UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA **CRIMINAL NO. 3:09 CR00197 (JBA)**

v.

STEVEN E. SCHLEIFER **December 18, 2009**

GOVERNMENT'S REPLY MEMORANDUM IN AID OF SENTENCING

This reply memorandum is submitted in aid of the sentencing of Defendant Steven E. Schleifer. The sentencing is currently scheduled before this Court for December 22, 2009. For the reasons set forth below, the Government asserts that the Defendant should receive a sentence within the Guidelines' range of 18-24 months. A prison sentence within this range is a reasonable and just sentence, and is not greater than necessary given the seriousnes of the defendant's conduct and the goals of sentencing.

I. The Need To Avoid Unwarranted Sentencing Disparities Supports a Guideline Sentence

In his Sentencing Memorandum filed November 10, 2009 (Doc. #19), the Defendant references the sentences imposed by this Court in the cases of *United States v. Kundrat,* No. 3:05 CR 172 (JBA) and *United States v. Vought,* No. 3:05 CR 268 (JBA) for the proposition that Defendant Schleifer should receive a similar sentence to those defendants. This argument is off-base in two critical respects.

First, the Defendant fails to reference the sentence of Robert Ross who received a sentence of one-year and 1 day imprisonment, 36 months supervised release and was order to pay restitution of nearly $1 million. This is particularly significant because Mr. Ross occupied the same type of

position in the bank conversion aspect of the scheme as Defendant Schleifer. That is, both Schleifer and Ross served as the individual planning and researching the deal, looking for depositors to line up as straw buyers, entering into agreements, financing the straw purchase, and dictating the division of the profits. While the Defendant seeks to cast himself in a light more similar to Mr. Vought, and Mr. Kundrat he is not. Vought was a silent investor who did not engage in the planning and researching of the deal he was an investor with Ross who provided funds and as a result, based on the evidence in that case, Mr. Vought had a lower Guidelines range. Similarly, Mr. Kundrat did not act as the middle man looking for depositors to line up as straw buyers, entering into agreements, and dictate the sharing of the profits.

Secondly, the sentence that was imposed in Mr. Ross's case was imposed after Mr. Ross testified at trial in open court and he still received a year and a day of incarceration. Admittedly, Ross orchestrated the purchase of more blocks of 700,000 shares ("Units") than did Defendant Schleifer, but their conduct was, by any definition, similar and their records before these cases were the same. *See* 18 U.S.C. Section 3553(a) (6). Kundrat, who financed two Units, also testified before this Court at trial and was the first to come forward in this entire investigation. The sentence imposed by this Court in the *Vought* matter was based, at least in part, on his more limited involvement and the more passive nature of his criminal conduct. Thus his applicable Guidelines' range was lower, yet he did receive a Guidelines sentence.

Thus, viewed in its entirety, 18 U.S.C. Section 3553(a) (6), which requires this court to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct" weighs in favor of a Guidelines sentence. The sentences imposed by this Court were either sentences within the applicable Guidelines' range, as

in the case with Vought, or imposed after the respective defendant testified at trial, Ross and Kundrat.

II. The Defendant Holds Numerous Bank Accounts at Multiple Savings Banks

One Factor the Court has and should consider in sentencing similarly situated defendants who illegally participated in the New Haven Savings Bank conversion, be it in a tax case such as this, wire fraud conspiracy such as Ross, or both, is the extent to which the particular defendant was familiar with mutual bank conversions, their operations, and the significance of holding accounts and or Certificates of Deposits prior to a conversion. In this regard, other defendants have sought to argue that their participation in the New Haven Savings Bank conversion was simply an anomaly. A one time event that only occurred because of the unique nature of the New Haven Savings Bank conversion. Based on the attachment to Defendant's financial statement, it does not appear that Defendant Schleifer was a novice with respect to savings banks or mutual bank conversions. Defendant Schleifer appears to have over 140 accounts and/or certificates of deposits at over 100 different banks, many of which are savings banks. (*See* PSR, Net Worth Statement at attachment A.) In fact, the Defendant holds nearly a million dollars ($922,791) in these various bank accounts and CDs. Moreover, these accounts and CDs are held in states such as Maine, Montana, Georgia, Illinois, Oregon, Massachusetts, Rhode Island, Ohio, Indiana, North Carolina, California, Texas, Vermont, and Connecticut. As such, it appears that Defendant Schleifer may be what has been termed a 'professional depositor' in savings banks, one who opens accounts with the anticipation of awaiting their conversion.

To the clear, the Government is not asserting that this alone is illegal or necessarily improper, but it helps elucidate the extent of the Defendant's familiarity with bank conversions and

negates any argument that would assert that he was a novice with respect to these conversions, as has been advanced by other similarly situated defendants such as Robert Ross and Chance Vought. Moreover, the defendant, as a controller for more than 12 years and an assistant controller before that, knew that he was required by law to pay his taxes completely and accurately, and knew that he should not have attempted to hide income by having separate checks made out in the names of his children.

III. Acceptance of Responsibility Requires Full Compliance with the Plea Agreement

In the Guideline calculation agree upon by the parties and found by the probation officer, the Defendant was given a three (3) level reduction under U.S.S.G. § 3E1.1 for acceptance of responsibility. Under the terms of the plea agreement the defendant agreed to make disgorgement and/or restitution of $73, 605 to the Securities and Exchange ("SEC"). Specifically, the signed executed plea agreement reads in relevant part:

> The parties agree that the defendant's undeclared income arose out of his illegal participation in the NewAlliance IPO and further agree that the number of identifiable possible victims that resulted from his unlawful participation in the IPO is sufficiently large and determining the complex issues of fact related to the cause and amounts of each possible victim's loss (e.g., number of shares of securities allotted to each possible victim and the price at which they may have chosen to sell) would complicate or prolong the sentencing process. Accordingly, the parties agree that in lieu of any order of restitution, the defendant will make disgorgement and/or restitution to the Securities and Exchange Commission under terms to be agreed upon by the SEC. The SEC has set up and is administering a "Fair Fund" related to the conversion of New Having Savings Bank to NewAlliance Bank and the defendant will deposit all ill-gotten gains from his participation in to the Fair Fund to be administered by the SEC.

Plea Agreement at 3.

As of this date, the defendant has not made disgorgement of $73, 605 to the SEC, but counsel has represented to the Government that the Defendant will present a check to the Court on the date of sentencing, so that he will be in full compliance. (*See* Attachment A). When the Defendant meets the financial terms of the plea agreement, he will of course be entitled to credit for acceptance of responsibility and the final Guideline calculation determined by the Court should reflect his full compliance. If, however, such a payment is not made at or before the day of sentencing, the Court may wish to revisit this issue.

IV. Conclusion

For the foregoing reasons, and those set forth in the Government's Memorandum in Aid of Sentencing , the Government respectfully submits that, under the circumstances of this case, the Court should impose a sentence of imprisonment at the low end of the Guidelines range of 18 to 24 months.

Respectfully submitted,

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UNITED STATES ATTORNEY

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CERTIFICATION

I hereby certify that on **December 18, 2009,** a copy of foregoing Government's Reply Sentencing Memorandum was filed electronically and served by hand on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone 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.

/s/Michael S. McGarry
MICHAEL S. MCGARRY
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December 18, 2009

Via E-Mail

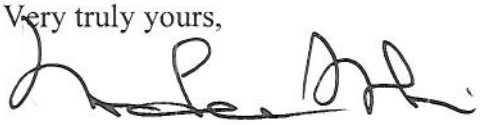
Michael S. McGarry
Assistant United States Attorney
U.S. Department of Justice
Connecticut Financial Center
157 Church Street
New Haven, Connecticut 06510

Re: *United States v. Schleifer*, No. 09-CR-197

Dear McGarry:

As you discussed during your telephone conversation today with my colleague Daniel K. Roque, I write to confirm that at sentencing in this matter on Tuesday, December 22, 2009, Steven Schleifer will make a payment to the Fair Fund established by the Securities and Exchange Commission in the amount of $73,605. Upon receipt of this letter you agreed that you would withdraw your motion filed today to adjourn the sentencing in this matter for sixty days.

Very truly yours,



Ira Lee Sorkin

ILS/dr