

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-20878-CR-KING

UNITED STATES OF AMERICA

v.

RENZO GADOLA,

Defendant.

**GOVERNMENT'S SUPPLEMENTAL
SENTENCING MEMORANDUM
AND MOTION FOR DEPARTURE
FROM THE SENTENCING
GUIDELINES**

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The United States of America, by and through its undersigned attorneys, respectfully submits this Supplemental Sentencing Memorandum to apprise the Court, pursuant to U.S.S.G. § 1B1.8, of information regarding the unlawful conduct of defendant Renzo Gadola (“Gadola”) as a banker at UBS AG in Switzerland and when self employed as an asset manager.¹ The government also moves this Court, pursuant to U.S.S.G. § 5K1.1, to impose a sentence upon the defendant that is below the level established by the Sentencing Guidelines as the minimum sentence for his offense of conviction.

I. Uncharged Conduct

The Information filed by the government and Statement of Facts agreed to by the defendant both briefly address the defendant’s conduct while a banker at UBS and later as a self employed asset manager. See, e.g., Information, ¶¶ 18-22 [D.E. 19]; Statement of Facts, p. 3 [D.E. 31]. However, the gravamen of the charged conduct was limited to the defendant’s

¹ The Government filed a Sentencing Memorandum under seal on June 13, 2011. This supplemental memorandum is intended to replace the prior submission to the Court, and relevant portions of the prior submission are incorporated into this supplemental motion.

conspiring to urge one U.S. taxpayer not to disclose his secret Swiss bank account to the IRS. There was no tax loss as to that U.S. customer. See Plea Agreement, ¶ 10 [D.E. 30]; Pre-Sentence Investigation Report, ¶ 35.

Pursuant to U.S.S.G. § 1B1.8, the government has the obligation to inform the Court of loss suffered by the government from the defendant's uncharged conduct, even though the loss cannot be used in determining the advisory Guidelines sentence. As part of the IRS's Offshore Voluntary Disclosure Initiative, twelve (12) U.S. customers disclosed to the Service their secret Swiss bank accounts that they used to conceal their assets and income and evade their taxes and that the defendant was one of the bankers who assisted them in their efforts. These taxpayers estimated that, collectively, they had undeclared assets valued at not less than \$18 million and not more than \$46 million.² The taxpayers estimated that their collective unreported income was at least \$2 million.

II. Guidelines Calculation

Probation has calculated that, with acceptance, the defendant has a total offense level of 12, which yields an advisory Guidelines sentence of 10 to 16 months imprisonment. Presentence Investigation Report, ¶ 43. Pursuant to the Plea Agreement, the government has agreed to

² Further, records produced by UBS pursuant to the Deferred Prosecution Agreement indicated that the defendant managed undeclared accounts for Robert Greeley, a U.S. taxpayer residing in San Francisco, California, that, as of December 31, 2004, had assets in excess of \$13.7 million. Greeley pleaded guilty to filing a false tax return for tax year 2008, in violation of 26 U.S.C. § 7206(1), which failed to report \$49,770 in income from his undeclared accounts. United States v. Robert Greeley, 3:11-cr-00374-CRB (N.D. CA). On November 9, 2011, Greeley was sentenced to: 6 months home confinement; 3 years probation; a \$3,000 criminal fine; \$16,869 in restitution payable to the IRS (which has already been paid); and \$6,861,930 for a civil FBAR penalty (which has already been paid).

recommend that the Court sentence the defendant at the low end of the guideline range, as that range is determined by the Court.³

III. Substantial Assistance

In support of the motion for a downward departure, the Government states the following:

1. On November 8, 2010, IRS Special Agents arrested Gadola on a criminal complaint charging him a conspiracy to defraud the United States. The gravamen of the complaint was that Gadola met with a U.S. taxpayer who had a secret Swiss bank account that was managed by Martin Lack, an independent asset manager in Zurich, Switzerland who partnered with Gadola to service secret Swiss bank accounts, to urge that U.S. taxpayer not disclose the account to the IRS, but to perpetuate the ongoing conspiracy and keep the account secret. After his arrest, the defendant quickly agreed to cooperate with the Government. On November 9 and 10, 2010, Gadola participated in lengthy proffer sessions where he provided information regarding a scheme to assist United States taxpayers in opening and maintaining secret bank accounts in Switzerland to assist those taxpayers in concealing assets and income from the United States Government, specifically the Internal Revenue Service. Gadola provided information about his then-current and former U.S. customers who maintained secret Swiss accounts, as well as information about other Swiss bankers and Swiss financial advisors who assisted United States taxpayers in maintaining secret accounts. After the two initial proffer sessions, Gadola submitted to no less than five (5) additional interviews by the Government, each time providing information regarding his U.S. customers with secret Swiss bank accounts as well

³ Under U.S.S.G. §5C1.1(d)(2), because offense level 12 falls into Zone C, the sentence can be satisfied with one-half of the term of imprisonment being imposed, with the other half of the sentence being imposed by community confinement or home detention.

as the Swiss banks, Swiss bankers, and Swiss financial advisors who aided and abetted those U.S. customers. Moreover, within days of his arrest, Gadola participated in consensually monitored phone conversations with U.S. customers who continued to maintain secret Swiss bank accounts.

2. Gadola made more than one phone call with a U.S. customer who maintained a secret bank account in Switzerland. During one of those calls, the U.S. customer discussed with Gadola a scheme to avoid paying taxes and penalties owed on the assets and income generated by the secret Swiss bank account. Further, Gadola provided information that corroborated information in UBS banks records produced by the Swiss government to the IRS.

3. Gadola also provided substantial information about his colleague, Martin Lack. Gadola corroborated evidence in the Government's possession that showed that Lack assisted United States customers in maintaining secret Swiss accounts, and also assisted clients in transferring their funds from UBS to another Swiss bank so that the accounts would remain secret. Specifically, Gadola identified Lack's U.S. customers and advised the government of the methods Lack used to assist his U.S. customers in evading income taxes. Gadola provided the Government with copies of documents and communications with Lack. Based, in part, on the information and assistance provided by the defendant, a grand jury returned an indictment on August 2, 2011, alleging one count of conspiracy to defraud the United States, in violation of 18 U.S.C. § 371. United States v. Martin Lack, 0:11-cr-60184-WPD (S.D. FL). As of the date of this filing, Lack remains a fugitive.

4. Gadola also provided valuable information regarding Christos Bagios, a former banker at UBS in Switzerland who was arrested on January 26, 2011. In January 2011, the

Government learned that Bagios had entered the United States but would only remain in the country for approximately 48 hours. Bagios's short stay caused the Government to move quickly to obtain a criminal complaint and an arrest warrant.⁴ On very little notice, the defendant provided the Government with information necessary to obtain the complaint, including the approximate amount of undeclared accounts that Bagios serviced at UBS, as well as the approximate amount of assets that were under Bagios's management. Additionally, Gadola provided information about Bagios's manner of operating, including his travel to the United States to meet with United States customers who had undeclared accounts at UBS. Gadola was extremely cooperative and did not hesitate to provide us with assistance on short notice. Without his help, it might not have been possible to secure a criminal complaint and arrest warrant for Bagios. The Bagios case is ongoing but if Christos Bagios does proceed to trial, it is anticipated that Gadola will testify.

5. Renzo Gadola has been cooperative from the day he was arrested. As evidenced by Gadola's Statement of Facts, [D.E. 31], Gadola has admitted that he was involved in a scheme where he serviced hundreds of secret Swiss bank accounts that were owned and controlled by U.S. customers. He has been fully willing to meet with the Government and to provide information and answer questions about his U.S. customers who used secret Swiss bank accounts to evade their income taxes as well as the Swiss bankers, and Swiss financial advisors who aided and abetted those U.S. customers. Gadola has also indicated he wishes to continue to cooperate

⁴ Bagios has been charged by complaint with a conspiracy to defraud the United States, in violation of 18 U.S.C. § 371, related to the assistance that he provided to U.S. taxpayers to evade their individual income taxes when he was employed by UBS AG and UBS Swiss Financial Advisors. See United States v. Bagios, Case Number 0:11-mj-06030-RSR (S.D. FL.).

with the Government after he is sentenced, and will assist in other grand jury investigations and will testify at the trials of the his former customers and colleagues, if necessary.

6. Renzo Gadola has provided valuable information regarding UBS and the ways in which he and other UBS employees serviced both declared and secret Swiss bank accounts for United States customers. Gadola was a member of the Zurich-based team that serviced U.S. customers on the West Coast of the United States. Gadola has provided extensive information about each of the members of his team, their duties and responsibilities, and their U.S. customers.

7. The IRS's voluntary disclosure provides a means for U.S. taxpayers with secret foreign accounts to avoid criminal prosecution by disclosing those accounts to the Service, and paying back taxes, penalties and interest, and a civil penalty based on the percentage of the assets held in the foreign accounts. It cannot be doubted that Gadola's guilty plea as well as the very public nature of his cooperation in the prosecution of Martin Lack and Christos Bagios has been of great benefit to the IRS as it has spurred U.S. taxpayers to enter into the voluntary disclosure program.

8. This motion is made to advise the Court that the Government believes the Court should depart downward from the applicable guideline range in sentencing Gadola. The Government believes the downward departure is warranted based on upon all the facts and circumstances in the case, including Gadola's quick decision to cooperate fully and his valuable assistance to the Government in a number of investigations and prosecutions. The Government recognizes that the extent of the downward departure is a matter entrusted solely to the sound discretion of this Court. The offense level to which the Government and the defendant agreed in

the plea agreement, taking into account a reduction for acceptance of responsibility under U.S.S.G. § 3E1.1, is 12, which would be 10-16 months' imprisonment. The Government further agreed to request a sentence at the low end of the guidelines, which would be 10 months. Under U.S.S.G. § 5C1.1(d), the sentence could be served with five months' imprisonment and five months' of supervised release. The Government respectfully requests that Gadola be given a reduction in his sentence.

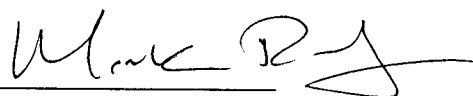
Additionally, the Government requests that, if sentenced to either a term of supervised release or probation, the Court make a condition of such release or probation that Gadola return to the United States at least once a year to continue to cooperate with the Government. Gadola has indicated that he is fully willing to return in the future when his cooperation is needed.

WHEREFORE, the United States respectfully requests that the Court impose a sentence upon defendant Renzo Gadola that is below the bottom end of the level established by the Sentencing Guidelines as the minimum sentence for his offense of conviction.

Respectfully submitted,

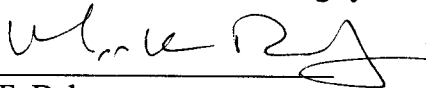
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CERTIFICATE OF SERVICE

This is to certify that on November 10, 2011, an original copy of the foregoing was filed with the U.S. District Court for the Southern District of Florida and served on counsel for the defendants by filing the same with the with the Electronic Case Filing system.



Mark F. Daly
Trial Attorney
U.S. Department of Justice, Tax Division