

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION  
-----

UNITED STATES OF AMERICA,

Plaintiff,

No.1:04-CR-165

v.

Hon. Robert Holmes Bell  
Chief District Judge

WESLEY MYRON BOSS,

Defendant.

\_\_\_\_\_ /

UNITED STATES RESPONSE TO DEFENDANT  
WESLEY MYRON BOSS' MOTION FOR SEVERANCE

Now comes the United States of America, by its attorney, Margaret M. Chiara, United States Attorney, and Thomas J. Gezon, Assistant United States Attorney, and hereby responds in opposition to the Defendant Wesley Myron Boss' Motion to Sever as follows:

1. INTRODUCTION

The Defendant is charged, along with seven other individuals, as a co-conspirator, with conspiracy to commit mail fraud (Count 39), Conspiracy to commit money laundering (Count 41) and conspiracy to defraud the Internal Revenue Service (Count 42). The grand jury also charged all of the eight defendants with various substantive counts of mail fraud and money laundering in connection with three underlying conspiracies. The Introduction to the Indictment gives the outline to the charges. The Defendants operated and sold a fraudulent investment scheme under the name of Access Financial. The scheme was sold by word of mouth from early investors who were satisfied and appeared to be getting the promised monthly returns from

profits. The Defendants also encouraged investors to purchase a bogus “church sub-chapter” for the purpose of receiving their “profits” from Access Financial free of income tax consequences.

Starting in 1998, the investment scheme took in approximately \$20 million from approximately 550 investors. After the scheme began to collapse in 2001, the Government investigation revealed that the scheme was a ponzi type fraud and the church chapter structures were completely bogus. By tracing the funds received from investors through more than 50 bank accounts, the Government intends to prove at trial that approximately \$8 million was used by the Defendants, including Wesley Myron Boss, to pay the investors the monthly “profit” checks. The balance of investor funds were used to purchase homes, cars, and other personal purchases and to pay the expenses of the scheme to make it appear legitimate.

The Government intends to introduce evidence that Defendant, Wesley Myron Boss, was an integral and substantial party in this fraud. The evidence will show he was one of only four sales managers; that he and his wife, co-defendant Diane Renae Boss, operated the business for the entire group out of their home for a period of the fraud and that the defendant actively participated in promoting and selling the bogus “church chapters” to investors. The attached documents distributed to victims/investors show Wesley Myron Boss' various titles and positions in the organization.

The Government expects to prove that each Defendant knowingly participated in the fraudulent venture, in part, by showing their respective roles in operating and promoting the fraud and by tracing the victims’ funds to show that: (1) the funds were not being protected from loss as promised by the Defendants; and (2) that the funds were dissipated by the unchecked personal spending of the Defendants, including Wesley Myron Boss.

The Government expects to call approximately 100 witnesses, including: (1) victims; (2) former employees; (3) agents who conducted the investigation and analyzed more than 50 bank accounts to trace the funds; (4) bank record keepers; and, (5) third-party vendors who were paid by the co-conspirators with victims' funds.

2. Joint Trials of Indicted Conspirators Are Encouraged by the Courts

Where defendants are properly joined as co-conspirators under Fed. R. Crim. P. 8(b), the court should grant severance under Fed. R. Crim. P. 14, only if the defendant can substantially show a serious risk that a joint trial compromises a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence. Zafiro v. United States, 506 U.S. 534 (1993). The Supreme Court has recognized that joint trials serve the legitimate goals of preserving state funds, of diminishing the inconvenience to witnesses and other parties, of avoiding delays in bringing cases to trial and of helping avoid inconsistent verdicts. Richardson v. Marsh, 481 U.S. 1987).

The Sixth Circuit has also stated that in complex conspiracy cases, joint trials are favored, United States v. Tocco, 200 F.3d 401, 413 (6<sup>th</sup> Cir. 2000); United States v. Wiener, 988 F.2d 629, 634 (6<sup>th</sup> Cir. 1993). The Defendant bears a heavy burden to show “specific and compelling prejudice” from having a joint trial. United States v. Harris, 9F.3d 493, 500 (6<sup>th</sup> Cir. 1993) (joint trials preferred, defendant bears heavy burden). Disparate evidence of guilt in strength or quality, is not sufficient reason to warrant severance as the properly instructed jury is presumed to be capable of weighing the evidence among the charged co-conspirators. Harris, id.; United States v. Lausey, 834 F.2d 1277, 1287-88 (6<sup>th</sup> Cir.) cert. denied 486 U.S. 1034 (1988).

### Defendant's Claim

The Defendant concedes that his claim not to be the “ringleader” or that he intends to point the finger at other charged co-defendants is not reason to sever. His position is consistent with the great weight of the relevant case law. The presentation of evidence more applicable to one co-defendant than another, at various times in a joint trial is a “fact of life” inherent in joint trials. United States v. Pauline, 935 F.2d 739, 751 (6<sup>th</sup> Cir.), cert. denied 502 U.S. 914 (1991).

The Defendant claims that the possible disruptive conduct of co-defendant Marcusse requires pre-trial severance. The conduct and control of the trial parties is left to the sound discretion of the trial judge. This court is not without experience in presiding over trials with multiple defendants, some represented and some *pro-se*. This Court has also successfully presided over several trials where the defendants claimed not to recognize the authority of the laws of the United States or the Court, itself. There is no reason to speculate that this trial will present any unique issues in that regard. The potential for a difficult or unruly defendant does not require severance when other trial management tools and curative instructions to the jury will address the concerns. United States v. Lopez, 309 F.3d 966, 971-72 (6<sup>th</sup> Cir.), cert. denied 537 U.S. 1244 (2003) (potentially inflammatory evidence brought out by disruptive *pro-se* co-defendant not reason to sever); United States v. Kincaide, 145 F.3d 771, 780-81 (6<sup>th</sup> Cir.), cert. denied 525 U.S. 1166 (1999) (bizarre *pro-se* conduct of co-conspirator not reason to sever).

The Defendant claims that, unlike Defendant Marcusse, and perhaps the other Defendants, he is not a “tax protestor” and the jury may confuse evidence relevant to other Defendants on their belief of tax laws as compared to views of the Defendant, Wesley Myron Boss. First, the Government responds that the Defendant, nor the co-defendants are not on trial

for their “beliefs” or opinions on what the law is. The Court will instruct the jury on the proper definition of all relevant laws. Thus, the views of the defendant as to what the tax law is or is not, should not be an issue.

Second, Defendant Wesley Myron Boss is charged as a co-conspirator with all the Defendants in Count 42, with conspiracy to defraud the Internal Revenue Service (“IRS”) in its task of properly assessing tax liabilities of United States citizens. Thus, the conduct in failing to file correct and accurate returns, in selling to investors bogus church sub-chapters, and in running a bogus umbrella church to evade income tax consequences are all relevant evidence of guilt and participation in the conspiracy.

The Government intends to introduce significant evidence to show the Defendant counseled investors that they could evade income taxes by becoming a sub-chapter of his umbrella church organization. Indeed, he held himself out as an officer of the bogus umbrella church and he was a signator on a checking account through which hundreds of thousands of dollars of victims’ funds passed during the fraud. If the Defendant was not the highest leader, he was nonetheless, a very integral part of the tax fraud.

Attachments A-F are just a few of the bogus church and church sub-chapter documents which Wesley Myron Boss signed while dealing with victims. At his trial, the defendant may try to distance himself from his co-defendants’ conduct to counter the Government’s proofs; however, that strategy is for a properly instructed jury, in a joint trial, to determine.

It is common in fraud trials for the contested issues to center around proof of intent to defraud and guilty knowledge of the individually charged co-defendants in the scheme. Similarly, the Defendant William Myron Boss’ defense strategy is currently antagonistic to other

co-defendants, that defense strategy is not grounds for severance. United States v. Pierce, 62 F.3d 818, 829-31 (6<sup>th</sup> Cir.), cert. denied 516 U.S. 1136 (1996); United States v. Critton, 43 F.3d 1089, 1097-98 (6<sup>th</sup> Cir.), cert. denied 514 U.S. 1121 (1995).

The Defendant also cites United States v. Breinig, 70 F.3d 850 (6<sup>th</sup> Cir. 1995) in support of his claim for entitlement for severance. The unique facts of the case are not present in the instant case. In Breinig, the defendant and his ex-wife were jointly tried for tax evasion. The wife defended herself by introducing evidence through experts that she was under duress from the defendant. To support this claim, she introduced evidence, in great detail, that the defendant was an abuser and manipulative during the marriage. This evidence of bad character would not otherwise have been admissible against the Defendant. In this very unique factual situation, the Court held that the denial of severance was an abuse of discretion. The Court stressed that the facts of this case were very unique and the mutually antagonistic defenses of the feuding co-defendants was not reason enough for severance. It was the admission of inadmissible inflammatory bad character evidence, related to the fact that the two co-defendants had been in a bitter marriage and divorce, that required severance. Breinig at 853. No such evidence is present in the present case.

In the instant case, the Defendant was a business partner with the co-defendants. He held himself out as a sales manager and an official of the bogus church organization used by all the defendants to perpetuate the fraud. He and his wife, operated the central office of the organization out of their residence for a number of months during the scheme. Mr. Boss' present antagonism and attempts to distance himself from his past business partners, is a common defense posture and does not give cause for a separate trial from his co-defendants.

Conclusion

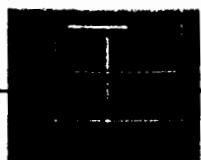
Therefore, the Government respectfully urges the Court to deny the severance motion of Defendant Wesley Myron Boss.

Respectfully submitted,

MARGARET M. CHIARA  
United States Attorney

Dated: December 10, 2004

/s/ Thomas J. Gezon  
THOMAS J. GEZON (P-24066)  
Assistant United States Attorney  
P.O. Box 208  
Grand Rapids, Michigan 49501-0208  
(616) 456-2404



**Offices Of  
Access Financial Group**

3217 Port Sheldon Rd.  
Hudsonville, MI 49426

Phone: 616-662-2391  
Fax: 616-662-2393

December 20, 1999

**OUR OFFICE ADDRESS AND TELEPHONE NUMBERS  
HAVE CHANGED DUE TO GROWTH.**

**Please change your records accordingly**

Effective December 20, 1999, the new headquarters telephone number and address for all Correspondence and Investments have been changed to :

**Access Financial Group  
4128 Byron Rd.  
Hudsonville, MI 49426  
616-896-9431 Phone Effective 12/22/99  
616-896-9047 Fax Effective 12/22/99**

We are happy to announce that Wes Boss and Diane DeWeerd were married on December 11, 1999. Wes and Diane will be running Access Financial Group together. The office has now been moved so it is more accessible to them. Also as many of you may know we have also added to our staff. Bonnie Kurnat will be working as Secretary to Wes and Diane. Welcome Bonnie.

**Wes & Diane Boss  
Access Financial Group  
4128 Byron Rd.  
Hudsonville, MI 49426  
Phone: 616-896-9431  
Fax: 616-896-9047**

**\*\* Please contact your representative first rather than the headquarters office as the volume of calls has increased considerably over the past year. Your Manager phone numbers will remain the same. The only change will be for Wes and Diane.**

**\*\* Please note that the Access offices will be CLOSED from December 17, 1999 thru January 3, 2000 so that the move can take place. Voice mail will still be checked on a daily basis during this time. The phone numbers will change over on December 20, 1999. Thank you all for your help and understanding in these matters.**

## December News Letter

Regarding the January 2001 rollover, if you have not returned your roll over form to this office, we are now past the December 10<sup>th</sup> dead line, therefore anyone who we have not heard from will have all funds rolled over for the year 2001. NO exceptions can be made.

In regards to January 2001, no interest checks will be sent out with the exception of those who invested in September 2000. The only checks going out of this office in January will be those of you who selected to receive **cash out** from your roll over. Again you will **NOT** be receiving an **INTEREST CHECK** for January. Those of you choosing to take a portion of your monies to set up family members with their own separate accounts in their names, will take place in February 2001. Their first interest checks will be mailed February 25, 2001. Please make sure that they have signed a non solicitation/non disclosure form into the main office by January 15th, so that we can set up these new people. **NO EXCEPTIONS WILL BE MADE.** These new investors must be 18, to be allowed to set an account up in their name. .

Regarding taxes **DO NOT** report any funds received on your 2000 taxes. **It is a gift**, non reportable. No 1099's will be issued. Greg Brown is no longer working for us, and as of this date he has not been replaced. We will inform you when a new accountant has been hired.

In reference to our managers, for those of you who were reporting to Rich Muma, he is on a medical leave of absence due to quadruple bypass surgery he had at the beginning of December. Rich is home and doing well. He will be on leave of absence till further notice. refer to your November news letter for the manager that will be handling your account until further notice.

### Phone listings for managers:

**Don Buffin : 616-457-4418**

**Wes Boss: 616-896-9431**

**Jeff Visser: 616-534-9228**

**Mike Brewer: 505-299-2794**

Remember to call the office 616-896-9431 or Fax 616-896-9047, if you have set up an E-Gold or DW Global account with account numbers.

**We all want to wish you a Merry Christmas and A Blessed New Year!!!!!!**

# Certified Copy of Resolution Authorizing Bank Account

(For use by unincorporated Association or Organization)

We, Diane Boss, and Wesley Boss of Discovery Church, hereinafter (Sometimes called "Organization", Trustees, EIN 38-3477795, do hereby jointly and severally certify as follows: 501(c)(3)@508(c)(1)(A); Sec.6033(a)(2)(A)(I)&(iii); 170(b)(1)(A)(i);

1. That said Organization is not incorporated and is an Unincorporated Church Organism with Jesus Christ as it's King.
2. That the following is a true copy of certain resolutions duly adopted on 12/15/00 at a meeting of The Presiding Bishop in Council, the governing body of said Organization, duly called and held; and that said resolutions have not been modified or rescinded and are now in full force and effect; and that the same are not in contravention of or in conflict with the by-laws or constitution of said Organization and are in accord therewith and pursuant thereto;

"RESOLVED, that an account of deposit be opened or continued and maintained with \_\_\_\_\_ account number \_\_\_\_\_, titled RESCUE and that funds of this Organization on deposit in the said bank( the word "bank" herein may be construed to mean fund or investment) shall be subject to withdrawal by checks, notes, drafts, bills of exchange, acceptances, orders or other instruments made in the name of said Organization and signed by one of the following of this Organization;  
Paul Stinger, Staff Director, Trustee, and/or Joycelyn Stinger, Staff Director, Trustee and/or \_\_\_\_\_, Staff Director, Trustee

And all such checks, notes, drafts, bills, of exchange, acceptances, orders or other instruments signed as aforesaid on behalf of this Organization, drawn upon said bank as drawee or made payable at or to said bank, including instruments drawn to cash or bearer or to the individual order of any officer, employee or member of this Organization (whether signed by such person or otherwise), shall be honored and paid by said bank and charged to the account of this Organization, and said bank may receive the same in payment of or as a security for the personal ineptness of any signer or other officer, employee or member to the bank, or in any transaction whether or not known to be for the personal benefit of any such person, without inquiry as of the circumstances of their issue or the disposition of their proceeds, and without liability to this Organization, and without any obligation upon said bank to inquire whether the same be drawn or required for this Organization's business or benefit: 26 U.S.C. 7611(a) to (h) at P.L. 91-172.121 (a)(1) at (A)(1):

FURTHER RESOLVED, that the person above named is authorized on behalf of this organization and in its name to endorse, negotiate, and receive, or authorize the payment of the proceeds of any negotiable or other instruments or orders for the payment of money payable to or belonging to this Organization; this resolution precedes signature cards from Staff Directors;

FURTHER RESOLVED, that the President and Secretary of this Organization are each hereby directed to certify to said bank a copy of these resolutions and the name of the present incumbents of the offices herein before referred to and to further certify from time to time hereafter the names of any successors to the present incumbents of said offices, together with specimens of their respective signatures; and said bank is herein authorized, empowered and directed to rely upon any such certificate unless and until the same shall have been formally revoked or altered by a subsequent certificate of this Organization actually received by said bank, this resolution is subject to Discovery Church Articles of Association, Church Rules and Applications;

3. That the following named Staff Director(s), Trustee(s) persons of said Organization in the capacity set opposite the Respective specimen signature: do, thereby identify, save and hold harmless the Church; A.R.S. 10;427.

NAME	TITLE	RESIDENCE ADDRESS
<u>Paul Stinger</u>	Staff Director, Trustee	<u>P.O. Box 134</u> <u>Springlake, MI</u>
<u>Joycelyn Stinger</u>	Staff Director, Trustee	<u>Fruitport, MI 49475</u> <u>49456</u>

IN WITNESS WHEREOF, We have hereunto subscribed our names this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Received by:

Presiding Bishop

Secretary

Diane Boss

Wesley M. Boss

Bank Representative

Discovery Church  
4128 Byron Rd.  
Hudsonville, MI 49426  
1-616-896-9234

Discovery Church  
4128 Byron Rd.  
Hudsonville, MI 49426  
1-616-896-9234

# Certified Copy of Resolution Authorizing Bank Account

(For use by unincorporated Association or Organization)

We, Diane DeWeerd, Wesley Boss and \_\_\_\_\_ of  
Discovery Church, hereinafter (Sometimes called "Organization"), Trustees ETN 38-3477795  
do hereby jointly and severally certify as follows: 501(c)(3) & 508(c)(1)(A), Sec 6033(a)(2)(A)(i)&(ii), 170(b)(1)(A)(i).

- 1 That said Organization is not incorporated and is an Unincorporated Church Organization with Jesus Christ as it's King
- 2 That the following is a true copy of certain resolutions duly adopted on 9/16/99 at a meeting of The Presiding Bishop in Council, the governing body of said Organization, duly called and held; and that said resolutions have not been modified or rescinded and are now in full force and effect; and that the same are not in contravention of or in conflict with the by-laws or constitution of said Organization and are in accord therewith and pursuant thereto,

"RESOLVED that an account of deposit be opened or continued and maintained with \_\_\_\_\_ account number \_\_\_\_\_, titled Servants Heart and that funds of this Organization on deposit in the said bank (the word "bank" herein may be construed to mean fund or investment) shall be subject to withdrawal by checks, notes, drafts, bills of exchange, acceptances, orders or other instruments made in the name of said Organization and signed by one of the following of this Organization:  
Stanley Krognan Staff Director, Trustee, and/or Suzanne Krognan Staff Director, Trustee and/or  
\_\_\_\_\_  
Staff Director, Trustee

and all such checks, notes, drafts, bills, of exchange, acceptances, orders or other instruments signed as foresaid on behalf of this Organization, drawn upon said bank as drawer or made payable at or to said bank, including instruments drawn to cash or bearer or to the individual order of any officer, employee or member of this Organization (whether signed by such person or otherwise), shall be honored and paid by said bank and charged to the account of this Organization, and said bank may receive the same in payment of or as a security for the personal ineptness of any signer or other officer, employee or member to the bank, or in any transaction whether or not known to be for the personal benefit of any such person, without inquiry as of the circumstances of their issue or the disposition of their proceeds, and without liability to this Organization, and without any obligation upon said bank to inquire whether the same be drawn or required for this Organization's business or benefit: 26 U.S.C. 7611(a) to (h) at P.L. 91-172, 121 (a)(1) at (A)(1).

FURTHER RESOLVED, that the person above named is authorized on behalf of this organization and in its name to endorse, negotiate, and receive, or authorize the payment of the proceeds of any negotiable or other instruments or orders for the payment of money payable to or belonging to this Organization, this resolution precedes signature cards from Staff Directors.

FURTHER RESOLVED, that the President and Secretary of this Organization are each hereby directed to certify to said bank a copy of these resolutions and the name of the present incumbents of the offices herein before referred to and to further certify from time to time hereafter the names of any successors to the present incumbents of said offices, together with specimens of their respective signatures; and said bank is herein authorized, empowered and directed to rely upon any such certificate unless and until the same shall have been formally revoked or altered by a subsequent certificate of this Organization actually received by said bank, this resolution is subject to Discovery Church Articles of Association, Church Rules and Applications.

- 3 That the following named Staff Director(s), Trustee(s) persons of said Organization in the capacity set opposite the Respective specimen signature, do, thereby identify, save and hold harmless the Church, A.R.S. 10.427

NAME	TITLE	RESIDENCE ADDRESS
<u>Stanley Krognan</u>	Staff Director, Trustee	<u>12673 Waterwheel Rd</u>
<u>Suzanne Krognan</u>	Staff Director, Trustee	<u>Coral, ME 49322</u>

IN WITNESS WHEREOF, We have hereunto subscribed our names this 16 day of Sept, 1999

Received by:

Bank Representative

Presiding Bishop  
Diane DeWeerd  
Discovery Church  
3217 Port Sheldon Rd.  
Hudsonville, MI 49426  
1-616-662-~~2391~~  
2391

Secretary  
Wesley Boss  
Discovery Church  
3217 Port Sheldon Rd.  
Hudsonville, MI 49426  
1-616-662-~~2391~~  
2391

DISCOVERY CHURCH  
4128 BYRON RD.  
HUDSONVILLE, MI. 49426

This letter is to thank you for the gift of \$246,394.86 which was received from Duane Krogman, for the Outreach Ministry program of Discovery Church. EIN 38-3477795 on 9/16/99. Thank you again for your Christian love and concern for this ministry. May you be truly blessed as you go thru life helping others.

In Christ's Service,

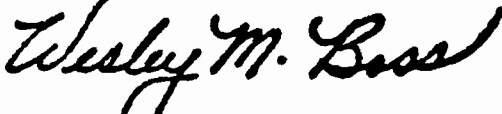
*Wesley M. Boss*

Wesley M. Boss, Secretary

DISCOVERY CHURCH  
4128 BYRON RD.  
HUDSONVILLE, MI. 49426

This letter is to thank you for the gift of \$246,394.85 which was received from Stanley Krogman, for the Servant's Heart Ministry program of Discovery Church. EIN 38-3477795 on 9/16/99. Thank you again for your Christian love and concern for this ministry. May you be truly blessed as you go thru life helping others.

In Christ's Service,

A handwritten signature in cursive script that reads "Wesley M. Boss". The signature is written in black ink and is positioned above the typed name.

Wesley M. Boss, Secretary