

Dear Judge Block:

The government respectfully submits this letter regarding the restitution amount that should be ordered as part of the sentencing of Charlene Wint (the "defendant"), which occurred on November 17, 2022. Because the full amount of the victim's loss was within the scope of the criminal activity the defendant agreed to undertake and was reasonably foreseeable to Wint, the defendant is jointly and severally liable for the full amount of the victim's loss. Therefore, the Court should order restitution in the amount of $3,500,000 plus interest.

I. Background[1]

The Paycheck Protection Program

In March 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act into law. It was designed to provide emergency financial assistance to the millions of Americans who were suffering the economic effects of the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of up to $349 billion in forgivable loans to small businesses for job retention and certain other expenses through a program referred to as the Paycheck Protection Program ("PPP").

To obtain a PPP loan, a qualifying business was required to submit a PPP loan application signed by an authorized representative of the business. The PPP loan application

[1] Unless otherwise noted, the facts in this section come from the Information and Pre-Sentencing Report ("PSR") for the defendant, which was adopted by the Court without objection from the parties at sentencing on November 17, 2022.

required the business, through its authorized representative, to acknowledge the program rules and to make certain affirmative certifications to be eligible to obtain a PPP loan. In the PPP loan application, the small business was required to state, among other things, its: (a) average monthly payroll expenses and (b) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. In addition, businesses applying for a PPP loan were required to provide documentation showing their payroll expenses.

The Economic Injury Disaster Loan Program

The Economic Injury Disaster Loan ("EIDL") program was a Small Business Administration ("SBA") program that provided low-interest financing to small businesses, renters and homeowners in regions affected by declared disasters. Another source of relief provided by the CARES Act was the authorization for the SBA to provide EIDLs of up to $2 million to eligible small businesses experiencing substantial financial disruption due to the COVID-19 pandemic. Under the program, the SBA was authorized to issue advances of up to $10,000 to small businesses within three days of applying for an EIDL Advance. The amount of an EIDL Advance was determined based on the number of employees working for the applicant. The advance did not have to be repaid.

To obtain an EIDL or EIDL Advance, a qualifying business was required to submit an application to the SBA and provide information about its operations, such as the number of employees, gross revenues for the 12-month period preceding the disaster, and cost of goods sold in the 12-month period preceding the disaster. In the case of EIDLs for COVID-19 relief, the 12-month period was the period preceding January 31, 2020. The applicant also was required to certify that all the information in the application was true and correct to the best of the applicant's knowledge.

EIDL applications were submitted directly to the SBA and processed by the SBA with support from a government contractor. The amount of the loan, if the application was approved, was determined based, in part, on the information provided in the application about number of employees, revenue, and cost of goods, as described above. Any funds issued under an EIDL were issued directly by the SBA. EIDL funds could be used for payroll expenses, sick leave, production costs, and business obligations, such as debts, rent and mortgage payments. If the applicant also obtained a loan under the PPP, the EIDL funds could not be used for the same purpose as the PPP funds.

The Fraudulent Scheme

The defendant worked as the second most senior employee at a bank branch in Manhattan ("Bank 1"). Taking advantage of that position, the defendant engaged in a scheme where she and her co-conspirators fraudulently obtained approximately $3.5 million in PPP loans.

The defendant, co-conspirator #1, co-conspirator #2, and co-conspirator #3 (the "Bank Employees"),[2] were employed at a retail branch of Bank 1 located at 125th Street, New York City. Bank 1 is a national bank with locations around the country.

Following the enactment of the CARES Act, the defendant and Bank Employees, together with others, effectuated a scheme to submit fraudulent PPP loan applications on behalf of Bank 1 customers who did not legitimately qualify for loans under the PPP program in exchange for "commissions" taken from loan proceeds. The defendant and Bank Employees worked with a network of recruiters to identify borrowers who were either existing Bank 1 customers or became Bank 1 customers after they were recruited. In exchange for their assistance, the defendant and Bank Employees gave the recruiters "commissions" from the PPP loan proceeds.

After borrowers were recruited to join the scheme, the defendant and Bank Employees assisted customers with all aspects of the PPP loan application process. The defendant personally helped borrowers fill out fraudulent PPP loan application documents that contained fraudulent information. As part of the scheme, the defendant and Bank Employees also worked with tax preparers to obtain false tax documents, which were provided as support for the fraudulent PPP applications to maximize the loan amount for each borrower's business. In addition, the defendant and Bank Employees submitted fraudulent EIDLs on behalf of recruited customers which also contained false information.

In addition to relying on recruiters to find complicit customers, the defendant personally recruited many borrowers to the scheme. Once recruited, the defendant directed applicants (who did not have legitimate businesses) to others who would assist them in fabricating documents needed for the applications. This included Hashim Campbell ("Campbell"), an accountant, and co-conspirator #4 (another accountant not employed by the bank). Campbell and co-conspirator 4 prepared false tax documentation, including false W2s and 941s, which overstated the applicants' business payroll information. Campbell and co-conspirator #4 received approximately 10% of each loan that was supported by false tax documents. In other cases, rather than sending the applicants to Campbell, the defendant and Bank Employees forwarded the applicants' personal information to Campbell (e.g. name, business name, SSN, etc.) and Campbell used the information to prepare false tax documents, without ever meeting the loan applicant. For applicants with legitimate businesses, Campbell inflated financial figures on tax documents so that the applicants would qualify for larger PPP loans. For applicants with no businesses, Campbell created false tax returns.

After Campbell prepared the false tax documents, he sent the documents, often via email, to the defendant and Bank Employees.

Once the defendant's borrowers' PPP applications were complete, with all required paperwork, the defendant forwarded the applications to her supervisor for approval. The supervisor, who was a co-conspirator and the branch manager, was responsible for

[2] Some of these co-conspirators have been charged in other cases pending in this district before Your Honor.

reviewing and approving all the PPP loan applications from the branch. The defendant was instructed by a co-conspirator to call applicants into the bank when their PPP loans were funded so the applicants could withdraw the money and make payments to the co-conspirators.

The defendant and her co-conspirators profited from their scheme through the commissions they received from the straw borrowers. This was done in two ways. In some instances, once a borrower obtained a fraudulent PPP loan, one of the co-conspirators determined a "commission" amount each borrower owed the Bank Employees. Other times, as part of the PPP application process, the defendant and the Bank Employees often required borrowers to sign "starter" checks, which were legally negotiable instruments often issued by banks to customers who opened new checking accounts. Once the PPP loans were funded, the defendant and the Bank Employees used the signed starter checks to make withdrawals from borrowers' accounts. In some instances, the defendant and Bank Employees used the starter checks to purchase cashiers' checks, which they used to pay themselves the "commissions."

The defendant obtained thousands of dollars in "commissions" from the PPP loan proceeds after processing dozens of fraudulent PPP loans totaling approximately $3.5 million. The defendant demanded approximately $5,000 in loan proceeds from each of her bank customers that she helped to fraudulently obtain PPP loans and was aware that the Bank Employees demanded similar payments. The defendant also submitted a number of EIDL applications on behalf of borrowers and was, at times, paid "commissions" with respect to the EIDLs.

On September 23, 2021, the defendant pled guilty before the Honorable Roanne L. Mann, United States Magistrate Judge, Eastern District of New York, to a single-count Information charging her with participating in a conspiracy to commit bank and wire fraud, and in violation of Title 18, United States Code, Section 1349. Subsequently, on November 17, 2022 the defendant was sentenced to nine months of home confinement and restitution to be ordered within 90 days.

II. Applicable Law

The Mandatory Victim Restitution Act ("MVRA"), 18 U.S.C. § 3663A, provides for mandatory restitution in all sentencing proceedings where (a) the offense was committed by fraud or deceit and (b) an identifiable victim has suffered a physical injury or pecuniary loss. 18 U.S.C. §§ 3663A(a)(1), (c)(1)(A)(ii), (c) (1)(B). The amount of restitution to be ordered is the "amount of loss caused by the specific conduct forming the basis for the offense of conviction." United States v. Gushlak, 728 F.3d 184, 195 n. 7 (2d Cir.2013) (quoting United States v. Silkowski, 32 F.3d 682, 688 (2d Cir.1994)). The Government bears the burden of establishing loss amount, and "[a]ny dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence." United States v. Bahel, 662 F.3d 610, 647 (2d Cir.2011) (quoting 18 U.S.C. § 3664(e)). "The district court need not establish the loss with precision but rather 'need only make a reasonable estimate of the loss, given the available information.'" United States v. Carboni, 204 F.3d 39, 46 (2d Cir.2000) (quoting United States v. Jacobs, 117 F.3d 82, 95 (2d Cir.1997)). There is no dispute that defendant's offense is one to which mandatory restitution applies or that the victim identified by the Government is entitled to restitution.

The MVRA authorizes district courts to hold co-conspirators jointly and severally liable for restitution owed to the victims of a conspiracy. See United States v. Nucci, 364 F.3d 419, 423 (2d Cir.2004) (citing 18 U.S.C.A. § 3664(h)). Rejecting the argument that "the MVRA provides for restitution based only on the conduct of the defendant, and not on the conduct of others," the Second Circuit has held that a defendant is "liable for the reasonably foreseeable acts of all co-conspirators." United States v. Boyd, 222 F.3d 47, 50–51 (2d Cir.2000). It does not matter that a defendant may "not have agreed on the details of the conspiracy" or may be "unaware" of his co-conspirator's acts. United States v. Gushlak, No. 03 CR 833, 2011 WL 782295, at *3 (E.D.N.Y. Feb.24, 2011) (quoting United States v. Geibel, 369 F.3d 682, 689 (2d Cir.2004)). Where a defendant "was a member of the conspiracy," her "offense was committed pursuant to the common plan of the conspiracy," and she "could reasonably have foreseen that a co-conspirator would commit the substantive offense," she is liable for restitution arising out of those offenses. Boyd, 222 F.3d at 51.

III. Restitution in the Amount of $3,500,000 is Appropriate

Here, the losses reflected in the proposed restitution order were readily foreseeable by the defendant. Indeed, Wint pleaded guilty to conspiring with the Bank Employees, Campbell, and others to commit bank and wire fraud. She undertook numerous acts in furtherance of the conspiracy, such as directing applicants for PPP loans (who did not have legitimate businesses) to others who would assist them in fabricating documents needed for the applications, taking kickbacks after individuals were fraudulently awarded loan money, and forwarding false applications to the branch manager for them to be submitted. Even assuming that Wint had no knowledge of all false loans that were given out, it was reasonably foreseeable to her, as a bank co-conspirator, that her other co-conspirators would be preparing false loan applications, submitting them, and obtaining PPP loan money fraudulently.

The loss amount was included within the PSR that was adopted by the Court, and no objected to by the parties. See PSR ¶ 22 ("The defendant is accountable for a total of $3,500,000 in fraudulently obtained loans."). Additionally, the victim's loss amount was laid out in the submission by the victim that was submitted prior to the sentencing and made part of the record by the Court. The total loss that the defendant is jointly and severally liable for is $3,500,000.

Further, "the purpose of restitution is essentially compensatory: to restore a victim, to the extent money can do so, to the position he occupied before sustaining injury." United States v. Boccagna, 450 F.3d 107, 115 (2d Cir.2006). Consistent with that purpose, the MVRA provides that a "court shall order restitution to each victim in the full amount of each victim's losses." 18 U.S.C. § 3664(f)(1)(A). Restitution should not be limited to the defendant's ill-gotten gains. The Second Circuit has conclusively rejected substitution of ill-gotten gains for a victim's actual loss in awarding restitution. See United States v. Zangari, 677 F.3d 86, 92–93 (2d Cir.2012) ("We ... hold that a sentencing court ordering restitution under the MVRA may not substitute a defendant's ill-gotten gains for the victim's actual loss."). As the proper measure is the full amount the victim's losses, the restitution order must reflect that sum.

The Court retains jurisdiction to modify the terms of payment if there is a material change in defendant's economic circumstance that may affect her ability to pay restitution, see

United States v. Kyles, 601 F.3d 78, 83-84 (2d Cir. 2010), including adjusting the payment schedule or even requiring immediate payment in full, as the interests of justice may require. See 18 U.S.C. § 3664(k). The Court may adjust the payment schedule on its own motion, and section 3664 even permits a court to accelerate defendant's schedule of restitution payments so her victims are promptly and justly compensated. See United States v. Gilmartin, 12-cr-287, 2018 WL 2059650, at *3 (S.D.N.Y. May 1, 2018). Although the MVRA provides the Court with continuing jurisdiction to modify the timing of payment, 18 U.S.C. § 3664(k), that section makes no mention of altering the amount of payment. See United States v. Hamburger, 414 F. Supp. 2d. 219, 227 (E.D.N.Y. 2006). The Second Circuit in Kyles, 601 F.3d at 83, made it abundantly clear that, although a district court has equitable authority to modify a payment schedule, this authority does not extend to decreasing the amount of restitution.

Lastly, no hearing is required. "Pursuant to 18 U.S.C. § 3664(d)(5), so long as the victim's losses are ascertainable at least ten days before [ruling on restitution], and the documents supporting the victim's losses are provided to the defendant within this time-frame, the district court may decide restitution ... without holding a separate evidentiary hearing." United States v. Hagerman, 506 F. App'x 14, 19 (2d Cir.2012); see also United States v. Sabhnani, 599 F.3d 215, 258 (2d Cir.2010) (district court did not abuse its discretion in declining "to hold a full-blown evidentiary hearing" on restitution). Under the circumstances, the requirements for issuing a restitution order without holding a hearing have been satisfied. The victim's losses were ascertainable to defendant and copies of the documents supporting the victim's losses were provided to defendants within a relevant time frame. Wint cannot rebut these findings. Additionally, there is sufficient evidence to conclude, based on the record, that Wint is liable for restitution payable to the victim identified by the Government, and no hearing is required.

Conclusion

Accordingly, it is appropriate for the full amount of restitution, totaling $3,500,000 plus interest, to be imposed jointly and severally as to Wint, and her co-defendants. The proposed Order of restitution is attached.

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Because the proposed Order includes the name and address of the victim and it is an ongoing investigation regarding other members of the conspiracy, the government respectfully requests that Exhibit A to the restitution Order remain under seal except for the limited purpose of providing access to the clerk of the court.

Additionally, the government requests that the Court exclude time under the 90-day clock during the pendency of the motions until Your Honor's decision.

Respectfully submitted,

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