

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Court File No. 09-CR-00269 (RHK)

United States of America,)	
)	
Plaintiff,)	SENTENCING POSITION
)	PAPER OF THE UNITED
v.)	STATES
)	
Gregory Malcolm Bell,)	
)	
Defendant)	

The United States of America, by its attorneys, B. Todd Jones, United States Attorney for the District of Minnesota, and Assistant United States Attorneys John Docherty and Timothy Rank, respectfully submits its Sentencing Position Paper in this matter.

Defendant Greg Bell was the owner of a holding company that in turn owned a family of hedge funds (the "Lancelot Funds"). Bell was the investment manager for the Lancelot Funds, and in this capacity decided what investments would be part of the funds. The Lancelot funds were invested almost exclusively in promissory notes issued by Petters Company, Inc. ("PCI").

On September 24, 2008, when a series of search warrant executions by federal law enforcement began the last act in the long-running Petters Ponzi scheme, Lancelot was holding approximately \$1.5 billion in PCI promissory notes. These promissory notes have turned out, of course, to be essentially worthless.

Bell had been putting his customers' money into PCI for

several years, and PCI had proven, until late 2007, to be an investment that routinely paid in full and on time. However, in late 2007, PCI began paying promissory notes later and later. Bell did not reveal this state of affairs to his investors. Eventually, on February 28, 2008, when the PCI notes were intolerably late, Bell put together the first of a series of transactions intended to give the impression that PCI was continuing to pay its financial obligations to the Lancelot funds. These sham "round-trip" transactions are described in detail in the criminal complaint that initiated this case; for the sake of summary, suffice it to say that Bell sent money to PCI, and that PCI promptly sent the money back, falsely representing the return of Lancelot's own money as purported payment on PCI's obligations to Lancelot.

Bell orchestrated 86 of these financial round-trips between late February and early September of 2008. Bell did not reveal to his investors that PCI only appeared to be doing well financially; he did not reveal that PCI was only able to "pay" the promissory notes that Lancelot held when Lancelot self-funded those payments. In late August, when a large, institutional investor asked for a note-by-note accounting of the payoff status of a number of PCI notes, Bell directed Lancelot's accountant to prepare a spreadsheet that showed a number of those notes as paid in full, one as partially paid, and a number of others as not yet paid. Bell did not reveal to the investor that all of the notes marked on the spreadsheet as paid in full, and the note marked as paid in part,

had been paid through these sham round-trip financial transactions.

During the time that the round-trip transactions were taking place, from February through and including September of 2008, Lancelot took in more than two hundred million dollars in new investor money without telling any of the new investors that there were any problems with the PCI notes.

In July 2009, Bell was arrested at his suburban Chicago home and charged with wire fraud. Shortly after his arrest, Bell began cooperating with federal authorities. Bell pled guilty to an information, and did not attempt to minimize or rationalize his conduct. Bell met with federal law enforcement officers from the FBI, IRS, and Postal Inspection Service, together with federal prosecutors, for one full day on September 23, 2009; again on October 6, 2009 for one-half day before his change of plea hearing; and again on October 14, 2009, for one full day. Bell was forthcoming and truthful in these meetings, even when the answers to the questions he was asked cast him in a negative light. Bell testified at the trial of Thomas Petters. In preparation for testifying at trial, he met with FBI agents and prosecutors on November 11, 2009.

On November 12 and 13, 2009, Bell testified at the Petters trial. His testimony helped to demonstrate Petters' remarkable salesmanship and his ability to deceive even the most sophisticated investors.

Bell graduated near the top of his class from the University

of Chicago Business School MBA program and had been a successful financial analyst before he met Tom Petters. In his testimony at trial Bell described how he had conducted initial due diligence on PCI but, when he tried to press Petters for information from third parties like PCI's bank, or the manufacturers of the electronic goods PCI was purportedly selling, or the retailers with whom PCI purportedly did business, Petters was able to talk his way around additional scrutiny through a combination of plausible explanations and a false personal connection that gave Bell confidence in Petters and PCI. Later, when Bell became concerned in late 2007 and early 2008 that PCI was not paying on the notes held by Lancelot, Bell testified that Petters was always able to calm him with assurances that he was personally meeting with Sam's Club and the other retailers to work out payment problems. Bell also described how Petters used his son's death as a way of avoiding difficult issues, knowing that this was a soft spot for Bell; when Bell pushed Petters on the payment problems in 2008, Petters would often derail his inquiries by bringing up the death of his son:

When I would be on the phone and I just tried to ask about the series of payments he would say something like, you know, I'm sure we'll be okay. Johnny is looking out for us up there. And both of us would break up and start crying and the conversation would digress and both of us would be crying and just trying to comfort each other on a number of occasions.

Trial Tr., Volume XII at 2184-85. Bell's testimony at Petters' trial was truthful and helpful to the jury.

Over and above cooperation with federal criminal authorities,

Bell also has met with lawyers and accountants from the Securities and Exchange Commission's Division of Enforcement. The SEC has filed a civil injunctive action against Bell and has frozen all of his assets that can be found. Bell also cooperated with three bankruptcy trustees: Doug Kelley of Kelley & Jacobson in Minneapolis; Ron Peterson of Jenner & Block in Chicago, the Lancelot trustee; and Barry Mukamal, the trustee in Florida for Palm Beach Finance Partners, another hedge fund that had invested in PCI. Although the US Attorney's Office only participated in some of these meetings, we are informed that in the aggregate, they were spread out over several months and totaled about eight days.

During the summer of 2008, when it was clear to Bell that there were substantial problems with PCI, Bell set up a "foreign asset protection trust" organized under the laws of the Cook Islands. He then moved fifteen million dollars to a Swiss bank account where it was held in the trust by a Hong Kong-based trustee. Bell set up the asset protection trust in an effort to keep this money away from his creditors and the government. After his arrest and detention, Bell was cooperative in unwinding the asset protection trust and repatriating the money he had deposited into the Swiss bank account. The fifteen million dollars is now in a bank in Chicago, where it will remain until the SEC appoints a receiver to oversee the money's return to victims. While it is undeniably true that Bell's incarceration focused his attention on the need to cooperate with the SEC, it is also true that the

actions he took to assist in unwinding this Cook Islands trust were contrary to his financial interest, and the financial interest of his immediate family.

Sentencing Considerations

There are a number of factors that the Court should consider in fashioning an appropriate sentence for Mr. Bell. First, although Bell was not part of the underlying Petters fraud, and while the United States has never claimed that Bell knew that PCI was operated as a Ponzi scheme, the separate and independent fraud that Bell did operate was quite serious enough. Mr. Bell continued to sell participation in, and to accept more than two hundred million dollars towards, an investment, PCI, that he knew could only make its payments to Lancelot investors if he, Greg Bell, first provided PCI with the funds needed to make those payments. Bell may not have known that the reason PCI began paying late, and then later did not pay at all, was because PCI was a Ponzi scheme that was showing the first signs of unraveling; but we cannot, and have no wish to, reduce Bell's culpability simply because he was not a part of the Petters fraud. Bell forswore every opportunity to tell his investors truthfully what he was observing with the PCI investment. What he was observing was deeply troubling, and as a result of his false statements the investors from whom he accepted money from February to September of 2008 lost that money. In the aggregate, two hundred million dollars is gone as a result of Bell's behavior. All of the investors who put money into PCI

through Lancelot between February and September 2008 have lost their investment. This is painful to all of them, and has put some of Bell's investors into serious financial distress.

Without understating the seriousness of this matter in any way, Bell's criminal behavior needs to be counter-balanced against Bell's cooperation with federal criminal authorities, the SEC, and three bankruptcy receivers. While this will not make his investors whole, we believe his testimony did assist the Petters trial jury to reach the correct conclusion, and that Bell's cooperation has at least mitigated some of the damage caused by his behavior.

Ultimately, the United States asks that this Court impose a sentence that takes into consideration all aspects of the defendant and his conduct in this case, all the positive and negative factors, as well as the sentencing guidelines, to arrive at a sentence that reflects an appropriate balance of the factors under 18 U.S.C. § 3553(a). These factors include "the nature and circumstances of the offense and the history and characteristics of the defendant;" "the need for the sentence imposed -- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;" and "the need to avoid unwarranted sentence disparities

among defendants with similar records who have been found guilty of similar conduct”

The Court should consider these factors in fashioning a sentence that reflects Bell’s conduct in perpetrating a large fraud scheme and thereby promotes respect for the law, provides just punishment, and affords adequate deterrence.

Date: Sept. 1, 2010

Respectfully Submitted,

B. TODD JONES
United States Attorney

s/John Docherty

BY: JOHN DOCHERTY
TIMOTHY RANK
Assistant U.S. Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2010, I served, or caused to be served, the following documents:

SENTENCING POSITION PAPER OF THE UNITED STATES

I certify, further, that I electronically filed the above-listed documents with the Clerk of the Court by using ECF, which constitutes service on the following ECF participants, pursuant to the ECF Procedures for the District of Minnesota:

Kevin W Devore
Email: Kevin@Devorelawoffice.Com

Michael R Wanser
Email: Mwanser@Dl.Com

Seth Farber
Email: Sfarber@Dl.Com

Vincent Paul Schmeltz , Iii
Email: Vschmeltz@Dl.Com

I certify, further, that I served, or caused to be served, the above-listed documents to non-ECF participants by placing a copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressee(s) :

N/A

B. TODD JONES
United States Attorney

John Docherty/ds

BY: JOHN DOCHERTY
Assistant U.S. Attorney