U.S. Department of Justice

United States Attorney
Eastern District of New York

JRS/MJC/PLC
F. #2016R00695

271 Cadman Plaza East
Brooklyn, New York 11201

August 22, 2025

By ECF

The Honorable Nicholas G. Garaufis
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Jean Boustani, et al.
Criminal Docket No. 18-681 (NGG)

Dear Judge Garaufis:

The government respectfully submits its response to the motions filed by defendants Detelina Subeva (ECF No. 830) and Surjan Singh (ECF No. 831) for reconsideration of the Court's May 16, 2025 Memorandum & Order regarding restitution (ECF No. 803) (the "restitution order"). For the reasons stated below, the government requests that the Court vacate the restitution order to the extent it requires defendants' Subeva and Singh to pay restitution to VTBC.

I. Background

The government assumes familiarity with the facts underlying this case. On May 16, 2025, as part of the sentencing proceedings of defendant Manuel Chang, the Court entered the restitution order following briefing by the government and defendant Chang. In the restitution order, the Court found that VTBC sustained a loss of approximately $352,200,000 as a result of defendant Chang's conduct, and that such loss was compensable under the Mandatory Victims Restitution Act ("MVRA"), 18 U.S.C. § 3663A. (ECF No. 803 at 18.) With respect to the apportionment of that loss between defendant Chang and his co-defendants, including defendants Subeva and Singh, the Court found that "the relative [percentage of] kickback payments received by the defendants is a reasonable proxy for their relative culpability for VTBC's losses." (Id. at 19-20.) Using that formula, the Court determined that of the losses sustained by VTBC, defendant Subeva was liable for approximately $10,566,000, and defendant Singh was liable for approximately $35,220,000.[1]

[1] The Court also found that defendant Andrew Pearse was liable for approximately $264,150,000 of VTBC's losses. (ECF No. 803 at 19.)

Prior to the Court's entry of the restitution order, defendants Subeva and Singh were not heard on the issue of apportionment of VTBC's losses. On August 8, 2025, defendants Subeva and Singh separately moved for reconsideration of the restitution order.[2] (ECF Nos. 830, 831.)

II. Legal Standard

The Federal Rules of Criminal Procedure do not provide for motions for reconsideration. See United States v. Greenfield, No. 01 CR 401 (AGS), 2001 WL 1230538 (S.D.N.Y. Oct. 16, 2001). Nevertheless, courts have generally allowed such motions and have analyzed them under the applicable rules and standards for motions for reconsideration in civil cases. See United States v. Goldenberg, No. 04-CR-159 (NGG), 2006 WL 1229152 (E.D.N.Y. May 5, 2006) (Garaufis, J.); Greenfield, 2001 WL 1230538 at * 1 (concluding "that the Local Rule 6.3 standard applies").

In this District, Local Civil Rule 6.3 governs motions for reconsideration and requires the moving party to set forth "the matters or controlling decisions which counsel believes the court has overlooked." The purpose of a motion for reconsideration, therefore, is to bring to the Court's attention facts or controlling law that the moving party believes the Court has overlooked and "that might reasonably be expected to alter the conclusion reached by the court." Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995) (noting that "[t]he standard for granting such a motion is strict, and reconsideration will generally be denied").

III. Discussion

A. Detelina Subeva

Defendant Subeva contests the restitution order on the grounds that the Court imposed her final sentence in August 2022, including with respect restitution, and thus cannot amend the terms of that sentence nearly three years later to require her to pay restitution to VTBC. The government agrees.

On May 20, 2019, defendant Subeva pleaded guilty to one count of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h), pursuant to a cooperation plea agreement. On August 11, 2022, Judge Kuntz sentenced defendant Subeva to a custodial sentence of time served, imposed a $100 special assessment, and ordered her to pay forfeiture in the amount of $200,000. (ECF No. 446.) In considering the § 3553(a) factors, Judge Kuntz expressly found that "[r]estitution is not applicable to this case." (Id. at 10.) On August 12, 2022, Judge Kuntz entered the Judgment for defendant Subeva, which indicated that the only applicable criminal monetary penalty was the special assessment. (ECF No. 447 at 3.)

Under the MVRA, district courts must impose restitution no later than 90 days after

[2] Defendant Pearse is also separately contesting, and was not heard on the apportionment issue prior to the entry of, the restitution order.

the conclusion of the sentencing hearing. 18 U.S.C. § 3664(d)(5). However, in United States v. Dolan, the Supreme Court held that a district court may continue to exercise its MVRA restitution authority after the 90-day statutory period "at least where" it makes clear its intent to award restitution within 90 days of sentencing. 560 U.S. 605, 608 (2010). In a decision interpreting Dolan, the Second Circuit held in United States v. Avenatti that, as a general matter, "a delay of more than 90 days in awarding restitution . . . is properly deemed harmless to the defendant unless he can show actual prejudice from the omission." 81 F.4th 171 204, 205 (2d Cir. 2023). Because the district court in Avenatti "made clear at sentencing that the question of restitution was still very much pending," the Second Circuit concluded that the defendant "cannot claim any prejudice from disturbed expectations of repose." Id. at 206. By contrast, Avenatti suggested that such prejudice may exist where a district court enters a "final sentence . . . thus relinquishing authority to order restitution," and then subsequently orders restitution more than 90 days later. Id. (quoting United States v. Gushlak, 728 F.3d 184, 192 n.4 (2d Cir. 2013) (stating that the apparent purpose of Dolan's "at least where" limitation is to "guard against a sentencing judge entering what appears to be a final sentence, thus relinquishing authority to order restitution, only then to impose restitution more than ninety days thereafter")).

Here, Judge Kuntz entered defendant Subeva's final sentence on August 12, 2022, expressly found that restitution was inapplicable, and gave no indication that any restitution-related issues remained pending. (ECF Nos. 446 at 10, 447.) Judge Kuntz therefore created an expectation of repose that is likely prejudiced by the Court's imposition, nearly three years later, of the restitution order. Accordingly, even if defendant Subeva would otherwise be liable under the MVRA to make restitution to VTBC, the government does not believe the Court has the authority to amend the terms of her final sentence at this juncture.

B. Surjan Singh

Defendant Singh contests the restitution order on the grounds that he is not liable under the MVRA for any of the losses sustained by VTBC. The government agrees.

Defendant Singh was not involved in VTBC's decision to extend either the Proindicus upsize loan or the MAM loan — the only transactions for which VTBC sought restitution. During the pendency of the wire fraud scheme in this case, defendant Singh worked exclusively for Credit Suisse. In that capacity, he did not participate in either of the VTBC transactions. Moreover, the criminal conduct underlying defendant Singh's conviction for conspiracy to commit money laundering — namely, his laundering of the kickback payments he received from Privinvest in exchange for promoting Credit Suisse's investment in the original Proindicus loan (as well as the EMATUM loan and restructuring) — was completed by March 1, 2014, when he received his final kickback payment. (See GX 1843.) VTBC did not agree to extend the MAM loan until May 20, 2014 (GX 301). And though VTBC extended the Proindicus upsize loan on November 15, 2013 (GX 1201-I-10), defendant Singh, as noted, played no role in that transaction.

Under the MVRA, restitution is permissible where, among other criteria, the victim's losses are the direct and proximate result of the offense of conviction. See 18 U.S.C. § 3663A(a)(2); United States v. Reifler, 446 F.3d 65, 135 (2d Cir. 2006). Here, defendant Singh

cannot be said to have directly and proximately caused VTBC's losses. Although his laundering of kickbacks was certainly related to the underlying wire fraud scheme which victimized VTBC, that alone does not make VTBC a victim of defendant Singh's under the MVRA. See In re Loc. #46 Metallic Lathers Union & Reinforcing Iron Workers, 568 F.3d 81, 86-87 (2d Cir. 2009) (victim of broader scheme underlying money laundering conviction was not victim of defendant convicted solely of money laundering conspiracy).

IV. Conclusion

For the reasons set forth above, the government respectfully requests that the Court vacate the restitution order to the extent it requires defendants Subeva and Singh to pay restitution to VTBC.

Respectfully submitted,

JOSEPH NOCELLA, JR.
United States Attorney

By: /s/
Jonathan Siegel
Assistant U.S. Attorney
(718) 254-7000

MARGARET A. MOESER
Chief, Money Laundering &
Asset Recovery Section
Criminal Division
U.S. Department of Justice

By: /s/
Morgan J. Cohen
Trial Attorney
(202) 606-0116

LORINDA LARYEA
Acting Chief, Fraud Section
Criminal Division
U.S. Dept. of Justice

By: /s/
Peter L. Cooch
Trial Attorney
(202) 924-6259

cc: All Counsel of Record (via ECF)