

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 1:08CR00058CAS
	)	
RUSSELL TODD McBRIDE,	)	
	)	
Defendant.	)	

**GOVERNMENT’S MEMORANDUM RELATIVE TO  
SENTENCING ISSUES**

Comes now the United States of America, by and through its attorneys, Michael W. Reap, Acting United States Attorney for the Eastern District of Missouri, and Paul W. Hahn, Assistant United States Attorney for said District, and for the Government’s Memorandum Relative to Sentencing Issues, submits to the Court as follows:

**I. BACKGROUND**

On June 2, 2009, the defendant, Russell Todd McBride, pled guilty to Count I of Conspiracy to Commit Mail Fraud and Wire Fraud in connection with the purchases and sales of residential real estate property located in Sikeston, Missouri. McBride also pled guilty to 12 counts of Wire Fraud and 12 counts of Mail Fraud, as well as six counts of Money Laundering. The objective of the conspiracy was to obtain mortgage loan proceeds through fraudulent real estate transactions. McBride obtained false and fraudulent appraisals for residential real estate located in Scott County, Missouri. Sales of the real estate were brokered and facilitated by actions of McBride and his co-defendant, Robert Wrolstad, which involved overvaluing the real estate property for the purpose of obtaining inflated loan proceeds for the personal benefit of McBride and Wrolstad.

The defendants represented to investors that the residential real estate to be purchased would be good investment properties, that the rents would pay the mortgage, and the properties could be acquired with no money down, and that the properties could be sold at a profit. McBride provided mortgage loan applications, appraisals and supporting documents for review by prospective lenders, and McBride and Wrolstad caused to be submitted to mortgage loan companies located outside the Eastern District of Missouri materially false, fraudulent and misleading loan applications, real estate appraisals, and other documents to induce mortgage loan companies to approve the applications and lend funds to the borrowers and investors. McBride and Wrolstad directed closing agents to pay them substantial amounts of the mortgage loan proceeds by checks and wire transfers into their personal bank accounts and other bank accounts controlled by them. Some transactions involved the defendants forging signatures of sellers on warranty deeds, and having those signatures falsely notarized. As indicated in McBride's Plea Agreement, the amount of loss was between \$7,000,000 and \$20,000,000. The amount of restitution owed to lenders defrauded by McBride's scheme was \$9,357,865.27. McBride fraudulently received at least \$6,367,623.44 in loan proceeds, and Wrolstad fraudulently received \$2,799,326.49 in loan proceeds. (P.S.R. ¶ 54)

The facts and circumstances underlying the offense conduct for which McBride pled guilty are set out in summary fashion in the Plea Agreement and Presentence Report. (See Plea Agreement, pp. 9-18; P.S.R. ¶¶ 1-56)

## **II. McBRIDE'S TOTAL OFFENSE LEVEL**

Defendant McBride's base offense level is 7 pursuant to U.S.S.G. §§ 2S1.1(a)(1) and 2B1.1(a)(1). (P.S.R. ¶ 62) The parties stipulated that the amount of loss exceeded \$7,000,000 but was less than \$20,000,000. Accordingly, twenty levels are added pursuant to U.S.S.G. §

2B1.1(b)(1)(K). Since the offense involved 50 but less than 250 victims, four levels are added pursuant to U.S.S.G. § 2B1.1(b)(2)(A)(i). McBride derived more than \$1,000,000 in gross receipts from one or more financial institutions; therefore, two levels are added pursuant to U.S.S.G. § 2B1.1(b)(14). McBride engaged in money laundering under 18 U.S.C. § 1957, resulting in one level being added pursuant to U.S.S.G. § 2S1.1(b)(2)(A). Since McBride was the organizer and manager of the instant offense, two levels are added pursuant to U.S.S.G. § 3B1.1(A). After a three level reduction for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(a) and (b), McBride's total offense level is 33. (P.S.R. ¶ 71)

### **III. McBRIDE'S CRIMINAL HISTORY**

On April 24, 1997, McBride received a suspended imposition and was placed on five years probation for the offense of Conspiracy to Commit Arson in the Circuit Court of Scott County, Missouri, in Case Number CR396-15F. McBride received one criminal history point for this offense. (P.S.R. ¶ 76) McBride's resulting criminal history score is I, which establishes a criminal history category of I. (P.S.R. ¶ 81)

### **IV. SENTENCING GUIDELINE RANGE**

Based on a total offense level of 33 and a criminal history category of I, McBride's Guideline imprisonment range is from 135 to 168 months. The maximum term of imprisonment for the Conspiracy count as set forth in Count I is five years, and the maximum term of imprisonment for the Money Laundering counts as set forth in Counts IV, VIII, XI, XVII, XX and XXIV is ten years. The maximum term of imprisonment for the remaining counts of wire fraud and mail fraud is twenty years.

## V. NEED TO PROMOTE LISTED STATUTORY OBJECTIVES

In determining the particular sentence to impose, the court shall consider a number of factors pursuant to 18 U.S.C. § 3553(a). Among those factors are the following:

**A. Nature and Circumstances of the Offense and History and Characteristics of the Defendant.**

Among the factors courts are directed to consider in imposing a sentence is “the nature and circumstances of the offense and the history and characteristics of defendant.” 18 U.S.C. § 3553(a)(1). The scheme implemented by McBride and Wrolstad involved investors recruited by them to purchase real estate primarily located in the City of Sikeston, Missouri. The owners of the real estate would sell their real estate for a price that approximated its fair market value to the investors. However, the investors paid prices for the real estate that were significantly greater than the actual selling price received by sellers. The investors would purchase the real estate at a fraudulently and overvalued price by obtaining loans to purchase the property. The Indictment charged mail fraud, wire fraud and money laundering revolving around the sale and acquisition of 12 properties located in the City of Sikeston, Missouri. The Government anticipates presenting to the Court evidence that there were at least 341 properties that were involved in the scheme. McBride and Wrolstad extracted millions from the mortgage loan proceeds generated from the sales of those properties, despite neither being a buyer or seller of the property.

To accomplish their goals, McBride and Wrolstad were responsible for altered documents, forged signatures, and misleading dozens of people.

In one example involving the sale of the residence located at 309 Prosperity in Sikeston, Missouri, the actual selling price received by the seller was \$7,500. Despite the selling price being \$7,500, McBride and Wrolstad caused to be prepared a contract for the sale of the property to the

purchaser for \$66,000.00, nearly nine times the actual selling price of the property. Longbeach Mortgage funded the purchasers' loan in the amount of \$57,259.56. On the following day, as part of the closing for the sale of the 309 Prosperity property, McBride and Wrolstad caused the title company to wire transfer \$51,029.23 to McBride's account with US Bank, and caused the title company to wire transfer \$3,071.93 to Wrolstad's account with Regions Bank. The purchasers used their credit ratings to borrow the money to fund the purchases which yielded such extraordinary payments to McBride and Wrolstad.

**B. Seriousness of the Offense, Respect for the Law, and Just Punishment**

Section 3553(a)(2)(A) requires the court to consider the need for the sentence imposed "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; . . ." McBride's and Wrolstad's fraud resulted in investors being obligated to repay over Nine Million Dollars in excess of the fair market value of the property they purchased. Several lenders lost over Nine Million Dollars due to this extensive mortgage fraud scheme. This is an extraordinarily serious financial crime. Payment of restitution is doubtful. Accountability for these offenses can be obtained by the imposition of a significant and lengthy sentence reflecting the serious nature of these offenses, the financial devastation suffered by the individual investors, and the impact on the lenders. A sentence at the upper end of the Guideline range of 135 to 168 months would serve to reflect the seriousness of the offense, promote respect for the law and provide just punishment for this offense.

**C. Adequate Deterrence to Criminal Conduct**

Section 3553(a)(2)(B) directs the Court to consider the need for the sentence “to afford adequate deterrence to criminal conduct.” Courts have recognized that “*white collar crime . . . requires heavy sentences to deter* because it is potentially very lucrative.” *United States v. Hauptman*, 111 F.3d 48, 52 (7th Cir. 1997) (emphasis added). A lengthy prison term would provide significant deterrence to others contemplating similar fraudulent schemes on such an extraordinary scale. The Mortgage Asset Research Institute’s March 2009 report to the Mortgage Bankers Association reports that “fraud incidence is at an all-time high,” and “[e]merging fraud trends are further draining lender, law enforcement, and consumer resources in the industry’s most challenging times.” See [risk.lexisnexis.com/mari](http://risk.lexisnexis.com/mari). There were 63,713 mortgage fraud related suspicious activity reports filed with FinCEN in fiscal year 2008, compared to 17,127 such reports in fiscal year 2004 -- an increase of 370%.

“Because economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence.” *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (internal quotation omitted). “Defendants in white collar crimes often calculate the financial gain and risk of loss, and white collar crime therefore can be affected and reduced with serious punishment.” *Id.* at 1240.

Mortgage fraud is lucrative and can be difficult to detect. McBride and Wrolstad collectively siphoned over Nine Million Dollars of mortgage loan proceeds over an extended period of time. It often takes years for mortgage fraud schemes to be detected, if at all.

As Judge Easterbrook of the Seventh Circuit has explained, “[t]he system of penalties under the Guidelines is constructed on the belief that . . . longer sentences of imprisonment, are more effective deterrents. A large body of evidence supports this intuition.” *United States v. Turner*, 998

F.2d 534, 536 (7th Cir. 1993) (Easterbrook, J.). Judge Posner writes that “raising the price of crime” will reduce its incidence. RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW 5 (4th ed. 1992) (“[A]n increase in . . . the severity of the punishment . . . will raise the price of crime and therefore reduce its incidence.”).

The extraordinary impact of mortgage fraud has contributed to the meltdown in the financial markets and crisis in the lending industry experienced in the United States in 2007 and 2008, from which this nation has not recovered. This greed based crime was committed by exploiting the lenders and the investors, and damaged the credit of dozens of individuals who had the great misfortune to fall prey to McBride’s and Wrolstad’s scheme. A sentence at the upper end of the Guideline range of 135 to 168 months would deter others tempted to engage in mortgage fraud.

#### **D. Public Protection from Further Crimes by Defendant**

Section 3553(a)(2)(C) directs the Court to consider “[t]he need for the sentence . . . to protect the public from further crimes of the defendant.” There is a significant risk that McBride will return to committing fraud upon release from prison. Despite having been found guilty of the felony offense of Conspiracy to Commit Arson, and serving a lengthy term of probation, McBride failed to abide by the law notwithstanding his previous experience with the criminal justice system. (PSR ¶ 76) McBride had the ability to talk dozens of investors into using their credit to purchase hundreds of properties for amounts several times their actual purchase price. A lengthy prison term would serve to protect the public from further crimes of defendant McBride while he is incarcerated.

## **VI. RESTITUTION**



McBride is guilty of offenses in violation of 18 U.S.C. Sections 1341, 1343 and 1357. Accordingly, McBride is subject to mandatory payment of restitution to victims of his mortgage fraud offenses pursuant to the 18 U.S.C. § 3663A. "The Mandatory Victims Restitution Act ("MVRA") mandates, in pertinent part, that a trial court award restitution when sentencing a defendant convicted of 'an offense against property under [Title 18], ... including any offense committed by fraud or deceit[.]'" *United States v. Waldner*, 580 F.3d 699, 709-10 (8<sup>th</sup> Cir. 2009), quoting 18 U.S.C. § 3663A(c)(1)(A)(ii). In the Plea Agreement, McBride agreed:

that regardless of the particular counts of conviction, the amount of mandatory restitution imposed shall include all amounts allowed by Section 3663A(b) and the amount of loss agreed to by the parties, including all relevant conduct loss. The defendant agrees to provide full restitution to all victims of all charges in the indictment and victims of offenses included as relevant conduct without regard to the count or counts to which the defendant has agreed to plead guilty.

Plea Ag. ¶ 7.A.

A "victim" is "a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern." 18 U.S.C. § 3663A(a)(2). Persons directly and proximately harmed as a result of McBride's mortgage fraud offenses include the mortgage lenders and the investors/purchasers of the residences acquired pursuant to McBride and Wrolstad's scheme.

"[W]here a defendant is convicted of a conspiracy offense, courts may now award restitution to all individuals or entities defrauded in the 'entire scheme' with which a defendant was engaged, not just those defrauded in the specific offense counts to which a defendant has been found guilty."



*United States v. Bold*, 412 F.Supp.2d 818, 827 (S.D.Ohio 2006), citing *United States v. Davis*, 170 F.3d 617, 627 (6th Cir.1999); *United States v. Sosebee*, 419 F.3d 451, 458-59.

The pool of “victims” eligible for MVRA restitution thus includes individuals or entities not harmed by a defendant's convicted offense counts, but harmed in the same general manner as the victims of those counts, or as part of same general scheme giving rise to the conviction. *See, e.g., Davis*, 170 F.3d at 627 (award to all individuals targeted by defendant's telemarketing fraud); *United States v. Jamieson*, 427 F.3d 394, 418 (6th Cir.2005) (award to all investors in mail fraud and money laundering scheme).

*Bold*, 412 F. Supp. at 827.

In determining the amount of restitution under these circumstances, repayment of the amounts loaned by the mortgage lenders and borrowed by the investors/buyers, less the value of the residential property at the time of the transaction, should be ordered by the court. See §33663A(b)(1) (the order of restitution shall require that such defendant--**(I)** in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense--the greater of--**(I)** the value of the property on the date of the damage, loss, or destruction; or **(II)** the value of the property on the date of sentencing, less **(ii)** the value (as of the date the property is returned) of any part of the property that is returned)). As indicated in paragraph 12 of Count I of the Indictment, the owners of the real estate sold the residential real estate involved in the scheme for a price that approximated its fair market value to the investors/buyers of the real estate.

Courts have approved a common methodology for estimating intended loss in a flip mortgage fraud scheme, namely, to use the straw buyer's loan amount minus the promoter's purchase price. This methodology properly holds the mortgage fraudster responsible for the loan money received as a result of the fraud, but appropriately deducts from the loss amount the fair market value of the collateral, as suggested by Application Note 3(E)(ii) to U.S.S.G. §2B1.1. This is the methodology

recommended by the Government and employed by the Presentence Report to determine actual loss. (P.S.R. ¶ 122) Subtracting the value of collateral at the time of sentencing from the mortgage loan proceeds to determine actual loss to lenders was employed the Eighth Circuit in *United States v. Parish*, 565 F.3d 528 (8<sup>th</sup> Cir. 2009) in determining loss for sentencing purposes.

Pursuant to U.S.S.G. § 2B1.1, the equation used to calculate actual loss to the lenders is the amount of the fraudulently obtained mortgage loans minus any payments made on the loan principal and the value of the collateral at the time of sentencing. *See* U.S.S.G. § 2B1.1 app. n. 3 (E)(i) and (E)(ii). The government submitted evidence to the district court that defendants fraudulently obtained 195 mortgage loans from twenty-four separate lending institutions, resulting in defendants receiving approximately \$85,020,128 in loan proceeds. Therefore, we take the amount of the loan proceeds-\$85,020,128-and subtract the value of the 195 homes built by PMDC and used as collateral.

*Id.* at 535.

The First Circuit recently endorsed this approach of “first determin[ing] the total amount of the loan issued for each of the flipped properties, and subtract[ing] from that number the considerably lower amount the land-flippers paid for the piece of property in question . . . [so that the] latter quantity serve[s] as a proxy for the true amount of the security the lender held on the property.” *United States v. Innarelli*, 524 F.3d 286, 290-91 (1<sup>st</sup> Cir. 2008), *cert. denied*, 129 S.Ct 350 (2008). Actual loss to the lenders should be determined in like manner. This method favors the defendants because many of the properties have been foreclosed or condemned and are worth less than their selling price received by the sellers. Also, it would be extraordinarily impracticable to obtain appraisals on all the 341 properties as of the date of sentencing.

Determining actual loss by subtracting the amount paid to sellers, representing fair market value of the properties at the time of sale, from the amounts loaned by lenders and borrowed by

investors pursuant to the scheme, yields the following amounts of restitution owed by McBride and Wrolstad to Lenders and Investors.

**A. Restitution Owed to Lenders**

<b><u>Assignee Lender</u></b>	<b><u>Original Lender</u></b>	<b><u># of Properties</u></b>	<b><u>Restitution</u></b>
American Home Mortgage Servicing, Inc. 4600 Regent Blvd., Suite #200 Irving, TX 75063	Argent Mortgage	38	\$1,193,680.40
ACC-Capital Holdings Corp. Attn: Diana Tiberend 1100 Town & Country Road Orange, CA 92868	Argent Mortgage	1	\$21,375.00
Aegis Mortgage Attn: Legal Department 11381 Meadowglen Lane, Suite I Houston, TX 77082-2647	Aegis	1	\$20,802.44
Aurora Loan Service 10350 Park Meadows Drive Littleton, CO 80124	Argent Mortgage	1	\$23,200.00
BAC Home Loan Servicing, L.P. Customer Service, CA6-919-01-41 P. O. Box 5170 Simi Valley, CA 93062-5170	Argent Mortgage	3	\$100,953.00
Bank of America P. O. Box 5170 Simi Valley, CA 93062-5170	American Lending (2 properties); Countrywide (1 property)	3	\$18,430.00
BNC Mortgage Attn: Legal Department 1901 Main Street Irvin, CA 92614	BNC Mortgage	5	\$51,913.78

Citigroup, Inc. Attn: Brad Ennis, Senior Investigator 1000 Technology Drive MS 260 O'Fallon, MO 63368	CitiMortgage	1	\$0
Commonwealth Unlimited Home LLC 436 Westover Pines Drive Richmond, VA 23223-3458	Commonwealth Untd.	1	\$59,967.09
CoreStar Financial Group, LLC 1966 Greensping Drive, Suite 610 Timonium, MD 21093	CoreStar	1	\$90,038.62
EMC Mortgage Corporation Attn: Customer Service P. O. Box 293150 Lewisville, TX 75029	Argent Mortgage	6	\$172,603.69
Equifirst Corporation Attn: Fraud Manager 500 Forest Pine Circle Charlotte, NC 28273	Equifirst	12	\$320,098.75
First Magnus Home Loans Attn: Legal Department 603 N. Wilmot Road Tucson, AZ 85711	First Magnus	1	\$20,899.58
First NCL c/o Berger Singerman 200 S. Biscayne Blvd., #1000 Miami, FL 33131	First NCL	4	\$135,050.00
GMAC Mortgage 3541 Hammond Avenue Waterloo, IA 50702	Argent Mortgage	4	\$180,363.58
Harbourton Mortgage 2121 Alton Parkway, Suite 110 Irvine, CA 92606	Harbourton	3	\$82,400.00
Homeq Servicing Corporation 4837 Watt Avenue North Highlands, CA 95660	Argent Mortgage	13	\$318,816.74

JP Morgan Chase Attn: Martin McHugh, Fraud Investigator 10151 Deerwood Park Blvd. Jacksonville, FL 32256	Argent Mortgage, Longbeach Mortgage, and Washington Mutual	152	\$4,356,484.51
Meritage Mortgage Corporation Attn: Russell Burdsall 9710 Two Notch Road Columbia, SC 29223	Meritage Mortgage	5	\$107,419.49
MortgageIT Inc. 33 Maiden Lane New York, NY 10038-4518	MortgageIT	1	\$35,560.43
Novastar Mortgage Inc. 8140 Ward Parkway Kansas City, MO 64114	Novastar	1	\$60,300.00
Option One c/o Mr. Wilbur Ross WL Ross & Company 1166 Ave. of the Americas, 27 <sup>th</sup> Fl. New York, NY 10036	Option One	4	\$146,599.50
Ownit Mortgage Solutions 27349 Agoura Road, Suite 100 Agoura Hills, CA 91301	Ownit	10	\$353,844.39
PCHLI c/o Pachulski Stang Ziehl Young Jones & Weintraub 10100 Santa Monica Blvd., 11 <sup>th</sup> Fl. Los Angeles, CA 90067	PCHLI	10	\$222,410.23
People's Choice c/o Pachulski Stang Ziehl Young Jones & Weintraub 10100 Santa Monica Blvd., 11 <sup>th</sup> Fl. Los Angeles, CA 90067	People's Choice	9	\$169,230.57
PNC Financial Services Group 249 Fifth Avenue One PNC Plaza Pittsburgh, PA 15222	National City Mortgage	1	\$14,849.00

Select Portfolio Inc. 3045 South 1030 West Salt Lake City, UT 84119	Argent Mortgage	5	\$158,668.93
Specialized Loan Servicing 8742 Lucent Blvd., Suite #300 Highland Ranch, CO 80129	Argent Mortgage	8	\$256,704.32
Unknown	Argent Mortgage	9	\$233,514.13
Vericrest Financial Inc. P. O. Box 24610 Oklahoma City, OK 73124	CIT Group	8	\$204,536.30
Wells Fargo Home Mortgage 1 Home Campus MAC# X2302-022 Des Moines, IA 50328	Argent Mortgage	6	\$126,606.86
Wells Fargo P. O. Box 5708 Springfield, OH 45501	Wells Fargo	3	\$48,476.04
Wilshire Credit Corp. 14523 S.W. Millican Way #200 Beaverton, OR 97005	Argent Mortgage	1	\$10,567.90

**Total Restitution Total Due Lenders**

**\$9,357,865.27**

**B. Restitution Owed to Investors/Purchasers**

Investors/Purchasers borrowed the amounts owed to the mortgage lenders which funded McBride's and Wrolstad's mortgage fraud scheme, in the amounts referenced in the chart set forth below. These amounts reflect payments in excess of the fair market value paid by the investors to purchase the residential real estate involved in McBride's and Wrolstad's mortgage fraud scheme. To the extent restitution is made to the lenders, an equal amount should be reduced from the amount due the Investor/Purchasers.