

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No.: 08-302 (RHK/AJB)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	GOVERNMENT'S POSITION
)	REGARDING SENTENCING
MICHAEL CATAIN,)	
)	
Defendant.)	

The United States, by and through its attorneys, B. Todd Jones, United States Attorney for the District of Minnesota, and Joseph T. Dixon III, John R. Marti, and Timothy C. Rank, Assistant United States Attorneys, hereby submits this Position Regarding Sentencing.

Recruited by Tom Petters, defendant Michael Catain engaged in one of the largest money laundering conspiracies in the history of the United States. More than twelve billion dollars was laundered through Catain's bank accounts at Enchanted Family Buying Company, a shell company Petters asked Catain to form for the purpose of facilitating Petters' colossal fraud scheme. Although Petters had been engaged in fraud since the early 1990s, it was not until Catain, as well as Larry Reynolds, began to launder funds for Petters while being held out to investors as Petters' "wholesaler" that Petters' Ponzi scheme went from a million dollar fraud to a billion dollar fraud. In exchange for what became simple administrative tasks, wiring the billions of dollars of investors' money out of his bank account and into Petters'

account, Catain kept millions of dollars in "commission payments" for himself. As a result, many of Petters' investors lost everything.

And yet, while he was essential to Petters' staggering fraud, Catain was a relatively inactive participant in the underlying fraud scheme. He did as he was told and he knew that he should not ask questions. His fraud was mostly a fraud by omission, running billions of dollars of investor funds through his accounts knowing that Petters was misrepresenting Enchanted Family Buying Company to his investors. To date, the government has found only two instances in which Catain himself made false representations to third-parties about being Petters' wholesaler - once to an early PCI investor and once to Catain's bank to explain the billions of dollars running through the account.

Moreover, Catain admitted his conduct early. Catain came forward and agreed to plead guilty within days of the execution of search warrants in this case on September 24, 2008, which hastened resolution of the criminal investigation. Indeed, when Catain, Robert White and Deanna Coleman entered guilty pleas on October 8, 2008, it dealt an irrevocable blow to any hope Tom Petters might have harbored that his "instruments of darkness" would circle the wagons and protect him. Indeed, but for the exercise of trying and convicting Petters, as of October 8, 2008, for all intents and purposes this case was done. Catain's plea also likely had an impact on Larry Reynolds' decision to plead guilty in this case.

Catain also testified at Tom Petters' trial. And, while his was not pivotal testimony, it was helpful in illuminating the way in which Petters selected his accomplices and orchestrated the fraud scheme.

Finally, Catain has also, with one notable exception, cooperated with the Receiver in this case. He will be left largely penniless as a result of his participation in Petters' fraud scheme. Virtually all of Catain's assets have been seized and the government will seek an order of forfeiture so that the assets can be used to compensate Petters' victims.

I. Michael Catain's Role in Petters' Fraud Scheme

In late 2001, Petters approached Catain to assist him with his fraud scheme. Petters told Catain that he was worried his investors would discover who his real vendors were and would steal his relationships. Petters asked Catain to pretend to be PCI's wholesaler if he was ever questioned by an investor. Catain agreed, and pursuant to Petters' request, Catain formed Enchanted Family Buying Company and opened a bank account in the company's name. Catain also agreed to direct funds sent to his business account to PCI, less a commission which was a percentage of the funds running through the account.

Between January 2002 and September 2008, more than \$12 billion flowed through Enchanted Family Buying Company's bank account into PCI's bank account. The funds were wired into the Enchanted Family Buying Company's bank account by third-party investors that loaned money to PCI. These third-party investors were advised that the funds

were being sent to Enchanted Family Buying Company for the purchase of consumer electronics by PCI. Catain knew that the third-party investors were advised that the wire transfers to the Enchanted Family Buying Company account were for the purchase of merchandise from Enchanted Family Buying Company by PCI. Catain also knew that PCI made no purchases of merchandise from Enchanted Family Buying Company and that, in reality, other than the percentage he kept for himself, Catain wired all of the funds directly to PCI.

II. Sentencing Guidelines

The United States agrees with the conclusions set forth in the Presentence Investigation Report ("PSR") with respect to the appropriate guidelines calculations. Catain laundered more than twelve billion dollars over almost seven years. The PSR correctly concludes that his Total Offense Level should be 37, and the sentencing guidelines call for a sentence of between 210 and 240 months.

An offense level of 37 for the defendant's conduct fairly and accurately represents the seriousness and magnitude of the defendant's conduct during the execution of the scheme. Catain's assistance was critical in facilitating Tom Petters multi-billion dollar fraud, which resulted in billions of dollars of losses for thousands of investors. Indeed, but for Catain's cooperation in this prosecution (discussed later), the United States would be seeking a sentence within the guidelines range.

III. Sentencing Considerations

There are a number of conflicting factors that should be considered by this Court in sentencing Catain. These factors are difficult to reconcile. On the positive side, Catain pleaded guilty early, he met with and provided helpful information to the United States, and he was a helpful (although not critical) witness at the trial of Tom Petters. In addition, it does not appear that Catain was aware of the brazenness of Petters' fraud scheme - Catain knew Petters was misrepresenting Enchanted Family Buying Company to investors, but there is no evidence that Catain knew that there was no merchandise whatsoever being bought and resold by PCI and that Petters was simply stealing investors' money.

On the negative side, Catain kept quiet knowing he was being used to defraud investors, and he collected more than fourteen million dollars to ensure his continued, unquestioning assistance. And although he may not have understood the full scope of Petters' lies to investors, Catain knew that the fraud involved significant amounts of money since he himself facilitated Petters' acquisition of billions of investors' dollars.

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 the extreme seriousness of Catain's role in an enormous fraud scheme, and thereby promotes respect for the law, provides just punishment, and affords adequate deterrence.

Because the Court has declined to enter a restitution order in this matter, the government will seek forfeitures of personal assets with the intent that those assets be made available to victims through the Department of Justice's forfeiture remission process. In lieu of restitution, the Court may also consider other financial sanctions as well in fashioning an appropriate sentence.

IV. Motion for Downward Departure Under U.S.S.G. §5K1.1

As set forth above, Catain's assistance in the investigation and prosecution of this matter was helpful. On September 24, 2008, law

enforcement agents executed the first search warrants in this case. In connection with these warrants, agents contacted Catain and the next day Catain came to the United States Attorney's Office and providing a detailed description of his role in laundering investors' funds for Petters.

Within days of his first interview, Catain agreed to plead guilty to a money laundering charge, and less than two weeks after the interview, on October 8, 2008, Catain entered his guilty plea. His quick plea was significant in motivating other defendants to cooperate in this matter and significantly advanced this case.

From October 2008 through trial, Catain participated in about seven interviews with law enforcement or representatives of the Receiver, and he testified before the grand jury. At trial Catain testified over the course of several hours, and was subjected to extensive cross examination. And while by no means crucial, his testimony was helpful to the government's success in this case. In particular, his testimony - when viewed along with the testimony of Larry Reynolds, Robert White and Deanna Coleman - showed that it was Tom Petters who recruited and brought together all of the participants in the fraud scheme, testimony which was useful in rebutting the defense contention that the fraud was perpetrated without Petters' knowledge. Although Petters' ignorance defense would have been preposterous even without any coconspirator testimony, it was helpful

to the jury to see that the only common thread between the fraud participants was their relationship to Petters.

Finally, Catain also stipulated to the appointment of a receiver under 18 U.S.C. § 1345. As the Court is aware, Catain did have some issues with respect to the receivership, including an incident in which he misappropriated funds from the car was supposed to be operating for the benefit of the receivership estate. Apart from this incident, however, he has largely cooperated with the receiver in disclosing and turning over assets for the purpose of providing restitution to victims.

In summary, once contacted by law enforcement, Catain quickly pleaded guilty and assisted the prosecution and investigation of this matter. This assistance was timely and helpful. Accordingly, the government moves under U.S.S.G. § 5K1.1 for a departure from the advisory sentencing guideline range.

Catain argues in his sentencing position pleading that he should receive a sentence no higher than Deanna Coleman's. This is a false comparison, because, unlike Catain, Coleman ended Petters' fraud scheme by walking in to law enforcement and voluntarily subjecting herself to certain criminal prosecution. Catain could have come forward at any time, but did not. And, while Coleman was clearly more involved in Petters' fraud scheme than Catain, her cooperation with law enforcement was extraordinarily helpful in understanding the details of Petters' elaborately constructed fraud by giving an inside

look into the fraud while it was still in existence, rather than trying to reassemble the fragments of Petters scheme after it had fallen apart.

V. Conclusion

Thomas Petters recruited Michael Catain to become an essential tool in a massive fraud scheme, and Petters relied on Catain to play his role and launder billions of dollars through a shell-company bank account. The amount of money laundered by Catain is unprecedented, and would fully warrant a guidelines sentence but for Catain's cooperation. In light of his cooperation, however, the United States asks that the Court depart from the guidelines range as set forth in the PSR and consider Catain's cooperation, as well as all of the factors enumerated 18 U.S.C. § 3553(a), in arriving at an appropriate sentence.

Dated: July 7, 2010

Respectfully Submitted,

B. TODD JONES
United States Attorney

s/Timothy C. Rank

BY: TIMOTHY C. RANK
Attorney ID No. 245392
JOSEPH T. DIXON, III
JOHN R. MARTI
Assistant U.S. Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2010, I served, or caused to be served, the following documents:

GOVERNMENT'S POSITION REGARDING SENTENCING

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:

Michael Colich, Esq.

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

s/Pat Schones

BY: PAT SCHONES
Legal Assistant