



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

WMP:SSS
F. #2015R01435

*271 Cadman Plaza East
Brooklyn, New York 11201*

February 17, 2017

By ECF

The Honorable Nicholas G. Garaufis
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. David Gotterup
Criminal Docket No. 15-498 (NGG)

Dear Judge Garaufis:

The government respectfully submits this letter in advance of the defendant David Gotterup's sentencing.¹ For the reasons set forth below, the government submits that a term of incarceration within the advisory United States Sentencing Guidelines ("Guidelines" or "U.S.S.G.") range is appropriate. Gotterup is scheduled to be sentenced on March 7, 2017, at 11:00 a.m.

The Presentence Investigation Report ("PSR") indicates that Gotterup has a total offense level of 38 and Criminal History Category of II under the Guidelines, resulting in a sentencing range of imprisonment of 262 to 327 months. The plea agreement estimated a Guidelines range of 135 to 168 months, assuming that the defendant was in Criminal History Category I. The government stands by the Guidelines range calculated in its plea agreement.

I. Background

A. Charged Conduct

As detailed in the Presentence Investigation Report ("PSR"), the defendant was involved in a mortgage loan modification scheme with Jason Green and others between September 2008 and June 2013. PSR ¶ 1. The defendant and others fraudulently solicited distressed homeowners to pay more than \$3 million to have their mortgage loans modified. PSR ¶ 30. Specifically, the defendant and others made a series of false and fraudulent representations

¹ The government also requests permission to respond to any letter that the defendant may submit.

to convince more than a thousand homeowners to pay thousands of dollars each in advanced fees. PSR ¶ 22. Contrary to their representations, the defendant and others performed little or no work in connection with these improperly charged advanced fees. Id. The defendant and others directed telemarketers and salespeople to contact victims by telephone and mail and convince them to use the companies' purported loan modification services. PSR ¶ 23. For example, victims were told that they were retaining a "law firm" and "attorney" to complete their mortgage relief applications and negotiate with banks to modify the terms of the mortgages. Id. While Gotterup retained an attorney to be able to charge distressed homeowners upfront fees for alleged legal services for loan modifications, the attorney did not provide loan modification services. See Addendum to PSR. Thus, the victims should never have been charged upfront fees.

In addition, Gotterup was involved in (a) a mortgage flip scheme, (b) a Small Business Administration disaster loan fraud, and (c) using another person's social security number in connection with the other schemes. PSR ¶¶ 11-21, 28 and 34. The total losses from the defendant's schemes exceeded \$3.5 million. PSR ¶ 34.

The defendant was the owner and operator of several of the loan modification companies used to defraud homeowners and directed others to provide false and fraudulent information. PSR ¶ 34. To conceal his fraud, the defendant used multiple bank accounts and often changed his companies' names and moved their locations. Id.

On June 16, 2016, the defendant pleaded guilty before Your Honor to Count Two of the indictment, which charged conspiracy to commit mail, wire and bank fraud. PSR ¶ 1.

B. Relevant Post-Arrest Conduct

The government respectfully submits that the Court should consider relevant post-arrest conduct that came to the government's attention when the government reviewed telephone calls between the defendant and his brother while the defendant was incarcerated at the Metropolitan Detention Center.² Specifically, the evidence reveals that the defendant attempted to bribe suretors to post their property to secure his bail.

Between December 28, 2015, and April 18, 2016, in a series of telephone calls from the defendant to his brother Randy Gotterup ("Randy"), the defendant and Randy discussed Randy's attempts to secure bail for the defendant by bribing potential suretors to post their properties. On at least two recorded calls (December 28, 2015, at 11:49 a.m. and January 20, 2016, at 11:26 a.m.), the defendant and Randy specifically discussed Randy offering \$40,000 to individuals to post their houses to secure the defendant's bail. Additionally, the defendant instructed his brother what to tell potential suretors to persuade them to post their houses to secure his bail, including that only two defendants in the last twenty years have successfully fled from the federal government while on bail (recorded call on December 28, 2015, at 11:49 a.m.), that if the defendant escaped while on bail his suretors would not lose their homes (id.), and that

² The government has recordings of the defendant's prison calls from December 13, 2015, until May 16, 2016.

the defendant would be required to wear an ankle monitor if released on bail (id. and January 4, 2016, at 11:58 a.m.).

In addition to the calls which describe the defendant offering \$40,000 to potential suretors to post their properties to secure bail for the defendant, bank records from a “Gott Consulting Services Inc.” account at Santander Bank show that Randy withdrew slightly more than \$40,000 in cash right before two of the defendant’s bail hearings. The bank records reflect that Randy withdrew cash totaling \$43,000 on November 16, 2015 (one day prior to the defendant’s bail hearing on November 17, 2015, at which Ed Savran offered to post his house), and cash totaling \$44,000 between December 7, 2015, and December 21, 2015 (prior to the defendant’s bail hearing on December 22, 2015, at which Ed Savran again offered to post his house).

By way of background, John and Pompea Guglielmi owned property in Deer Park that they offered to post to secure the defendant’s bail at a hearing on April 15, 2016. The Guglielmis who are deaf and in their 70s had their daughter interpret using sign language during the bail hearing and during an earlier interview with the government. The Guglielmis and their daughter told the government and, later, the Court that they were willing to post their home as bail because their daughter was friends with the defendant. Yet, it is apparent from the defendant and Randy’s recorded calls that the defendant did not know the suretors or their daughter.

On several recorded calls, Randy and the defendant referred to an individual named “Damien” who assisted them in finding the couple to post their property to secure the defendant’s bail. On a recorded call on or about January 21, 2016, at 8:18 p.m., Randy told the defendant that he thinks that they can meet Damien’s terms. On a recorded call the next day, January 22, 2016, at 1:56 p.m., Randy told the defendant that he spoke to Damien and that the property is in Deer Park. On or about January 25, 2016, at 2:05 p.m., Randy told the defendant that he spoke to Damien who said he is giving a telephone number to the defendant’s attorney to set up an appraisal. On or about January 28, 2016, at 12:22 p.m., Randy told the defendant that he is on call to meet with suretors in the city through Damien. The next day, January 29, 2016, at 11:32 a.m., Randy told the defendant, “I met up with the people last night. Everything is good to go. I reached out to the attorney and gave him their number. The people who are putting it up are deaf, so I met up with their daughter.”

On or about April 18, 2016, at 2:32 p.m., which was three days after the bail application was denied, Randy apologized to the defendant on a recorded call and said, “I went over with her what to say. They said they’d even done it before that, they know.” Not once did the defendant or his brother mention the Guglielmis’ daughter by name or refer to her as a friend of the defendant.

Accordingly, Gotterup’s post-arrest conduct in attempting to bribe suretors to post their properties for his release should be taken into account at sentencing.

