

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 1:16-CR-150

vs.

Hon. Paul L. Maloney
United States District Judge

SARAH FRANCES BOLHUIS,

Defendant.

GOVERNMENT’S SENTENCING MEMORANDUM

More than 50 people have been victimized by Defendant’s long-running investment scheme and collectively lost more than \$5 million. Several of those victims have suffered substantial financial hardship as a result and have been forced to make significant changes to their lives as a result of losing retirement and other savings. Retirement plans have been abandoned. Financial security has been lost. Initial shock is now daily stress. Defendant’s disarming approach and devious ways — including her assurance to certain victims that wealthy relatives would back up their investments — has wreaked financial and emotional havoc on many of her victims.

None of Defendant’s various investment pitches contained even the slightest bit of truth. In total, the scheme brought in more than \$7.5 million and available evidence indicates that only about \$2.3 million was returned to participants. Despite the efforts of two federal law enforcement agencies, most of the fraudulent proceeds remain unaccounted for and cannot be traced. This is in large part due to the duration of the fraud, Defendant’s failure to carefully document the monies she received and returned to her “investors,” and the extensive use of U.S. currency in the scheme. Although several victims told the government they believe Defendant has buried or moved the fraudulent proceeds overseas, the government has no evidence supporting those theories.

In a desperate attempt to keep the massive fraud from being discovered, Defendant went to extraordinary lengths to secure new money from people and to avoid paying interest as she had promised her victims. She recruited others to bring more money into the program and offered financial incentives if new investors were identified. Defendant even had the gall to ask one of her victims to pretend to be another person to (unbeknownst to that victim) corroborate one of the many lies she told others to convince them that she was using their money as promised.

Perhaps the most appalling criminal act committed by this Defendant occurred *after* she began cooperating with law enforcement as it began investigating the fraud. In about May 2015, a victim contacted Defendant because her home mortgage and taxes were not being paid by Defendant as part of the monthly “interest” Defendant had promised her. The victim’s home went into foreclosure as a result. The individual who bought the victim’s home was threatening to evict her from her home. Defendant assured her that she was working out a resolution with the new owner and needed an additional \$10,000 to stall the eviction. At about the same time, Defendant approached a different person (also another fraud victim) and asked for an additional \$20,000 for a real estate investment that would pay a 6% return and the return of principal in six months, but that person declined. Later, when an eviction crew arrived at the home, Defendant asked the victim’s children for money. Defendant once again lied to her victim by claiming she had checks for \$350,000 and \$50,000 at her home, and asserted that if the victim’s children gave her \$240,000, she would give the victim a portion of her money to resolve the issue. The children agreed to withdraw funds from their accounts to help save their mother’s home. However, the victim later had to come up with an additional \$100,000 to re-purchase her home.

In truth, by this point in time, Defendant’s scheme had completely unraveled and she had no such money available to help rescue her victim. Defendant effectively had the victim buy back

her residence from the person who bought it in foreclosure using the victim's and her children's money. As a result, Defendant increased the loss already suffered by one of her victims and created two new victims in the process, all while she was supposedly starting to make amends for her offenses.

This jaw-dropping criminal behavior must be met with significant punishment from this Court.

Although Defendant has accepted responsibility for her actions and voluntarily provided a substantial volume of documents and information to federal investigators, she has offered this Court many explanations why the actions of others contributed to her victims' losses. In her written statement to the Court, Defendant implies that she would not have defrauded people to the extent she did but for the involvement of others who effectively were paid to bring new money into the scheme. But Defendant cannot blame others to excuse her own deception and repeated personal efforts to obtain money from people by selling the various "investment" opportunities available to them. And she cannot blame others to excuse her additional fraudulent activity using her new company, Tri-Logic, particularly the "real estate rescue" fraud she committed in May and June 2015 while ostensibly cooperating with law enforcement.

Regardless of the alleged actions of others, Defendant stands before this Court having fully participated in a wide-ranging fraud scheme that consisted of repeatedly lying about investments that were never made; empty promises of interest payments to entice new and existing "investors" to contribute more money; the creation of a fake document and using an unwitting victim to help Defendant advance the scheme against other victims; paying old investors with new investor money; and using false excuse after false excuse to avoid making interest payments or repaying principal amounts to her victims to keep the scheme from falling apart.

This Court's sentence should ensure that Defendant is appropriately punished for her actions and that the public is protected from her devious ways for many years.

A. The Government's Calculation of Restitution Owed is \$5,224,854.41

Restitution is mandatory pursuant to 18 U.S.C. §§ 3663A(a)(1), (c)(1)(A)(ii) because Defendant is convicted of an offense against property committed by fraud or deceit. When a defendant has unlawfully obtained money through fraud and deceit, the victims are entitled to the return of that money, less any money previously returned to them. 18 U.S.C. § 3663A(b)(1)(B). Section 3664 governs the procedures for issuing a restitution order. Any dispute "as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence." 18 U.S.C. § 3664(e). The burden is on the government to demonstrate the amount of loss sustained by victims. *Id.* The burden of demonstrating "such other matters" as this Court deems appropriate is on "the party designated by the court as justice requires." *Id.*

Courts may adopt a reasonable estimate of victims' losses if an exact calculation cannot be achieved due to missing documents. *See United States v. Jones*, 511 F. App'x 420, 423-24 (6th Cir. 2013) (affirming reasonable estimate of loss and restitution based on statistical extrapolation when 54 patient files were unavailable). Mathematical precision is unnecessary. A reasonable estimate of the loss, using the information that is available to the Court, is particularly appropriate "in situations where the losses occasioned by financial frauds are not easy to quantify." *United States v. Triana*, 468 F.3d 308, 320 (6th Cir. 2006). *See also United States v. Johnson*, 162 F. App'x 526, 530-31 (6th Cir. 2006) (district court did not abuse its discretion by ordering restitution in same amount as its reasonable estimate of loss); USSG § 2B1.1, Comment. Note 3(C) ("The court need only make a reasonable estimate of the loss.").

1. Calculation of Restitution Owed to Each Victim

Defendant has acknowledged that she is required to pay full restitution under the law. The parties initially estimated the amount of restitution to be approximately \$5.4 million. (R.2: Plea Agreement, ¶5, PageID.9) The government has expended considerable effort to identify and locate all of the victims, including issuing a press release to television and print media; sending notification letters to known victims requesting additional information and impact statements; and posting information on the U.S. Attorney's Internet website encouraging anyone who believes they were a victim of the offense to contact the FBI to report their loss. See <https://www.justice.gov/usao-wdmi/victim-and-witness-assistance-program/vw-large-cases/Bolhuis>. To date, the government has identified 53 victims who have suffered a net loss in the investment scheme.

Determining a precise restitution amount and the specific amount owed to each victim is difficult in this case for several reasons: (1) federal investigators were not able to retrieve all pertinent records from various financial institutions due to the duration of the fraud (some victims started giving Defendant money in 2001); (2) Defendant engaged in cash transactions with many of her victims, and receipts or other documentation were inconsistently provided to victims; (3) several victims delivered cash to Defendant on multiple occasions in varying amounts; (4) some victims are elderly, have died, or have difficulty remembering the exact amount of money they lost; (5) several victims have not been located or did not return a victim impact statement; and (6) Defendant opened joint bank accounts in her name and her victim's names, deposited "interest payments" into those accounts, and sometimes withdrew those deposits for her use, telling victims she was "reinvesting" their money.

The parties met and conferred in Traverse City to review Defendant's preliminary objections to the government's restitution calculation. The government also provided Defendant

with extensive additional document discovery, including victim interview summaries prepared by investigating agents. At the conclusion of the meeting, the government's best estimate of the loss was determined by federal agents using available bank records and other documents and information provided by Defendant and the victims. A chart of the restitution amount owed to each victim, as calculated by the government, has been attached as **Exhibit 1**.¹

In some instances, however, the government's calculation of a victim's net loss is different than the amount the victim requested in their impact statement or interview. For example, victims may have requested additional amounts of restitution for expenses beyond what is statutorily authorized (e.g., promised interest payments, interest expense from borrowing money that was used to invest with Defendant, or for non-reimbursable attorney fees). Additionally, some victims provided the total amount of money they gave to Defendant, but did not indicate the amount of money returned during the scheme, and victims have asserted that they gave Defendant more money than what the available documentation corroborates. Accordingly, the government has made its best effort to determine the net loss for each victim based on the totality of the available evidence, and only for losses recoverable under applicable federal restitution law.

2. Repayment Schedule: Pro Rata, Priority Order, or Percentage of Payment

The Court has the discretion to "provide for a different payment schedule for each victim based on the type and amount of each victim's loss and accounting for the economic circumstances of each victim." 18 U.S.C. § 3664(i).

Certain victims lost substantially more money than others. For example, one victim had a net loss of \$1,158,300 and another victim had a net loss of \$1,742. Additionally, some of the victims were able to recover a portion of their investment through repayments, while others lost

¹ The government has separately filed a motion for leave to file Exhibit 1 under restricted access because it contains sensitive information pertaining to the victims' alleged losses in the scheme.

their entire investment and received no money from Defendant. The government acknowledges that, due to the variety of facts and circumstances typically at play in financial fraud cases, courts typically employ a pro rata payment schedule so that each victim receives an equal share of any restitution payments made by Defendant. However, at least one victim has requested that victims who lost the most money in the scheme receive a larger percentage of any restitution payments made by Defendant. Given the wide variation in loss amounts and economic circumstances from victim to victim in this case, and to avoid advocating on behalf of certain victims to the detriment of others, the government takes no position on this issue and leaves it to the sound discretion of this Court to determine the appropriate distribution of any restitution payments.

Five victims who suffered a pecuniary loss in the scheme and are entitled to restitution advised federal agents that they do not wish to receive any restitution from Defendant. *See Exhibit 1*. In light of their request, however, the Court may wish to consider ordering that those victims be paid last after all other victims have been paid, if that were to occur.

3. Defendant is Not Entitled to Apportionment of Restitution

To the extent Defendant argues at sentencing that the actions of other individuals contributed to the victims' loss in this case and that her restitution obligation should be lessened as a result of those alleged acts, the government respectfully disagrees. The involvement of others in the scheme is irrelevant to the calculation of Defendant's restitution obligation.

Even in cases where multiple defendants are charged with an offense causing a pecuniary loss, the government is not required to prove the amount of loss that resulted solely from an individual defendant's conduct, nor must this Court make individual restitution findings. *See United States v. Church*, 731 F.3d 530, 538 (6th Cir. 2013). Furthermore, discretionary apportionment of restitution liability to reflect the level of contribution to the victims' loss is not

appropriate in this case. Section 3664(h) expressly states that apportionment is permissible if a court finds that “more than 1 *defendant*” has contributed to the victims’ loss. 18 U.S.C. § 3664(h) (emphasis added); *see also United State v. Bogart*, 576 F.3d 575-76 (6th Cir. 2009) (describing court’s discretion to apportion liability “in case involving *multiple defendants*”) (emphasis added).

In this case, only the Defendant has been charged in connection with the investment fraud scheme, and Defendant’s obligation to pay restitution is not limited by the alleged role of others in the scheme. If other individuals are later charged and convicted of an offense arising out of this scheme, this Court can address those defendants’ joint and several restitution obligations at that time. Moreover, if Defendant believes that others are legally responsible for losses incurred in connection with her business associations with those individuals, she has the option to pursue any appropriate civil claims she may have against those individuals outside of this criminal proceeding.

The government also anticipates that Defendant will move for a downward variance for the same reasons it may seek apportionment of restitution, and because the government cannot show that Defendant greatly profited from her scheme. Although the Court retains the discretion under 18 U.S.C. § 3553(a) to vary from the advisory Sentencing Guidelines based on a broad range of factors, the government objects to a downward variance for the same reason it does not believe that apportionment of restitution is appropriate in this case. Moreover, the fact that a handful of participants did not suffer any loss (and even profited) in the scheme does not ameliorate Defendant’s offense conduct or the harm she inflicted on her victims.

B. Government's Sentencing Recommendation

The government recommends that Defendant be sentenced at the low end of the applicable advisory Sentencing Guidelines range after any departures or variances. (R.2: Plea Agreement, ¶14, PageID.17) Although Defendant has proffered with federal investigators on several occasions, and directly with the undersigned prosecutor on one occasion, the government has determined that, to date, Defendant has not provided substantial assistance law enforcement in the investigation and prosecution of another person who has committed an offense. Therefore, the government will not be filing a motion for downward departure pursuant to USSG § 5K1.1.

The presentence investigation report correctly calculates the advisory Sentencing Guideline range at 70 to 87 months. Accordingly, the government recommends that this Court impose a custodial sentence of 70 months on counts 1 and 2 (concurrent).

Respectfully submitted,

ANDREW BYERLY BIRGE
Acting United States Attorney

Dated: February 15, 2017

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