

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 08-364(1) (RHK/AJB)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	GOVERNMENT'S RESPONSE
)	REGARDING SENTENCING
THOMAS JOSEPH PETTERS,)	
)	
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.¹

The defendant's pitch to the Court is that he is a victim, that the story of his life is a poetic tribute to what might be. The reality as demonstrated at trial, is the defendant's life was a fraud, based on deceit and corruption. The defendant's purported "unbending faith that tomorrow all will be well" is founded on a refusal to recognize that actions and words have consequences, for himself and others. As he plainly demonstrated during his testimony, for Tom Petters, the truth is irrelevant; to him, words are simply tools to manipulate and to deceive.

¹The parties have entered into a stipulation regarding the number of investors. The government will not require an evidentiary hearing.

Far from voicing contrition, the defendant espouses pride in the "reality" he created with real companies with real employees. The evidence at trial, however, demonstrated that the defendant's companies were not operated as self-sustaining businesses, but were sustained with millions and millions of dollars in fraud proceeds. Salaries, bonuses, operating expenses were paid by fraud. The businesses were simply props for the defendant's fraud and his desire to be a capitalist tycoon. The defendant argues he should be rewarded for this reality.

In his pleading with the Court, the defendant makes no effort to address the staggering and unprecedented size and impact of his fraud on victims and the community. Instead, he asks this Court to give credence to his contorted view of life in which he is the victim. The defendant defiantly rejects personal responsibility. He is unrepentant. For the defendant, his wealth and status render him impervious to laws, rules, and consequences. The Court should reject the defendant's efforts to deflect the full consequences of his fraud.

As eloquently written by one of his many victims:

The fact that so many people trusted Tom Petters because he portrayed himself to be a committed follower of God, and a supporter of charitable organizations is highly disconcerting. Does this man not have a conscience? Does he not care for anyone other than himself? Does he have any understanding of the words - trust, caring, commitment?

Tom Petters has hurt and personally devastated so many, many lives - elderly people, nursing home residents, young families, retired people like myself . . .

How could Tom Petters so blatantly lie to so many, many people, and then when apprehended continue to lie and refuse to take responsibility for his actions by trying to play on the sympathy of the jury. Lying while facing people and under oath, even when some of his close associates confessed to their parts in the scandal is almost inconceivable. I repeat . . . Does this man not have a conscience? Does he not care for anyone else but only his own selfish, greedy motives?

. . .

With a crime of this magnitude of \$3.5 billion, and the personal devastation he has caused to so many, many people's lives, I believe that Tom Petters needs to be punished to the full extent of the law, especially when he takes no responsibility for his actions. Like Bernard Madoff, Tom Petters obviously does not care for anyone other than himself and his own extremely selfish, self-centered, greedy motives.

Our society, unfortunately, is becoming plagued with too many people like this, and like Bernard Madoff. Tom Petters needs to learn that there are severe consequences for his incomprehensible behavior.

. . .

May this case also serve as a warning to other would-be Ponzi con men, that they will be caught, and that they will not go unpunished but will pay heavily for their crimes to the full extent of the law.

The government respectfully seeks the sentence the defendant has brought upon himself, a life sentence, which in this case gives rise to the maximum statutory sentence permitted by the counts of conviction (335 years). See United States v. Madoff, Cr. No. 09-213 (DC) (S.D.N.Y. June 29, 2009) (district court determined that life guideline resulted in statutory maximum sentence of 150

years); United States v. Evans, 272 F.3d 1069, 1077-78 (8th Cir. 2002) (in Mann Act case, noting statutory maximum sentence of 85 years resulted from life guideline). A life sentence is reflective not simply of a guideline calculation but also, and more importantly, the magnitude of the offense, the impact on the victims and the community, and the defendant's refusal to accept responsibility for his conduct.

Seriousness of the Offense

The defendant argues that his offense is not serious and does not warrant a life sentence, which he incorrectly claims is reserved for those who take a life. Of course, life sentences are imposed on defendants who cause vast societal harm, such as drug kingpins. The defendant argues that fraudsters should be granted lenience regardless of the magnitude of the fraud. This proposition simply ignores the breadth and impact of the defendant's fraud in this case and his refusal to accept responsibility for his conduct.

The defendant argues that prison does not deter. Congress has rejected this claim. See 18 U.S.C. §3553(a)(2)(B) and (C). Courts have also rejected this claim, imposing significant sentences in significant financial fraud cases. See, e.g., United States v. Madoff, Cr. No. 09-213 (DC) (citing symbolic retribution for the staggering human toll of the fraud, general deterrence and betrayal of victims as basis for 150-year sentence); United States v. Lewis,

594 F.3d 1270, 1275-78 (10th Cir. 2010) (affirming 72-year old, defendant Schmidt's 330 year sentence for a \$43 million Ponzi scheme as "substantively reasonable" but reducing it to 310 years based on the counts of convictions that were affirmed); United States v. Robert Thompson, Cr. No. 07-109-RET-SCR (M.D. La. Feb. 17, 2010) (imposing 309-year sentence following conviction for identity theft and attempted fraud of \$20 million); United States v. Sholam Weiss (11th Cir. 2010) (pending appeal of 845-year sentence following conviction for fraud that resulted in collapse of insurance company); United States v. Richard Harkless, (C.D. Cal. 2009) (imposing 100-year sentence for \$35 million Ponzi scheme); People v. Hoover, 165 P.3d 784, 802-04 (Colo. 2006) (affirming 100-year sentence for investment fraud scheme and rejecting argument white-collar offenses merit lesser sentences).

Contrary to the defendant's view, courts have recognized that "white collar crimes such as wire fraud and tax fraud are 'serious,' and typically will warrant serious punishment." United States v. Levinson, 543 F.3d 190, 201 (3d Cir. 2008). In the Schmidt case, the district court noted the following:

These are serious offenses that, when considered with relevant conduct, have had adverse, long-lasting and life changing, ruinous consequences on hundreds of victims and the defendant. Innocent people have been traumatized. Lives have been ruined. Life savings of hard-working, decent men and women have been lost. The victims of this defendant's criminal conduct are numerous and include the elderly, the infirm, and even the disabled.

594 F.3d 1277.

Of course, compared to most economic crime cases, the gravity of this case is staggering. The impact of the fraud extended far beyond a simple financial loss (and financial ruin in many cases). Tom Petters betrayed friends, family, employees, business associates and numerous other people and organizations (including charitable organizations) who entrusted the defendant with so much. The defendant's conduct throughout the years of his fraud, his subversion of charitable organizations and real corporate assets to promote his fraud, and his unrepentant, calculated perjury at trial sets him apart, even in the context of the most significant financial fraud cases.

There are hundreds of victims. By way of example, one victim wrote the following:

We had our entire savings including the full equity of the mortgage on our house invested with Petters. This was 57 years of savings! I knew Tom Petters personally and he knew we had our entire life's savings invested with him. . . . I think it would be horrible if he received anything less than a life sentence. He needs to be held responsible for the thousands of lives he has destroyed. . . . Tom Petters also stole millions from Christian ministries, pastors and good non-profits. Many of these ministries give their lives to help the needy. This is as low as one can go.

Another of the defendant's victims addressed the impact of the fraud in this way:

I raised five children as a single mother, pay all the bills on time, and was looking forward to retirement and more time with my children and grandchildren. . . . I don't know when I'll be able to quit working now, I have no home to retire in (I currently rent a room in someone's home). . . . What have I lost? My ability to

choose, hope for my own little retirement home to putter around in, and the resources to see my out-of-state children and grandchildren.

Yet another describes his loss in this fashion:

I gave up the fun things in life, such as boats, snow machines, a bigger and nicer home and worked at the same job for 38 years to save for my retirement. I invested my money with Tom Petters and he has taken my dreams and retirement from me.

Defendant's claim that he has not committed one of the most serious offenses does not pass muster. Simply put, the defendant's fraud has devastated lives. The sentence imposed in this case should be sufficiently significant that it will provide fair warning to potential future fraudsters, young and old, that committing fraud is simply not worth the risk.

History and Characteristics of the Defendant

As demonstrated at trial, the defendant's life history as a businessman is a history of fraudulent conduct, culminating in one of the most substantial frauds in history.

The defendant now argues that he is not likely to re-offend. (Def.'s Position at 12 & 14 ("For Mr. Petters, perhaps unlike Mr. Gall, the deterrent value of the case has already reached fruition. Adverse media coverage has ruined his reputation and name.") How can he seriously contend he will not re-offend when he has not even admitted he has committed a crime? How can he argue that his reputation has been wrongly ruined by factual reporting regarding

the evidence of the defendant's conduct and statements? The argument is less than frivolous.

Purported "Cooperation"

The defendant even claims he has been cooperating with the authorities from the "get go" and should be rewarded for his efforts. The defendant miscasts the facts.

By November 2008, the government had already obtained overwhelming evidence against the defendant, including recordings, email, and cooperator testimony. Although not required to do so, prior to indictment, the government provided the defendant and his defense counsel with access to the evidence. The government hoped to avoid the unnecessary expense of a long investigation and trial, to start paying restitution to the victims as quickly as possible, and to avoid a substantial delay in the recovery efforts resulting from the fraud.

As noted in his pleading, on November 24, 2008, after seeing the evidence amassed against him, the defendant sent his attorney to negotiate a cooperation agreement with the government. The government declined to enter into a cooperation agreement with the defendant (his perjurious testimony validates that decision). Importantly, however, the government offered the defendant an opportunity: if the defendant agreed to plead guilty and accept responsibility for his conduct, the government promised it would inform the Court of any assistance the defendant provided to law

enforcement. The defendant rejected the offer, which the government thereafter confirmed in correspondence with defense counsel. Instead, the defendant determined to go to trial, deliberately gambling that he could overcome the overwhelming evidence and avoid his accountability for his crimes by deceiving the jury. Tom Petters did not care about the consequences of this decision on his victims or others.

Notably, the government made the same offer to Larry Reynolds. Reynolds quickly accepted the offer, pleaded guilty, and accepted his responsibility for the fraud.

The government also made the same offer to Greg Bell. Bell also quickly accepted the offer, pleaded guilty, and accepted his responsibility for his own fraud.

The defendant remains uniquely unrepentant.

The defendant now claims he is now working hard to assist the receiver recover assets. Even now, defendant misrepresents his cooperation with the receiver, advising the Court that he "provided a listing of his assets and assisted in the location of the same." (Def.'s Position at 19.) Defendant apparently forgets his effort to conceal assets from the receiver following his arrest. See Special Report of the Receiver dated Jan. 22, 2009, Civ. No. 08-5348 (reporting defendant diverted \$50,000 in corporate assets and concealed them with a family member while using the funds). The defendant touts his recent meetings with the receiver, but they

began only after the defendant was convicted, sixteen months after the receiver began his efforts to restore to victims the proceeds of the fraud. Once again, the defendant has demonstrated that in his world, his interests come first. He will offer assistance when it is of benefit to him.

Charitable Contributions

The defendant also points to his charitable donations as a reason for a more lenient sentence. First and foremost, the defendant deserves no credit for the charitable donations he made with other people's money. The defendant's charitable donations are traceable to the proceeds of his fraud. In fact, the defendant caused these charitable organizations harm through these donations of fraud proceeds as these same organizations are now required to return the money. Moreover, the defendant purposely used his persona as a charitable philanthropist to further the fraud. The receiver has reported that the foundation established by the defendant in the name of his murdered son - the organization on which the defendant purportedly spent most of his time and effort - was used largely to fund gala events featuring the defendant and to support the defendant's company, Petters Group Worldwide. The receiver's accountants have determined that approximately twenty percent of donations went to student scholarships. Indeed the evidence at trial proved the defendant used the charitable events to entice new investors. See Gov't Ex. 280 (Petters: "John would

want me to make deals and raise money for his foundation at the same time.")

The defendant's true civic character was also made plain by his tax returns, which revealed the defendant paid almost no taxes despite hundreds of millions of dollars in income and remarkably extravagant personal expenditures. He was recorded laughingly admitting that he cheated on his taxes.

Blaming the Victims

Throughout the trial, the defendant chose the unseemly trial tactic of blaming his victims, referring to them as "giant loan sharks" and other names. He continues that tack even now - notwithstanding the testimony of his friends and associates and people like Janet Leck and Ray Ross - arguing that he should not be punished for his fraud and his deceit, because the victims chose to invest based on his promises of substantial rates of returns. The evidence demonstrated that the investors, including unsophisticated "little old ladies," all took the defendant at his word. Now, he argues they deserved what they got. His argument makes plain that the defendant would repeat the offense if given the opportunity. He should be incarcerated to protect the public.

The defendant spent most of his career obtaining money from investor/victims through deceit and fabrications. The defendant took money from individuals without a second thought, saying whatever he needed. If there came a time when he was required to

repay an investor, for example the Breckners or GE Capital, the defendant simply worked his remarkable talent, calling new and old potential investors and tricking them into giving him more money. If Petters indeed had an "unbending faith in tomorrow," it was his faith that he was always capable of separating new victims from their money. The recordings adduced at trial reflected this mentality, the defendant's race to beat the clock and his confidence that he could do so. But for the government's investigation in September 2008, who can really say how many tens of millions of dollars more would have been lost.

The defendant now also blames the regulatory system for its failure to capture him sooner. (Def.'s Position at 19.) This is an odd argument. The defendant blames the government for not stopping his fraud earlier, but then asks this Court to release him sooner. According to the defendant's logic, were the Court to impose a sentence permitting the defendant to leave prison, any subsequent frauds perpetrated by the defendant would then be the government's fault, as it could have prevented them.

Long-Term Medical Prognosis

Finally, desperate for any argument, the defendant points to his medical condition - a pituitary tumor - as a ground for leniency. Notably, in October, the government requested access to the defendant's doctor. Through counsel, the defendant denied the government's request. Based on what is publicly known of his

condition, there is substantial question whether the defendant's pituitary tumor represents a significant medical problem. See Dr. Craig Bowron, "Tom Petters' pituitary-gland tumor: reason for leniency or just another fraud?", MinnPost.com (March 10, 2010) (noting that 10 percent of population have pituitary adenomas without symptoms).

More to the point, the defendant's medical condition is irrelevant to a determination of his proper sentence. The defendant, by his conduct, has earned for himself a life sentence, whatever that might be.

CONCLUSION

The defendant argues that he is "worthy for the nod of mercy." (Def.'s Position at 23.) The defendant has done nothing to merit this Court's mercy. A life sentence is just punishment for the defendant.

Dated: April 1, 2010

Respectfully Submitted,

B. TODD JONES
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CERTIFICATE OF SERVICE

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number: 08-364 (1) (RHK/AJB)

THOMAS JOSEPH PETTERS,

Defendant(s).

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

GOVERNMENT'S RESPONSE 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:

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