

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 10-CR-006

SUJATA SACHDEVA,

Defendant.

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by its attorneys, James L. Santelle, United States Attorney for the Eastern District of Wisconsin, and Matthew L. Jacobs, Assistant United States Attorney, hereby submits the following memorandum in anticipation of the defendant's sentencing in the above-referenced case, which is presently scheduled for November 17, 2010.

Background

On December 21, 2009, the defendant, Sujata Sachdeva, who is known as "Sue," was arrested and charged by criminal complaint with using interstate wire communications to execute a scheme to defraud her then-employer, the Koss Corporation ("Koss"), in violation of Title 18, United States Code, Section 1341 ("wire fraud"). R.1.¹ Sachdeva was arraigned before Magistrate Judge Goodstein that same day and released on bond. R. 3.

¹In this memorandum, "R." followed by a number refers to an entry in the district court docket sheet in this case; "PSR" followed by a number refers to a paragraph of the Presentence Investigation Report prepared under date of October 25, 2010.

On January 20, 2010, Sachdeva was charged by indictment with six counts of wire fraud. R.8. On July 27, 2010, and pursuant to a plea agreement previously filed, Sachdeva pleaded guilty to all six counts of the indictment. R. 29 & 31. Sachdeva is scheduled to be sentenced on November 17, 2010.

Sentencing Guidelines and Objections

The government begins its analysis with the advisory Sentencing Guideline range. The PSR prepared in connection with Sachdeva's sentencing proposes a total offense level of 36, which, in combination with Sachdeva's Criminal History Category of I, produces an advisory guideline range of 188 - 235 months. (PSR ¶97).

Sachdeva objects to two aspects of the PSR's calculation of her total offense level, first, a proposed 2-level increase under U.S.S.G. § 2B1.1(b)(9)(C) based on a finding that Sachdeva's fraud involved "sophisticated means," and, second, a proposed 4-level increase under U.S.S.G. 2B1.1(b)(14)(B)(ii) based on a finding that Sachdeva's offense "substantially endangered the solvency or financial security of ...a publically traded company...."

The government agrees with the PSR that both enhancements should be applied.

Sophisticated Means

The Commentary to § 2B1.1 provides that, for purposes of § 2B1.1(b)(9)(C), "'sophisticated means,' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense."

As recently stated by the Seventh Circuit Court of Appeals, an enhancement under § 2B1.1(b)(9)(C),

is proper when the conduct shows “a greater level of planning or concealment” than a typical fraud of its kind. As the Eighth Circuit puts it, the two-level enhancement “is proper when the offense conduct, viewed as a whole, was notably more intricate than that of the garden-variety [offense].”

United States v. Knox, No. 08-1571, slip op. (7th Cir. November 10, 2010) (citations omitted).

Essentially, Sachdeva argues that all she did was steal money from Koss and then try to cover it up. When reduced to this basic level, all fraud is simple. The fallacy of this argument is reflected in counsel’s attempt to describe Sachdeva’s efforts to conceal her fraud. Counsel states: “These simple revisions to Koss’ books consisted primarily of ‘debit/credit wipes’ (see PSR at ¶ 40) by which Mulvaney overstated expenses and costs, and understated sales, until Koss’ ledgers matched the amount of cash remaining on the books.” Defense Objection at 4.

These “simple revisions” involved literally hundreds, if not thousands, of fraudulent entries in Koss’s general ledger that impacted both Koss’s income statement and its balance sheet. Unlike a garden-variety embezzlement, where an employee dips into the till or surreptitiously diverts payments to herself or a fictitious vendor, Sachdeva’s fraud was multi-layered and complex.

Up until 2009, the cashier’s checks and wire transfers Sachdeva diverted to her personal benefit were not recorded in Koss’s book and records. This made it very difficult to detect Sachdeva’s fraud and would have required auditors to review source documents, such as bank records, to discover the thefts. Having surreptitiously stolen funds, however, Sachdeva still had to prevent Koss and its auditors from discovering the theft once it compared bank balances to Koss’s books and records. To accomplish this, Sachdeva had to reduce the cash reflected on Koss’s internal records. Sachdeva engaged in both a short-term, temporary solution and a long-term, permanent solution to this problem.

For the short-term, Sachdeva directed one of her assistants to delay recording cash receipts from customers and also to record payments prior to actually making them. This would temporarily reduce the cash on Koss's books to correspond to the actual balances in its bank accounts, from which Sachdeva had diverted funds. Once the receipts were ultimately recorded and payments actually made, Sachdeva, however, had to find a way to reduce permanently the cash on Koss's books to successfully hide her scheme.

Contrary to the defendant's characterization, these efforts took a variety of forms. Sachdeva's assistant used a process known as "debit/credit" or "D/C" wipe to erase or eliminate entire sales from Koss's books. These entries happened at the individual customer account level and, because it involved completely erasing transactions, would have been virtually impossible to detect had forensic auditors not found secret records maintained by Sachdeva or her assistant. Even these transactions, however, required balancing entries to other expense accounts to maintain the overall sales figures.

In addition to the "D/C wipes," Sachdeva or her assistant made numerous journal entries to overstate assets, understate liabilities, understate sales, overstate costs of goods sold, and overstate expenses, to reduce the cash on Koss's books. Again, each of these entries required one or more balancing entries to other accounts. Frequently, one transaction was balanced by a series of smaller entries to expense accounts.

A testament to the complexity of Sachdeva's fraud is the fact that, even after interviewing Sachdeva and locating records for some of the various fraudulent entries, Koss's forensic accountants have been unable to determine how Sachdeva hid more than \$6.5 million of embezzle funds on Koss's books.

Substantially endangering the financial security of a publically traded company

As is relevant here, the Sentencing Guidelines call for a 4-level increase in a defendant's offense level if her offense "substantially endangered the solvency or financial security of ...a publically traded company...." U.S.S.G. § 2B1.1(b)(14)(B)(ii).

The Commentary to § 2B1.1 provides the following non-exhaustive list of factors for the Court to consider to determine if this enhancement should be applied:

1. The organization became insolvent or suffered a substantial reduction in the value of its assets.
2. The organization filed for bankruptcy under chapters 7, 11, or 13 of the Bankruptcy Code.
3. The organization suffered a substantial reduction in the value of its equity securities or the value of its employee retirement accounts.
4. The organization substantially reduced its workforce.
5. The organization substantially reduced its employee pension benefits.
6. The liquidity of the equity securities of a publicly traded company was substantially endangered. For example, the company was delisted from its primary listing exchange, or trading of the company's securities was halted for more than one full trading day.

U.S.S.G. § 2B1.1, comment (n.12).

Basic common sense demonstrates that Sachdeva's fraud, through which she embezzled more than \$34 million from a company, whose current total market value is less than \$40 million, substantially endangered the solvency and financial security of Koss.²

The application of this enhancement is further supported by a review of the price of Koss's stock during the period Sachdeva perpetrated the bulk of her embezzlement (2005 - 2009), as well

²The indictment alleges, and the defendant conceded as part of her plea agreement, that, at all times relevant, Koss Corporation was a publically traded company that had its shares traded on the NASDAQ stock exchange. Indictment, ¶ 2(b) and Plea Agreement, ¶ 5.

as the fact that trading in Koss's stock was halted for a 3-week period after Sachdeva's fraud was discovered.

In this latter regard, on December 21, 2009, after discovering Sachdeva's fraud, and at Koss's request, NASDAQ halted trading in Koss's stock. This was reported to the Security and Exchange Commission, as well as the fact that the annual financial reports Koss had filed with the S.E.C. for the years 2005 through 2009 were not reliable. Trading in Koss's stock resumed on January 11, 2010. Plainly, by halting trading, the liquidity of Koss's stock was substantially endangered, it was completely eliminated.

A review of Koss's financial statements and the record of its stock price, demonstrates that the value of Koss's stock was substantially reduced by Sachdeva's embezzlement. During the period from fiscal year 2005 (beginning July 1, 2004) through December 2009, Sachdeva embezzled more than \$31 million. As reflected on the attached table, this represented more than 10% of Koss's reported net sales and more than 60% of its net income or profit. Quite understandably, as Sachdeva's embezzlement continued and grew, the value of Koss's stock went from approximately \$10 per share to \$5.51 when trading was halted in December 2009. Because Sachdeva was secretly diverting the majority of Koss's income, Koss was, by definition, substantially under reporting its sales and profitability. This could only have substantially reduced the value of its stock.

In her objections to the PSR, Sachdeva claims that Koss stock outperformed the NASDAQ composite during the 10-year period from 2000. This is both misleading and irrelevant. During the last 5 years, when Sachdeva committed the bulk of her fraud, Koss stock did substantially worse than either the NASDAQ composite or the S&P 500. That only makes sense, given the huge amount of money Sachdeva stole from the company during this time period. The value of the stock had to be

substantially reduced. The fact that over a longer period of time, Koss stock outperformed NASDAQ only indicates how significantly Sachdeva's fraud dragged the value of the business down in the relevant years (2004 - 2009).

In addition, Sachdeva's embezzlement directly threatened Koss's solvency. As indicated in the attached table, as a result of Sachdeva's theft, Koss reported a net loss of almost \$5 million for fiscal year 2010 (beginning on July 1, 2009). This means that during 2009, in order to fund her fraud, Sachdeva didn't merely steal current profits and understate Koss's income, she began stealing borrowed money by drawing on Koss's line of credit. At the time her fraud was discovered, Sachdeva had drawn more than \$5.8 million on Koss's previously untapped line of credit and saddled the business with a huge debt which further reduced the company's value and threatened its viability.

Based on the foregoing, the Court should adopt the guideline calculations recommended in the PSR and determine that Sachdeva's advisory guideline range is 188 to 235 months. With these guidelines in mind, the government turns to the factors set forth in § 3553(a)

Sentencing Considerations

As the Court is aware, 18 U.S.C. §3553(a) directs the Court to consider the following factors when sentencing a defendant.

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) The need for the sentence imposed -
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and,
 - (D) to provide the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner;

- (3) The kinds of sentences available;
- (4) [The advisory guideline range;]
- (5) Any pertinent policy statements issued by the Sentencing Commission;
- (6) The need to avoid unwarranted sentence disparity among defendants with similar records who have been found guilty of similar conduct; and,
- (7) The need to provide restitution to any victims of the offense.

18 U.S.C. §3553(a).

After considering these factors, the Court should impose a sentence that is sufficient, but not greater than necessary, to satisfy the purposes of sentencing, which include the need to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, and to provided the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

The Nature and Circumstances of the Offense

As outlined in the indictment and detailed in the PSR, Sachdeva's offense involved a massive fraud scheme executed over a period of more than 12 years, in which the defendant defrauded her employer of more than \$34 million. In executing her scheme, Sachdeva enlisted the assistance of one or more of her subordinates to facilitate and conceal her fraud. These efforts involved numerous, complex entries to Koss's books and records that made it virtually impossible to detect Sachdeva's fraud.

While Sachdeva frequently paid for meals and drinks for her subordinates, and may have allowed them to divert small amounts of money to their own use, the vast majority of money Sachdeva stole from Koss was used for her own personal use. Moreover, this is not a situation where Sachdeva's crimes arose out of any legitimate need. Sachdeva received a significant salary

from Koss and her husband, who is a physician, was well compensated. Sachdeva lived in a large home in Mequon, Wisconsin. Her children attended an expensive private school. She appears to have had a loving and supportive family and wanted for nothing.

By all objective factors, Sachdeva's criminal conduct is extremely serious. The amount of actual loss Sachdeva personally and directly inflicted on her former employer is very large by any standards. Published reports indicate that this is the largest embezzlement uncovered in the United States during 2009. Government counsel is personally unaware of a larger embezzlement case in the Eastern District of Wisconsin in the past 25 years

The seriousness of Sachdeva's fraud is further demonstrated by examining the impact her embezzlement had on Koss. While the government contends that Sachdeva stole a relatively small amount of money from Koss in 1992, Sachdeva began her embezzlement in earnest in September 1997. During the period from September 1997 through June 30, 2004, Sachdeva embezzled more than \$2.7 million by issuing cashier's checks off of Koss's bank account and using them to pay her personal expenses.

Over the ensuing period (July 1, 2004 through December 2009), Sachdeva accelerated her fraud and stole almost \$31.5 million. As reflected on the attached table, Sachdeva effectively stole more than half of Koss's net income or profit during this 5½ year period. Understandably, as Sachdeva's embezzlement increased, Koss's stock value dropped from more than \$10 per share in 2003, to \$5.50 when Koss was forced to halt trading in its stock after Sachdeva's fraud was discovered.

The duration and frequency of Sachdeva's fraudulent conduct further establishes the extremely serious nature of her criminal conduct. During this time, Sachdeva literally made tens

of thousands of purchases using funds she stole from Koss. She directed her employees to issue hundreds of fraudulent cashier's checks totaling approximately \$17.5 million, more than 200 wire transfers, totaling more than \$16 million, from Koss's operating account to pay for her personal expenses.

Sachdeva's criminal conduct is further aggravated by the fact that the purchases she made using the stolen money were for frivolous, luxury items, which she apparently purchased for the thrill or "high" it gave her.

History and Characteristics of the Defendant

The PSR paints a very positive picture of the defendant's background. Sachdeva reports having a "great childhood" in which all her needs were met. (PSR, ¶69). Sachdeva further reports that she has a good relationship with her family and that her family is supportive of her. (PSR ¶ 70). Interviews with her husband and family members confirm this. (PSR ¶¶ 71-78). Sachdeva has a college degree and was employed for 19 years at Koss Corporation. (PSR ¶¶87 and 88). Sachdeva is married with two children and she and her husband own a home with an assessed value of approximately \$780,000. (PSR ¶ 89).

The PSR also suggests that there may be mitigating factors warranting a more lenient sentence including the defendant's lack of prior record, mental health issues, and pro-social family and personal history.

The government addresses Sachdeva's mental health issues below as part of its comments on the sentencing documents recently submitted by defense counsel.

The government disagrees with the suggestion that Sachdeva's lack of a prior criminal record warrants a more lenient sentence. First, Sachdeva's lack of a criminal record has been taken into

account by the advisory Sentencing Guidelines, which assign her a Criminal History Category of I. Second, defendants in embezzlement other white-collar cases typically have no prior criminal record. A defendant with a criminal record is unlikely to be hired and put in a position of financial trust that would allow her to embezzle money. Thus, Sachdeva's lack of a criminal record is not unusual.

Finally, Sachdeva's lack of a criminal record is misleading. While it is true that Sachdeva has never been convicted of a crime, she has been anything but law-abiding. As reflected above, Sachdeva engaged in a virtually continuous fraud beginning in September, 1997, and involving literally hundreds of individual thefts from Koss. Thus, it is fair to say that, for almost half of her adult life, Sachdeva has been engaged in criminal conduct, betraying the trust Koss place in her, and embezzling funds on a large scale.

The government also questions why Sachdeva's pro-social family and personal history might warrant a more lenient sentence. Plainly, no one would suggest that a defendant whose family was anti-social should be punished more severely. To the contrary, it should be to Sachdeva's shame that, despite having an intact, supportive family, the benefits of a college education, and an affluent lifestyle independent of her fraud, Sachdeva nonetheless elected to steal from her employer to purchase huge quantities of luxury clothing and other goods.

Sachdeva's Sentencing Memorandum

On November 9, 2010, defense counsel provided the government with a set of sentencing documents, which were submitted to the Court with a request that they be kept under seal. It is my understanding that these materials were not provided to the Probation Department and were not, therefore, included or otherwise referenced in the PSR.

Without discussing in detail the contents of the defense submission, it is fair to say that Sachdeva asserts that her criminal conduct is attributable to significant mental health issues and significant traumatic events in her life that “impaired her judgment, insight and her ability to control her behavior.” Defense Sentencing Memorandum at 5. Nonetheless, the defense acknowledges that Sachdeva was able to appreciate the wrongfulness of her conduct. *Id.* Moreover, while arguing that Sachdeva had a compulsive shopping disorder, Sachdeva herself acknowledges that she simply “didn’t want to stop.” *Id.* at 37.

In any event, Sachdeva is not charged with compulsive shopping. She is charged with stealing to feed her habit. While mental health issues, including a compulsive shopping disorder, might help explain Sachdeva’s conduct, it does not excuse it.

Sachdeva is like most criminals, who know right from wrong, but choose to violate the law because of the benefit or “thrill” they receive. Throughout her fraud, Sachdeva repeatedly demonstrated that she could, if necessary, control her behavior. Sachdeva consistently stopped issuing fraudulent cashier’s checks during the last month of Koss’s fiscal year (June) because she knew Koss’s outside auditors would be examining that month’s bank records.³ Moreover, she had sufficient control over her extravagant spending not to use her own money to pay for it; perhaps because her husband would learn of it. She also hired a personal assistant to hide her purchases. Thus, Sachdeva was able to make rational and calculated decisions to avoid detection and enable herself to continue her embezzlement.

³In his objections to the PSR, defense counsel asserts that by June 2009, Sachdeva was so out of control that she took funds from Koss’s accounts indiscriminately. Defense Objection at 5. This is false. As with all the prior years, Sachdeva stopped issuing fraudulent cashier’s checks during June 2009.

The government is not in a position to confirm or refute many aspects of Sachdeva's personal history as reflected in her sentencing memorandum. Sachdeva's attempt to attribute the start of her embezzlement to a particular merchant and a perceived threat to expose her extravagant shopping, however, is contrary to the evidence. In the sentencing memorandum, Sachdeva claims that her embezzlement started out small with an initial payment to the merchant in 2004. Defense Sentencing Memorandum at 33 & 37.

In fact, by the time Sachdeva issued the first fraudulent cashier's check to this merchant in September 2004, she had already issued more than 190 fraudulent cashier's checks and embezzled approximately \$3.4 million. These checks were issued to pay her personal credit cards, and various retailers including Nieman Marcus, Saks Fifth Avenue and Marshall Fields. These included a cashier's check issued in August 2002, in the amount of \$22,124.62, to St. John Boutique, where Sachdeva claims to have purchased most of her business wardrobe with her own money. Sentencing Memorandum at 33.

Sufficient but not excessive

Section 3553(a) directs the Court to impose a sentence that is sufficient, but not greater than necessary, to address the goals of sentencing. Among the relevant goals are the need for the Court's sentence to reflect the seriousness of the defendant's criminal conduct, to promote respect for the law, to provide just punishment for the offense, and to deter future criminal conduct.

With these goals in mind, several aspects of the defendant's offense require a substantial prison sentence. The harm caused by Sachdeva's offense is great. She stole more than \$34 million from her employer for her personal benefit. Sachdeva's crimes were not motivated by any financial need or desperation. Sachdeva's fraud took place over a lengthy period of time and involved

numerous, almost continuous acts of fraud against her employer. Thus, her crimes were neither isolated nor aberrant.

Sachdeva not only betrayed the trust placed in her by her long-time employer, she corrupted other Koss employees and directed them to falsify the company's books and records and conceal the falsifications from auditors. Sachdeva frequently took these employees to lunch and plied them with alcohol, as well as expensive gifts, all of which were ultimately paid for by Koss. Sachdeva also used Koss money to hire the husband of one of her subordinates to act as her personal assistant and help her conceal her numerous purchases.

All cases are unique in the sense that every defendant is a unique individual. The question is whether a defendant's individual characteristics are an appropriate basis to reduce a defendant's sentence. It may well be that Sachdeva has mental health issues that require treatment while in prison. Nonetheless, given the magnitude of Sachdeva's criminal conduct, a substantial prison sentence is required to adequately punish, promote respect for the law, and deter future criminal conduct.

Respectfully submitted this 15th day of November, 2010.

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