

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

JOHN A. MATASSA, JR.

No. 17 CR 373

Hon. Matthew F. Kennelly

GOVERNMENT'S SENTENCING MEMORANDUM

The UNITED STATES OF AMERICA, by its attorney, JOHN R. LAUSCH, JR., United States Attorney for the Northern District of Illinois, respectfully submits its position paper as to the factors in sentencing and asks this Court to sentence defendant JOHN A. MATASSA, JR. to a term of imprisonment within the Guideline range of 27 to 33 months. As discussed below, such a term would be sufficient, but not greater than necessary, to satisfy the principles set forth in the Sentencing Guidelines and 18 U.S.C. § 3553(a).

Procedural Background

On May 26, 2017, defendant JOHN A. MATASSA, JR. ("MATASSA" or "defendant") was charged in a ten-count indictment with wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts One and Two), theft of government funds, in violation of Title 18, United States Code, Section 641 (Counts Three and Four), embezzlement of union funds, in violation of Title 29, United States Code, Section 501(c) (Counts Five through Eight), and false entries in records that were

required to be kept by the Department of Labor (Counts Nine and Ten). R. 1. On February 26, 2019, defendant pleaded guilty to Count Six of the indictment. R. 61.

Offense Conduct¹

On February 6, 2013, defendant, the Secretary-Treasurer of the Independent Union of Amalgamated Workers Local 711 (hereinafter, the “Union” or “Local 711”), added his wife to the payroll of the Union without the knowledge or approval of the Executive Board or the President of the Union.² In doing so, defendant divided his existing salary and began issuing checks to his wife that only he signed. PSR ¶ 13.³ From February 2013 through December 2016, defendant’s wife was the highest paid employee by Local 711, yet, at that point and for the entirety of the nearly four-year scheme, defendant’s wife was not working for the Union. Instead, defendant continued to do the minimal work required of him as Local 711’s Secretary-Treasurer. As defendant admitted to the Union’s accountant and his personal tax preparer, the purpose of adding his wife to the payroll and dividing his salary was to reduce his reported income in order to qualify for Old-Age Insurance benefits with the Social

¹ The information in this section is derived from defendant’s plea agreement and reports and other materials provided to Probation in connection with the preparation of the PSR. At sentencing, a district court may rely upon information contained in a PSR as long as the information is well supported and appears reliable. *United States v. Salinas*, 365 F.3d 582, 587 (7th Cir. 2004).

² Per the Union’s Constitution and Bylaws, the President of Local 711 had the authority to hire or terminate employees and set wages. See the Government’s Version of the Offense Exhibit 1 at 7, PSR at Pg. 40.

³ Per the Union’s Constitution and Bylaws, all checks were to be signed by the President and Secretary-Treasurer. See the Government’s Version of the Offense, Exhibit 1 at 7, PSR at Pg. 40.

Security Administration (the “SSA”).⁴

On April 30, 2013, defendant applied for Old-Age Insurance benefits with the SSA. By that point, defendant was not at full retirement age and the SSA could reduce or withhold his benefits depending on his reported income. In his application for benefits, defendant reported his income as the exact minimum threshold that would enable him to avoid having any benefits reduced. PSR ¶¶ 15-16. Based on that representation, the SSA began paying defendant Old-Age Insurance benefits in around August 2013. As part of defendant’s scheme to obtain SSA benefits, defendant caused the Union’s accountant to submit Forms W-2 and W-3 wage and income statements from the Union for 2013 through 2016 that reflected his wife as the highest paid employee of Local 711. Defendant continued to receive Old-Age Insurance benefits through December 2016 because of the fraud.⁵

During the time of the scheme, on two occasions, defendant unilaterally increased his wife’s salary without the knowledge or approval of the Executive Board or the President of the Union. PSR ¶ 13. Specifically, on July 2, 2014 and February 4, 2015, defendant gave his wife raises and continued to sign all of the checks reflecting the new salary. Defendant gave his wife these raises despite her failure to perform work for the Union. Mindful of the purpose of the scheme and the risk of

⁴ See Exhibit 15.1 to the Government’s Version of the Offense at PSR Pgs. 331-32.

⁵ Defendant reached full retirement age in 2017 and began to receive his Old-Age Insurance benefits without regard to his reported income. However, after he was indicted in the present matter, the SSA began to withhold his benefits to account for the ill-gotten payments.

reducing or losing his SSA benefits, defendant did not increase his own salary.

In order to make it appear as if the Executive Board had authorized his wife's hiring and salary, defendant drafted meeting minutes reflecting discussion of the issue, motions made by other Board members relating to her employment, and Board approval of the measure. These minutes were false. The Executive Board members did not know that defendant's wife was a Union employee, let alone the highest paid employee of the Union, nor did they approve the arrangement during the time of the scheme.⁶

Guidelines Calculation

Offense Level Calculation

The government agrees with the offense level calculations set forth in the PSR, with the exception of credit for acceptance of responsibility. PSR ¶¶ 22-40. Specifically, the government agrees that, pursuant to Guideline § 2B1.1(a)(2), the base offense level is 6. PSR ¶ 26. The government also agrees that there is an 8-level enhancement, pursuant to Guideline § 2B1.1(b)(1)(E), because the loss to the victims, both Local 711 and the SSA, was approximately \$108,621.60, which is more than \$95,000, but less than \$150,000. PSR ¶ 27.

The government also agrees with Probation's finding that the offense involved sophisticated means and that defendant intentionally engaged in or caused the

⁶ See Exhibits 2-8 to the Government's Version of the Offense at PSR Pgs. 63-64, 81-83, 107-09, 113-14, 155-56, 160, 193-196, 226-228, 253.

conduct constituting the sophisticated means, pursuant to Guideline § 2B1.1(b)(10)(C). PSR ¶¶ 28-32.

Under application note 9(B) to Guideline § 2B1.1, “sophisticated means’ means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense.” While application note 9(B) to Guideline § 2B1.1 provides a non-exhaustive list of the types of conduct that constitutes sophisticated means – the hiding of assets or transactions, the use of fictitious entities or corporate shells, or the use of offshore accounts – “not all of [defendant’s] actions needed to be elaborate for the adjustment to apply; it is enough that, as the district court found, [defendant’s] actions when viewed as a whole constituted a sophisticated scheme.” *United States v. Ghaddar*, 678 F.3d 600, 602 (7th Cir. 2012). “Even if any single part of the offense was not particularly complicated, ‘repetitive and coordinated conduct can amount to a sophisticated scheme.’” *United States v. Sethi*, 702 F.3d 1076, 1079 (8th Cir. 2013) (quoting *United States v. Fiorito*, 640 F.3d 338, 351 (8th Cir. 2011)). In part, the enhancement is in place to deter “elaborate efforts to avoid detection,” *United States v. Landwer*, 640 F.3d 769, 772 (7th Cir. 2011), including the use of fraudulent documents, *United States v. Anobah*, 734 F.3d 733, 739 (7th Cir. 2013).

Here, as the Probation department observed, defendant’s fraud on the Union was merely a precursor to a fraud on the SSA. PSR ¶ 31. Defendant added his wife to the payroll of Local 711 and shifted sufficient income in order to maximize his SSA

benefits. Defendant then completed an application for SSA benefits, which reflected his phony reduced salary. Then, defendant caused his accounting firm to create and submit false or misleading tax forms, Forms W-2 and W-3 wage and income statements, to the SSA and IRS. The documentation supported the fiction that defendant's wife was employed by and working for Local 711 and the SSA made benefits payments to defendant based on those forms. To then prevent detection of the scheme, by either the Union or investigating agencies, defendant prepared fake meeting minutes approving of the arrangement. The scheme went on unabated for years – from 2013 through 2016 – with the SSA paying defendant benefits to which he was not entitled and the Executive Board completely unaware that the Union was paying defendant's spouse or that defendant's spouse was the highest paid employee of the Union.

Accordingly, it is the government's position that the offense involved sophisticated means pursuant to Guideline § 2B1.1(b)(10)(C).

The government agrees with Probation that defendant abused a position of trust as the Secretary-Treasurer of Local 711 and a fiduciary,⁷ and that a 2-level enhancement is warranted pursuant to Guideline § 3B1.3. PSR ¶ 34.

⁷ Pursuant to Title 29, United States Code, Section 501(a), “[t]he officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group.” Defendant, as Secretary-Treasurer was an officer of a labor organization, Local 711. In the plea agreement, defendant does not dispute the application of this enhancement. *See* Plea Agreement, R. 62 ¶ 9(b)(iv).

With regard to acceptance of responsibility credit under Guideline § 3E1.1(a), the government reserves the right to take whatever position it deems appropriate at the time of sentencing. Notably, at this point, the plea agreement does not reflect defendant's acceptance of responsibility for the full extent of the scheme, including when and how it started (without the Board's authorization from February 2013) and the length of the scheme (running through the end of 2016), and the falsification of meeting minutes reflecting approval of the arrangement with defendant's wife and a salary and expenses for the Secretary-Treasurer. Should defendant acknowledge his culpability for these actions before or at sentencing, the government agrees that defendant should receive credit for acceptance of responsibility for his conduct.

Criminal History Category Calculation

The government agrees with the Probation Office's finding that defendant has 0 criminal history point. PSR ¶ 47. With 0 criminal history points, defendant is a criminal history category of I. *Id.*

Advisory Guideline Range

Based upon a total offense level of 18 and a criminal history category of I, defendant's Guideline range is 27 to 33 months' imprisonment.⁸

⁸ With credit for acceptance of responsibility under Guideline § 3E1.1(a), defendant's Guideline range would be 21 to 27 months.

The Factors Set Forth in 18 U.S.C. § 3553(a)

Section 3553(a) requires the Court to impose a sentence that is “sufficient, but not greater than necessary,” to comply with the purposes of sentencing.⁹ In order to determine the sentence to impose, the court must consider the statutory factors listed in § 3553(a)(1)-(7). One of those factors is the advisory range set by the Sentencing Guidelines, and another is the Commission’s policy statements. § 3553(a)(4), (a)(5). Although the Sentencing Guidelines are advisory only, “[a]s a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” *Gall v. United States*, 552 U.S. 38, 49 (2007). For the reasons set forth below, consideration of the § 3553(a) factors reflects that a sentence within the Guideline range is warranted and necessary.

The Nature and Circumstances of the Offense

The Union generated its revenue from the dues of hard-working Veterans Park District employees, plastics and rubber manufacturers working in warehouses and on assembly lines, food delivery people, roofers, and construction workers. These employees had \$40 of their salaries sent straight to Local 711 every month. Defendant, as an officer of the Union, was a fiduciary, who was legally obligated to

⁹ Those purposes are the need for the sentence “(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.” 18 U.S.C. § 3553(a)(2).

act in the best interests of the organization and its dues-paying members.

However, in reality, defendant performed minimal work for the Union. Defendant assisted in several hours of collective bargaining negotiations every three to five years, depending on the company, which sometimes meant only updating dates in the documents.¹⁰ Between 2013 and the end of 2016, Local 711 union members filed approximately twenty-two grievances, none of which resulted in hearings or arbitration and which were usually resolved by a phone call.¹¹

For nearly four years, defendant defrauded the Union, spent most of the Union's revenue on salary for himself and his wife, and spent thousands of dollars of the Union's money on restaurant bills, food purchases, and gas and maintenance for his car. PSR ¶ 18. Often times, defendant listed people on receipts for these meals who were not present. *Id.* These personal expenditures served absolutely no benefit to the Union.

Defendant then created meeting minutes—minutes purporting to authorizing the arrangement with his wife, minutes referencing purported trustees who never attended Executive Board meetings, and minutes purporting to authorize expenses for the Secretary-Treasurer. These meeting minutes were false and defendant created them to cover up his fraud and justify his profligate spending of Union money.

In addition, defendant concocted the scheme adding his wife to the Union

¹⁰ See Exhibits 18-23 to the Government's Version of the Offense at PSR Pgs. 362-384.

¹¹ See Exhibit 17 to the Government's Version of the Offense at PSR Pgs. 359-361.

payroll as the highest paid employee with the express purpose of defrauding another entity, the SSA. The SSA makes its payments to beneficiaries from the reserves a trust fund funded from, among other things, tax revenues. These reserves are limited and defendant fraudulently drew up on them out of his own personal greed.

Based on the nature and circumstances of the offense, including the length and breadth of the fraud, the government respectfully submits that a sentence within the Guideline range is appropriate.

History and Characteristics of the Defendant

Defendant is a Chicago native who had a seemingly normal upbringing. PSR ¶¶ 53-54, 57. Currently, defendant suffers from a number of health conditions, including coronary artery disease, hypertension, diabetes, sleep apnea, and chronic obstructive pulmonary disease. PSR ¶¶ 70-75. According to defendant's motion, (R. 65), defendant recently encountered an issue during a stress test, which relates to one of his heart valves, which may require surgical treatment.

While some of these conditions are not uncommon for someone of defendant's age and treatment will continue during any period of incarceration, the government acknowledges that it would be appropriate for the Court to consider defendant's various medical conditions when determining defendant's sentence.

The Seriousness of the Offense, and the Need to Promote Respect for the Law, Provide Just Punishment, Afford Adequate Deterrence, and Protect the Public

Fraud and embezzlement, in any context, are incredibly serious offenses. Defendant took and used money derived from the hard work of honest individuals

who trusted him to act in their best interests. Defendant failed them. Union officers who embezzle from the union steal from the very people they are meant to protect. Defendant's use of the Union to defraud the SSA is also a serious offense. The SSA's funds are limited and defendant's abuse of his position at the Union to trick the SSA into providing him with funds to which he was not entitled depleted the SSA's trust fund.

Accordingly, a sentence within the Guideline range would have the benefit of acknowledging the seriousness of defendant's conduct, promoting respect for the law, providing just punishment to defendant for his actions, deterring defendant from similar criminal conduct, and protecting the public from defendant.

Restitution

Pursuant to Paragraph 13 of the plea agreement and Title 18, United States Code, Section 3663A, defendant agreed to pay restitution to the victims in an amount totaling \$66,253.10, which was the amount of restitution owed at the time of his change of plea. Since that time, the SSA has continued to withhold benefits payments to defendant and will continue to do so until the amount owed. Defendant has also agreed to make restitution to the Union in the amount of \$33,513.

Supervised Release

Consistent with the Seventh Circuit's guidance in *United States v. Thompson*, 777 F.3d 368 (7th Cir. 2015), the government agrees with Probation's recommendation for the imposition of a term of supervised release of two years. In

order to promote the sentencing objectives of deterring recidivism, protecting the public, and assisting in defendant's rehabilitation and reintegration into society, the government supports Probation's recommendation that the term of supervised release include the conditions set forth below.

a. Mandatory Conditions of Supervised Release

The government agrees that the following mandatory conditions of supervised release proposed by the Probation Department should be imposed because they are required by 18 U.S.C. § 3583(a), and recommended by Guideline § 5D1.3(a):

- defendant shall not commit another federal, state, or local crime during the term of supervised release (Mandatory Condition 1);
- defendant shall not unlawfully possess a controlled substance (Mandatory Condition 2); and
- defendant shall cooperate in the collection of a DNA sample if the collection of such a sample is required by law (Mandatory Condition 5).

b. Discretionary Conditions of Supervised Release

The government agrees that the following discretionary conditions of supervised release proposed by the Probation Department should be imposed, as such discretionary conditions will serve to facilitate supervision by the Probation officer, support defendant's rehabilitation and reintegration into society, and serve to promote deterrence and protect the public, and are thus appropriate in this case.

Such discretionary conditions are:

- defendant shall refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession

only to a stated degree or under stated circumstances, specifically, any position involving the authority to issue funds on behalf of an organization for which he has no ownership interest (Discretionary Condition 5);

- defendant shall refrain from knowingly meeting or communicating with any person whom he knows to be engaged, or is planning to be engaged, in criminal activity (Discretionary Condition 6);
- defendant shall refrain from excessive use of alcohol or any use of a narcotic drug or other controlled substance, as defined in § 102 of the Controlled Substances Act (21 U.S.C. § 802), without a prescription by a licensed medical practitioner (Discretionary Condition 7);
- defendant shall refrain from possession of a firearm, destructive device, or other dangerous weapon (Discretionary Condition 8);
- defendant shall refrain from knowingly leaving the federal judicial district where he is being supervised, unless granted permission to leave by the Court or a probation officer (Discretionary Condition 14);
- defendant shall report to a probation officer as directed by the Court or a probation officer (Discretionary Condition 15);
- defendant shall permit a probation officer to visit him at any reasonable time at home, at work, at school, at a community service location, or at any other reasonable location specified by a probation officer and permit confiscation of any contraband observed in plain view of the probation officer (Discretionary Condition 16);
- defendant shall notify a probation officer promptly, within 72 hours, of any change in residence, employer, or workplace, and absent constitutional or other legal privilege, answer inquiries by a probation officer (Discretionary Condition 17);
- defendant shall notify a probation officer promptly, within 72 hours, if arrested or questioned by a law enforcement officer (Discretionary Condition 18); and
- defendant shall satisfy other special conditions (Discretionary Condition 22).

c. Special Conditions of Supervised Release

The government agrees with the special conditions of supervised release

proposed by the Probation Department in the PSR, which further support defendant's reintegration into society. Specifically:

- defendant shall not incur new credit charges or open additional lines of credit without the approval of a probation officer unless he is in compliance with the financial obligations imposed by this judgment (Special Condition 5);
- defendant shall provide a probation officer with access to any requested financial information necessary to monitor compliance with conditions of supervised release (Special Condition 6);
- defendant shall notify the court of any material change in his economic circumstances that might affect his ability to pay restitution, fines, or special assessments (Special Condition 7);
- defendant shall pay any financial penalty that imposed by this judgment that remains unpaid at the commencement of the term of supervised release and a monthly payment schedule shall be in an amount that is at least 10% of defendant's monthly income, defined as income net of reasonable expenses for basic necessities such as food, shelter, utilities, insurance, and employment-related expenses (Special Condition 10); and
- defendant shall not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court (Special Condition 11).

Conclusion

For the foregoing reasons, the United States requests that the Court sentence defendant JOHN A. MATASSA, JR. as stated above.

Respectfully submitted,

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Dated: May 8, 2019

CERTIFICATE OF SERVICE

I, Richard Michael Rothblatt, hereby certify that on May 8, 2019, I electronically filed the foregoing **GOVERNMENT'S SENTENCING MEMORANDUM** with the Clerk of the Court for the United States District Court for the Northern District of Illinois by using the Case Management/Electronic Case Files (CM/ECF) system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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