

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA CASE NO.: 2:22-CR-39-SPC-NPM

vs.

DANIEL JOSEPH TISONE
_____ /

**DEFENSE’S OBJECTION TO PSI CALCULATING LOSS USING
“INTENDED LOSS” AS OPPOSED TO “ACTUAL LOSS”**

1. On August 26, 2022, Mr. Tisone appeared before U.S. Magistrate Judge Nicholas P. Mizell and pled guilty to Counts Two, Eight, Fourteen, and Eighteen of the indictment.
2. Pursuant to his plea agreement, Mr. Tisone agreed to pay restitution for the money that he obtained, which is \$2,617,447.17.
3. In calculating the loss amount, Probation considers the amount of “intended loss” as opposed to the “actual loss.” Therefore, Probation alleges that Mr. Tisone is responsible for \$10,792,054.17.
4. Probation recommends in the PSI that the Court increases Mr. Tisone’s guideline range by 20 levels because the loss amount was more than \$9,500,000, but less than \$25,000,000.
5. If the Court considers only the actual loss amount, the guidelines would only be increased by 16 levels since the amount is over \$1,500,000 but less than \$3,500,000.
6. While U.S.S.G. § 2B1.1(b)(1) requires Courts to determine offense levels by considering the amount of loss, the guideline fails to define what “loss” actually means. It would be error to apply the commentary which references “intended loss.” Mr. Tisone should be sentenced based exclusively on actual loss.

7. The Court has sufficient precedent to determine loss based on “actual loss.” See: United States v. Riccardi, 989 F.3d 476, 481-482, 484-85 (6th Cir. 2021), United States v. Banks, No. 22-1607 (3d Cir. 2022), United States v. Dupree, No. 19-13776 (11th Cir. 2022).
8. Wherefore, based upon the above and foregoing, the Defendant respectfully requests this Court to determine loss based on the funds that were actually obtained.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via CM/ECF to: United States Attorney’s Office, AUSA Trenton Reichling and Probation Officer Nick Stevens, this 9th day of January, 2023.

Respectfully submitted,
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