

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 12-177 (JRT/JSM)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	GOVERNMENT’S POSITION AS
v.)	TO SENTENCING <u>AND</u>
)	MOTION FOR EVIDENTIARY
CHRISTOPHER JON ANDREWS,)	SENTENCING HEARING
)	
Defendant.)	

The United States of America, by and through its attorneys, John R. Marti, Acting United States Attorney for the District of Minnesota, and Tracy L. Perzel and John Kokkinen, Assistant United States Attorneys, hereby submits its position as to sentencing and motion for evidentiary sentencing hearing for defendant Christopher Jon Andrews.

POSITION ON SENTENCING

Defendant Andrews lied to mortgage loan lenders, directly and through others, to unlawfully line his own pockets with mortgage loan proceeds. His business model, honed with knowledge gained from others in the industry, was relatively simple: create a one-stop shop for residential real estate transactions where sellers agreed to accept prices below those memorialized in the purchase agreements, lenders unknowingly funded mortgage loans for more than the true sales prices, buyers received undisclosed cash payments from the excess mortgage loan proceeds post-closing, and defendant Andrews profited. Defendant Andrews used his perceived strengths – his persuasive and often aggressive demeanor, his ability to capitalize on those he could learn from and/or

manipulate, and his drive to make money regardless of the potential fallout – all to arrange residential real estate transactions from which he would benefit.¹

Defendant Andrews' buyers well knew the one-stop shop he had created. The buyers, most of whom worked with defendant Andrews at GMAC-Residential Capital, recalled how he structured and pitched his operation in precisely this way. It was defendant Andrews who sold buyers on investing in real estate whether at work and or at seminars he organized. It was defendant Andrews who negotiated with the sellers, gave them tours of the available residences, and drafted or caused the drafting of the purchase agreements the buyers would sign. It was defendant Andrews who directed the buyers to the mortgage broker (initially, Daniel Boler's business) to secure financing. If necessary, it was defendant Andrews who loaned the buyers the funds they needed to close the transactions. It was defendant Andrews who arranged for the buyers to receive their cash payment from the mortgage loan proceeds following closings he often attended. And, ultimately, it was defendant Andrews who continued to benefit once these transactions were closed by "managing" these properties as rentals for a monthly, per-property fee imposed on the buyers.

For his part, defendant Andrews had learned quickly from individuals like Robert Rick, who had connections to builders, and P.O. a real estate agent who showed defendant Andrews the ropes. As defendant Andrews steeped himself in these fraudulent transactions and became versed in their operation, he unceremoniously trimmed the "fat,"

¹ As a collateral contact who has known defendant Andrews for more than 20 years told the PSR writer, defendant Andrews coveted money and success, to the point of even putting those "above his family." PSR ¶ 47.

taking the knowledge he had gained from those participating in the fraud and eliminating them, if he could, to increase his profits. For example, when defendant Andrews tired of working P.O. and seeing the substantial commissions paid to P.O., defendant Andrews convinced his dutiful wife to obtain her real estate license and severed his relationship with P.O. This gave defendant Andrews complete control over this aspect of the fraud and added sizeable real estate commissions to his spoils.

Defendant Andrews could not eliminate his use of those directly connected to the mortgage loan lenders – Dan Boler and Susanne Mathis – and instead chose to bully them to churn out the mortgage loan approvals and close the transactions. Purchase agreements with false prices, loan applications that failed to truthfully memorialize the transactions and the buyers’ financial condition, and “invoices” created at defendant Andrews’ direction to conceal the cash payments to be made to the buyers were the norm. When defendant Andrews suggested a sizeable cash payment to himself in connection with a property purchase Boler declined to continue participating in the fraud. That, however, did not stop defendant Andrews, and only resulted in him securing another mortgage loan officer (A.K.) to occupy Boler’s former role.

All told, approximately 200 properties in Minnesota were purchased through defendant Andrews’ fraud with mortgage loans totaling approximately \$50 million. Generally, the Andrews-fraud properties were in existing neighborhoods and often numbered multiple properties per neighborhood. They were peppered among properties owned by traditional buyers who had purchased through arm’s length transactions where the sales price was truthfully stated and the mortgage loan funding resulted from that

truthful price. After the arrival of defendant Andrews' fraud and unbeknownst to those traditional buyers, most property transactions in their neighborhoods were no longer at arm's length, as each property's "sales price" became a fiction of defendant Andrews' and his coconspirators' creation. This inflated price served two purposes (1) to secure sufficient mortgage loan financing to fund the undisclosed cash payment to the buyer and (2) to artificially maintain the "comparable" property values in the neighborhood and thereby support appraisals for future sales. One fraudulent transaction built on another, creating a precarious situation for traditional homeowners, the buyers Andrews recruited, the neighborhoods in which the properties were located, the communities in which those neighborhoods were located, and the State of Minnesota.

Indeed, mortgage loan fraud of the type perpetrated by defendant Andrews and his coconspirators has plagued Minnesota and, when combined with similar fraud schemes, resulted in the state being named one of 10 mortgage fraud hotspots in the United States in June 2008. Such fraud perpetuated the housing bubble and its eventual burst, as individuals like defendant Andrews pushed the sales of properties at prices higher than the open market could sustain.

Smartly, defendant Andrews tried conceal his true involvement in the fraud by hiding behind others who signed their names to the documents he drafted and who completed the transactions he had arranged – his wife, his brother, P.O., A.K., Dan Boler, Susanne Mathis, Lindsay Loyear, and the myriad of coworker buyers he solicited and led to financial ruin, among other individuals. Defendant Andrews cannot, however, fool this Court into ignoring his self-identified one-stop-shop by claiming his fraud only

involved undisclosed bridge loans (“downpayment assistance”). Such claims defy the reality that is this case, in that each transaction is fraudulent beginning with the false sales price.

Accordingly, the Government respectfully requests a term of imprisonment of 120 months and, regardless of the ultimate guidelines range applied to this case, believes such a sentence is sufficient but not greater than necessary to satisfy the purposes of sentencing set forth in Title 18, United States Code, Section 3553(a).

Despite this, the United States will address the appropriate guideline calculations below.

PRESENTENCE INVESTIGATION REPORT

The government has no objections to any of the factual statements or to the guidelines calculations set forth in the thorough and well-written Presentence Investigation Report (“PSR”), except as follows.

First, by combining victim lenders and property buyers, the probation officer tallied fifty or more victims and, for that reason, assessed a four-level increase. (PSR ¶ 24). The government agreed to include only victim lenders – which total more than 10 but less than 50 – in the calculation of victims for sentencing guideline purposes. Thus, the government respectfully requests a two-level enhancement for the number of victims.

Second, the probation officer assessed a two-level enhancement on the basis that defendant Andrews derived more than \$1,000,000 in gross receipts from one or more financial institutions as a result of the offense. (Id. ¶ 26.) The parties did not

contemplate application of this enhancement in the plea agreement, and the government, therefore, respectfully requests no enhancement for such gross receipts.

In sum, the government respectfully requests calculation of the total offense level at 32, which would result in an advisory guidelines range of 121-151 months.

MOTION FOR EVIDENTIARY HEARING

Defendant Andrews continues to claim that (1) the loss amount occasioned by his conduct is less than \$7 million, (2) his conduct did not involve sophisticated means, and (3) he was not an organizer or leader of criminal activity involving five or more participants. (PSR ¶¶ 25, 28).

The government bears the burden of establishing that these enhancements apply by a preponderance of the evidence. United States v. Boesen, 541 F.3d 838, 850 (8th Cir. 2008). Thus, the United States respectfully moves the Court to hold an evidentiary hearing at sentencing at which the government will present evidence that the loss amount in this case well exceeds \$7 million, defendant Andrews' conduct involved sophisticated means, and defendant Andrews lead and organized extensive criminal activity involving five or more participants.

A. Loss Amount.

Under U.S. Sentencing Guideline Section 2B1.1, the loss amount is the greater of actual loss or intended loss. U.S.S.G. § 2B1.1, cmt. n.3(A). In this case, "actual loss" exceeds intended loss, and drives the guidelines. "Actual loss" means the reasonably foreseeable pecuniary harm that resulted from the offense. U.S.S.G. § 2B1.1, cmt. n.3(A)(i). "Reasonably foreseeable pecuniary harm" means pecuniary harm that the

defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense. U.S.S.G. § 2B1.1, cmt. n.3(A)(iv). In fraud cases involving collateral, loss is reduced by “the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, the fair market value of the collateral at the time of sentencing.” U.S.S.G. § 2B1.1, cmt. n.3(E)(ii).

Following conversations with defense counsel, the United States understands that defendant Andrews does not object to calculating loss based on the difference between the original mortgages and the distress-sale price (through foreclosure, short sale or otherwise). Rather, defendant Andrews asks the Court to parse the activities of his “one-stop-shop” and to find him responsible only for those transactions where he provided undisclosed bridge loans to the buyers. The problem with this argument is that the heart of each transaction – bridge loan or no bridge loan – is fraud against the lender. Specifically, and as defendant Andrews well knows, in each transaction the seller agrees to accept less than the sales price memorialized in the purchase agreement, such that there will be excess mortgage loan proceeds to provide the buyer a cash payment post-closing. At the evidentiary hearing, the government will call U.S. Postal Inspector Christie Kroells, one or more buyers, and possibly additional witnesses to detail the full scope of the fraud and defendant Andrews’ knowledge of it. Postal Inspector Kroells will testify concerning a loss chart she prepared and the underlying documentation on which she relied. Specifically, she will confirm that the loss to victim lenders is greater than \$7

million and closer to \$14 million, such that a 20-level enhancement for loss properly applies. U.S.S.G. § 2B1.1(b)(1)(K).

B. Sophisticated Means.

Guidelines Section 2B1.1(b)(9)(C) provides a two-level enhancement if the offense “involved sophisticated means.” Application note 8(B) provides, in part, that the term means “especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense.” U.S.S.G. § 2B1.1 cmt. n.8(B). In United States v. Septon, 557 F.3d 934, 937 (8th Cir. 2009), the Eighth Circuit affirmed this Court’s *sua sponte* application of this enhancement to a fairly typical mortgage fraud scheme which involved submitting false information to lenders to obtain loans by fraud.

The offense conduct in this case is much more elaborate than the offense conduct in Septon. For example, and as to some of the transactions, defendant Andrews arranged for the creation of false invoices through which the buyers would receive the excess mortgage loan proceeds generated by the fraudulent transactions. These false invoices caused title companies to pay mortgage loan proceeds to the buyers’ limited liability companies, thereby disguising the fact that the money was actually going to the investor/buyers. These payments were often disguised on the HUD-1 settlement statements as “prepaid management fees” or “facilitator fees” that were not related to any legitimate services rendered. Other times, defendant Andrews disguised the cash payments to the buyers from mortgage loan proceeds as real estate commissions. The realtor receiving the commissions (Lindsay Loyear) would take a small fee from those funds and transfer the remaining mortgage loan proceeds to the buyer. The use of

entities, which have nothing to do with the transactions, to facilitate and conceal the receipt of proceeds by itself justifies the sophisticated means enhancement. Cf. United States v. Kieffer, 621 F.3d 825, 835-36 (8th Cir. 2010) (movement of money through defunct entities ordinarily indicates sophisticated means).

C. Aggravating Role in the Offense

The PSR properly identified defendant Andrews as an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive and, accordingly, assessed a four-level enhancement pursuant to Guideline Section 3B1.1(a). (PSR ¶25.) While defendant Andrews objects to the application of this enhancement, his admissions to the Probation Office in support of the reduction for acceptance of responsibility alone reveal this objection lacks merit.

1. Five or More Participants

There can be no dispute that was at least five or more participants in the mortgage fraud scheme. As the PSR notes, the mortgage fraud scheme resulted in the four related criminal cases against Robert Rick, Daniel Boler, Susanne Mathis, and Lindsey Loyear. In addition, Defendant's acceptance-of-responsibility statement acknowledges the involvement of those other participants, as well as defendant Andrew's wife and two other real estate agents (P.O. and J.T.).

2. Organizer or Leader of Criminal Activity

The PSR correctly concludes that defendant Andrews was an organizer or leader given that he "recruited buyers and arranged for buyers, real estate agents, title company employees, and closers to participate in the [fraud scheme]," "solicited buyers and other

parties to participate,” and “provided direction on executing the scheme and coordinated the actions of the other participants.” (PSR at A.3.)

Application Note to Guideline Section 3B1.1 identifies relevant factors for the court to consider in assigning leader/organizer status and states:

Factors the court should consider include the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

U.S.S.G. §3B1.1, cmt. n.4. The evidence in this case amply supports this enhancement.

First, defendant Andrews’ acceptance-of-responsibility statement is replete with statements acknowledging his leadership and organization of the instant fraud. Specifically, defendant Andrews admits that he (1) recruited members of his immediate family, co-workers at his former employer, and other friends and colleagues to purchase investment properties through the mortgage fraud scheme; (2) “began to act as a conduit” between the investors and the real estate agents and mortgage brokers who were instrumental in the implementation of the mortgage fraud scheme; (3) “assisted in negotiating” for sellers to sell properties to investors, for mortgage loan lenders to fund the purchases, and for title companies to close the transactions; (4) “personally worked with” builders of new construction to identify the properties that ultimately were purchased through the mortgage fraud scheme; (5) “connected investors with these builders” to purchase the properties; (6) “hired an attorney to assist the investors” in

setting up the limited liability companies that enabled the investors to receive the cash back from the mortgage loan proceeds (i.e., “kickbacks”) at or after the transactions closed; (7) “set [the investors] up with Dan Boler and others to arrange for the mortgage finance applications”; and (8) “arranged for and knew” that the transactions were structured such that the sellers would sell the properties for a certain price but that the purchase agreements would indicate that the buyers were purchasing the property for a higher price. (PSR ¶19, pgs. 5-7.) In addition, defendant Andrews admits that he gave “explicit directions” to his wife to implement the practice of offering investors down payment assistance loans that were never disclosed to the lenders’ underwriters. (*Id.* ¶ 19, pg. 6.)

Second, and beyond defendant Andrews own statements, the government will offer evidence at the sentencing hearing showing that defendant Andrews exercised considerable decision-making authority. He recruited the buyers. He told them they would receive a cash payment once each transaction closed and concealed these cash payments from the lenders. He negotiated the terms of the transactions with the sellers and sought to maximize the difference between the true sales price and the inflated sales price (that ultimately included on the purchase agreement), while also concealing that difference from the lenders. He arranged for the production of the purchase agreement that memorialized the false purchase price. He directed the buyers to Dan Boler’s mortgage brokerage, where mortgage loan applications were crafted to get the transactions approved. He offered bridge loans to the extent that buyers needed such loans to complete their transactions and concealed these loans from the lenders. He was

instrumental in the artful disguising of the cash payments to the buyers, both in the purchase agreements and on the HUD-1 settlement statements. He instructed the buyers to set up the limited liability companies to which the cash payments would be made. He, without the knowledge of the buyers, generated or instructed others to generate false invoices for purportedly legitimate services, thereby concealing from lenders that these payments were going to the buyers.

For all his efforts, defendant Andrews claimed a sizeable share of the fraud's spoils. In addition to any finders-type fees he received by securing buyers, defendant Andrews collected real estate commissions through his wife, collected monthly fees to manage the buyers' properties by acting as a landlord on the buyers' behalf, and collected substantial cash payments from mortgage loan proceeds for the properties that he purchased and convinced his wife to purchase.

To the extent defendant Andrews claims others led or organized the scheme, the Government wholly disagrees, and notes that even were this so “[t]here can, of course, be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy.” U.S.S.G. §3B1.1, cmt. n.4. The four-level enhancement properly applies.

CONCLUSION

Considering all of the factors in Section 3553(a) and the advisory guidelines range, the United States respectfully requests a term of imprisonment of 120 months. defendant Andrews' fraud was longstanding and blatant – with defendant Andrews persuading several investors to individually purchase as many as ten or more properties through the scheme – and its tentacles had wide reach. Only as a result of defendant

Andrews' careful planning and execution of lie after lie after lie with the aid of professionals – behind whom he then and now tries to hide – was this scheme so devastating to the individual buyers, the victim lenders, the neighborhoods in which the residences were located, the broader communities, and this State.

Dated: October 7, 2013

Respectfully submitted,

B. TODD JONES
United States Attorney

s/ Tracy L. Perzel

**BY: TRACY PERZEL and
JOHN KOKKINEN**
Attorney ID Nos. 0296326/388356
Assistant United States Attorneys
300 South Fourth Street, Suite 600
Minneapolis, MN 55415
(612) 664-5600