IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1355
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JASON HEWITT ARMSDEN,

Defendant-Appellant.

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Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CR-106-A

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(January 6, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Jason Hewitt Armsden appeals his sentence, contending that the district court erred in finding that he could reasonably foresee losses of $2,200,000 and that application of U.S.S.G. §§ 4A1.1(d) and (e) violates the double jeopardy clause.

Armsden contends his offense level should not have been increased pursuant to § 2F1.1(b)(1)(M) because he could not reasonably foresee losses of $2,200,000. This Court reviews a district court's loss determination for clear error. United

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

States v. Sowels, 998 F.2d 249, 251 (5th Cir. 1993). A defendant is responsible for all "relevant conduct," including "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity." See § 1B1.3(a)(1)(B); United States v. Lghodaro, 967 F.2d 1028, 1030 (5th Cir. 1992). Given that Armsden understood his conduct to be fraudulent, that all of the telephone sales representatives followed a standardized script which contained the same or similar misrepresentations, and that managers monitored the representatives' sales pitches in order to assess their performance, Armsden could reasonably foresee that his co-workers engaged in the same type of fraudulent activity. Thus, the fraudulent activities of Armsden's co-workers can be considered relevant conduct, and the losses caused by such conduct are properly attributable to Armsden. The district court's loss determination, therefore, is not clearly erroneous.

Armsden contends that application of §§ 4A1.1(d) and (e) violates the double jeopardy clause because he "was subjected to multiple punishments for the exact same criminal offense." Although the double jeopardy clause protects individuals from multiple punishments, "[w]here Congress intended . . . to impose multiple punishments, imposition of such sentences does not violate the Constitution." Albernaz v. United States, 450 U.S. 333, 345, 101 S. Ct. 1137, 67 L. Ed. 2d 275 (1981); United States v. Bigelow, 897 F.2d 160, 161 (5th Cir. 1990). Section 4A1.1(e) explicitly acknowledges that a defendant's criminal history score might be increased pursuant to both §§ 4A1.1(d) and (e).

Thus, in formulating the Guidelines, it was intended that there would be instances where both §§ 4A1.1(d) and (e) would apply to the same conduct. Therefore, there was no violation of the double jeopardy clause. Cf. Bigelow, 897 F.2d at 161-62; United States v. Vickers, 891 F.2d 86, 87-88 (5th Cir. 1989).

For the foregoing reasons, the sentence is AFFIRMED.