

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

United States of America,)	
Plaintiff,)	
vs.)	No. 07-0003-01-CR-W-FJG
Saundra McFadden-Weaver,)	
Defendants.)	

SENTENCING MEMORANDUM

First, the Court notes that contrary to prior appellate precedent, the sentencing guidelines ranges are no longer presumed reasonable. Gall v. U.S., 128 S.Ct. 586, 76 U.S.L.W. 4009 (December 10, 2007).

In addition to reviewing the guidelines and determining their accuracy, the Court must review the requirements of 18 U.S.C. § 3553(a). The applicable advisory Guideline range in this case was 24 to 30 months. The Court believes this range to be accurate and it was not challenged by either side.

Further, the Court is required to make an individualized assessment based upon the facts and evidence presented. This individualized assessment includes (1) the nature and circumstances of the offense(s) and (2) the history and characteristics of the defendant. In order to do a meaningful assessment, this Court has reviewed relevant testimony from the August 2007 trial.

Further, Gall v. U.S. instructs that the Court must keep in mind that a sentence which is greater than necessary to serve the objectives of 18 U.S.C. §3553(a) may work to promote not respect, but derision, of the law.

Also, the law must not be viewed merely as a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing.

I. Nature and Circumstance of the Offense

Under Count One, Sandra McFadden-Weaver is charged with conspiracy to commit wire fraud. Counts Two through Seven relate to the electronic transmission of information in furtherance of a conspiracy; primarily as a result of actions initiated by Ricky Hamilton who utilized defendant McFadden-Weaver's income and financial information.

A. Circumstances of the Offense

The purpose of this conspiracy was to benefit Emanuel Kind, Ricky Hamilton, Josh Paschall and Sandra McFadden-Weaver. There was no evidence that this conspiracy was the beginning of a larger conspiracy involving multiple buyers, sellers, lenders, mortgage companies or closing agencies.

This conspiracy was conceived and masterminded by Emanuel Kind. The key players with inside knowledge about the legal impropriety of Emanuel Kind's plan to be the occupier of the 301 N.E. Hackamore residence were Ricky Hamilton (mortgage broker) and Josh Paschal (realtor). All had financial incentives to participate.

Emanuel Kind had clear benefits to gain including cash at closing and title to a house he could not afford to purchase through proper legal procedures. Further, he would suffer no liabilities if he failed to make the payments. He had no legal obligation to the lender nor any contractual obligation to McFadden-Weaver. The contract for deed was consummated

after the fact.

Ricky Hamilton was a key component to this fraud. Without his skills as a mortgage broker the plan could not have been fully executed. He knew these acts were unlawful and gained significant commissions from the closing. There is credible evidence that he forged the documents knowingly, making false and fraudulent misrepresentations about McFadden-Weaver's income and assets with the intent to defraud the lenders.

Sandra McFadden-Weaver was a necessary component. She was the "straw buyer" of 301 N.E. Hackamore. There is credible evidence that she was the least knowledgeable about the legal impropriety of this fraudulent activity. Clearly, she failed to read important legal documents. The reasons she did so may be simple. She blindly trusted the representations of Emanuel Kind and Ricky Hamilton because she was either too busy with City or church business. Or, she consciously failed to read these documents to create plausible deniability as to their content. Neither act diminishes her legal responsibility for the representations attributable to her in those documents. Co-defendants, Kind and Hamilton, took advantage of McFadden-Weaver's blind trust in them. Her busy schedule and the need to get the home at 2518 Benton renovated, made her vulnerable to their plan.

Credible evidence supports McFadden-Weaver's belief that defendant, Emanuel Kind, was going to legally take money at the closing of the Hackamore residence to buy supplies and actually renovate her home. Thereafter, McFadden-Weaver would refinance the home and pay Emanuel Kind for his services.

McFadden-Weaver ignored many of the signs of impropriety. First, she failed to realize that her income and assets could not support a \$400,000 plus loan needed to finance the Hackamore property. Second, she believed her co-defendants' explanation that the "stated income" method allowed them to misstate her income and assets to accommodate the loan for the Hackamore property. There was credible evidence that Ricky Hamilton knew that McFadden-Weaver did not understand this process. He took advantage of her misplaced trust in him and lack of understanding about the transaction.

She either ignored or did not understand that these legal documents required her to live in the property, not Emanuel Kind. She also either ignored or did not understand that the loan rate was based on owner occupancy and that she could not unilaterally agree to sublet the property to Emanuel Kind.

Emanuel Kind got all of the amenities of home ownership without the legal liabilities. Ricky Hamilton and his firm got a substantial commission (\$24,000.00) on a transaction he clearly knew was illegal. Out of that \$24,000 Ricky Hamilton kicked back \$10,000 to Emanuel Kind. Realtor, Josh Paschall, received a substantial commission knowing full well the conduct engaged in by these defendants was fraudulent e.g., that McFadden-Weaver had no plans to live in the Hackamore home. He knew that Emanuel Kind was the intended occupier.

Defendant, Sandra McFadden-Weaver received virtually nothing of value from this conspiracy. Emanuel Kind did pay off a \$5,100 loan for McFadden-Weaver. However, this was necessary to facilitate the loans for

the Hackamore residence by McFadden-Weaver. This was more of an investment by Emanuel Kind into this scheme. There is no credible evidence that McFadden-Weaver expected this as payment for her involvement in the conspiracy. Notwithstanding, Ricky Hamilton's trial testimony that Emanuel Kind told him that McFadden-Weaver was taken care of was vague, unreliable and self-serving.

II. Assessing Defendant's Conduct

In assessing the individual conduct of defendant, McFadden-Weaver, this Court views the aggravating and mitigating facts as follows.

A. Aggravating Factors

Defendant, Sandra McFadden-Weaver willingly allowed herself to engage in conduct which amounted to conspiracy to commit wire fraud as well as the substantive acts of Counts Two through Seven by failing to exercise due diligence. First, she did not inform herself about the people she was dealing with; both had criminal records. Second, she failed to read important legal documents that would have given her reasons for concern about these transactions and the individuals she placed so much trust in. Third, she believed the co-defendants' rationale for her financial ability to support a \$400,000 loan for the Hackamore property was legal, i.e., legitimately provide funds to renovate 2518 Benton. Her conduct was either willful or inexcusably negligent. Further, she may have been of the opinion that her position as a city council person and member of the clergy gave her a free pass if her conduct was determined to be illegal.

B. Mitigating Factors

Unlike her co-defendants, McFadden-Weaver has no prior criminal

record which makes her version of the events more credible in the Court's opinion. To the contrary, she has a record of public service both as an elected political official and as an ordained minister. The Court is mindful that neither public officials nor ordained ministers are immune from corruption. In fact, they seem to be the subject of prosecution quite often for activities associated with either abuse of office or with their selfish greed. The facts of this case do not fall into either category.

It is conceivable that her calling as a minister created the blind trust she placed in the representations of co-defendants Kind and Hamilton. That is no excuse, but a possible explanation. Ricky Hamilton possessed McFadden-Weaver's financial information from her attempts to refinance 2518 Benton. Once he gained her confidence, it did not take much effort for him to misuse that information in this conspiracy.

Co-defendants Kind and Hamilton took advantage of McFadden-Weaver's trust and need to get 2518 Benton renovated. They concocted a plan which they represented to her to be legal. That plan allowed her funds for the renovations at 2518 Benton. McFadden-Weaver effectively became the "straw buyer" of the Hackamore residence. Straw buyers typically are knowing participants in the illegality of their conduct; and receive predetermined compensation for their services. McFadden-Weaver received no predetermined financial benefits, only Kind's promise to renovate the 2518 Benton property. The payment of an outstanding loan she owed was necessary to finance the Hackamore residence. These matters were known and handled by Emanuel Kind and Ricky Hamilton.

These findings are consistent with McFadden-Weaver's version of the

facts. While Emanuel Kind plead guilty, he did not testify. The Court and jury, therefore, had to rely upon Ricky Hamilton's accounting of Emanuel Kind's statements. The Court does not believe Ricky Hamilton's testimony to be credible on this subject. The realtor Josh Paschall, Ricky Hamilton and Emanuel Kind knew that the loan and related paperwork required McFadden-Weaver to occupy the Hackamore residence. Yet, none of them brought it to the attention of the lender, the title company or McFadden-Weaver even though there were many opportunities to do so prior to closing. There is no reliable evidence to the contrary.

McFadden-Weaver is held legally responsible for the veracity of the information contained in all documents she signed. The evidence establishes she did not read those documents. Further, there is credible evidence that supports the fact that she did not understand the significance of the requirements; and that she relied upon Ricky Hamilton's assurance that the signing of the documents was legal.

The credible evidence regarding substantive Counts Two through Seven are the result of acts more attributable to Kind and Hamilton in furtherance of their financial gain. These multiple acts were in furtherance of a single objective: to illegally gain Emanuel Kind a home he could not lawfully obtain. The carrot held out to McFadden-Weaver was the prospect of renovations of 2518 Benton which Emanuel Kind never intended to complete. Sandra McFadden-Weaver did some irresponsible things and made poor choices in associates to reach an outcome she thought was legal.

III. What is the Appropriate Sentence for McFadden-Weaver's Conduct

I believe a substantial variation from the sentencing guidelines is appropriate based upon the referenced mitigating factors. The sentencing guidelines are only the first step in the Court's consideration. Having considered all of the factors of 18 U.S.C. § 3553(a) in combination with my aforesaid analysis of the nature and circumstances of the offense as well as an individual assessment of defendant, Sandra McFadden-Weaver, I have concluded the appropriate sentence is as follows:

Two months custody on all seven counts to be served concurrently with a recommendation that the Bureau of Prisons designate defendant to a local residential re-entry center located near Kansas City, Missouri; and

Three years supervised release with the following special conditions:

1. Four months home confinement;
2. Authorized work release at both the residential re-entry center and during home confinement; and
3. Restitution, joint and several, with co-defendants to pay \$64,291.74 to: Wilshire Credit Corporation, 14523 S.W. Millikan Way, Suite 200, Beaverton, OR 97005, Account No. 1383943; and \$79,942.68 to: Sovereign Bank, One Sovereign Way, Mail Stop: RI-1-EPV-02-17, East Providence, RI 02915, Account No. 6749754.

No further payment shall be required of defendant McFadden-Weaver after the sum of the amounts paid by defendants Emanuel Kind and Ricky Hamilton has fully compensated the victims.

While restitution is still owed, the defendant shall notify the United States Attorney of any change of residence within 30 days and notify the Court and United States Attorney when there is a material change in the defendant's economic circumstances.

Since the Court finds the defendant does not have the ability to pay interest, any interest is waived.

Mandatory drug testing is waived pursuant to 18 U.S.C. 3583(d).

While on supervised release, the defendant shall comply with the mandatory and standard conditions that have been adopted by this Court. In addition, the defendant shall comply with the following special conditions:

Pay any restitution balance during the first 30 months of supervision on the schedule set by the Court.

Provide the Probation Office with access to any requested financial information.

Not incur new credit charges or open additional lines of credit without the approval of the Probation Office, while court-ordered financial obligations are outstanding.

Successfully participate in a program of home detention for 4 months which may include electronic monitoring, with the costs to be paid as directed by the Probation Office.

The defendant shall submit her person, residence, office or vehicle to a search, conducted by a U.S. Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds

for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

Defendant is to voluntarily surrender to the residential re-entry center designated by the Bureau of Prisons as ordered by the Court.

IV. 18 U.S.C. § 3553(a) Factors

This sentence gives appropriate consideration to those factors contained in 18 U.S.C. § 3553(a) as follows:

Reflects the seriousness of the offense. Defendant will suffer a loss of her liberties. Further, her failure to comply with restrictions of supervised release will result in a complete loss of liberties by confinement.

It promotes respect for the law. The sentence reflects defendant's involvement in these crimes. It is not greater than necessary. A harsher sentence would promote not respect for the law but derision of the law.

It ***provides just punishment*** given the role played by defendant.

It places substantial restrictions on her freedom. It is not a free pass.

It ***affords adequate deterrence.*** Defendant will suffer a loss of her liberties. Defendant is subject to confinement for her failure to conform to restrictions of supervised release.

It ***protects the public.*** Defendant is not likely to become involved in similar conduct, and she is not a danger to society.

Further, the public is put on notice that similar conduct is illegal.

This sentencing memorandum is intended to supplement and become a part of the sentencing record made in open court on this date.

/s/Fernando J. Gaitan, Jr.
Chief U.S. District Judge

Dated: January 4, 2008
Kansas City, Missouri