

MARVIN NEIMAN *
THEODORE T. MAIRANZ *

*MEMBER N.Y. AND N.J. BARS

HEALTH CARE DIVISION

ISAAC ZOLDAN, CPA^o

MARK KERN, CPA^o

^oNON-ATTORNEY STAFF

NEIMAN & MAIRANZ P.C.

ATTORNEYS AT LAW

39 BROADWAY

25TH FLOOR

NEW YORK, N.Y. 10006-3003

(212) 269-1000

FAX: (212) 635-9302*

www.ngmpc.com

1616 49TH STREET
BROOKLYN, N.Y. 11204
(718) 851-9000

520 WESTFIELD AVENUE
ELIZABETH, N.J. 07208

(908) 436-1666

FAX: (908) 436-2766

*NOT FOR SERVICE OF PAPERS

June 17, 2018

OPINION LETTER

To Whom this May Concern:

This firm has been asked to render an opinion as to the computation of the sentence for Sholam Weiss (“Weiss”) under the current sentencing guidelines. In order to be able to address this request it is most important to review the background of the case.

BACKGROUND

Weiss was convicted on February 15, 2000 and sentenced to *consecutive sentences of the statutory maximum* on each of the 76 counts charged in his conviction. This resulted in a total sentence of 845 years to be served in the federal prison system. Presently he has actually served 17 years in various federal penal institutions.

United States Sentencing Guidelines (“USSG”) §2E1.1(a) fixes the “base offense level” at the “offense level applicable to the underlying racketeering activity” for which Weiss was convicted. The underlying racketeering acts in the indictment were: wire fraud (18 U.S.C. § 1343), money laundering (18 U.S.C. § 1956), and interstate transportation of stolen funds (18 U.S.C. § 2314). Because there were three underlying offenses, the highest offense level was utilized, which in this case was the money laundering counts.¹

During sentencing, Weiss was found responsible for money laundering involving \$100 million. Under the 1998 guidelines applied to Weiss at the time, money laundering carried a heavy

¹ USSG §2E1.1, comment 1; *see generally* § 3D1.2 (establishing grouping rules for related counts).

offense level of 23, which was increased based on the amount of money laundered.² Losses were not an issue for the jury, nor was it in the indictment. The sentencing judge adopted the probation officer's finding that Weiss was responsible for "losses or attempted losses" of \$125 million to National Heritage Life, the victim in the case, which formed the basis of his restitution judgment.³

Only recently, on July 28, 2016, the government filed a Notice of Special Assessment and Restitution Order in the Weiss case, stating that the restitution imposed on Weiss by his Amended Judgment "has been paid."⁴

ANALYSIS

In order to ascertain his sentence under the current guidelines, we must review the afore stated facts as applied under the current sentencing guidelines. The guidelines which apply to money laundering (§2S1.1), effective November 1, 2001, drastically change how Weiss' sentence would be calculated today. Section 2S1.1(a)(1) provides that the base level for money laundering is the "offense level for the underlying offense from which the laundered funds were derived." *Id.*

In this case, the underlying offenses from which the laundered funds were derived were wire fraud (18 U.S.C. § 1343) and transportation of stolen goods (18 U.S.C. § 1314).⁵ These would fall under §2B1.1(a)(1),⁶ with a Base Offense level of 7.⁷

² According to the Sentencing Commission commentary to the 1998 USSG §2S1.1, the severe base level of 23 was established to counteract the large-scale illegal drug trade. This, though, had no connection or relevance to this matter.

³ Presentencing Report at page 33; Amended Judgment, Criminal Case, Doc. 2223.

⁴ Criminal Case Doc. 2446.

⁵ National Heritage transferred funds to Weiss' company, South Star. Because the CEO of National Heritage, who arranged the transfer, hid the transfer from other officers of the company in the guise of reinsurance, the money transfers were construed as "interstate transportation of stolen property."

⁶ This section covers "...fraud and deceit; forger; offenses involving altered or counterfeit instruments...".

⁷ See, e.g., *U.S. v. Campbell*, 765 F.3d 1291, 1296 n.3 (11th Cir. 2014), applying this section. If there were no underlying offenses, there would be a different calculation based on money laundering alone.

In addition, in Weiss' case, §2B1.1(b)(16)(B) would require a 4 level increase for "substantially jeopardize[ing] the safety and soundness of a financial institution." The enhancement for leadership (4 level increase), and enhancement for obstruction of justice (2 level increase) would still apply as they did at the time of the original sentencing. With a total offense level of 17, and a criminal history category score of III, Weiss' criminal sentence range would be 30-37 months.

Section 2B1.1, effective in 2001, focuses on money losses as the main consideration in determining the length of sentencing for money laundering convictions in those cases that have underlying offenses to the money laundering conviction.⁸ See, *United States v. Byors*, 586 F.3d 222, 225 (2d Cir. 2009). In this matter, Weiss claims that the value of the mortgages his company, South Star, returned to National Heritage before there ever was a criminal investigation, exceeded the amount of losses attributed to him by the sentencing court. This effectively results in no actual losses by his actions.⁹ The evidence supports this.¹⁰ With no losses, albeit with \$100 million laundered, Weiss' sentence would be a relatively low 30-37 months, which he has served many times over.¹¹

⁸ In the original 2000 sentencing, under the 1998 guidelines, the court determined the length of sentencing for money laundering on the amount laundered; not on losses. The district court merely accepted the probation officer's findings in the PSR for losses, in order to determine restitution and fines.

⁹ USSG §2B1.1, Application Note 3(E)(i)(effective in 2001) states, "The money returned, and the fair market value of the property returned and the services rendered, by the defendant or other persons acting jointly with the defendant, to the victim before the offense was detected." USSG §2B1.1 app. n.3(E)(ii) provides that the amount of the loss shall be reduced by "the amount the victim has recovered at the time of sentencing from the disposition of the collateral, or if the collateral has not been disposed of by that time, the fair market value of the collateral at the time of sentencing."

¹⁰ As detailed in Weiss' commutation application, the Receiver of National Heritage had admitted that the mortgages were the main source of National Heritage assets at the time of receivership. Weiss' restitution of \$125 million dollars was satisfied from proceeds from these mortgages. A NY district court, in a civil case, had found that the Receiver from National Heritage actually made a profit from the mortgages. *Williams v. UFH Apartments, Inc.*, Southern District of New York (White Plains), Civil Case No.: 7:97-cv-09050-CLB-MDF, Doc. 99 (07/13/2001), which was affirmed, *Williams v. UFH Apartments, Inc.* Docket No. 01-7903 (2nd Cir. 2002) by summary Order.

¹¹ As of June 2018, Weiss has served 17-years, or a total of 20 years, considering good-time credits.

CONCLUSION

For all the foregoing reasons it is our opinion that under the current sentencing guidelines the sentence to Weiss would be only in the 30-37 months range.

Respectfully submitted,

NEIMAN & MAIRANZ P.C.

A handwritten signature in black ink, appearing to read "Marvin Neiman", written in a cursive style.

By:

Marvin Neiman