

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

|                                   |   |                                   |
|-----------------------------------|---|-----------------------------------|
| <b>UNITED STATES OF AMERICA</b>   | ) |                                   |
|                                   | ) | <b>No. 10 CR 196</b>              |
| <b>vs.</b>                        | ) |                                   |
|                                   | ) | <b>Judge Harry D. Leinenweber</b> |
| <b>RUDOLPH CARMEN FRATTO</b>      | ) |                                   |
| <b>WILLIAM ANTHONY DEGIRONEMO</b> | ) |                                   |

**DEFENDANT RUDOLPH FRATTO'S  
SENTENCING POSITION PAPER**

Now comes the defendant, Rudolph Fratto, by and through his attorney, Donald J. Angelini, Jr., and in the submission of his Sentencing Position Paper, states as follows:

**1. Introduction**

The defendant, Rudolph Fratto, is due to be sentenced before your honor on September 26, 2012 for violating 18 U.S.C. Sec. 1341 (Mail Fraud). The defendant entered into a written plea agreement, and the United States Probation Department conducted a pre-sentence investigation which resulted in the following Sentencing

Guideline Calculation:

|  |  |                  |
|--|--|------------------|
| Section 2B1.1(a)(1)                      | Base Offense Level.....                  | 7                |
| Section 2B1.(b)(1)(F)                    | Loss Amount (\$150,000 - \$200,000)..... | 10               |
| Section 3E1.1(a)                         | Acceptance of Responsibility.....        | -2               |
| Section 3E1.1.(b)                        | Timely notice of intent to plead.....    | -1               |
| Adjusted Offense Level.....              |  | 14               |
| Criminal History Category (2points)..... |  | II               |
| Sentencing Range.....                    |  | 18-24 months     |
| Fine (Section 5E1.2 (c)(3).....          |  | \$4,000-\$40,000 |

For reasons stated below, the defendant, Rudolph Fratto prays this court to depart downward from the above guideline range, or in the alternative to sentence the defendant at the low end of the applicable sentencing guideline range.

## **II. The Offense**

### *a. Rudolph Fratto's participation*

It was an ill-conceived plan from the beginning. Schemes that are formulated in "pay-back" or vendetta are usually ill conceived. According to the United States of America, William DeGironemo concocted such a plan to get back at Mark Hammerschmidt from *Hertz* by initially plotting with a Chicago attorney and a cooperating informant to arrange for DiGironemo's company to secure a contract from the *Greyhound Exposition Services* in 2004. This scheme was unsuccessful. The "behind the scenes" efforts of the informant to supply William DeGironemo's company with the contract did not go as planned, and *Hertz* was awarded the contract anyway.

According to the government, in late 2005 and into 2006, William DeGironemo concocted another scheme with the same purpose, and in this scheme he recruited Rudolph Fratto to meet that end. This scheme supplanted the attorney with Rudolph Fratto, and the purpose of the plan was to secure a contract by obtaining confidential bidding information about *Hertz*. William DeGironemo recruited Rudolph Fratto into the plan, because he knew that Rudolph Fratto and the confidential informant had known each other for almost twenty (20) years. Mr. Fratto could use this relationship to gain the necessary trust and information from the confidential informant. Again, the scheme did not work. It could not have worked. It could never have worked.

William DeGironemo and Rudolph Fratto had zero (0) experience in the equipment leasing business. They had no referrals from prior vendors, and most importantly, they had no equipment.

Rudolph Fratto conspired with William DeGrironemo to commit a fraud, and he has accepted his responsibility for this idiotic, no-chance-at success, illegal and in every way unethical plan to secure a bid from the *Greyhound Exposition Services*. And why? For money. This was a quick way to make money. Rudolph Fratto did not have to put up money to get involved in this scheme. He did not have to pay off any prior losses. He did not have to worry about equipment that was rotting in a junkyard. He was walking into the situation because he knew the "guy"; he knew the informant. Rudolph Fratto performed because he believed that he could make an easy buck by exploiting a relationship that went back many years. And he was wrong for doing so.

b. *Government's Version of the Offense*

On November 28, 2011, the United States of America presented its *Version of the Offense* to the United States Probation Department, and the defendant, Rudolph Fratto agrees that the government's version of the offense is accurate. The version describes that in or about July 2005, and continuing until in or about October 2008, the defendants devised and intended to devise a scheme to defraud Greyhound Exposition Services ("GES") in order to obtain money and property from GES by means of false and fraudulent pretenses, representations, and promises. (See Government's Version of the Offense attached to the PSR).

According to the United States of America, the defendants engaged in a scheme to obtain contracts to supply forklifts to *Greyhound Exposition Services* to be used to set up

expositions at McCormick Place, by obtaining and using confidential information, including non-public bid pricing information.

In exchange for access to the confidential bid pricing information, the defendants arranged with a *Greyhound Exposition Services* employee to pay him a portion of the profits which would result from payments from *Greyhound Exposition Services* for the performance of any contracts awarded to their company, *Midstates Equipment Rentals and Sales, Inc.* According to the United States of America's Version of the Offense, each of the defendants committed several overt acts in furtherance of the fraud conspiracy.

There has always been a disagreement between Mr. DeGironemo and the government concerning the legality of the efforts that Mr. DeGironemo took to secure the bids prior to involving Rudolph Fratto in the conspiracy in 2005. This defendant has no knowledge of the truth or nature of this conduct because he had no knowledge of the conduct prior to being recruited by William DeGironemo. There is no dispute, however, that William DeGironemo recruited Rudolph Fratto into the conspiracy. Rudolph Fratto knew the cooperating witness for many years, and William DeGironemo thought that this relationship could help secure the bids.

In a nutshell, William DeGironemo and Rudolph Fratto arranged to bribe an individual to push a bid to William DeGironemo's company. It is for the court to determine if either defendant was more culpable (or if it even matters), but this defendant cannot conceive that he was more culpable than the individual who recruited him into the scheme and who had attempted the same scheme two years prior to Rudolph Fratto's involvement. While the trier of fact is not bound to sentence both defendants in an

identical light (they are different people), the crime and the respective participation in that crime should hopefully still be the most critical factor at sentencing.

### **III. Intended Loss**

The defendant asserts that the base level calculation overstates the seriousness of the offense. The parties agree that no loss was suffered by the victim, *Greyhound Exposition Services*. The intended loss which was agreed upon between the parties (between \$150,000.00 and \$200,000.00), emanated from an estimation of the value to the victim of the confidential information that the *Greyhound Exposition Services* employee was going to exploit.

Primarily, this was a plan that had zero chance of success. Even if this *Greyhound Exposition Services* employee was not cooperating with the federal government, this conspiracy had absolutely no chance at succeeding. This defendant is not implying that the court should give him a break because he was absolutely delusional in thinking that the scheme would work. He does, however, assert that any victim impact in relation to this particular conduct was tenuous, at best, because there was never going to be (a) a losing bidder, (b) an unsuspecting purchaser or (c) an overpaying user of the services. For purposes of the United States Sentencing Guidelines, this crime is treated identically to a fraud where somebody actually lost two hundred thousand (\$200,000.00) dollars. For reasons stated, the defendant believes that the base level calculation overstates the seriousness of the crime.

Under USSG 3553(a)(4)(A), the United States Federal Sentencing Guidelines command that “a sentencing court shall consider the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable

category of defendant as set forth in the guidelines”. Under USSG 2B1.1 application note 19 (C) the guidelines even provide for a downward departure in this context if “the offense level determined under this guideline substantially overstates the seriousness of the offense”.

These unique circumstances clearly place the defendant among the least culpable defendants at this base offense level. The guidelines allow a scenario where this defendant could be treated more leniently than a more culpable defendant in the same base offense level category where the fraud actually resulted (or even could have resulted) in an actual loss. For reasons stated above, Rudolph Fratto should be sentenced at or below the low-end of his guideline range.

#### **IV. Criminal History**

The defendant, Rudolph Fratto, also asserts that his criminal history is also overstated by the criminal history calculation which places the defendant at a Level II.

On October 13, 2009, the defendant was indicted for a tax evasion charge, wherein he pleaded guilty and was sentenced by Judge Matthew Kennelly on December 27, 2010 to one (1) year and one (1) day imprisonment. Under United States Sentencing Guideline Sec. 4A1.1(b), Rudolph Fratto received two (2) criminal history points for said offense. While he was waiting to present himself to the United States Bureau of Prisons on the first case, Rudolph Fratto was indicted in the instant action. There is no question that all of the overt acts which lead to the defendant’s indictment in the instant action occurred well before he was indicted in the initial tax evasion case.

The United States Sentencing Guidelines provide for longer sentences for defendants with multiple convictions, for the purpose of discouraging a recidivist from

re-offending after he has already been prosecuted a first time. Rudolph Fratto is not this type of offender. In the tax evasion case, Rudolph Fratto was prosecuted as a defendant who had a criminal history of I. For purely recidivism purposes, this defendant is the same person who presented himself to Judge Kennelly for sentencing two (2) years ago. For reasons stated above, the defendant asserts that his criminal history calculation of II overstates his actual criminal history.

#### **V. The Appropriate Sentence**

Under 3553(a), the district court's mandate is to impose "a sentence sufficient, but not greater than necessary, to comply with the purposes" as laid out in that statute. To ascertain such a sentence, the courts are directed to consider certain relevant factors, including (1) the nature and circumstances of the offense, (2) the history and characteristics of the offender, (3) the need to provide the defendant with needed medical care in the most effective manner., (4) the need to provide just punishment for the offense, (5) the need to afford adequate deterrence, and (6) the need to protect the public from further crimes of the defendant. 18 USC 3553(a). The court must assess defendant's personal characteristics aside from the offense conduct, "... (1) The nature and circumstances of the offense and the history and characteristics of the defendant..."

18 U.S.C 3553 (a)(1)

Although it is necessary in every case for the Court to provide the appropriate message to the public at large, it is also important to recognize that the Court is sentencing the entire person. Mr. Fratto's advanced age, health condition, and family situation all mitigate strongly in favor of the Court imposing a sentence that, while still recognizing the

seriousness of the overall offense, will appropriately account for those other important factors.

*a. The defendant's family circumstances warrant a downward departure*

Maybe in an effort to distinguish William DeGironemo from the defendant who stands before you, counsel for the co-defendant has continuously painted Rudolph Fratto as the "bad apple" in the conspiracy. Rudolph Fratto is not a "bad apple". In fact, for the first sixty-five (65) years of his life, Rudolph Fratto had never been arrested for any crime. Rudolph Fratto has also always maintained full-time legitimate employment and he has always worked towards providing for his family.

Rudolph Fratto is a sixty-eight (68) years old man who suffers from severe migraine headaches. The defendant's wife, Kim also suffers from serious medical conditions,<sup>1</sup> and she depends upon the defendant for her care and support. Kim Fratto has a variety of health problems, including but not limited to the fact that she is ninety (90%) percent blind in her left eye and is losing the vision in her good eye. She often requires the assistance of a cane or walker as a result of an injury that she suffered several years ago.

Moreover, the defendant, Rudolph Fratto, through enduring two (2) federal criminal cases in the span of three (3) years, is financially destitute.<sup>2</sup> The defendant has to stay in the workforce for his family to survive this ordeal. The defendant has two younger children (sons) who depend upon him for financial support. His oldest son,

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<sup>1</sup> The defendant and his wife's medical conditions are more fully set forth in the PSR and their letter of character.

<sup>2</sup> Since the Pre-Sentence Report was filed on February 7, 2012, Rudolph Fratto's financial condition has worsened. He has been unable to make a mortgage payment for the last ten (10) months, and one of the lenders has filed a foreclosure action. The Frattos listed their home for sale over five (500) days ago, and they have been unable to sell the home to pay off some of their mounting debt. The value of the home continues to decrease while it remains for sale.

Rudy, is twenty-two (22) years old, and he is a student at the University of Illinois in Champaign-Urbana, Illinois. His youngest son, Sam, is eighteen (18) years old and he is also in college. As the family's main earner, Rudolph Fratto must keep himself in the workforce (which he has been able to do) at the advancing age of sixty-eight (68) years old.

Beyond family, Rudolph Fratto also has a great sense of community. Some of the letters which were submitted on the defendant's behalf come from the community in which his two (2) sons, Rudy and Sam, currently thrive. The defendant raised two (2) sons with his second wife, Kim, later in his life. The greatest gift that the defendant (an uneducated man) gave his sons and continues to give his sons is the gift of education. Fenwick College Preparatory High School and the University of Illinois are two of the institutions that the defendant has provided for in educating his sons at great expense. And unfortunately, he is not done at sixty-eight (68) years old.

The defendant is praying this court to allow him to work, to allow him to support his children and his family. The defendant has acknowledged his full and complete responsibility for his conduct. He is remorseful and deeply regrets his past mistakes. The defendant has not recidivated since he was first prosecuted for tax evasion. He participated in GED (High School General Equivalency Degree) classes while he was serving the sentence of imprisonment imposed upon his conviction for tax evasion in order to make an uneducated man, more educated. Rudolph Fratto is a good man; he is not the bad apple in this conspiracy.

## **VI. Conclusion**

The defendant asserts that (a) the base level offense was overstated in light of the seriousness of the offense, (b) the defendant's criminal history was also overstated, and (c) the defendant's advancing age and extreme family circumstances are sufficiently severe to warrant this court to consider a sentence for the defendant which does not include a period of incarceration.

While the United States Probation Department did not view either the nature of the offense or the character of the defendant as determining factors that would warrant departure, he did fashion a scenario wherein the defendant could be sentenced to a period of home confinement if the court deemed that sentence appropriate. (See Pre-Sentence Report Page 14, paragraphs 316-334). For reasons stated above, the defendant prays this court to consider a sentence for this defendant which does not include a period of incarceration.

Date: September 19, 2012

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 19, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent the notification of such filing to the following:

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All Defense Counsel

DATE: September 19, 2012

Respectfully submitted,

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