

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1510
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RONALD LEE SPEER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92CR 106 A
- - - - -
(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Ronald Lee Speer appeals the sentence imposed by the district court following entry of his guilty plea to wire fraud. Speer was an employee of Multicorp, Inc., which was in the business of direct telephone sales of water filters and other items. Multicorp's sales representatives using high-pressure sales tactics which involved the use of false statements and representations concerning the products and premiums offered as

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

inducements to customers. During his employment at Multicorp as a telephone sales representative and manager, Speer made 586 personal sales for a total amount of \$232,458. Speer argues on appeal that the district court should not have held him accountable in sentencing for Multicorp's gross sales during his period of employment, totalling \$8,940,506.

The district court's calculation of the amount of loss pursuant to § 2F1.1(b)(1) is a factual finding, reviewed by this Court for clear error. United States v. Brown, 7 F.3d 1155, 1159 (5th Cir. 1993). A defendant is held accountable under § 2F1.1(b)(1) for all relevant conduct, which includes all reasonably foreseeable acts and omissions of others which were in furtherance of their jointly undertaken criminal activity. United States v. Lghodaro, 967 F.2d 1028, 1030 (5th Cir. 1992).

Speer argues that he was not aware of the total gross or net income of Multicorp because he was merely a telephone sales representative. This argument is undermined, somewhat, by the district court's conclusion that Speer was a manager. In any event, this Court recently affirmed the sentence of one of Speer's original codefendants, Jason Armsden. United States v. Armsden, No. 93-1355 (5th Cir. Jan. 6, 1994) (unpublished). Although Armsden was only a Multicorp telephone salesman and not a manager, the Court upheld the district court's attribution to him of Multicorp's gross sales of \$2,200,000 during his term of employment. Id. The Court reasoned,

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.

Id. The facts underlying the district court's finding in this case are relatively more compelling. The district court's conclusion that the scope of Multicorp's activities was reasonably foreseeable to Speer was not clearly erroneous.

AFFIRMED.