

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	)	
_____	)	

**REPLY TO GOVERNMENT’S RESPONSE TO DEFENDANT’S
RESTITUTION REQUEST**

COMES NOW, Defendant, Antonio Hosey, by and through undersigned counsel and files this reply to the government’s response to his request that the Court apportion restitution pursuant to 18 U.S.C. § 3664(h) and order him to pay \$33,332.¹

First, the government attempts to call into question the amount that Mr. Hosey profited from the conspiracy by citing statements allegedly made by his co-conspirator, Rodericque Thompson. (Doc. 28 at 2). However, these statements were

¹ As a preliminary matter, the government’s assertion that Mr. Hosey’s restitution request was made for the first time at his sentencing hearing is misleading. Undersigned counsel first received proposed restitution figures from the government two days prior to Mr. Hosey’s sentencing hearing. This was five days after Mr. Hosey’s sentencing memorandum had been filed and nearly two years after the submission of PSR objections by both parties. Both the initial and final PSR disclosures listed restitution as “to be determined” and stated that the report would be updated “upon receiving the restitution amount and victims.” Within seven hours of receiving the proposed figures from the government, undersigned counsel responded via email explaining Mr. Hosey’s restitution request and the statutory authority supporting it. His arguments were raised at the first available opportunity and were not a surprise to the government.

not included in Mr. Hosey's PSR and were not presented as evidence during his sentencing hearing. Mr. Hosey's statement that he made a total of \$33,333.32 from the conspiracy was included in his PSR, was not objected to by the government, and was accepted by this Court as fact. (PSR at ¶ 32).

The government also argues that Mr. Hosey misinterprets the term "apportion." (Doc. 28 at 5). However, it is the government's interpretation of this term that is flawed. The government asserts that the Court would be "apportioning" restitution by ordering Mr. Hosey to pay \$463,779.79—the amount of the *entire* loss that was attributed to him. *Id.* However, that is the maximum restitution figure that the Court could order. There is no support for the government's assertion that the Court could order to Mr. Hosey to pay restitution for loss that was not reasonably foreseeable to him. The government's reliance on *United States v. Scott*, 335 F. App'x 891, 894 (11th Cir. 2009) to support its assertion that the court could order Mr. Hosey to pay restitution in an amount higher than the loss amount attributable to him is inapposite. *Scott* was ordered to pay to pay restitution that equaled the loss attributable to her. On appeal, she argued that the trial court should have apportioned restitution based on her relative culpability. The court's analysis in *Scott* supports Mr. Hosey's interpretation of the word "apportion." Although it upheld the district court's denial of Scott's request to apportion restitution between her and her co-defendant, the Eleventh Circuit took no issue with her interpretation of the word

“apportion” which was identical to that of Mr. Hosey here. Additionally, the Eleventh Circuit determined that the district court did not clearly err in determining that Scott stood to benefit *equally* with her co-defendant—a fact that supported the district court’s denial of her request to apportion restitution.

Here, Mr. Hosey did not stand to benefit equally from the criminal conspiracy. The court need not determine the exact profit discrepancy between Mr. Hosey and his co-conspirators to determine that he stood to make substantially less than each of them. Each business owner stood to make \$150,000 per \$300,000 loan. They were aware of the total amount of each loan and agreed to submit fraudulent applications because of the substantial profit they stood to gain. Alternatively, Mr. Hosey played utilitarian role in the scheme and had little control over the overall amount involved. The relatively small amount that he was paid is evidence of his limited role and culpability in relation to the larger scheme and supports his request that the court apportion restitution.

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 20th day of December, 2022.

Respectfully submitted,

/s/ Caitlyn Wade

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