

NO: 08-5836

IN

SUPREME COURT OF THE UNITED STATES

JANET MARCUSSE - PETITIONER

v.

UNITED STATES - RESPONDENT

SUPPLEMENT TO

PETITION FOR A WRIT OF CERTIORARI TO

SIXTH CIRCUIT COURT OF APPEALS

Janet Marcusse

#17128-045

Federal Correctional Institution

501 Capital Circle, NE

Tallahassee, Florida 32301

NOW COMES Appellant, Janet Marcusse, to bring to the attention of the Supreme Court an intervening matter not known or available to her at the time of her petition for a writ of certiorari, which was docketed on August 19, 2008, as Case No: 08-5836. According to Rule 15, a supplemental brief may be filed at any time while a petition for a writ of certiorari is pending.

On September 2, 2008, Marcusse received an official notification from the IRS dated August 27, 2008, that the Department of Treasury intended to audit her for tax years 1999, 2000, and 2001, the same years Agent Donald Kempf admits in his letter were covered in the 2005 trial (App. 1-3). While Marcusse was not charged in the indictment with failure to file an income tax return, at trial the IRS alleged she had not filed tax returns for tax years 1998, 1999, 2000, and 2001, and had unreported income of \$943,370 (App. 4). The IRS agreed with Marcusse that no return was required to be filed for tax year 1998, as her income of \$6,744 was below the threshold level of the amount required to file a return. This year, however, was the first year of the alleged ponzi scheme (App. 5), an allegation which was withdrawn by the prosecution in rebuttal closing after legitimate investments were admitted by government witnesses (App. 6).

Based upon the heavily disputed summary exhibits regarding tax years 1999, 2000, and 2001, however, upon which substitute tax returns were submitted, but about which Marcusse was not permitted the use of any bank records as evidence to establish pass through funds going into investments, the jury found her guilty of conspiracy to defraud the IRS (Count 42), as based upon the prosecution's alleged failure to file objective (App.

7-9). The prosecutor had concluded his rebuttal closing arguments asking the jury to find the defendants guilty "for deceiving the federal government, in this case the IRS, and not paying their taxes" (App. 10). The jury instructions had tied the duty to file an income tax return to the money laundering counts (App. 11-18).

The court sentenced Marcusse to 60 months (5 years) for Count 42, and 240 months (20 years) on the money laundering charges, with the sentences to be served consecutively for a total of 300 months (25 years). The court further ordered Marcusse to pay restitution of \$310,722.00 to the IRS for the three tax years (App. 19).

As the result, the basis for all of the 25 year sentence was tied to this failure to file allegation, a misdemeanor with a one year statutory maximum sentence. It now appears that the IRS is reopening this matter to debate. The August 27, 2008, letter from Agent Kempf indicates, "You will be given an option of signing an enclosed audit report or writing a response to the report and the case will be forwarded to our Appeals Division" (App. 1). Failure to file is only a crime if "willfulness" is established, and the taxpayer had income over a specified threshold amount, issues Marcusse contested. If the IRS is acting to reopen these matters in an audit to determine whether or not Marcusse even owed any taxes, certainly it cannot be claimed by the government that there was proof beyond a reasonable doubt. Marcusse would submit, therefore, that because the government is now in effect admitting that there may be something wrong with the manner in which this case was handled, she is entitled to her petition for writ of

certiorari to be granted.

According to Kenner v. Commissioner, 387 F 2d 689 (7th Cir. 1968), cert. denied, 393 U.S. 841 (1968), reh. den., 393 U.S. 971 (1968), even after decision becomes final, Tax Court has power to reconsider decision where taxpayer claims that decision was fraudulently obtained.

The record at the district court indicates that Marcusse filed several fraud upon the court petitions under Rule 60(b) around the time of sentencing, objecting to the manner in which this case was handled and the conviction obtained. She also filed a complaint with the Office of Professional Responsibility, which forwarded it to the Investigations Division of the Assistant Inspector General (App. 20-21). The prosecution withdrew the ponzi scheme allegation upon which the trial was admittedly based from jury deliberations (App. 5, 6), but would not dismiss the charges, instead proceeding on all counts based on a failure to file conspiracy. The prosecution also admitted, but not until after trial, that the basis upon which Count 42 was made, that the defendants had failed to file appropriate employee and payroll tax information with the IRS, may also not have been true. Marcusse testified that her associates were independent contractors with their own organizations or companies. In a filing after trial, the government admits the "sales managers operated independently of each other" (App. 22). Two-thirds or \$600,000 of the \$943,370 in unreported income attributed to Marcusse was handled by barrister Gurmail Sidhu. His home and office were raided under a falsified drug trafficking search warrant, confiscating Marcusse's business and bank records, so she could not use them at trial (App. 23-24).

The district court denied her motion for these records (App. 25-27). As indicated in the petition for writ of certiorari, the prosecution has Marcusse's bank records. They were given to the government by the Bosses after Marcusse reported them for embezzling \$1.5 million of investor funds. Without access to the bank records, Marcusse would be severely handicapped in an audit, just as she was at trial. Therefore, she looks to the Supreme Court for relief on these matters.

CONCLUSION

The IRS, who investigated this case, is reopening the basis for its charges to debate. Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Date:

9/11/08


Janet Marcusse, Pro Se

Department of the Treasury
Small Business/Self-Employed, Area Central

Internal Revenue Service
777 Riverview Dr., D-109/110
Benton Harbor, Michigan
49022

Person To Contact: Donald A. Kempf

Janet Mavis Marcusse
Tallahassee Federal Correction Institute
501 Capital Circle, NE
Tallahassee, Florida 32301

Employee Identification Number: 38-01083
Telephone Number: (269) 927-8506
Number: (269) 927-8520 FAX

Date: August 27, 2008

Dear Ms. Marcusse:

I have received information regarding the Access Financial Group for the years 1999, 2000, and 2001. During this time period you worked for them and received compensation, commissions, and other income. We do not show that you filed tax returns during this time period. The Internal Revenue Service and the Department of Justice have provided me with information submitted for your trial regarding the income paid to you during the years 1999, 2000, and 2001.


I will be forwarding to you within the next 30 – 45 days an audit report regarding the income that you received during that time period. This will show the income, expenses, deductions, and credits that are attributable to you during these 3 years. You will also be provided with publications explaining your options regarding the audit report. You will be given an option of signing an enclosed audit report or writing a response to the report and the case will be forwarded to our Appeals Division.

I have enclosed a standard audit Letter 2205 with some basic information. It does not show a date or time period for the audit, but it does provide some basic information and the IRS website.

If you have any questions, you can write to me at the above address or call at the telephone number listed.

Thank you very much for your cooperation.

Yours truly,



Donald A. Kempf
Internal Revenue Agent

Enc: Letter 2205
Publication 1, Notice 609

**Internal Revenue Service
Small Business / Self-Employed**

Date: August 27, 2008

Janet Mavis Marcusse
Tallahassee Federal Correction Institute
501 Capital Circle, NE
Tallahassee, Florida 32301

Department of the Treasury
Internal Revenue Service
777 Riverview Drive, D109/110
Benton Harbor, Michigan 49022

Taxpayer Identification Number:
485-74-1766
Form:
1040
Tax Period(s):
Dec. 31, 1999, 2000, 2001
Person to Contact:
Donald A. Kempf
Contact Telephone Number:
269-927-8506
Contact Fax Number:
269-927-8520
Employee Identification Number:
38-01083

Dear Ms. Marcusse:

Your federal return for the period(s) shown above has been selected for examination.

What You Need To Do

Please call me on or before _____ . I can be contacted from _____ to _____ at the contact telephone number provided above.

During our telephone conversation, we will talk about the items I'll be examining on your return, the types of documentation I will ask you to provide, the examination process, and any concerns or questions you may have. We will also set the date, time, and agenda for our first meeting.

Someone May Represent You

You may have someone represent you during any part of this examination. If you want someone to represent you, please provide me with a completed Form 2848, *Power of Attorney and Declaration of Representative*, at our first appointment.

If you prefer, you may mail or fax the form to me prior to our first appointment. You can get this form from our office, or from our web site www.irs.gov, or by calling 1-800-829-3676. If you decide that you wish to get representation after the examination has started, we will delay further examination activity until you can secure representation.

Your Rights As A Taxpayer

We have enclosed Publication 1, *Your Rights as a Taxpayer*, and Notice 609, *Privacy Act Notice*. We encourage you to read the Declaration of Taxpayer Rights found in Publication 1. This publication discusses general rules and procedures we follow in examinations. It explains what happens before, during, and after an examination, and provides additional sources of information.

Thank you for your cooperation and I look forward to hearing from you by

Sincerely,



Donald A. Kempf
Internal Revenue Agent

Enclosure:
Publication 1
Notice 609

1 purported interest checks, but you tried to trace how much was
2 given to or obtained by each of the eight defendants; is that
3 correct?

4 A Correct.

5 Q And that's about -- the total is \$4.8 million, correct?

6 A Yes.

7 Q And according to your calculations you're going to talk
8 about, Mr. Albrecht got 252-some-odd thousand dollars?

9 A Yes.

10 Q Mr. Besser got a million; Diane Boss got \$485,000; Mr.
11 Boss, Mr. Wes Boss got 826; Mr. Buffin got 264; Mr. Flynn got
12 730; Ms. Marcusse got 940; and Mr. Visser got 250?

13 A Correct. I was just looking. It appears there might be
14 an error on the Bosses.

15 Q Okay. Tell us what that one is.

16 A I believe just looking at this that Diane received more
17 than Wesley.

18 Q So those might be different, but together did they
19 receive about --

20 A Together they received \$1.3 million, \$1.31 million.

21 Q All right. Well, let me be clear. You're saying that of
22 investors' funds, these folks got this amount?

23 A Yes.

24 Q Okay. Let's start with Mr. Albrecht, Exhibit 89. Is
25 that the exhibit which you explain how that happens?

1 thank you ahead of time.

2 Myself along with Mr. Gezon represent the government
3 in this case, and this is a criminal case in which charges
4 were brought against the eight defendants. **Ponzi** scheme.
5 You've heard the word already, **Ponzi** scheme. That's what this
6 case is about.

7 Now, some of you may not know what a **Ponzi** scheme
8 is.

9 THE COURT: Excuse me. I think we need to turn up
10 the volume a little bit.

11 MR. SCHIPPER: Thank you, Your Honor.

12 A **Ponzi** scheme is a form of investment fraud named
13 after Charles **Ponzi** after about 1919 or 1920 who came up with
14 an investment fraud scheme that was named after him. Now,
15 some of you may have heard of a pyramid scheme. A **Ponzi**
16 scheme is similar, and a **Ponzi** scheme has certain
17 characteristics.

18 You'll hear from Leonard Zawistowski. Leonard
19 Zawistowski is an expert with the Federal Reserve Board. He
20 investigates financial fraud cases, investment fraud cases
21 specifically, including **Ponzi** schemes. Mr. Zawistowski will
22 tell you that **Ponzi** schemes have several characteristics that
23 are common. Now, not every **Ponzi** scheme has all of these
24 eight, ten or twelve characteristics. Some have six or eight
25 of them and some have different little twists. But they

From Vol. I Trial Transcript, dated 5/16/05 [bold emphasis added]

1 the evidence and the testimony and focus on that.

2 I remind you that what's been said by the persons in
3 closing argument is not testimony. What we say, what I say,
4 what the other attorneys said, what Mr. Visser said as his own
5 lawyer standing up there is not testimony. It's his argument
6 about what he believes the evidence shows, but it's not his
7 testimony. It's his closing argument.

8 Let me address these cases, the issues, basically by
9 returning to the order in which they were given, and let me
10 start with Mr. Kaczor and his remarks about Ms. Marcusse.
11 First of all, he told the story about Peter Ponzi and
12 explained to you or suggested to you that if it didn't happen
13 just like he claims Peter Ponzi would do it, then you must
14 acquit, because if you didn't do it the way Peter Ponzi did
15 this thing, then you're not doing a Ponzi scheme and you must
16 acquit Ms. Marcusse.

17 Let me just say about that that I don't think if you
18 look at the indictment you will see the words Ponzi scheme
19 anywhere in that indictment. I suspect that you will not hear
20 the word Ponzi scheme coming from the Judge's instructions,
21 and I know you will not see the words Ponzi scheme in any of
22 the elements that you have to consider in these crimes. The
23 Judge will instruct you that you must determine whether or not
24 a person has devised a scheme to obtain money and used
25 omissions, misrepresentations, reckless statements,

From Vol. XIX of Trial Transcript, dated 6/14/05

1 THE COURT: Yes, yes, yes. I'm going to have a
2 couple copies for them.

3 MR. GARTHE: Next at Page 43, the gross definition
4 definition.

5 MR. KACZOR: Gross income.

6 MR. GARTHE: Gross income, yes. This kind of goes
7 in with No. 44. Both those instructions, Your Honor, deal
8 with basically the failure to file a tax return. The count
9 concerning -- Count 42 is defrauding the United States, and I
10 don't believe there's anywhere mentioned in that count failure
11 to file a tax return. I think they're alleging the defrauding
12 of the United States was as a result of failure to file a W-2
13 or failure to keep records of your income, putting money here
14 or there, whatever, and this sort of -- these two instructions
15 sort of turn the case into a failure to file an income tax
16 return case.

17 Also, gross income is -- it's highlighting one --
18 these two instructions are highlighting one example of
19 defrauding of the United States whereas we don't have other
20 separate instructions on each of the other examples that are
21 cited in Count 42. So therefore, it highlights an example of
22 defrauding the United States, plus it basically deals with
23 failure to file an income tax return. And if that truly is
24 allowed in, then we would ask that a lesser included
25 instruction be given on failure to file an income tax return.

1 If that truly is what our defendants are being accused of
2 doing wrongfully, then they should be entitled to that
3 instruction. Thank you.

4 MR. GEZON: Your Honor, I'm sorry, I don't have a
5 copy of my indictment in front of me right now, but I've read
6 this. I looked at this yesterday. If you look at the
7 indictment, it clearly says that the manner and means includes
8 failing to keep records, other things, but it also clearly
9 states that failing to file income tax returns is one of the
10 manner and means.

11 Could someone share a copy of the proposed
12 indictment -- I mean superseding indictment? Thank you.
13 Count 42?

14 MR. SCHIPPER: 42.

15 MR. GEZON: If you'll let me state this, in the
16 manner and means section after the charging language, it says
17 the grand jury incorporates the mail fraud counts and the
18 money laundering conspiracy, and then it goes on, manner and
19 means. 2. Paid themselves large commissions, did not keep
20 accurate records of pay. 3. Defendants set up more than 20
21 different bank accounts in which they placed their funds. 4.
22 The defendants opened and used non-interest bearing checking
23 accounts in the name of church chapters. 5. The defendants
24 failed to report to Internal Revenue Service the salaries and
25 commissions they paid themselves from victims' funds. 6.

1 Failed to report to the Internal Revenue Service the monies
2 they received from victims' funds with which they paid
3 personal expenses. 7. Failed to file the appropriate
4 employee or payroll tax information, failed to issue 1099 and
5 W-2s, and failed to keep normal and accurate books of the
6 victims' funds. And 8. The defendants conducted financial
7 transaction with the victims' funds in a manner so as to hide
8 the source and the nature of the funds for the purpose of
9 evading payment of appropriate income taxes.

10 So clearly this count has to do with obtaining
11 money, not keeping track of it for tax purposes, and
12 eventually not paying -- not filing income tax or filing false
13 income tax returns. So it incorporates the essence of failure
14 to file and filing false returns, but that's the nature of the
15 conspiracy. This is a -- I could say this is a standard
16 instruction which the Court has used many times in the past.
17 It's not anything novel. And basically before the jury can
18 consider whether someone has willfully failed to file taxes,
19 it has to be willful; they have to be of a filing status, so
20 that instruction about duty to file has to be in there; and
21 they have to know what the definition of income is that's
22 applicable to this case. And that definition includes the
23 things that are applicable to this case.

24 THE COURT: Well, 42 is conspiracy to defraud the
25 United States, but it's just not the whole United States.

1 people did with it. These folks didn't lose their money.
2 They made money. They made millions. Who lost their life
3 savings? How many stories did we hear about ruined lives?
4 The victims. What about it from the victims' point of view?

5 I would ask you to come back with a verdict of
6 guilty on all counts against these defendants for their
7 participation in this scheme; that they conspired with each
8 other and worked very closely together to come up with this
9 ruse of a successful investment company; that they kept it
10 going even in desperate times. They tried their best to keep
11 the government from investigating. They tried their best to
12 keep the investors from talking to the police. But it didn't
13 work, and even in this trial when it didn't work, they want to
14 claim that they were doing the best they could.

15 I suggest to you that the evidence calls them all
16 liars, and you should convict each and every one of them for
17 taking the investors' money and for deceiving the federal
18 government, in this case the IRS, and not paying their taxes.
19 Thank you very much.

20 THE COURT: Thank you, all counsel.

21 We'll take a break for a few minutes and then we'll
22 come back and start with some instructions.

23 (Proceedings recessed at 10:58 a.m.; reconvened at 11:17 a.m.)

24 THE COURT: You may be seated.

25 Members of the jury, I will now instruct you

1 and intentionally and with the specific intent to do something
2 the law forbids; that is to say, with a purpose either to
3 disobey or to disregard the law. In order to convict a
4 defendant under Counts 42 through 57, you must find that the
5 government has proven that the law imposed a duty on a
6 defendant, that a defendant knew of this duty, and that the
7 defendant voluntarily and intentionally violated that duty.

8 Now, a defendant does not act willfully if he or she
9 believes in good faith that they are acting within the law or
10 that their actions comply with the law. This is even so if
11 the defendant's beliefs are not reasonable as long as he or
12 she held that belief in good faith. The reasonableness of a
13 belief is a factor for you to consider in determining whether
14 a defendant actually held a belief and acted on it. The more
15 farfetched a belief is, the less likely it is that a person
16 actually held or would act on that belief.

17 If a defendant acts without reasonable grounds to
18 believe that his or her conduct is lawful, it is for you to
19 decide whether that person is acting in good faith in order to
20 comply with the law or whether that person has willfully
21 violated that law. A defendant who knows the law -- who knows
22 what the law is -- and who disagrees with it does not have a
23 good faith misunderstanding defense. Neither a defendant's
24 disagreement with the law nor their personal belief that such
25 law is unconstitutional, no matter how earnestly he or she

1 he or she intended to use a third party as a go-between may be
2 sufficient.

3 Count 41 of the indictment accuses all of the
4 defendants of a conspiracy to commit money laundering in
5 violation of federal law even if they never actually
6 accomplished their goal. For you to find a defendant guilty
7 of this conspiracy charged in Count 41, the government must
8 prove each and every one of the following elements beyond a
9 reasonable doubt:

10 First, that two or more persons conspired or agreed
11 to commit the crime of money laundering.

12 Second, the government must prove that a defendant
13 or the defendants knowingly and voluntarily joined the
14 conspiracy.

15 You must be convinced that the government has proven
16 both of these elements beyond a reasonable doubt in order for
17 you to find any of these defendants guilty of this conspiracy
18 charge.

19 Now, Count 42 of the indictment accuses all of the
20 defendants of a conspiracy to defraud the United States by
21 dishonest means in violation of federal law. For you to find
22 a defendant guilty of this conspiracy charge in Count 42, the
23 government must prove each and every one of the following
24 elements beyond a reasonable doubt:

25 First, that two or more persons conspired or agreed

1 to defraud the United States or one of its agencies or
2 departments by dishonest means. The word "defraud" is not
3 limited to its ordinary meaning of cheating the government out
4 of money or property. "Defraud" also means impairing,
5 obstructing, or defeating the lawful function of the
6 Department of Treasury or the Internal Revenue Service by
7 dishonest means.

8 Second, the government must prove that a defendant
9 knowingly and voluntarily joined the conspiracy.

10 Third, the government must prove that at least one
11 member of the conspiracy did at least one of the overt acts
12 for the purpose of advancing or helping the conspiracy.

13 You must be convinced that the government has proven
14 all of these elements beyond a reasonable doubt in order to
15 find that a defendant is guilty of a conspiracy charge.

16 The crime does not require that a defendant intended
17 to directly commit the fraud himself or herself. Proof that
18 he or she intended to use a third party as a go-between may be
19 sufficient. But the government must prove that the United
20 States or one of its agencies or departments was the ultimate
21 target of the conspiracy, and that a defendant intended to
22 defraud.

23 Now, Count 42 charges that the defendants
24 accomplished the conspiracy, in part, by failing to report
25 significant amounts of gross income they had received during

1 the conspiracy on appropriate tax returns.

2 "Gross income" means all income from whatever source
3 it is derived, including wages and compensation for services,
4 tips, compensation in the form of personal expenses paid for
5 by the defendant's organization.

6 The defendant -- the law requires an individual to
7 make and file a federal income tax return if that individual
8 had gross income of more than a certain amount, depending on
9 their filing status, whether or not such person owed any tax.
10 Anyone with a gross income of more than \$13,400 was required
11 by law to file an income tax return in years 1997 through
12 2001.

13 The filing of a federal income tax return is not
14 voluntary. An individual with gross income amounts charged in
15 the indictment is required by law to follow -- to file an
16 income tax return.

17 The question of what constitutes a "church" for
18 spiritual purposes is not before you. However, the question
19 of what constitutes a "church" for federal tax purposes may
20 be. You have heard evidence that the defendants claimed their
21 income was exempt from income tax laws because they called
22 themselves a church or a church auxiliary. One cannot exempt
23 their income from federal income tax laws by simply declaring
24 oneself to be a church or a church auxiliary. The law
25 requires that to be a church or church -- or auxiliary church

1 for federal tax purposes, certain rules apply.

2 Under the law, one cannot be an exempt church
3 organization unless it is organized and operated exclusively
4 for religious purposes, no part of its earnings inuring to the
5 benefit of any one individual.

6 You have heard reference to an "exempt 508 church."
7 Section 508 is an implementation section providing special
8 rules for Section 501(c)(3) organizations. Section 508 does
9 not provide for an independent tax exempt organization.

10 As I have previously instructed, a defendant's good
11 faith belief that their actions complied with the law negates
12 an intent to defraud the United States, even if that good
13 faith is not reasonable. You may consider the reasonableness
14 of the belief in determining whether or not the defendant
15 actually held that belief.

16 It is not a good faith misunderstanding if the
17 defendant knows what the law is and disagrees with it, every
18 citizen's duty being to obey the law whether they agree with
19 it or not.

20 Now I will give you some instructions that apply to
21 all three conspiracy charges.

22 With regard to the first element, a criminal
23 agreement, the government must prove that two or more persons
24 conspired or agreed to cooperate with each other to commit the
25 crimes of conspiracy to commit mail fraud, conspiracy to

1 defraud the United States, and conspiracy to commit money
2 laundering.

3 This does not require proof of any formal agreement,
4 written or spoken. Nor does this require proof that everyone
5 involved agreed on all the details. But proof that people
6 simply met together from time to time and talked about common
7 interests or engaged in similar conduct is not enough to
8 establish a criminal agreement. These are factors which you
9 may consider in deciding whether the government has proven an
10 agreement. Without more, they are not enough.

11 What the government must prove is that there was a
12 mutual understanding, either spoken or unspoken, between two
13 or more people to cooperate with each other to commit the
14 crimes of conspiracy to commit mail fraud, conspiracy to
15 defraud the United States, and conspiracy to commit money
16 laundering. This is essential.

17 An agreement can be proven indirectly, by facts and
18 circumstances which lead to a conclusion that an agreement
19 existed. But it is up to the government to convince you that
20 such facts and circumstances existed in this case.

21 One more point about the agreement. The indictment
22 accuses the defendants of conspiring to commit several federal
23 crimes. The government does not have to prove that the
24 defendants agreed to commit all of the crimes, but the
25 government must prove an agreement to commit at least one of

1 them for you to return a guilty verdict on the conspiracy
2 charge.

3 If you are convinced that there was a criminal
4 agreement, then you must decide whether the government has
5 proven that the defendants knowingly and voluntarily joined
6 that agreement. You must consider each defendant separately
7 in this regard, as in every other count. To convict any
8 defendant, the government must prove that he or she knew the
9 conspiracy's main purpose, that he or she voluntarily joined
10 it intending to help advance its goals.

11 This does not require proof that a defendant knew
12 everything about the conspiracy, or everyone else involved, or
13 that he or she was a member of it from the very beginning.
14 Nor does it require that a defendant played a major role in
15 the conspiracy, or that his or her connection to it was
16 substantial. A slight role or connection may be sufficient.

17 But proof that, again, a defendant simply knew about
18 it, the conspiracy, or was present at times, associated with
19 members of the group is not enough, even if he or she approved
20 of what was happening and did not object to it. Similarly,
21 just because a defendant may have done something that happened
22 to help a conspiracy does not necessarily make that defendant
23 a conspirator. These are all factors you may consider in
24 deciding whether the government has proven that a defendant
25 joined a conspiracy. But without more, it is not enough.

1 What the government must prove is that a defendant
2 knew the conspiracy's main purpose and that the defendant or
3 the person voluntarily joined it intending to help advance or
4 achieve its goals. That is essential.

5 A defendant's knowledge may be proven indirectly by
6 facts and circumstances which lead to a conclusion that he or
7 she knew the conspiracy's main purpose, it being up to the
8 government to convince you that such facts and circumstances
9 existed in this particular case.

10 The third element that the government must prove
11 with respect to these conspiracies charged in Counts 40, 41,
12 and 42 is that a member of the conspiracy did one of the overt
13 acts described in the indictment for the purpose of advancing
14 or helping the conspiracy. Again, the indictment is by
15 agreement before you in Exhibit 157, and you may read the same
16 as it pertains to the overt acts.

17 The government has alleged and introduced evidence
18 they contend demonstrates certain overt acts. The government
19 does not have to prove that all of these acts were committed
20 or that any of these acts were themselves illegal, but the
21 government must prove that at least one of these acts was
22 committed by a member of the conspiracy and that it was
23 committed for the purpose of advancing or helping a
24 conspiracy. This is essential.

25 Now, some of the people who may have been involved

Judgment--Page 5 of 11
 Defendant: JANET MAVIS MARCUSSE
 Case Number: 1:04-CR-165-01

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS:	\$6,000.00	\$	\$12,961,966.80

G The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

[x] The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States.

<u>Name of Payee</u>	<u>Total Loss</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
SEE PAGES 6-9	\$12,651,244.80	\$12,651,244.80	
Internal Revenue Service	\$ 310,722.00	\$ 310,722.00	
TOTALS	\$12,961,966.80	\$12,961,966.80	

G Restitution amount ordered pursuant to plea agreement \$ _____

G The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

[x] The court determined that the defendant does not have the ability to pay interest and it is ordered that:

[x] the interest requirement is waived for the G fine [x] restitution.

G the interest requirement for the G fine G restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.



U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Room 3266
Washington, D.C. 20530

APR 9 2008

Janet Marcusse
Reg. no. 17128-045
Federal Correctional Institution
501 Capital Circle, NE
Tallahassee, FL 32301

Dear Ms. Marcusse:

This is in response to your correspondence to the Office of Professional Responsibility (OPR), dated September 27, 2007, in which you alleged misconduct by an Assistant United States Attorney (AUSA) and United States Marshals Service (USMS) employees.

OPR has jurisdiction to investigate allegations of misconduct involving Department of Justice (DOJ) attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice, as well as allegations of misconduct by law enforcement personnel when they are related to allegations of attorney misconduct within the jurisdiction of OPR. It is, however, the policy of this Office to refrain from investigating issues or allegations that could have been or still may be addressed in the course of litigation, unless a court has made a specific finding of misconduct by a DOJ attorney or law enforcement agent or there are present other extraordinary circumstances. Based on our review of your correspondence, we have determined that your allegations regarding the AUSA fall into this category, there is no evidence that the court has made a finding of misconduct, and there are no other extraordinary circumstances present. We note that your correspondence indicates that you have raised your claims with the court. Accordingly, we concluded that no action by this Office is warranted.

In addition, we have determined that the aspect of your complaint concerning alleged misconduct by USMS employees falls within the jurisdiction of the Office of the Inspector General. By copy of this letter, we are forwarding our copy of your correspondence to that Office for its review and any action it deems appropriate. Future inquiries regarding the USMS should be directed to that Office.

You may wish to seek the advice of private counsel or the Legal Aid Society with regard to your concerns. We regret that we are unable to be of further assistance to you in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Annie Wong".

Annie Wong
Program Analyst

cc: Thomas F. McLaughlin (with enclosure)
Assistant Inspector General
Investigations Division
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W., Room 4706
Washington, DC 20530

fellow salesmen/co-defendants.

D. Paragraphs 180, 210 and 213. The government concedes that the title "sales manager" and the role of sales manager in Access Financial referred to a concept of being responsible for a group of assigned investors. Thus, if an investor called to obtain information, the caller would be referred to their assigned "sales manager." The government also concedes that although his wife, Diane Renae Boss, (and later Donald Maynard Buffin, Jr. and Jeffrey Alan Visser) supervised the day to day activities of the office staff - Bonnie Kurnat, Julie Sieman, Kristen Hayes and others - Wesley Myron Boss did not, according to the testimony of Bonnie Kurnat and Julie Sieman. The defendants' observation that the sales managers operated independently of each other and answered to Janet Mavis Marcusse and George Terrance Besser also appears to be borne out by the evidence. The government concedes that the management of investors by the defendant/sales managers does not meet the requirement of managing "participants" of the offense, as required in USSG § 3B1.1, application note #1.

E. Paragraph 205. The offense clearly involved more than 250 victims, as the number proven was approximately 577.

F. Paragraphs 206-207 and follow through paragraphs. The defendant, like all the co-defendants, represented to the victims and third parties that they were a church and a charitable foundation. Wesley Myron Boss promoted church subchapters of the church he formed, called Sanctuary Ministries. He signed many documents claiming to be an officer of that church; he was a signator on the bank account of the church. He made application for health insurance coverage claiming to be an employee of a church organization. He signed church subchapter acknowledgment forms as a church officer for investors who bought a church