

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)
)
v.) 3:18-CR-167
) JUDGES MCDONOUGH/POPLIN
CHRISTINA ERIN MYERS)

MOTION TO SUBSTITUTE

The United States of America, by and through the United States Attorney for the Eastern District of Tennessee, hereby requests that the attached document in the above-referenced matter be substituted for the document previously filed, which appears as docket entry number 36 in the Court’s ECF system. The request is based upon the need to fully redact sensitive information for the protection of victim identities.

Wherefore, the United States of America respectfully requests that the attached document be substituted for the document previously filed as docket entry number 36 in the Court’s ECF system.

Respectfully submitted, this the 25th day of November, 2020.

J. DOUGLAS OVERBEY
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knowledge or authorization of her victims. From May 2014 through July 2018, Myers fraudulently obtained approximately \$522,000, which she used to purchase jewelry, meals, vacation travel, country club memberships, and generally to pay for a self-indulgent lifestyle.

2. The Fraudulent Real Estate Scheme

Myers began her fraud scheme while employed as the Marketing Director for Williams Ferry Pointe (“WFP”), a senior living community in Lenoir City, operated by Tennessee Baptist Adult Homes (“TBAH”). Since Myers was the primary point of contact for WFP real estate sales, she was able to use WFP's television and print advertising to communicate with elderly prospective residents. Myers developed relationships with these individuals and secured their trust in order to defraud them.

When it came to signing up new victims and getting their money, Myers' creativity was without limitation. She solicited deposits and encouraged prospective residents to take advantage of "specials," which she said were available for only a short period of time. She encouraged victims to make cash deposits. When cash deposits could not be made, Myers instructed victims to make checks payable to her. She assured her victims that the checks would be deposited into her escrow account and that all deposits were refundable. In fact, the money went into her personal account. By withholding executed sales documents from WFP, she kept her employer in the dark regarding sold units. Myers kept victims distracted by requiring them to visit vendors throughout the Knoxville area to select construction materials, fixtures, furniture and appliances.

Myers routinely executed Lifetime Lease Agreements with her victims and received their deposits on behalf of WFP. Because such agreements were not authorized, however, Myers altered the executed lease documents before providing them to WFP. This also concealed the diversion of a portion of each deposit. In many instances, Myers collected rent from victims by permitting them to reside in empty units while their new residence was under construction. TBAH/WFP did not authorize the rental of units within WFP.

Myers' scheme began to unravel in January 2016, when Mark Anderson was hired as the president of TBAH. He immediately noticed abnormalities in the finances of WFP. He began questioning Myers about the abnormalities and asked her to provide documentation to substantiate expenses and contracts for the purchase of residences at WFP.

On July 11, 2016, Myers tendered her resignation from TBAH. Her last day with TBAH was one month later, on August 11, 2016. Following Myers' resignation, Anderson ordered an audit of the TBAH/WFP financial records for 2014 through 2016. The audit confirmed abnormalities with vendor payments and a lack of recordkeeping, and Anderson contacted Myers for assistance and explanation of the inconsistencies. Myers met with Anderson and an attorney for TBAH and asked for additional time to provide responses to their questions.

On August 23, 2016, Myers submitted a confession letter to TBAH, in which she admitted that she had misappropriated the funds of residents and prospective residents of WFP. In addition, she confessed to the misappropriation of vendor payments to another

contractor, for what appeared to be landscaping services. Myers took responsibility for the misappropriated funds and the cost of the audit. She signed a promissory note requiring repayment of \$165,870 no later than October 10, 2017. On October 10, 2017, Myers wrote a check drawn on her and her husband's joint checking account at ORNL for \$166,000, with no payee listed, and sent it via overnight delivery to Anderson.¹

One might have expected that getting caught stealing client funds, resulting in the loss of her position and a significant repayment obligation, would have ended Myers' dealings with WFP and its residents. Myers, however, decided to double down. On August 15, 2016 – only four days after her last day on the job – and unbeknownst to TBAH, she sent out the following email message to her WFP clients, informing them that she would be staying on as an “interim” for WFP:

Hello All.

Just sending out an email from my new email account to let everyone know I will be staying on as Interim for Williams Ferry Pointe while the new agent Laura is going through all of her training over the next few weeks.² I will be available for you all for questions during this time. She will be in training until September 1st and then will be off the Friday and Monday around Labor Day as a vacation she had already planned. I will be sending you all her cell number and email as of Sept 1st so that starting Sept 6th you will be contacting her from that point

¹ During an interview with investigators on July 17, 2018, Myers stated that she had borrowed the \$166,000 from her parents to repay the funds to WFP. Based upon evidence obtained through a search warrant executed at Myers' residence, however, it appears that the funds from her parents were actually for an “investment” in a nonexistent account at SouthEast Bank.

² In a subsequent email, Myers informed her WFP victims that she would continue in her present role, as Laura had decided against working there.

forward for all information as well as the builders cell and email at that point. So as of now I am still everyone's Go To Girl. .. If for some reason you happen to call, text or email it may take me until the following day to respond if it happens to be in the evening or the following business day if it happens to be on the weekend. I appreciate how everyone respects my time and for the most part no one has ever abused this and allowed me to stay focused with family! Again my cell is 865-924-7124 although I can't imagine anyone doesn't have it :) Please update your email contact with this new email address and again if you have any questions between now and September 1st please feel free to reach out to me! Thanks again ...
Christina Myers

In this manner, Myers kept up the pretense of working for WFP and continued taking money from unsuspecting victims. In 2008, Myers had obtained a real estate license and become an affiliate broker for Keller Williams. She used Keller Williams' logo on contracts, receipts and miscellaneous communications that she provided to victims. Between May 2014 and April 2018, Myers obtained more than \$284,000 in proceeds from fraudulent real estate transactions.

3. The Fraudulent Investment Scheme

After losing her job with TBAH in 2016, Myers took a job with SouthEast Bank. While she continued promoting fraudulent real estate sales to unwary victims, she now began offering fictitious investment opportunities as well. Myers' prowess as a fraudster is clearly displayed in the following email that she sent on April 25, 2018 to two victims, whose initials are TH and CW:

From: C [REDACTED] W [REDACTED] <[REDACTED]@comcast.net>
Sent: Wednesday, April 25, 2018 3:37 PM
To: Christina Myers
Subject: Re: Hello my favorite couple!!

We are home! Give us a call! C [REDACTED] and T [REDACTED]

Sent from my iPad

> On Apr 25, 2018, at 2:34 PM, Christina Myers <christinaemyers13@gmail.com> wrote:

>
> Hello there just wanted to give you all a quick update as well as throw something out there to see if your interested? The excavation on all the property will begin in the next 30 days and we are excavating both the area you all went to and looked at as well as the area on the opposite side and planting a ton of trees and bushes to give it private feel. We needed to add some trees so I think this will be so great and give it a truly amazing look on these large level lots! So there's that very excited. But my next information was to let you know that we have partnered with a bank for anyone who requires or needed financing and we are able to offer our current clients through us of our choosing an amazing CD rate of 3.85% for 12 months on current active escrow clients up to 3 clients per agent. Zero penalty if you wanted to pull the funds out early with a written notice from me as your agent as an immediate cash out. I think this is an amazing offer and thought of you all first to see if you were interested. They are doing this for a limited time and just thought this may be something you all would want to take advantage of and I can get you all taken care of. A super quick way in 12 months to make a great return back off of interest! So that's 3.85% interest rate on total amount invested for up to 12 months! Give me a call as well and we can chat.

> Christina Myers
[REDACTED]

TH and CW had funds invested in Certificates of Deposit with USAA Credit Union, but could not get the money for investment with Myers without paying an early withdrawal penalty. Myers agreed to cover the penalty and, on April 26, 2018, CW and TH withdrew \$190,000. CW wrote two checks totaling \$190,000 to invest in the bogus promotional CDs described in the email above.

Myers deposited the two checks at SouthEast Bank, but not into CDs. Rather, she placed the funds in two accounts that were under her control. In the following months, Myers used \$74,797 of the funds to make payments necessary to keep her scheme going,

including refunds to certain of her victims and the payment of maintenance expenses (such as landscaping and HVAC repairs) for properties “rented” to certain victims.

After Myers failed to provide TH and CW with documents from SouthEast Bank detailing the investment and providing account details, CW demanded documentation. In response, Myers provided them with a Certificate of Deposit Form indicating that a CD had been opened by TH and CW on May 1, 2018 and had been assigned account number CD00001715597. Both the account and the form, however, were bogus; SouthEast Bank later confirmed to investigators that the account did not exist and that the form given to the victims was not a SouthEast Bank document.

Myers even peddled her spurious bank investments to family members, claiming that the investment opportunities were available to them because they were related to her. Myers received investment funds totaling over \$44,000 from her father-in-law and grandfather-in-law. Myers told her grandfather-in-law that she was the vice-president of SouthEast Bank and would cover the early withdrawal penalty to free up funds invested at another bank. Myers’ father-in-law withdrew the last \$20,000 from his 401(k) to invest in Myers’ fictitious promotional investment opportunity. Between September 2017 and April 2018, Myers obtained more than \$234,000 from victims through her phony investment scheme.

4. The Investigation

Even the most cleverly devised fraud schemes eventually fall apart, and Myers' was no exception. In September 2017, the Lenoir City Police Department was contacted by a prospective WFP resident whose initials are CM, who reported paying Myers approximately \$23,000 towards the purchase of a residence at WFP. She told investigators that Myers had provided repeated excuses regarding the failure to begin construction of the new residence. As CM's requests for an explanation became more adamant, Myers ultimately "hired" her to be the "WFP Community Director" in an attempt to alleviate CM's concerns.

CM provided police investigators with documents, emails and text communications from Myers, which revealed that Myers had continued her fraudulent scheme after her resignation from WFP. The investigation found that Myers had continued to represent that she was employed by WFP in an effort to continue her victimization of elderly residents of Loudon County. Upon learning of the potential scope of Myers' fraud, and that it deliberately targeted vulnerable individuals, the Lenoir City Police Department contacted the Internal Revenue Service, which became involved in the investigation.

On July 17, 2018, federal search warrants were executed at Myers' residence and on her cellular telephone. Myers agreed to be interviewed and confessed to the misappropriation of funds at WFP and to the continued theft of funds from elderly victims. Evidence seized during the execution of the warrants revealed that Myers not only used fictitious real estate transactions to victimize the elderly, but also promoted fake investment opportunities through her employment at SouthEast Bank. Based on evidence

seized pursuant to the search warrant, however, it became apparent that Myers had failed to confess to the full extent of her scheme.

Financial records obtained through the investigation revealed that Myers made a significant number of deposits into her personal account that appeared to have come from her victims' real estate deposits. From January 2015 through May 2018, Myers deposited more than \$460,000 in suspected victim checks and made more than \$100,000 in unexplained cash deposits. Overall, investigators determined that Myers fraudulently obtained approximately \$518,395.41 from her victims.

5. Impact on Victims

Numerous victims have prepared and submitted letters describing the impact of Myers' criminal offenses on their lives. Those letters have been provided to the Court for its consideration in determining an appropriate sentence. In order to safeguard the victims' privacy, the United States will not identify the authors of the letters or quote from them extensively but will summarize some common points here.

All of Myers' victims suffered financial loss. As retired persons, they were living on fixed incomes and the theft of their funds was devastating. Victims tell of how the losses required them to scale back their living arrangements and their plans for travel and social activities in retirement. The theft of their retirement savings resulted in numerous cutbacks, from the inability to pay for little things, such as haircuts and movie tickets, to being unable to help grandchildren with college expenses.

In their letters to the Court, the victims write of the financial predicaments they now face. As retired persons, there is no way for them to regenerate the stolen funds; they cannot go back to work again and rebuild their retirement savings. This has saddled the victims with financial concerns that they sought to avoid through saving money during their working lives. While employed, the victims set aside funds so that during retirement they would not have to worry about running out of money or making ends meet. Myers robbed her victims of that security and frittered away their hard-earned retirement savings on a self-indulgent lifestyle.

The monetary losses that the defendant caused her victims can be quantified. The emotional damages, however, cannot be. One victim, a disabled senior, states that Myers' scam "totally bankrupted my outlook of society," as the defendant went so far as to use her own minor children to establish the illusion of friendship, with the victim accompanying the defendant's children at social outings, exchanging Christmas presents, going camping together, and celebrating special family events. When the scam came to light, the victim learned that this social involvement was all part of an elaborate ruse. The victim describes her resulting state of life as being "financially ruined, emotionally spent and socially cautious," having "[w]orked hard all my life, only to be taken by this selfserving woman." The victims report that being defrauded by Myers has destroyed their trust in other people. They write of feelings of guilt, sadness, and foolishness from having succumbed to Myers' treachery. Victims tell of needing counseling or prescription medications to deal with the anxiety that has resulted from being duped by this defendant.

The strongest reproof of Myers' actions is found in a letter that counsel for the United States received from Chief Don W. White of the Lenoir City Police Department. *See* Exhibit A. Since Myers' victims lived in Lenoir City and his department was the first law enforcement agency to investigate the defendant's crimes, Chief White is uniquely qualified to tell of the impact of Myers' actions on his community. He writes:

Christina Myers stood in a position of trust and confidence with her victims. By deception and intimidation, she obtained control over their property and their lives. She stole more than their money, she deprived them of their sense of security for their future. She robbed them of their dignity. The deception went on, not for days or weeks, but for months and years in some cases. Myers was a predator, she preyed on our elder population with the intention of financial abuse. She built relationships with the victims as a trusted professional advisor, solely, for her own financial gain. As Myers and her family lived a lavish lifestyle, she was tearing the lives of her victims apart.

The effect of Myers' actions goes far beyond the financial loss the victims endured. Families were fractured and future health care opportunities endangered. The embarrassment and emotional strain put on these individuals cannot be described on paper. Myers' scam went beyond her financial gain. She defamed the reputation of local businesses to carry out her schemes. She falsely portrayed herself, falsified documents, and forged names. She did whatever it took to accomplish financial wealth. Myers caused her victims to fear and isolate themselves from the staff of Williams Ferry Point. She instructed them to only communicate with her, for fear of her scams being revealed. She not only victimized strangers but her family as well, all for her benefit.

LEGAL STANDARD

Myers faces sentencing for two offenses: wire fraud, in violation of 18 U.S.C. § 1343, and money laundering, in violation of 18 U.S.C. § 1956. Congress has recognized the seriousness of both offenses, since each carries a potential sentence of up to 20 years in prison.

Title 18, United States Code, Section 3553(a) sets forth the factors that a Court should consider in imposing a sentence. In determining the appropriate sentence, the Court must consider “the nature and circumstances of the offense and the history and characteristics of the defendant” and impose a sentence sufficient, but not greater than necessary, to comply with the following purposes:

- (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 educational or vocational training, medical care, or other correctional treatment in the most effective manner.

A sentence within the applicable Guideline range is presumed reasonable. A court is permitted to vary downward or upward from the Guideline range, however, and a sentence outside the applicable range is not presumptively unreasonable. *United States v. Usbery*, 785 F.3d 210, 223 (6th Cir. 2015).

ANALYSIS

1. The Court should impose a sentence at the top of the applicable Guideline range.

A sentence at the top of the applicable Guideline range would be sufficient, but not greater than necessary, to comply with the sentencing factors set forth in 18 U.S.C. § 3553. Such a sentence would provide just punishment to Myers. It would reflect the magnitude of the devastation that this defendant’s actions have visited upon the individuals who placed their trust in her. Exploiting the vulnerabilities of senior citizens in order to steal their retirement savings is a particularly egregious sort of crime and one that is deserving of

society's harshest condemnation. A sentence at the top of the Guideline range would be a punishment that fits the crime.

Requiring Myers to serve a lengthy prison sentence would also be consistent with the need to provide adequate deterrence and protect the public from future crimes she might otherwise commit. In many cases involving financial crimes, specific deterrence – directed at dissuading a defendant from engaging in subsequent criminal acts – is unneeded; the shame, embarrassment and financial consequences of having their fraudulent acts discovered is enough to get their attention. That is plainly not the case with Myers. The discovery of her misappropriation of funds at WFP, the resulting repayment obligation, and the loss of her position did nothing to deter Myers from engaging in fraud. In fact, it appears to have prompted her to come up with new and more innovative ways of stealing from unwary victims.

Just as the sentence should be sufficiently harsh to deter future crimes by Myers, it should also serve the purpose of deterring others who might contemplate committing similar crimes. Fraud offenses such as those at issue in this case are both highly profitable and difficult to detect and investigate. Elder fraud is attractive to a prospective fraudster for a number of reasons related to the victims' vulnerabilities. In targeting an elderly person's retirement savings, a fraudster will exploit the victim's isolation, desire for companionship, lack of ability to make inquiries regarding a proposed investment opportunity, and potentially the victim's declining mental faculties. Moreover, as Myers' victims have informed the Court, those who fall prey to deception and suffer the loss of

their retirement savings may feel guilt at having allowed themselves to be duped and may decide not to report such crimes at all. Sentencing Myers to a term of imprisonment at the top of the Guideline range will send a strong message to other prospective hucksters that engaging in elder fraud will earn them a lengthy stay in prison.

In determining an appropriate sentence, section 3553 also directs the Court to consider the “history and characteristics of the defendant,” and the need “to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” 18 U.S.C. § 3553(d). There is no reason to believe that Myers has any particular need for medical treatment or that she would benefit from educational or vocational training. Accordingly, this factor is neutral with respect to the Government’s recommendation that she be sentenced to the top of the applicable Guideline range. Myers’ history and characteristics are nonetheless relevant to the sentencing determination. Since attributes of the defendant that fall into these categories largely form the basis for the defendant’s request for a downward departure or variance, however, the United States will discuss them below.

2. The Court should deny the defendant’s request for a downward departure or variance from the Guideline range.

Much of the defendant’s sentencing memorandum is devoted to arguing that the Court should impose a sentence below the applicable Guideline range, either through a downward departure or a variance. The Court is permitted discretion to consider whether factors, enumerated and unenumerated, are present to such an extent as to place a particular defendant’s situation outside the “heartland” of cases. *See* U.S.S.G. Ch. 1, Pt. A,

Subpt. 1, 4(b) (“Departures”). Unfortunately, the defendant points to no factors, or combination of factors, that would render her case “atypical” to the extent there would be a reason for departing or varying downward from the applicable Guideline range.

The defendant’s sentencing memorandum notes that Myers is an individual “with no prior criminal history whatsoever.” Motion for Downward Departure and/or Variance and Sentencing Memorandum at 12 (Docket No. 34) (“Sentencing Memorandum”). The lack of a criminal history, however, is of little use in deciding whether a below-Guidelines sentence is appropriate. The Guidelines contain a comprehensive set of instructions for determining the impact that a defendant’s criminal history should have upon the sentencing range; a person with an extensive criminal history will receive a lengthier sentence than someone who has no criminal convictions. In any event, relying upon the lack of criminal history in the present situation raises an unavoidable question for Myers: She was defrauding victims as early as 2016, but was not indicted until 2018. Did she fail to have a criminal history because of her lack of guilt, or because her talent at concealing her scheme had kept her from being caught?

In like manner, Myers cannot claim any entitlement to a lesser sentence merely because she was “cooperative and compliant during the pendency of the case as noted by the office of probation and parole.” Sentencing Memorandum at 13. Every criminal defendant that is allowed by the Court to remain free pending trial is expected to follow the probation officer’s instructions to the letter and comply completely with court-imposed conditions. Defendants who violate the conditions of release typically await trial in jail.

Myers also claims that “when approached by law enforcement she cooperated fully with their investigation without counsel, providing an account of her actions and permission to search her property.” Sentencing Memorandum at 12-13. What Myers fails to tell the Court, however, is that the investigators who approached her had search warrants for her residence and cellular phone. While it is true that Myers gave consent to the search of her storage unit – which contained some business documents – the agents could easily have obtained a warrant for the search of that location; providing consent did not further the investigation in any material respect. And while Myers did consent to being interviewed by investigators, she was not entirely complete or candid in the answers that she provided.

Myers also claims that she “presents a lack of danger to the public based on to the nonviolent nature of the offenses,” and that this should somehow entitle her to a lesser sentence. Sentencing Memorandum at 13. The United States disagrees. The Guidelines applicable to the defendant’s sentence presuppose that her offenses were not violent in nature. Had she committed acts of violence in conjunction with her crimes, she would have faced additional charges and been sentenced accordingly. A lack of physical violence, however, does not necessary equate to a lack of danger to the public. Despite the lack of evidence that Myers presents a risk of physical harm to other persons, danger can “encompass pecuniary or economic harm.” *United States v. Madoff*, 316 Fed. App’x 58, 60-61 (2d Cir. 2009) (citations omitted).

A recurring theme of Myers' sentencing memorandum is that her victimization of elderly individuals was "a vast deviation from an otherwise law abiding, compassionate, and generous life," "an aberrant event," and an "event [that] was quite apparently a grave deviation from an otherwise law abiding and productive life." Sentencing Memorandum at 3, 13, 15. The Sentencing Guidelines, and court decisions interpreting them, provide guidance as to the consideration that should be given to such arguments. Specifically, the United States Sentencing Commission's policy statement in U.S.S.G. § 5K2.20 ("Aberrant Behavior") states that "a court may depart downward . . . only if the defendant committed a single criminal occurrence or single criminal transaction that (1) was committed without significant planning; (2) was of limited duration; and (3) represents a marked deviation by the defendant from an otherwise law-abiding life." Reasonable minds may differ over whether Myers' actions at issue were truly a deviation from a law-abiding life, or if this was just the first time she was caught. It is impossible, however, to describe the defendant's crimes as "a single criminal occurrence or transaction," or a crime "committed without significant planning," or one "of limited duration." See *United States v. Lepird*, 142 Fed. Appx. 880, 881 n.1 (6th Cir. 2005) (affirming district court's denial of downward departure for aberrant behavior, where defendant's bank fraud involved the deposit of multiple counterfeit checks and numerous withdrawals over a 45-day period); *United States v. Rivera-Rodriguez*, 318 F.3d 268 (1st Cir. 2003); *United States v. Hollier*, 321 F. Supp.2d 601 (S.D.N.Y. 2004).

Myers also presents the Court with numerous letters from character witnesses, which describe personal attributes that she suggests should entitle her to a downward variance from the applicable Guideline sentence. Without exception, these character statements provide the picture of a diligent and outgoing individual, whose absence from the home during a period of incarceration would have a negative impact upon her children. None of the statements, however, acknowledge the destruction that the defendant visited upon her victims. Neither Myers nor those who wrote character letters on her behalf appear willing to recognize the true nature or seriousness of her offenses. Indeed, Myers' sentencing memorandum and the letters it incorporates suggest that Myers is the victim and speak of the hardship that will result if she is taken away from her husband and children.

An unfortunate consequence of crime is that it frequently leads to the separation of family members, sometimes through the criminal offense itself and sometimes as a result of the punishment. As stated in the Sentencing Commission's policy statements in U.S.S.G. § 5H1.6 (Family Ties and Responsibilities), "family ties and responsibilities are not ordinarily relevant in determining whether a departure may be warranted." Myers' decision to engage in fraud carried with it the potential consequences of imprisonment and years of separation from her family. At the time of the sentencing hearing, however, Myers will be 38 years old. Even if the Court were to impose upon her the most severe sentence permissible, Myers could still expect to be released from prison with many years of freedom, and time with her family, ahead of her.

In recommending leniency, the character letters offered on behalf of Myers illustrate a fact that makes Myers' criminal actions particularly despicable: She was given opportunities only dreamed of by most criminal defendants. Those who have practiced criminal law for any length of time are accustomed to stories of hardship and privation that lead defendants to engage in crime. In observing Myers' background, however, we do not see poverty, a broken home, child abuse, health problems or drug addiction. Instead, we see a young woman who was given every opportunity to succeed; one who was raised in a home with loving parents and siblings, was taken to church, and was given educational and employment options that are unknown to most defendants. Upon reaching adulthood, Myers' good fortune continued, with a suburban home, marriage to a successful and respected educator, and a family of her own. To borrow the well-loved expression, Myers had achieved the American Dream. She was dissatisfied, however, and desired more, even if that meant stealing the same dream from other persons and denying financial security to elderly individuals during the remaining years of their lives.

3. *A downward departure or variance is not needed to avoid undue sentencing disparities.*

Section 3553(a)(6) states that in formulating an appropriate sentence, the Court should consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." In consideration of this requirement, the defendant refers to the Sixth Circuit's decision in *United States v. Musgrave*, 647 Fed. Appx. 529 (6th Cir. 2016), in which a defendant who had been convicted of wire and bank fraud received a sentence of only one day, in conjunction with a fine,

home confinement, and a period of supervised release. The defendant suggests that imposing upon her a Guideline sentence would be inconsistent with the avoidance of sentencing disparities.

As the Sixth Circuit has correctly observed, “the need to avoid sentencing disparities under Section 3553(a)(6) concerns ‘national disparities,’ not disparities between specific cases. *United States v. Rochon*, 318 Fed. Appx. 395, 398 (6th Cir. 2009) (quoting *United States v. Houston*, 529 F.3d 743, 752 (6th Cir. 2008)). “Considering that one of the fundamental purposes of the Guidelines is to help maintain national uniformity in sentences, and considering that most sentences are within the Guidelines, the Guidelines themselves represent the best indication of national sentencing practices.” *Houston*, 529 F.3d at 752. In fact, using an isolated case such as *Musgrave* as the basis for departing or varying below the Guidelines in determining Myers sentence would invite the very sort of sentencing disparity that the Guidelines were intended to prevent.

4. *Myers’ obligation to pay restitution should not be used as a basis for reducing the appropriate period of incarceration.*

As part of her sentence, Myers should be ordered to provide full restitution to the victims that she defrauded. Based upon the *Musgrave* decision, Myers argues that she would be in a better position to pay restitution if she could remain out of prison and employed. Although the need for providing “restitution to victims of the offense” is a factor to be considered by the Court in deciding upon an appropriate sentence (*see* 18 U.S.C. § 3553(a)(7)), it is one of many factors. Permitting Myers to remain free so that she could raise money for restitution might accomplish that one sentencing goal, but it would

blatantly disregard other factors, such as providing just punishment and affording adequate deterrence. The Court should not use Myers' restitution obligation as a basis for imposing a sentence below the applicable Guideline range.

5. *The United States takes no position regarding the applicability of the enhancement for abuse of a position of trust.*

The plea agreement in this case does not address the application of an enhancement for abuse of a position of trust in accordance with U.S.S.G. § 3B1.3, which the Presentence Report suggests should be applicable to the defendant. *See* Presentence Report (“PSR”) at para. 68) (Docket No. 28). Pretrial Services correctly observes that through her employment with a senior living community, Myers was able to find her victims through the company’s marketing. Likewise, the PSR correctly observes that Myers was able to use her position to create realistic documents including advertisements and real estate contracts. *Id.* The Application Notes to U.S.S.G. § 3B1.3 state that “[p]ublic or private trust” refers to a position of public or private trust characterized by professional or managerial discretion (*i.e.*, substantial discretionary judgment that is ordinarily given considerable deference).” U.S.S.G. § 3B1.3, cmt. 1. The comments state that the enhancement is applicable where the position of trust contributed in some significant way to facilitating the commission or concealment of the offense. Myers actions, however, do not comport exactly with any of the examples presented in the Application Notes to this section.

The defendant is correct in stating that the plea agreement in this case followed lengthy and extensive plea discussions, which resulted in a stipulation regarding which

sections of the Guidelines would apply, including the applicable enhancements and the specific loss amount. No enhancement was included for abuse of a position of trust in accordance with U.S.S.G. § 3B1.3. On the other hand, where the parties to a plea agreement wish to stipulate that only those enhancements specifically referred to in the agreement are to be applicable, the parties will normally include a statement to that effect. Likewise, where the parties agree that a particular sentencing enhancement should *not* be applied, this is also a stipulation that can be included in a plea agreement. In the present case, the plea agreement was completely silent as to U.S.S.G. § 3B1.3.

The factual basis to the plea agreement begins with the statement that the facts contained in the factual basis do not constitute all of the facts of the case. “Other facts may be relevant to sentencing” and “[b]oth the defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.” *See* Plea Agreement at para. 4 (Docket No. 23). Moreover, the parties’ stipulations regarding the applicable facts and sentencing enhancements are followed by the caveat that, pursuant to Fed. R. Crim. P. 11(c)(1)(B), such stipulations are not binding on the Court. While the United States takes no position regarding whether an enhancement should be imposed for the abuse of a position of trust, it is completely within the Court’s discretion to impose, or refuse to impose, this enhancement. Similarly, the determination that Myers gained and exploited the trust of her elderly victims is one of many factors that could be considered in formulating a sentence that is sufficient, but not greater than necessary, to comply with the goals of 18 U.S.C. § 3553.

CONCLUSION

For the foregoing reasons, the United States recommends that the Court sentence Myers to a term of imprisonment at the top of the applicable Guideline range.

Respectfully submitted, this the 24th day of November, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2020, a copy of the foregoing document was filed electronically. Notice of the filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

s/ Frank M. Dale, Jr.
Frank M. Dale, Jr.
Assistant United States Attorney



LENOIR CITY POLICE DEPARTMENT

November 23, 2020

Mr. Frank M. Dale, Jr.
Assistant U.S. Attorney General
412 N. Cedar Bluff Road, Suite 302
Knoxville, TN 37923

Dear Attorney General Dale:

Below is information related to the sentencing of Christina Myers which is scheduled for December 8, 2020. Christina Myers stood in a position of trust and confidence with her victims. By deception and intimidation, she obtained control over their property and their lives. She stole more than their money, she deprived them of their sense of security for their future. She robbed them of their dignity. The deception went on, not for days or weeks, but for months and years in some cases. Myers was a predator, she preyed on our elder population with the intention of financial abuse. She built relationships with the victims as a trusted professional advisor, solely, for her own financial gain. As Myers and her family lived a lavish lifestyle, she was tearing the lives of her victims apart.

The effect of Myers' actions goes far beyond the financial loss the victim's endured. Families were fractured and future health care opportunities endangered. The embarrassment and emotional strain put on these individuals cannot be described on paper. Myers' scam went beyond her financial gain. She defamed the reputation of local businesses to carryout her schemes. She falsely portrayed herself, falsified documents, and forged names. She did whatever it took to accomplish financial wealth. Myers caused her victims to fear and isolate themselves from the staff of Williams Ferry Pointe. She instructed them to only communicate with her, for fear of her scams being revealed. She not only victimized strangers but her family as well, all for her benefit.

Myers promised her victims jobs, "allowed" them to name roads, convinced them that their homes had sold, going as far as stating that they were receiving free model homes. The extreme tactics displayed by Myers to achieve her own financial gain is far more than troubling. One victim particularly comes to mind, as I write this letter. _____ longed to move into her dream home but died before Myers was brought to justice. Ms. _____ lost approximately two years of her life, in hopes of having a "dream home" as depicted by Christina Myers. Sadly

enough, Ms. _____ succumbed to a brain tumor on November 21, 2017, during the investigation.

Even though some of Ms. Myers victims were reimbursed, it is beyond my comprehension as to how someone could purposefully and intentionally defraud the elder population. Many of her victims were extremely vulnerable because of their physical disabilities and cognitive decline. The harm done to the victims and their families during the execution of this crime not only affected financial portfolios, but their trust in what should be expected of those in professional roles. This intricate type of deception is beyond comprehension. I would plead with the courts to execute a sentence that is equivalent to the loss suffered by so many families. It would be a great injustice for her to receive anything less than the mandatory sentence. If you would like to speak with me directly, please feel free to contact me any time, 865-740-

Sincerely,

A handwritten signature in black ink, appearing to be 'D+H' or similar, written in a cursive style.

Don W. White
Chief of Police