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

UNITED STATES OF AMERICA *v.* ANTONIO HOSEY	Criminal Action No. 1:20-CR-396-LMM

The Government's Reply to Defendant's Restitution Request

The United States of America, by Ryan K. Buchanan, United States Attorney, and Diane C. Schulman, Special Assistant United States Attorney for the Northern District of Georgia, files this reply to Defendant's restitution request.

On or about November 19, 2020, Defendant was charged in a criminal information with one count conspiracy to commit wire fraud and money laundering in violation of Title 18 U.S.C. § 371. (Doc 1). These charges arose from Defendant's role in a PPP fraud scheme that defrauded two banks out of a combined $3,000,000.

The scheme involved 9 business owners who obtained $300,000 PPP loans by submitting applications that contained fraudulent information and attachments. Each business owner submitted the loan documents with the help of Rodericque Thompson, the ringleader of the scheme. Once the business owners obtained the loan, they were required to pay Thompson approximately 50 percent of the loan.

Defendant was involved in the scheme in several crucial ways. He knew Thompson, from years earlier when Thompson ran a questionable "credit repair" service. When Thompson got involved in the PPP fraud scheme, he needed to find small business owners who had business bank accounts to participate in the scheme. He reached out to Defendant because of their prior relationship. Because Defendant did not have a business bank account, he referred Timothy Williams to Thompson. Thompson paid Defendant a $10,000 referral fee. Williams was able to get a $300,000 PPP loan and he referred 3 other business owners. Those business owners obtained 4 PPP loans, each for $300,000.

Thompson also asked Defendant to help him launder the funds. In order to receive 50 percent of each loan, Thompson needed individuals who could cash checks from the business owners. He asked Defendant to recruit check cashers. Defendant recruited approximately 12 individuals to cash checks. He brought the check cashers to the bank to cash the checks. Typically, each check was for $8,333.33. Defendant let the check cashers keep $500 from each check and he collected the remainder of the cash.

Defendant told the Government that, as payment for his part in the scheme, Thompson told him to keep 4 checks, each for $8,333,33, or a total of $33,333.32. According to Thompson, Hosey received $30,000 for cashing checks, another $10,000 as a referral fee for referring Williams, and at some point he told Defendant to increase the amount kept from each check from $500 to $1,000 which was to be split between Defendant and the individual check casher.

On November 19, 2020, Defendant pleaded guilty to the criminal information pursuant to a negotiated plea. (Doc. 8). A total of 11 defendants were charged in connection with this scheme, and all but one entered a guilty plea.

At Defendant's November 16, 2022 sentencing hearing, Defendant was found to be responsible for a loss to the victim banks of $463.777.79 which represented the value of the money laundered in the form of checks Defendant and his crew of check cashers cashed. The Court sentenced Defendant to serve a year in a day in the custody of the Bureau of Prisons. (Doc. 24). When the Court was about to order Defendant to pay the same amount in restitution, Defense counsel, for the first time, argued that the Court should order Defendant to pay restitution in the amount of $33,332.00, the amount Defendant claims to have earned from the scheme.[1] The Court opted not to rule on the restitution amount until the parties briefed the issue.

II. Argument

Defendant was convicted to conspiracy to commit wire fraud and money laundering pursuant to 18 U.S.C. § 371. (Doc. 1). Pursuant to the Mandatory Restitution for Victims Act (MVRA), the Court is required to order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the defendant's economic circumstances. *See* 18

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[1] Defendant did not raise the issue of restitution in either his objections to the PSR or in his sentencing.

U.S.C. § 3664(f)(1)(A); *United States v. Ramedo*, 682 F. App'x 751, 758 (11th Cir. 2017). An order of restitution is not discretionary. *See United States v. Scott*, 335 F. App'x 891, 994 (11th Cir. 2009). District courts have discretion to apportion restitution jointly and severally among co-defendants to reflect each defendant's contribution to the victim's loss. *See* 18 U.S.C. § 3664(h). In this case, consistent with the statute, the Government asks that Defendant be ordered to pay $463,779.79 to be jointly and severally owed and apportioned among multiple defendants. *See* Gov't Ex. 1 (restitution breakdown).

This Court has sentenced 9 of 10 defendants all involved in the same scheme.[2] At each sentencing, the Court ordered restitution that was equivalent to the loss suffered by the victim bank. Additionally, the Court apportioned restitution among different defendants where appropriate. For example, Thompson was ordered to pay restitution of $2,723,259 jointly and severally with all of the business owners. Williams was ordered to pay restitution of $869,427.54. This amount considered the loan he received and loans that Wright, Baisden and Smith received because he referred them to Thompson. The restitution order reflected the actual loss the banks sustained from the fraudulent loans.

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[2] In addition to Defendant, the following Defendants have been sentenced: Kenneth Wright (1:20-CR-285-LMM), Thomas Wilson (1:21-CR-00011-LMM), Micah Baisden (1:21-CR-00011-LMM), Keith Maloney (1:21-CR-00011-LMM), Mark Stewart (1:20-CR-319-LMM), Stanley Dorceus (1:20-CR-320-LMM), Timothy Williams (1:20-CR-339-LMM), and Rodericque Thompson (1:21-CR-00011-LMM).

The Government seeks to treat Defendant identically to how the other defendants in this case have been treated. The Government did not seek to hold Defendant responsible for the entire amount of the loss the victim banks sustained from the fraudulent loans the business owners who Defendant cashed checks for obtained, although that would have been permitted by the statute. *See Scott*, 335 F. App'x at 894. Rather, the Government asks the Court to apportion Defendant's restitution to only the amount of the loss that he directly contributed.

Defense counsel argues that the Court should "apportion" Defendant's restitution and then misinterprets "apportion" to mean limit Defendant's restitution to the amount he profited from the scheme. (Doc. 27, pp. 2-3). Defense counsel cites no case law to support this definition of "apportion" or approach to restitution. Moreover, it is entirely inconsistent with the statute which defines restitution as the victim's loss. *See* 18 U.S.C. § 3663(f)(1)(A).

Her reasoning is also factually flawed. Specifically, Defense counsel claims that if Defendant was "ordered to pay $463,777.79 in restitution….it would be more than double what any of the business owners were required to pay." (Doc. 27, p. 3). As an initial matter, it should not matter whether Defendant is required to pay more than other business owners. The question is how much did he contribute to the victims' loss. *See* 18 U.S.C. § 3664(h). Moreover, Defense counsel's assertion is incorrect. Williams, who obtained a $300,000 PPP loan for his business, was ordered to pay $869,427.54 in restitution which is considerably more than amount the Government seeks to hold Defendant responsible. Many of the business owners were ordered to pay $300,000 in restitution which is more than half of the restitution the Government seeks here. Thus, Defendant will not be ordered to pay "more than double" than the business owners. And it represents the loss that defendant contributed to the victim banks and not a penny more.

She also incorrectly claims that the business owners made "4.5 more money off the scheme" than Defendant. (Doc. 27, p. 3). But this is not true either. Defense counsel has no idea how much the business owners profited from this scheme. While the Government has no way of knowing exactly how much each business owner received, the evidence shows that one business owner received nothing from the loan because the bank froze the account before he accessed the funds. In most of these cases, either the bank froze the business owner's account or the Government seized funds which prevented the business owners from receiving much money from the scheme. Yet, they were all required to pay restitution in the full amount of the loss to the victim bank.

Finally, Defense counsel claims that Defendant's economic circumstances require the Court to limit his restitution to $33,333.33. (Doc. 27, p. 4). She argues that the PSR lists Defendant's net worth as $14,378.21. Defendant's net worth is not substantially different from any of the business owners in this case. Like Defendant, all of the business owners are struggling to get by. Making multiple defendants jointly and severally liable for restitution means that each defendant will benefit if one defendant's financial condition improves. Thus, a sense of fairness dictates apportioning the restitution in the manner that the Government has requested so that the defendants are equally responsible for the loss they caused.

Conclusion

The Government asks that Defendant be order to pay $463,777.70 in restitution to be jointly and severally liable with co-defendants and apportioned as indicated by the Government.

Respectfully submitted,

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Caitlyn Wade

December 12, 2022

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