

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

Plaintiff

V.

CASE NUMBER: 3:12-cr-153(JCH)

MENACHEM JOSEPH LEVITIN

Defendant

JANUARY 6, 2015

JOSEPH LEVITIN'S SENTENCING MEMORANDUM

Introduction

It is ironic, but true, that Menachem Joseph Levitin, an observant Hasidic Jew, has become the personification of the prodigal son of the New Testament. The 29 year old man who appears for sentencing is far different from the young property manager who was instructed in a method for buying and selling real estate almost a decade ago by two men twice his age. Young and ambitious and unschooled, Joseph Levitin was provided a template skewed

to take advantage of the lax lending practices which existed in the first decade of this century.

The sixth of ten children in a family that truly lives its religion, Joseph was the outlier who was anxious to live and succeed in a go-go secular world his parents and siblings never chose to inhabit. Joseph learned well from his more senior mentors, Ron Hutchinson and Andrew Constantinou. He applied the template they taught him and achieved financial success. He acquired properties. He shared his success with his family and with others. And, importantly, until he was arrested and began to cooperate with the Government – ultimately testifying in two successful prosecutions and providing information leading to the conviction of 7 others – he did not appreciate how far he had strayed from the religious precepts by which his family lives. He has returned to those roots. He has become a successful and ethical businessman. He continues to enjoy certain financial success. He continues to share that success with his family. He is today a better person than he was before.

He asks the Court for a sentence of a year and a day.

This memorandum will not impose on the Court a senseless serpentine passage through a dense thicket of guideline analysis which would be mind-numbing and, ultimately, non-productive for all participants. The Court has presided over the trial of two, heard Joseph's testimony, and has sentenced six. The Court knows the case. Taking into account Joseph's extensive cooperation which has contributed to the investigation and successful prosecution of nine others; his losses and his significant rehabilitation, the requested sentence makes sense, is fair and achieves the goals and fulfills the requirements of 18 U.S.C. 3553(a).

Who Is Menachem Joseph Levitin

The Pre-Sentence Report is thorough, complete and insightful. In addition, the Court has seen Joseph Levitin "up close and personal" through the course of his testimony in the trials of co-defendants Constantinou and Kelly. It (and a jury) have been able to assess Joseph's credibility and character. The arguments advanced here, then, if false or exaggerated, will be quickly recognized. What was lacking in testimony has, for the most part, been set forth in the PSR.

The starting point is, necessarily, as with most of us, Joseph's family. His father, Berl, and mother, Feiga, live on Norton Street in New Haven. Berl is a rabbi and works in a non-profit organization dedicated to helping others. Both parents are extremely religious in the best sense of the word: they practice what they preach. They appear to live for others and to help others, often going without. They have raised ten children. All Joseph's siblings are actively religious and are involved in, and dedicated to, living and teaching their religion. Two brothers are rabbis. Others teach in Hebrew schools. At last count he has 23 nephews and nieces. (Some siblings are not yet married and there will be more nephews and nieces to come.)

Joseph's youth was, by most standards, unique. His home had no television, video games or internet access. Family life and activities revolved around their faith and living their faith. There was neither concern nor desire for material possessions, almost to a fault. The house was not well maintained due to limited resources. Foreclosure notices were not unknown. "Better Homes and Gardens" was neither the aspiration nor the reality.

While Joseph appreciated and understood the intensity of his family's religious devotion, he balked. Theirs was not the life for him. He didn't want

to have to worry about the mortgage being foreclosed or holes in the ceiling where rain came in, or a limited wardrobe. He wanted a job and wanted to be able to earn enough to own his own home. His parents recognized his orientation early on. They sent him to a number of Hebrew schools, some local, others far away. One was in Brooklyn where Joseph participated, but ultimately did not succeed. He was then sent to another religious school in Wilkes-Barre, Pennsylvania. He spent his junior year at a Hebrew School in Venice, Italy, the location of the original “ghetto”. And, for a while he attended the Rabbinical College of America in Brooklyn.

Candidly, Joseph had difficulty buying into “the program”. He was not comfortable with the restrictions his family’s religion imposed. When he was 18, Joseph spent several months in Israel. Upon his return to the United States, he tried to make a living in real estate, a field where he could earn without a college degree. He got into managing properties in New Haven while still in his teens. Although he was a licensed realtor at that age, he never really understood the nuts and bolts of his profession. That was the beginning of the road that led to his involvement in criminal activity.

What Joseph Did

Joseph's legal downfall came when visited by Ronald Hutchinson, a New York corrections officer, who was active in acquiring real estate. Through Hutchinson, he met Andrew Constantinou, Hutchinson's favored mortgage broker. Hutchinson rolled into New Haven in about 2005-2006. He arrived with big plans. He met Joseph and engaged him to find properties for sale. The plan – the template – was fairly simple. First, Joseph was to locate sellers who would agree to sell their properties for an amount certain. With that agreement in place, Hutchinson showed how, with the cooperation of Constantinou or, later, Ron Sobrowske, another mortgage broker, the properties could be sold and financed for an amount greater than what the seller sought. That amount, the false sale price, was presented to the lenders – with appropriate inaccurate paperwork and artificial down-payments. Financing for the false price was obtained and the transaction completed. It was a win-win. The seller got the desired price; the buyer, without putting up a down payment, got the property and, mirabile dictu, often walked out of the closing with cash from the financing; the realtor was paid; the attorneys were

paid; and whatever extra was left was spread around to Joseph, Hutchinson, et al. So far so good.

To Joseph, at least initially, this was a good deal. His two senior mentors had taught him well. The lender was happy; its loans were secured by properties appraised at significant values. Joseph was compensated for his efforts, well compensated. But Joseph's financial success led to his ethical myopia. What Joseph chose not to see was that the foundation for this process was a fraud. There were false papers submitted to the lenders, and false HUD forms were created and filed. What Joseph really didn't appreciate, at least at the beginning, was that this falsity violated one of the tenets of his faith (and, of course, federal criminal laws). It all seemed to work, and work well. No one was hurt. His mentors gave this venture their blessing, and all were rewarded for their efforts. Joseph did well, and he did well for a period of time.

The venture continued. According to the records submitted by the Government, Joseph participated in approximately 46 transactions which were fraudulent. In large part he acted under the guidance of his senior mentors, Hutchinson and Constantinou. The Government's statistics show Hutchinson

participated in 49 fraudulent transactions over a 27 month period and Constantinou in 26.

This was not a typical pyramid conspiracy with a “Mr. Big” on top and others in subservient roles. This conspiracy had an ensemble cast; every actor played a part. All were essential, some more prominent than others, but each filled a necessary role. The identity of the players might change, but the roles remained in place. Hutchinson developed the scheme and directed it. Joseph’s role was to find properties and secure agreements for the undisclosed sale price. Constantinou secured the financing and identified the documents needed to complete the enhanced sale and directed Joseph to obtain or produce those documents, such as rental agreements, etc. When Constantinou was unable to work his magic with his lenders, he lateralled (for a price) the finance work to Richard Sabrowske of CNS Mortgage. But attorneys were needed to complete the closings. Jeffrey Weisman participated in 26; Bradford Reiger in 19; Genevieve Salvatore in 13; and Lawrence Dressler in 7. In fact, as time went on Joseph recruited some of the attorneys.

While all players knew the score, the lawyer's role was key. Only the lawyers could make it work by certifying the accuracy of the transaction. (And, conversely, only the lawyers could stop it.) Completion of the fraud required false certification by the only players who had taken a professional oath to truthfully certify the transactions. The reality is the lawyers sold their oaths for a pittance.

The last chapter of this story results in more than 7 million dollars in losses.¹ (For Joseph, the number is just over the 7 million dollar guideline bracket threshold by about \$180,000.00). In Joseph's case, this results in a guideline exposure of 78 to 97 months if 4 points are awarded for leadership, or 63 to 78 months if only 2 points are awarded for leadership. Given the disparity in experience and age, Joseph maintains that he did not operate at the 4 level leadership enhancement the Government claims. (See plea agreement; PSR Paragraph 3).

¹ The financial institutions were not blameless, often consciously avoiding knowledge of the obvious. That, however, is a part of a bigger story and not the focus of this memorandum.

What Joseph Has Done to Help the Government and Himself

The extent of Joseph's cooperation cannot be overstated. He provided informational essential to the investigation. That information was key to the Governments charging decisions both to prosecute and not to prosecute. His willingness to testify contributed to guilty pleas. His testimony at trial was essential to guilty verdicts.

Joseph Levitin began to cooperate with the Government soon after his arrest. He met on countless occasions, beginning in August, 2010. The meetings were frequent, sometimes twice a month; he described his own activities and the actions of others. These were long, long sessions. Joseph's Yeshiva training taught him to question every proposition advanced. He did so consistently during the early sessions. Joseph was candid but reluctant. The early sessions were neither smooth nor easy.² Over time, it became clear that Joseph had learned and had come understand the dimensions of his crime and, importantly, to recognize that he had violated the teachings by which was raised. This was not a quick lesson, nor an easy one. Eventually, after

² To an observer, the cultural gap between the inquisitors and the witness produced a fascinating dynamic which required an adjustment by both, ultimately resulting in Joseph's successful testimony.

approximately 20 long, long sessions, Joseph became the effective witness the Court observed at the Constantinou/Kelly trial.

Joseph was always candid. He said who did what, including what he did himself. Even though it was clear that to Joseph that the Government sought information about others, and that providing such information could benefit him, Joseph did not and would not provide false information about others not involved, or about whom he was uncertain. He did not, for example, create conversations that did not occur. Joseph also helped the Government in identifying and locating Kwame Nocruma to enable his arrest.

Joseph is responsible for the conviction of every single individual in this case from top to bottom. From the architect, Ron Hutchinson, to the financier, Andrew Constantinou, to the four lawyers, and down to Jacques Kelly who bumbled into entering the conspiracy.

Joseph testified effectively at trial. There is little need here to articulate what the Court itself observed. The jury spoke. It accepted his testimony. The convictions resulted in large part on that testimony.

In addition to the assistance provided to the Government, Joseph also ceded a long list of properties (list attached) plus \$170,000.00 in cash valued at

nearly Three Million Dollars. Not all of these properties were obtained fraudulently; however, their purchase, in part, was enabled through the profits Joseph gained from the crimes he committed. He is, to our knowledge, the only defendant who has forfeited properties and certainly properties of the value ceded. Forfeitures on this scale are almost unheard of in these circumstances.

The Other Punishment

Part D of the PSR is entitled "Sentencing Options" (p.16). That section of the PSR does not, and is not designed to, address sentences which are beyond the power of the Court to impose. In many ways, for Joseph, it is that sentence that is the most severe.

The hard fact is that what Joseph has done will lead to his loss of liberty. That is one type of punishment. However, that punishment pales in comparison to the shame and embarrassment he has brought upon his family and his community. His parents are deservedly esteemed for who they are and the work that they do. His father, a respected rabbi and scholar, is devoted to helping others. The priority of Joseph's entire family is dedication to the practice of their religion. Joseph stands apart. He will continue to stand

apart. But what he did, and the shame he inflicted on all them, is a scar which weighs heavily on him.

What Joseph has done since his arrest amounts to a reconciliation and rehabilitation with and to the principles by which he was raised. Admirably, his parents, though shamed, never withdrew support for their son. They never made him a pariah within the family. They continued their unwavering support. What they can now enjoy and take satisfaction in is knowing that their teachings have taken hold in their son. Joseph has become a respected businessman. He continues to manage properties. He does so efficiently and well. He does so fairly and ethically. Certain of the letters presented are from tenants who appreciate Joseph's sensitivity to those who are less well off. He enjoys his material possessions. He enjoys much more the ability to help his family for the sacrifices they make in helping others.

Why the Requested Sentence is Appropriate

Joseph's extraordinary substantial assistance alone provides a justification for the requested sentence. There are additional reasons why the requested sentence is appropriate. First, in all of its sentencing's in this case, the Court has acknowledged that the loss figures overstate the seriousness of

the offense. The Court is familiar with arguments advanced about the lack of empirical basis for the present fraud guidelines. Meritorious arguments have been advanced that only the 1987 original guidelines are founded on studies justifying the original fraud brackets, in contrast the present guidelines brackets. The ABA Study referred to in the PSR [87] was undertaken in response to the recognized shortcomings in the fraud guidelines.

Second, the Court has also recognized that the practices of the financial institutions made them vulnerable to the type of activities designed and implemented by Messrs. Hutchinson and Constantinou. Third, Joseph has returned by way of forfeiture the “profits” he gained from his illegal activities. Fourth, he provides a lesson in redemption. One of the sins of youth is arrogance. That edge has been buffed. It is worth repeating: Joseph is a better person today than he was before. It is, ultimately, satisfying to recognize the rehabilitation that has developed through Joseph’s participation in the criminal process. The religious aspect of this rehabilitation, especially the reunification with his parents and the affirmation of their religious precepts, is unique and refreshing.

Clearly a period of incarceration is required, given the dimensions of the crime. There is, concededly, a need for deterrence. But, the combination of extensive cooperation over four years, forfeiture, and redemption justifies the requested sentence.

Other Considerations

The Court will be understandably concerned that someone listed at a leadership level requests a sentence below that of others who participated in fewer transactions and with lower financial gains.³ It is the lawyers, who, above all, have the highest duty. They possess unique responsibilities and powers. Without their active participation, the fraud could not have succeeded. It was the lawyers who knowingly placed their imprimaturs on fraudulent transactions on repeated occasions whether for great gain or little. The duty of attorneys in these transactions is the duty of truth. On each occasion, a lawyer knowingly perpetrated a falsity by certifying the accuracy of the HUD forms. Joseph is not a lawyer. And while it may be a bit much to claim he was

³ A probationary sentence, though desired, is unrealistic in these circumstances. The dimensions of the offense are too large. A request for that sentence would only detract from what we believe is, in these circumstances, a reasonable request. So requesting a year and a day is the desired sentence; it is not a marker, posted to encourage the Court to impose something close.

a complete ingénue, he was, next to everyone else involved in this conspiracy, a babe in the woods. He deferred to those senior and more experienced. His shortcoming was that he betrayed his parents' teaching. The attorneys betrayed an oath to be agents of truth. When they betrayed their oaths, they exposed themselves to the justifiably harsher sanctions that would befall them.⁴

That is not true of Joseph Levitin. While he deferred, against what should have been his better judgment, to the wisdom of his elders, he has done his best to correct his errors by assuring that others were held accountable.

THE DEFENDANT,
JOSEPH LEVITIN

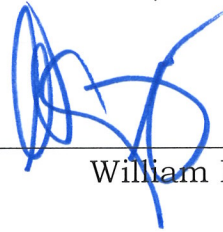
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⁴ Importantly, only one of them has cooperated.

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2015, a copy of the foregoing was filed electronically and served by United States Mail, first class postage prepaid on any party unable to accept electronic filing. Notice of this filing was sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to any party unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.



William F. Dow, III

address	%ownership		value	Date purchased	equity
501 Blatchley Ave	12.8		160000	October 13th, 2008	
108 Dewitt St	12.8		115000	May 26th, 2009	
314 Howard ave	12.8		190000	November 4th,2008	
97-99 Rock Creek Rd	12.8		165000	May 26th, 2009	
418 -420 Shelton Ave	12.8		130000	July 6th, 2009	
342 Sherman Ave	12.8		190000	July 8th, 2009	
55 Thompson St	12.8		240000	May 11th, 2009	
56-58 Victory Dr	12.8		150000	December 15th, 2008	
585 Winchester Ave	12.8		150000	April 13th, 2009	
TOTAL			1490000		\$190,720
15 Colby CT	14.69		225000	December 9th, 2008	
159 West St	14.69		65000	January 15th, 2010	
186 James St	14.69		110000	september 17th, 2008	
197 Bassett St	14.69		110000	February 19th, 2010	
2-4 Derby Ave	14.69		160000	June 9th, 2010	
354 Sherman Ave	14.69		180000	January 15th, 2010	
456 Huntington St	14.69		78000	february 3rd, 2010	
490 Howard Ave	14.69		140000	January 26th, 2010	
573 Winthrop Ave	14.69		175000	December 30th, 2008	
88 Hurlburt St	14.69		100000	November 28th, 2008	
TOTAL			1343000		\$197,286.70
81 Beers	50		230000	June 26th,2008	
19 Norton	50		140000	August 8th, 2008	
TOTAL			370000		\$185,000
89 Hazel	70		96000	February 24th, 2010	
TOTAL			96000		\$67,200
265 James St	100	mortgage	140000	April 8th, 2008	
363 Ellsworth Ave	100		220000	April 15th, 2009	
334 Sherman Ave	100		220000	April 9th, 2009	
279 Norton St	100		220000	October 5th , 2009	
378 Orchard St	100		190000	September 23rd , 2009	
25 Batter Terr	100		180000	October 1,2007	
41 Sheffield	100		150000	February 8th, 2010	
95 Pardee	100		150000	July 9th, 2009	
205 Dover	100		140000	December 17th, 2008	
141 County	100		155000	April 15,2008	
115 Clay	100		130000	September 4,2008	
270 Davenport	100		82000	SEPTEMBER 18th,2008	
280 Davenport	100		86000	August 31st , 2009	
122 Plymouth	100	mortgage	225000	April 3rd , 2008	
TOTAL			2288000		\$2,288,000
Cash					\$170,000
Grand total					3098206.7