

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 23-cr-20298

Hon. Judith E. Levy

WENDY BEARD,

Defendant.

GOVERNMENT'S SENTENCING MEMORANDUM

Defendant Wendy Beard took her father's once prosperous and highly regarded photography gallery and demolished it from within, leaving behind what amounted to little more than a Ponzi scheme and wreaking financial havoc along the way. More than forty victims—many of whom were elderly—trusted Beard with their art collections, only to have the most valuable pieces of those same collections stolen out from under them. The victims consigned photographs of *significant* value, relying on Beard's family name and purported expertise in hopes that they could turn a profit; more than one hoped to retire off the proceeds of the anticipated sales. Unfortunately, much of that artwork is now simply gone, with roughly 250 pieces still missing and unaccounted for (notwithstanding the seizure of nearly 700 *other*, far less valuable photographs). Adding insult to injury, when victims confronted Beard, they were met with lie upon lie, with the defendant going so far as to (1) fake

being in a coma; (2) fake receiving a double lung transplant; and (3) invent the identities of multiple individuals whole cloth, using those “employees” to attempt to lull her victims into a false sense of security. The sheer audacity of the defendant’s behavior speaks volumes, and the Court’s sentence should be reflective of the harm caused by Beard’s conduct.

As discussed further below, the government believes that the maximum sentence contemplated by the parties’ plea agreement—the mid-point of the guideline range determined by the Court—is both the appropriate sentence when considering the factors set forth in 18 U.S.C. § 3553(a), and also one that would be sufficient but not greater than necessary to accomplish the goals of sentencing.

I. OFFENSE CONDUCT

As acknowledged by the defendant in her Rule 11 Plea Agreement, Beard orchestrated a years-long, extensive scheme to defraud dozens of customers out of millions of dollars of fine art photographs. The government has reviewed the Offense Conduct set forth in paragraphs 7-53 of the PSR and finds it to be a comprehensive treatment of the charged offense. The government will not restate those facts herein. Rather, the following is an attempt to quantify the harm and define the contours of the scheme more broadly:

According to the 43 identified victims (or their successors in interest), approximately 393 fine art photographs were either (1) consigned to the defendant

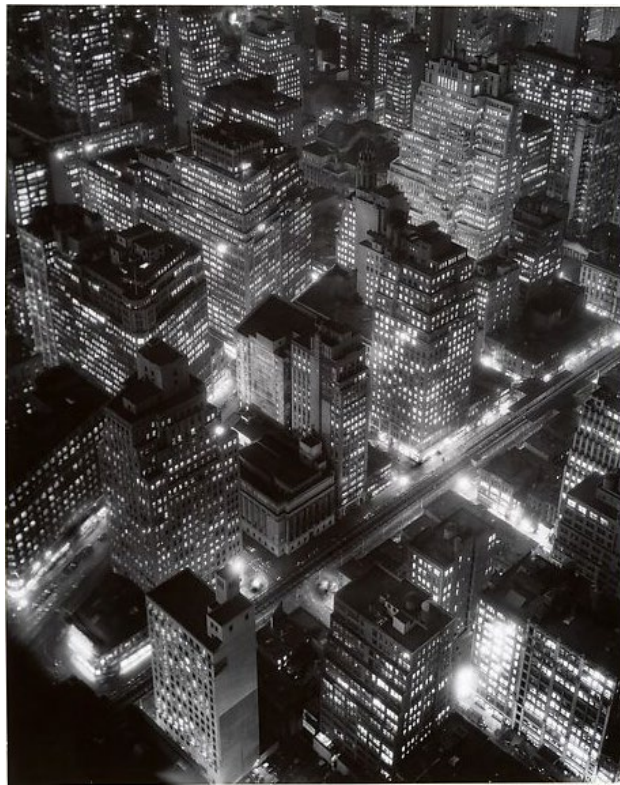
with proceeds never being paid over; or (2) purchased from the defendant but never received. Unfortunately, fewer than 150 of those photographs were located by the government during its investigation. Additional victims have come forward as recently as July 2024.

The single most-valuable image, an oversized print of Ansel Adams' "The Tetons and the Snake River" (depicted below) was appraised by Beard herself as being worth \$625,000 in 2016; it was consigned to her in 2018 along with several other Adams' prints; she sold it in 2019 for \$440,000 and kept the proceeds; it was subsequently re-sold across multiple galleries, multiple times, with the most-recent known sale price being \$685,000—the original agreed price at the time of consignment. The victim owner never received any of the proceeds.



(Credit: The Ansel Adams Gallery; image available at: <https://www.anseladams.com/the-tetons-and-the-snake-river/>)

On at least one occasion, it appears that one specific photograph, “Night View, New York” by Berenice Abbott (depicted below) was consigned [with an agreed price of \$17,000] by one victim who never received any proceeds from the sale, and sold [for price of \$24,500] to a different victim... who never received the photograph; the whereabouts of the photograph itself remain unknown.



(Credit: The Metropolitan Museum of Art; image available at: <https://www.metmuseum.org/art/collection/search/259570>)

Every victim has a unique vignette, many of which are discussed in some detail by the victims themselves in their statements which will be provided to the Court via separate cover. But the hallmarks of those stories are all the same: each

of the victims entrusted one or more of their most valuable fine art photographs to Beard (or paid her large sums of money with the expectation of receiving one or more fine art photographs), and are now left with little to show for that trust beyond a line item in a restitution order that Beard now lacks the funds to repay. Beard lied to her victims repeatedly, inventing ever more ridiculous justifications for her delay in repayment or return of consigned property. At times, she even tried to return *copies* of valuable photographs, attempting to pass them off as originals.

II. RESTITUTION

As part of her Rule 11 Plea Agreement, Beard agreed to make restitution to her victims in an amount to be determined by the Court. As of this writing, known victims are requesting \$3,307,718.97.

The government would ask for an order of restitution for the full amount.

III. FORFEITURE

Beard has also agreed to forfeiture—both the imposition of a Forfeiture Money Judgment against her in favor of the United States, representing the value of any property she obtained as a result of her crime; and the forfeiture of hundreds of photographs seized during the investigation. The parties have submitted a Stipulated Preliminary Order of Forfeiture (ECF No. 33, PageID.212) relating to the subject property and request that it be made part of the judgment. The government further asks that the Court impose a Forfeiture Money Judgment in an amount to be

determined at sentencing.

IV. GUIDELINES RANGE

The Probation Department calculated Beard's sentencing guidelines range as 78-97 months, using a loss in excess of \$3,500,000 (+18 levels); however, the government previously agreed in the Rule 11 plea agreement that it would recommend a loss between \$1,500,000 and \$3,500,000 (+16 levels).

Similarly, the Probation Department also scored a four-level increase for an offense resulting in financial hardship to five or more victims; however, the government previously agreed in the Rule 11 plea agreement that it would recommend only a two-level increase under the same provision.

As agreed, the government stands by its recommendations. In the event the Court accepts the recommendations contained in the parties' plea agreement, those recommendations would yield a lower range of 51-63 months; the mid-point of that range would be 57 months. In contrast, the midpoint of the range calculated by the Probation Department would be 87 months.

V. SENTENCING FACTORS

Title 18, United States Code, Section 3553(a), sets forth a number of factors that the Court shall consider in sentencing the defendant. These factors are described below, numbered as corresponding to Section 3553(a):

(1) The nature and circumstances of the offense and the history and characteristics of the defendant;

As discussed previously, this scheme caused financial harm—at times *significant* financial harm—to dozens of real victims. Although this is Beard’s first criminal conviction, it is one that cannot be discounted or explained away as a momentary lapse in judgment. As detailed by numerous victims, Beard repeatedly told increasingly unbelievable lies in attempt to evade detection. This was an ongoing course of intentional, deceptive conduct and should be punished as such.

(2) The need for the sentence imposed (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; (C) to protect the public from further crimes of the defendant; and (D) to provide defendant with appropriate education or vocational training.

Beard’s sentence should take into account not only the scope and seriousness of her criminal conduct but also the need to deter future crimes—both by Beard and by others. With respect to specific deterrence, significant incarceration is necessary to demonstrate to Beard the proverbial mantra that “crime does not pay,” especially given that virtually all the money she made from this scheme was spent in one way or another and is no longer available for restitution.

The sentence should also function as a general deterrent. Schemes that take advantage of the elderly, like this one, are often remarkably hard to detect until it is too late. Particularly in a trust-based industry such as this, it is all too easy to lull one’s victims into a false belief that their investments are safe and secure when, in

reality, both the assets themselves and any potential proceeds are long gone. And given that this crime arose out of the provision of professional (or quasi-professional) services, it is paramount that other professionals who could be inclined to commit fraud appreciate that the consequences will dramatically outweigh the benefits. A below guideline sentence such as that requested by the defense will not send the appropriate message of general deterrence, particularly in a case that has already received significant media attention.

(3) The kinds of sentences available

The maximum penalty for Wire Fraud, in violation of 18 U.S.C. § 1343, is twenty years imprisonment followed by up to three years of supervised release, and/or a fine not to exceed \$250,000.00 or twice the pecuniary loss.

The defendant's offense is a Class C felony, and calculation of the sentencing guidelines places her in Zone D of the sentencing table. Under the applicable guideline provision, the "minimum term" of the defendant's advisory guideline range, "shall be satisfied by a sentence of imprisonment." U.S.S.G. § 5C1.1(f).

As stated previously, the government believes that the maximum sentence permissible under the parties' plea agreement, would be one that is "sufficient, but not greater than necessary," when considering the purposes of 18 U.S.C. § 3553(a).

(4) The need to provide restitution

Restitution is mandatory in this case, as dictated by the Mandatory Victims Restitution Act codified at 18 U.S.C. § 3663A. The necessary restitution in this case is described above in Section II.

RECOMMENDATION

For the reasons stated above, the government recommends that Defendant Wendy Beard be sentenced to the maximum term of imprisonment contemplated by the parties' plea agreement, followed by three years of supervised release and also be ordered to pay restitution as described above in Section II.

Respectfully submitted,

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Date: September 5, 2024

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2024, I filed the foregoing electronically via the CM/ECF system, which will send notification of such filing to counsel of record:

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A copy was also provided to Probation Officer Kody Bellamy via email.

s/ Ryan A. Particka
Ryan A. Particka