U.S. Department of Justice

United States Attorney
Eastern District of New York

RCH/FJN/MAM
F. #2016R01214

271 Cadman Plaza East
Brooklyn, New York 11201

August 16, 2023

By ECF

The Honorable Diane Gujarati
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Hanan Ofer
Criminal Docket. No. 21-174 (DG)

Dear Judge Gujarati:

The government respectfully submits this letter in advance of the sentencing proceeding for defendant Hanan Ofer in the above-captioned case, which is currently scheduled for August 30, 2023 at 10:00 a.m. On September 13, 2022, the defendant pled guilty to one count of failure to maintain an effective anti-money laundering ("AML") program, in violation of Title 31, United States Code, Sections 5318, 5322(a) and 5322(b). See Pre-Sentence Investigation Report ("PSR") ¶ 1. Specifically, the superseding information charged that between November 2014 and June 2016, the defendant and others willfully failed to establish, develop, implement and maintain an effective AML program at the New York State Employees Federal Credit Union – Credit Union Service Organization LLC ("NYSEFCU-CUSO"), as required by law. See Dkt. No. 58. For the reasons set forth below, the government respectfully submits that a sentence of probation of two years and a fine of $9,500, which is within the Guidelines range of zero to six months, is appropriate in this case.

I. Facts

To guard against money laundering through financial institutions, the Bank Secrecy Act ("BSA") and its implementing regulations require domestic financial institutions to establish AML programs, including: the development of internal policies, procedures, and controls; the designation of a compliance officer; an ongoing training program; and an independent audit function to test programs. PSR ¶ 4. The BSA also requires such financial institutions to file a report with the Financial Crimes Enforcement Network ("FinCEN") of each deposit, withdrawal, exchange of currency or other payment or transfer by, through or to such financial institutions that involve a transaction in currency of more than $10,000, which are also known as Currency Transaction Reports ("CTRs"). Id. ¶ 7. Financial institutions and their

directors, officers, employees, and agents are also required under the BSA to report suspicious transactions through the filing of Suspicious Activity Reports ("SARs") with FinCEN. Id.

In particular, financial institutions that are money services businesses are required, under the BSA, to develop, implement and maintain an effective AML program, one reasonably designed to prevent that money services business from being used to facilitate money laundering and one commensurate with the risks posed by the financial services provided by the money services business. PSR ¶ 6. At a minimum, the compliance program requirements must include: (a) policies, procedures, and internal controls reasonably designed to assure compliance with the BSA, including verifying customer identification, filing reports, creating and retaining records and responding to law enforcement requests; (b) a designated person to assure day-to-day compliance with the AML program and the BSA, whose responsibilities include assuring that (i) the money services business properly files reports, and creates and retains records in accordance with the applicable requirements of the BSA; (ii) the compliance program is updated as necessary to reflect current requirements of the BSA and related guidance issued by the U.S. Department of the Treasury; and (iii) the money services business provides appropriate training and education; (c) provides education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under the BSA; and (d) provides for independent review to monitor and maintain an adequate program. Id.

From November 2014 to June 2016, Ofer owned 25% of the NYSEFCU-CUSO, a registered money services business affiliated with the New York State Employees Federal Credit Union ("NYSEFCU"), a federal credit union regulated by the National Credit Union Administration.[1] PSR ¶¶ 9, 10, 15. During this same time period, pursuant to an agreement with a Mexican financial institution, the NYSEFCU-CUSO received over $100 million in bulk cash deposits of U.S. currency from the Mexican bank into an account at the Federal Reserve maintained by the NYSEFCU and then wired those funds to the Mexican bank's accounts at a U.S. financial institution. Id. ¶ 16.

In addition, from October 2015 to June 2016, NYSEFCU-CUSO, pursuant to an agreement with another money transmitter, received more than $224 million in bulk cash deposits of U.S. currency from that money transmitter's various branches and deposited them into the NYSEFCU's account at the Federal Reserve, after which it wired the money to the money transmitter's account at another U.S. financial institution. PSR ¶ 19.

By transferring large volumes of cash from jurisdictions that present a high-risk for money laundering, the NYSEFCU-CUSO was engaged in high-risk financial transactions. PSR ¶ 20. The defendant and defendant Asre, as co-owners of the NYSEFCU-CUSO, willfully failed to ensure that the NYSEFCU-CUSO had an AML program commensurate with the significant risks associated with the financial services it was providing to the Mexican bank, despite having training and experience in the requirements of AML programs and despite co-defendant Asre being designated as its compliance officer. Id. ¶ 21. They failed to develop,

[1] Co-defendant Gyanendra Asre also owned 25% of the NYSEFCU-CUSO and was its compliance officer. ECF No. 1. ¶ 17.

implement and maintain an effective AML program that was reasonably designed to prevent the NYSEFCU-CUSO from being used to facilitate money laundering.[2] Id.

II. Guidelines Calculation

The government respectfully submits that the Guidelines calculation of the total offense level as calculated in the plea agreement is correct, set forth below:

Base Offense Level (§ 2S1.3(a)(1))	8
Plus: Pattern of Unlawful Activity (§ 2S1.3(b)(2))	+2
Less: Minor Participant (§ 3B1.2(b))	-2
Less: Acceptance of Responsibility (§ 3E1.1(a))	-2
Total:	6

Based upon a Criminal History Category of I, a total adjusted offense level of 6 results in an advisory Guidelines range of zero to six months of imprisonment.

This calculation differs from the Guidelines calculation set forth in the PSR in two respects. First, this calculation applies a two-level reduction for the defendant's role as a minor participant pursuant to Section 3B1.2(b) of the Guidelines. Second, this calculation does not apply a two-point enhancement for use of a special skill pursuant to Section 3B1.3 of the Guidelines. See PSR ¶ 30. Both the government and defense counsel filed objections to the PSR, including these objections to the Guidelines calculation in the PSR, with the Probation Department. Although the assigned Probation Officer advised the parties that an Addendum to the PSR would be forthcoming in response to these and other objections, to date no Addendum has been issued.

a. Minor Participant Reduction

The government respectfully submits that the two-level reduction under Section 3B1.2(b) of the Guidelines is appropriate here. A two-level decrease in the Guidelines is warranted when a defendant was a minor participant in any criminal activity. U.S.S.G. § 3B1.2(b). The Guidelines instruct that a minor participant adjustment applies to a defendant who is "less culpable than most other participants in the criminal activity, but whose role could not be described as minimal." U.S.S.G. § 3B1.2, application note 5.

Eligibility for an adjustment under this provision depends on "the defendant's relative culpability [with] reference to his or her co-participants in the case at hand." United States v. Wynn, 37 F.4th 63, 67 (2d Cir. 2022) (quoting United States v. Alston, 899 F.3d 135,

[2] As part of his plea, the defendant admitted that he was a minority owner of the NYSEFCU-CUSO, that he knew the company was required to maintain an effective AML program and that failure to maintain such a program was a crime, and that he knew he should have but did not take sufficient steps to make sure the person responsible for developing the AML program implemented an effective program. See ECF No. 64 (Transcript of Plea Hearing).

149 (2d Cir. 2018)). Even a defendant who performs an "essential or indispensable role in the criminal activity" may receive an adjustment. Id. at 68 (citing U.S.S.G. § 3B1.2(b) application note 3(C)). Applying this in the context of RICO violations, the Second Circuit has held that a determination must be made on the basis of the defendant's role in the overall RICO enterprise and the defendant's long-time participation in such a scheme is not alone sufficient to deny a mitigating role adjustment. Id. at 68-69. Instead the Guidelines instruct that the mitigating role adjustment is heavily dependent on the factors of the particular case and the court should consider various factors including the degree to which the defendant understood the scope and structure of the criminal activity, participated in the planning of the criminal activity, exercised decision-making authority, and stood to benefit from the crime, as well as the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts. In Wynn, despite the defendant's long-time participation in the scheme, the court found that the denial of the mitigating role adjustment was inappropriate given the nature and extent of the defendant's participation in the scheme and the lack of evidence that suggested the defendant planned or exercised decision-making authority over the scheme. Id. at 69.

Here, the PSR accurately points out that this defendant was a part owner of the NYSEFCU-CUSO but was not the compliance officer. PSR ¶ 22. The crime at issue was the failure to maintain an effective AML program at the NYSEFCU-CUSO. As the PSR acknowledges, this defendant had no formal role as the compliance officer at the NYSEFCU-CUSO. Instead, his co-defendant was the compliance officer and was responsible for implementing the NYSEFCU-CUSO's AML program. As a minority owner of the NYESFCU-CUSO, this defendant exercised some degree of decision-making authority, which he acknowledged when he accepted his plea. Given his ownership role in the company, the defendant's participation in the failure to maintain an AML program cannot be described as minimal. However, in assessing the defendant's relative culpability with reference to his co-defendant, who held the formal role of overseeing and implementing the AML program, a minor role adjust of two-levels is appropriate here.

Furthermore, in assessing a two-point adjustment for special skill and not applying the two-point downward adjustment for minor role, the PSR conflates the activities and AML responsibilities of the NYSEFCU-CUSO, the NYSEFCU, and DDH Group. The NYSEFCU-CUSO, the NYSEFCU, and DDH Group are all separate financial institutions that are each required to have separate AML programs pursuant to the BSA. 31 U.S.C. § 5318(h). This defendant pleaded guilty only to the failure to maintain an effective AML program for the NYSEFCU-CUSO. Any adjustment for the role in the offense should be determined "within the context of the charge to which [the defendant] pleaded guilty" and with respect to the defendant's "own particular" conduct. See United States v. Gomez, 31 F.3d 28, 30 (2d Cir. 1994) (rejecting a downward adjustment related to a broader scheme and evaluating defendant's role in the charge to which defendant pleaded guilty). The PSR suggests that a minor role reduction is not warranted because the defendant served as president of DDH Group and failed to file any SARS. However, the defendant was not charged with failure to file SARS, a count that involved the NYSEFCU and DDH Group, and did not plead guilty to any crimes involving DDH Group. The role adjustment should be considered in the context of the crime to which the defendant pleaded guilty, failure to maintain an effective AML program at the NYSEFCU-CUSO.

b. Use of Special Skill Enhancement

Similarly, the government submits that a use of special skill adjustment is not warranted here. While this defendant received AML training, he did not possess or represent to possess any "special skill" related to AML or use such a skill in a manner that significantly facilitated the commission of the offense. A use of special skill adjustment is warranted if the defendant used a special skill in a manner that significantly facilitated the commission or concealment of the offense. U.S.S.G. § 3B1.3. "Special skill" refers to a "skill not possessed by members of the general public and usually requiring substantial education, training, or licensing. Examples would include pilots, lawyers, doctors, accountants, chemists, and demolitions experts." U.S.S.G. § 3B1.3, note 4.

The PSR acknowledges that defendant Asre was the compliance officer for the NYSEFCU-CUSO and that this defendant, Hanan Ofer, had "no formal role as the compliance officer." PSR ¶ 22. But the PSR applies an adjustment for use of a special skill pursuant to U.S.S.G. § 3B1.2(b) on the theory that both Asre and Ofer represented to the NYSEFCU that they and the NYSEFCU-CUSO would conduct appropriate AML oversight as required by the BSA based on their experience in international banking and training in AML compliance and procedures. Id. The PSR, however, did not identify what special skill defendant Ofer possessed or used in the commission of the crime, beyond noting that he was trained in AML. The defendant's AML training is not unique, but rather is the type of training that every bank employee receives in the course of their employment and that the defendant received while he was working in the banknote business at a domestic bank. In contrast, defendant Asre, who served as the compliance officer for both the NYSEFCU-CUSO and the NYSEFCU, had specialized compliance training as a Certified Anti-Money Laundering Specialist through the Association of Certified Anti-Money Laundering Specialists ("ACAMS"). ACAMS is the largest international membership organization for Anti-Financial Crime professionals and provides a training program that certifies participants as having achieved the "global gold standard" in AML training and experience. Defendant Asre received his ACAMS certification in 2015 before becoming the compliance officer for the NYSEFCU and while he was the compliance officer for the NYSEFCU-CUSO. Defendant Asre also received specialized training and became a Certified Financial Crime Specialist with the Association of Certified Financial Crime Specialists.

Defendant Ofer did not have these specialist certifications and was not a specialist akin to those referenced in the sentencing guidelines—he was not a lawyer, doctor, or accountant, nor was he an AML specialist. See, e.g., United States v. Burt, 134 F.3d 997, 999-1000 (10th Cir. 1998) (To apply a special skill enhancement, the skill "must be more than the mere ability to commit the offense" and usually refers to a "skill not possessed by members of the general public and usually requiring substantial education, training or licensing. … formalized education, training, or licensing is usually necessary to trigger the enhancement" and "drug-dealing tricks [gained] through self-teaching … do not qualify as 'special skill' within the meaning of the guidelines."); see also United States v. Sampson, 898 F.3d 287, 313 (2d Cir. 2018) (applying special skill enhancement for attorney in obstruction of justice conviction). While the defendant was aware that the NYSEFCU-CUSO was required to have an AML program and admitted that he did not take sufficient steps to ensure an effective program was implemented at the NYSEFCUCUSO, he did not take on the role of compliance officer of the NYSEFCU-CUSO or have any special compliance related special skill that facilitated the

NYSEFCU-CUSO's failure to have a compliant AML program. Defendant Ofer's role in this crime, as a part owner of the NYSEFCU-CUSO and participant in the overall scheme, required no special skill beyond those skills usually possessed by a member of the general public ensuring that a business complies with the law. As a result, a use of special skill enhancement is not warranted here.

III. Discussion

The government respectfully requests that the Court impose a sentence of probation of two years, which is within the Guidelines range of zero to six months. A Guidelines fine of $9,500 is likewise appropriate in this matter. Such a sentence would be sufficient, but not greater than necessary, to achieve the goals of sentencing as set forth in Title 18, United States Code, Section 3553(a) and would appropriately reflect the seriousness of the defendant's conduct, promote respect for the law and deter the defendant and others from committing similar crimes in the future.[3]

The offense here is serious. Financial institutions are the gateway into the U.S. financial system for law-abiding citizens and sophisticated criminals alike. An appropriate and effective BSA anti-money laundering program ensures the security and integrity of the individual financial institution and the broader U.S. financial system and ensure those institutions and the larger system are not exploited for the laundering of criminal proceeds. Here, the defendant was a minority owner of the NYSEFCU-CUSO, a U.S. financial institution that engaged in high-risk, large volume transactions with a foreign bank and a money services business. To appropriately protect the NYSEFCU-CUSO and the U.S. financial system, the NYSECFU-CUSO was required to have an effective AML program that prevented the NYSEFCU-CUSO from being used to facilitate money laundering and was commensurate with the risks posed by the financial services provided by the NYSEFCU-CUSO. See 31 U.S.C. § 5318(h). Here, the NYSEFCU-CUSO's AML program was functionally non-existent.

The defendant knew his company, the NYSEFCU-CUSO, was required to have an effective AML program and knew that failure to have an effective program was a crime. He also knew that the AML program was ineffective, and he did not take steps to ensure that the person responsible for the program, his co-defendant Asre, implemented an effective program. Instead, he permitted the NYSEFCU-CUSO to transfer hundreds of millions of dollars in high-risk transactions through the NYSEFCU's Federal Reserve account without appropriate AML controls.

While the conduct is serious, it did not involve violence or harm to third parties and the defendant has no criminal history and has accepted responsibility for his actions. Also, the defendant was a minor participant in the crime as compared to co-defendant Asre, owning 25% of the business and relying on his co-defendant to act as the compliance officer with responsibility for implementing an effective AML program. There are no identifiable victims of this offense. A sentence within the Guidelines range recognizes defendant's history and characteristics as well as the nature and circumstances of the crime.

[3] Probation recommends a probationary sentence of two years and a fine of $9,500.

Finally, a sentence within the Guidelines range of zero to six months promotes the need for specific and general deterrence. Such a sentence is necessary to deter other owners and operators of money services businesses and other types of financial institutions who, like the defendant, willfully fail to implement legally required compliance programs that protect the U.S. financial system from money laundering and to inform the public that such conduct is a serious crime.

IV. Conclusion

For the reasons set forth above, the government requests that the Court impose a sentence of probation of two years and a fine of $9,500. The government respectfully submits that such a sentence is sufficient, but not greater than necessary, to achieve the goals of sentencing.

Very truly yours,

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