

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Criminal No.: 12-cr-00370
vs.)	
)	Hon. Leonie M. Brinkema
NURENI ABAYOMI BARUWA)	
)	Sentencing: December 12, 2014
Defendant.)	
)	

GOVERNMENT’S RESPONSE TO DEFENDANT’S POSITION WITH RESPECT TO SENTENCING

The United States of America, by and through its undersigned counsel, files this Response to Defendant’s Position With Respect to Sentencing (“Defendant’s Position”).

I. INTRODUCTION

For the reasons set forth in its Position with Respect to Sentencing (Dkt. #40) and those stated below, the government respectfully moves this Court to deny Defendant Baruwa’s request for a downward variance and sentence the defendant to 18 months in prison, impose a three-year term of supervised release, and order restitution in the amount of \$238,344.56¹. Such a sentence would be sufficient, and not greater than necessary, to accomplish the sentencing objectives identified in 18 U.S.C. §3553(a).

II. Resposne to Preliminary Statement and Presentence Investigation

Defendant Baruwa has presented a selective timeline of events to this Court in order to support his motion for a variance. However, a fulsome recitation of the facts supports an

¹ This number differs by less than \$1 from the number in the PSR and the government and defendant’s Position due to rounding errors.

advisory Guidelines sentence. As detailed in the government's Sentencing Memorandum, and as admitted to in defendant's Plea Agreement, Baruwa failed to collect, account for (file Forms 941), and pay over employment taxes from 2003 through 2010. In that time period, Baruwa had 29 opportunities over 8 years to fulfill his obligations under the Internal Revenue laws.² This is not isolated conduct, nor is it conduct that first arose in 2007.

Defendant Baruwa's business model was premised upon his complete failure to file tax returns for himself or his business and to pay employment taxes, corporate taxes³, and individual income taxes. The funds which he failed to pay over were not his or NAB's to decide what to do with. The funds were his employees' funds – their income and FICA taxes that were due and owing to the United States – and Baruwa had an obligation to remit these monies to the IRS. It was not, as Baruwa claims, a "choice" of whether to pay the payroll taxes or pay the expenses, but instead a willful violation of the criminal tax laws and a deliberate and intentional decision to continue to operate a business using other peoples' monies. Businesses do not get to use their employees' taxes to finance and sustain their companies.

III. Response to Request for Downward Variance

Defendant Baruwa's conduct is not an isolated or "first time" event. Baruwa created NAB in 1994 after he was assessed a civil trust fund penalty of more than \$50,000 for failing to collect, account for, and pay over trust fund taxes for a predecessor company. Baruwa made no payments towards this penalty, created NAB just six months later, and then declared bankruptcy in 1998, listing the IRS as a creditor.

² Baruwa did pay one quarter in 2004 and, after being informed that he was under criminal investigation, paid two quarters in 2010.

³ The government is not in a position to speak to NAB's true profitability because NAB never filed corporate tax returns.

Defendant Baruwa suggests that he should receive a sentence of home detention so that he can develop his new business in order to pay back the IRS. However, Baruwa's track record for successfully running a business while also meeting his tax obligations is zero. As Baruwa admits, he has been an unsuccessful businessman and has failed to grasp certain accounting fundamentals. There is no indication that he has suddenly acquired more astute business acumen. In fact, since 2012, when he allegedly returned to Nigeria to earn money that could be used to satisfy his tax debts, he has made no payments and has provided the government with personal income tax returns that state he earned little to no income.⁴ Allowing Baruwa to create and build this new company will not provide him with the necessary income to pay back the IRS and given his history leaves him vulnerable to commit a similar offense. The government suggests that Baruwa should obtain gainful employment as an employee of a company, earning a wage that will enable him to meet his restitution obligations. His track record going back to his 1993 trust fund penalty demonstrates his inability to responsibly run a business and meet his tax obligations.

The government submits that a sentence of home detention does not serve a deterrent purpose for either Defendant Baruwa individually or for general deterrence. Baruwa needs specific deterrence and his history of non-compliance warrants a Guidelines sentence to a term of imprisonment. Baruwa has already had one opportunity to learn his "employment tax lesson" by paying (or in this case not paying) a civil penalty. However, what he took away from that lesson in 1993 was that while a civil penalty would be imposed, he could create a new company, pick

⁴ The government would note that Defendant Baruwa was first made aware that he was the subject of a criminal investigation when he was interviewed by IRS-CI on April 16, 2010; he was read his non-custodial rights. After that meeting he filed all of his back Forms 941 and paid two of the quarters from 2010. He then continued his pattern of failing to pay. In April and May 2012, Mr. Rodio contacted SAUSA Finley at the Tax Division to schedule a conference concerning the criminal referral from IRS to the Department of Justice. While the conference never took place, on May 16, 2012, SAUSA Finley informed Mr. Rodio that the case was transmitted to the US Attorney's Office with authorization to prosecute Baruwa for violations of 26 USC §§ 7202 and 7203. It was around this time that Baruwa left the United States for Nigeria.

up with a new company, and fail to pay the penalty without any real consequences. A term of imprisonment would send a message to both Baruwa and the general population that failing to pay your employment taxes carries serious consequences.

CONCLUSION

For the reasons stated, the government asks the Court to deny Defendant Baruwa's motion for a downward variance and sentence the defendant to the low end of the guidelines range, 18 months. The government submits that such a sentence is sufficient and not longer than necessary to accomplish the sentencing objectives identified in 18 USC § 3553(a). Finally, the government asks the Court to impose a three year term of supervised release and restitution of \$238,344.56.

Respectfully submitted,

DANA J. BOENTE
United States Attorney

By: /s/ Uzo Asonye
Uzo Asonye
Assistant United States Attorney
Eastern District of Virginia
U.S. Department of Justice
Tel: (703) 299-3700
Fax: (703) 299-3981
Uzo.Asonye@usdoj.gov

By: /s/ Caryn D. Finley
Caryn D. Finley
Special Assistant United States Attorney
Eastern District of Virginia
U.S. Department of Justice
Tel: 202-514-5145
Caryn.Finley@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on December 9, 2014, I will file the foregoing pleading with the Clerk of the Court, who will then send a notification of such filing (NEF) to Baruwa's attorney.

/s/ Caryn D. Finley

Caryn D. Finley
Special Assistant United States Attorney
Eastern District of Virginia
U.S. Department of Justice
Tel: 202-514-5145
Caryn.Finley@usdoj.gov