

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL ACTION
	)	NO. 1:20-CR-00396-LMM
ANTONIO HOSEY	)	
_____	)	

BRIEF IN SUPPORT OF DEFENDANT’S RESTITUTION REQUEST

COMES NOW, Defendant, Antonio Hosey, by and through undersigned counsel and files this memorandum to address the grounds supporting his request that the Court apportion restitution pursuant to 18 U.S.C. § 3664(h) and order him to pay \$33,332.

Background

On November 19, 2020, Mr. Hosey entered a negotiated guilty plea to a criminal information charging him with one count of conspiring to defraud the United States in violation of 18 U.S.C. § 371. (Doc. 9). He was sentenced on November 16, 2022 to a period of incarceration of a year and a day to be followed by three years of supervised release. (Doc. 24). At that time, the Court ordered Mr. Hosey to file a brief within fourteen days addressing his restitution request. (Doc. 23).

Argument

Mr. Hosey asks this Court to order him to pay restitution in an amount of \$33,332 pursuant to 18 U.S.C. § 3664(h) which allows the Court to apportion restitution liability among multiple defendants. “If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim’s loss and economic circumstances of each defendant.” 18 U.S.C. § 3664(h). The Eleventh Circuit has reiterated that § 3664(h) gives sentencing courts discretion to apportion restitution based on an assessment of defendants’ relative participation in a criminal conspiracy. *See United States v. Jeune*, 2021 U.S. App. LEXIS 25102, 45-46 (11th Cir. 2021) (unpublished). While this Court is not obligated to apportion restitution, the facts and circumstances of this case support Mr. Hosey’s request.

At Mr. Hosey’s sentencing hearing, the Court overruled the government’s objections as to loss amount and determined that the total loss attributable to Mr. Hosey was \$463,779.79. (Doc. 23 and PSR at ¶ 37). This amount includes of all the checks that were cashed by Mr. Hosey and those that he recruited. This loss is also attributable to at least eight other individuals—seven business owners and Rodericque Thompson, the leader of the conspiracy. Because more than one

individual is responsible for the loss amount, the court may apportion restitution liability among the defendants to reflect the level of contribution to the victim's loss. The Court may also consider the economic circumstances of each defendant.

Here the court should apportion the loss based on the limited role that Mr. Hosey played in the overall conspiracy. He only made \$33,332 total. (PSR at ¶ 32). The business owners that applied for and received fraudulent loans stood to profit \$150,000 a piece—half the amount of each PPP loan. This is 4.5 times more than Mr. Hosey received. Mr. Thompson stood to profit well over a million dollars. Mr. Hosey's limited role and responsibility in the conspiracy is demonstrated by the very limited profit that he made.

This was Mr. Thompson's scheme along with the business owners. Mr. Hosey was never involved in the fraudulent applications for PPP loans and did not receive a loan himself. He was simply a means to allow the other co-conspirators to access the funds from the PPP loans. If Mr. Hosey is ordered to pay \$463,777.79 in restitution as requested by the government, it would be more than double what any of the business owners were required to pay—despite the fact that the business owners made 4.5 more money off of this scheme than Mr. Hosey. The government's request would require Mr. Hosey to pay more restitution than any other member of this conspiracy other than Mr. Thompson. That creates a patently unfair result.

Lastly, § 3664(h) allows the Court to consider the economic circumstances of each defendant. The PSR indicates that Mr. Hosey's total net worth is only \$14,378.21. (PSR at ¶ 90). His limited financial means will be further reduced by the prison sentence imposed in this case. While Mr. Hosey is not privy to his co-conspirators' financial information, it is clear that his own economic circumstances do not allow him to reasonably repay \$463,777.79 when he only received \$33,332 from the scheme.

Conclusion

For the foregoing reasons, Mr. Hosey asks that this Court exercise its discretion under 18 U.S.C. § 3664(h) to apportion restitution and order him to pay \$33,332.

Dated: This 30th day of November, 2022.

Respectfully submitted,

/s/ Caitlyn Wade

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