

1 **I. INTRODUCTION**

2 Defendant was convicted on all counts in the indictment on
3 October 16, 2013 following a jury trial. On December 19, 2013, the
4 United States Probation Office ("USPO") disclosed its Presentence
5 Report ("PSR").

6 **II. POSITION RE SENTENCING FACTORS**

7 The United States concurs with the total offense level and
8 criminal history category calculated in the PSR by the USPO under the
9 Sentencing Guidelines. The United States also concurs with the
10 factual statements in the Offense Conduct section of the PSR.

11 **III. POSITION RE SENTENCE**

12 The government disagrees with the USPO's recommendation that a
13 downward departure and a downward variance should be made. Instead,
14 the court should sentence defendant at the low end of the Guidelines
15 range corresponding to defendant's total offense level (21). Such a
16 sentence is appropriate and sufficiently takes into account the
17 mitigating factors cited by the USPO for the following reasons.

18 Imposing a sentence at the low end of the applicable Guidelines
19 range, rather than in the middle of the range or at the high end,
20 reduces defendant's sentence by up to nine months and takes into
21 account mitigating factors cited by the USPO.

22 The intended loss is at the top limit of the loss bracket set
23 forth in USSG § 2B1.1(b)(1)(H). The USPO mentions the lack of an
24 actual loss in this transaction and the possibility, in an
25 appropriate case, that an offense level might overstate the
26 seriousness of the offense. However, the same fourteen-level
27 enhancement added here would apply even if the loss had been far
28

1 less, as low as \$400,000. If the intended loss here had been even a
2 dollar higher (i.e., \$1,000,001), the offense level would be two
3 levels higher and the applicable sentence recommended by the
4 Guidelines would be nine months higher. The application of a
5 Guidelines range inside of which defendant just barely falls also
6 militates against any departure or variance.

7 As the USPO accurately points out, a two-level enhancement
8 applies where a defendant claims that fraud proceeds will assist a
9 charity, but the defendant actually intends to divert funds to his
10 own benefit. PSR ¶¶ 51-52. It is quite possible that such a result
11 was planned by defendant here, had the victim turned out to be a real
12 person who made the "investment," not a law enforcement agent. The
13 USPO is correct that there is insufficient evidence to carry the
14 burden of establishing this enhancement. However, as different
15 circumstances or additional evidence might have caused this
16 enhancement to increase defendant's sentence, defendant's avoidance
17 of such a higher sentence indicates that a departure or variance
18 below the applicable Guidelines range is not warranted.

19 Although the indictment and trial focused on defendants' attempt
20 to defraud "Thomas Moore" (the undercover identity), the evidence
21 that can be considered at sentencing is quite broad, USSG § 1B1.4 &
22 comment. (backgr'd) (court may consider "without limitation, any
23 information concerning the background, character, and conduct of the
24 defendant," including information related to uncharged conduct). The
25 discovery produced in this case shows that defendant was involved in
26 likely fraudulent high yield solicitations of other individuals. The
27 email message sent on December 1, 2006 to "Moore" by co-defendant
28 Beata Priore noted that, in addition to "Moore," there were three

1 other individuals who were "clients" that defendants were trying to
2 get to invest with TSI Consulting Group, i.e., Mr. Damji, Mr. Wenzel,
3 and Mr. Garrick. See Trial Exhibit 111 (copy attached hereto).

4 Documents obtained from co-defendant Irene Pimkova's hard drive
5 show that Onciu was involved in this solicitation. On November 22,
6 2006, Pimkova sent a response to an email message from Onciu, in
7 which he explained that Mr. Garrick will get two fee agreements to
8 sign, and discussed the share of the "investment" proceeds that will
9 go to Onciu, to Pimkova, and to Onciu's ministries. See Exhibit 169
10 (this is a newly-marked exhibit, not a document identified at trial;
11 it was assigned Bates No. 527 in discovery and a copy is attached
12 hereto). In her email message, Pimkova told Onciu that she was
13 sending him updated documents from Mr. Garrick pursuant to Onciu's
14 request and Pimkova asked Onciu to make sure that Garrick is
15 contacted immediately. Id. Furthermore, in his email message, Onciu
16 acknowledged that Garrick was not the only "investor" being
17 solicited, as he told Pimkova to "inform the clients" of certain
18 facts and states that he "believe[s] they will be happy with this
19 group, and their returns." Id.

20 Given the jury's finding that the TSI transaction was
21 fraudulent, is likely that Onciu engaged in fraud relating to other
22 individuals. If included here, those matters could have increased
23 the intended loss. Because the loss calculation here is limited to
24 only the "Thomas Moore" transaction and Onciu's sentence is not being
25 enhanced based on those other potential frauds, the court should not
26 depart or vary from the Guidelines range.

27 The USPO also states that the court should avoid disparities
28 with defendants sentenced in another case arising out of this

1 undercover operation, i.e., United States v. Leiske, Case No. SA CR
2 08-176-DOC. However, two of the three defendants who went to trial
3 in that case received 30-month sentences, almost double the 18 months
4 recommended here by the USPO. Another defendant (Leiske) was
5 sentenced to 120 months after a guilty plea in the District of Oregon
6 pursuant to Rule 20. Only defendant Ferry received a sentence (15
7 months) similar to that recommended by the USPO here. However, Ferry
8 had mitigating factors different from those present in Onciu's case.
9 Ferry was elderly - at 71, he was much older than the 57-year-old
10 Onciu. Ferry also was suffering from a life-threatening illness,
11 having undergone colon cancer surgery. See Ferry's Sentencing
12 Position, Clerk's Docket # 460. Therefore, a low-end Guidelines
13 sentence would be more consistent with the sentences imposed in the
14 other case than that recommended by the USPO.

15 Other than the issues discussed above regarding the prison term,
16 the government concurs with the remaining aspects of the sentence
17 recommended by the USPO. The government recommends that the fourth
18 condition of supervised release be revised to clarify that
19 "investment programs" from which defendant may not engage are those
20 involving investments of other people's money. The government
21 assumes that the USPO did not intend to prohibit defendant from
22 involvement with an investment program carried out with his own
23 money, or the money of a company that he owns, therefore, the
24 condition should be revised to make it clear that involvement in such
25 business is not barred.

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5:37 PM 12/01/06

lrbpriore@maxfoundation.us

investorthomasmoore@hotmail.com

Subject: Appointments]

Attachments: TSI_large.jpg (83.0 KB), TSI Consulting.doc (30.0 KB), TSI_close.jpg (67.7 KB)

Security scan upon download 

A note from the diligent office,
You should be receiving your contract Sat AM,
When you get it call me and I'll walk you through.
Regards,
Dr. Priore

Dear Beata,

please inform the clients that the appointments are as follows :

Mr Damji at 10:00 in Frankfurt
Mr. Wenzel at 11:30 in Frankfurt
Mr. Garrick at 13:00 in Frankfurt
Thomas Moore via email and mail.

When they go from airport to TSI please inform them that
they should take a Taxi and **get the receipt as TSI is paying to an from airport if
they present a receipt.**

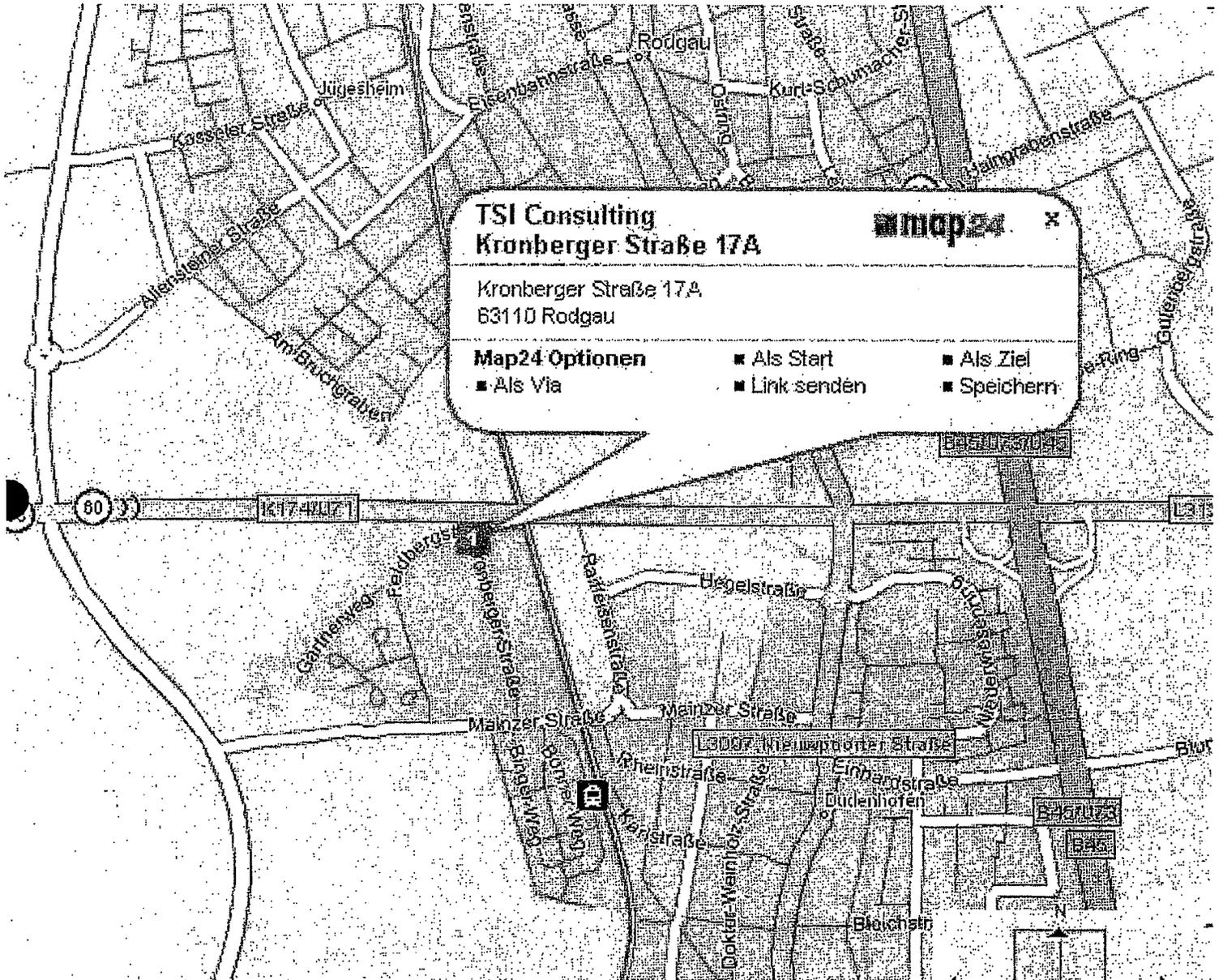
The place to go is : SEE ATTACHMENT

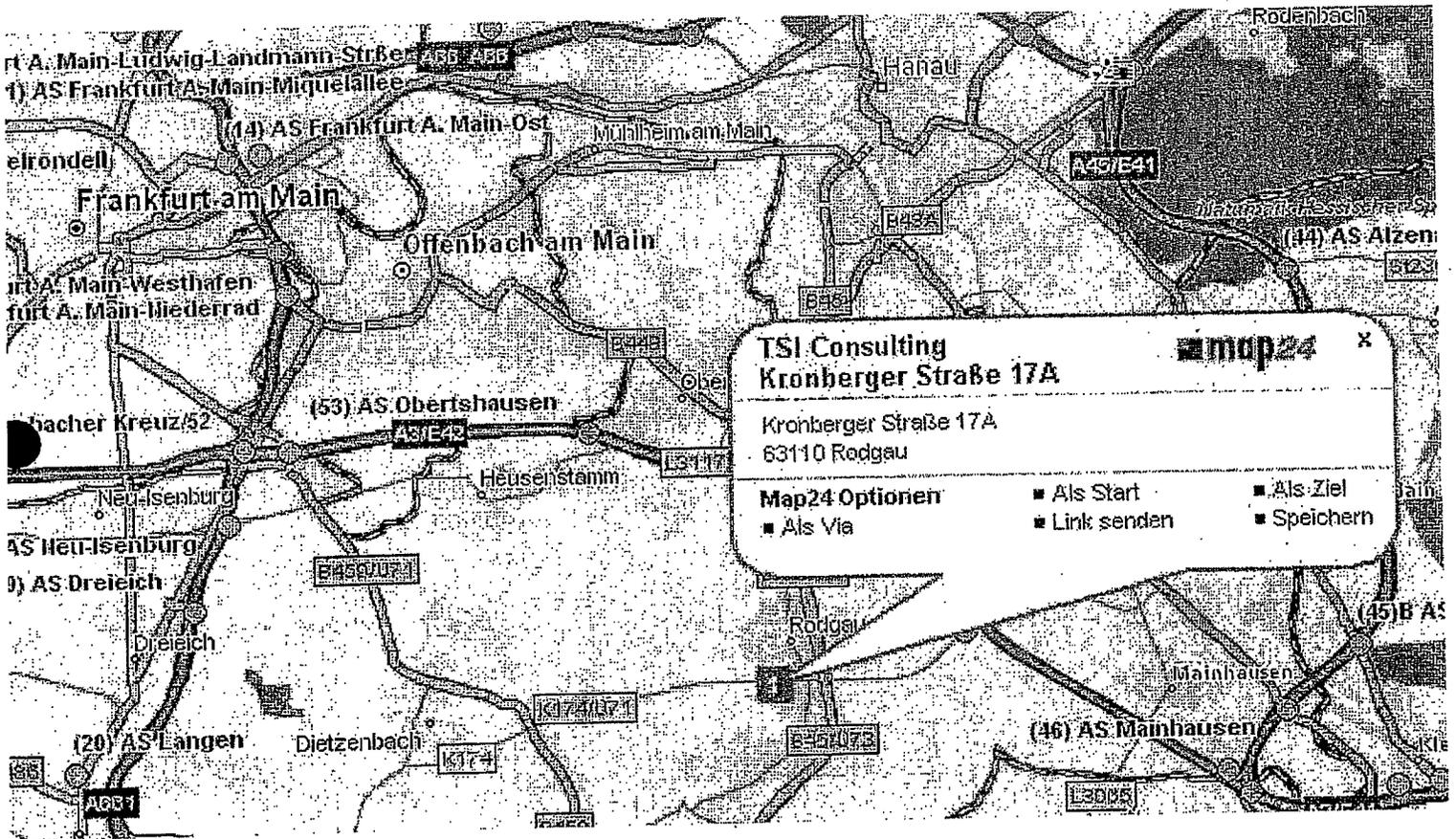
The contract will follow as it is already issued but TSI did send it to
Schaefer and he will forward as soon as he is back from Frankfurt
later today.

Please have each clients confirm their appointment.

Blessings
Palle

BullGuard Anti-virus har skannet denne e-mail og fundet den fri for virus.
Prøv BullGuard gratis: www.bullguard.com





TSI Consulting e.K.

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http://www.tsiconsulting.info/TSI_Kontakt.htm



Date: Wed, 22 Nov 2006 15:39:21 -0800 (PST)
From: "DrI" <amartyk@yahoo.com>
Subject: Mr. Garrick
To: "Dr Onciu" <monciu@msn.com>

Dr Onciu,
Per Your request attached are updated documents from Mr. Garrick.
Please, make sure he will be contacted today if possible.
Best regards,
DrI

Monciu <monciu@msn.com> wrote:

Dr. Irene,

The client will be given Two fee agreements to sign, one for 15% which goes to the trade side for arrnging the insurance and the trade, and 5% to intermediaries of which we have 2%. You will receive 1% and I the other. I have reduced the Hope Ministries portion from 50% to 25% (effectivly a 60%-40% split) so that the client retains a greater share and compensates for the 15% the trade/intermediaries will receive. If the client actually honors thier funding commitment with Hope Ministries you will also receive 5% from Hope's project funding award as a consulting representative of Hope Ministries. This is a board approved and acceptable expenditure which we make available to those who assist us in obtaining funds from various sources.

Please also inform the clients that the project funding award and FCAMA are PRIVATE, and not to be discussed with the trade group. We have had two other clients that were asked if they had a private agreement and said yes, then were held up until they issued a cease and desist for the trade file. They have both contacted me to assure me that they would honor thier commitment to me but it caused a two day delay.

I believe they will be happy with this group, and thier returns. It should provide them a NET return of

Thank you,

Dr. Moses Onciu

Access over 1 million songs - [Yahoo! Music Unlimited](#).

Attachments

Files:

64d92620.efx (179k)