

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

NEAL KENNETH ALLEN,

Defendant.

ORDER

04-CR-0023-C-01

Defendant Neal Kenneth Allen has written two letters to the court, raising a number of questions. In the first, which is dated May 26, 2006, defendant asks for “disks on which discovery is located.” It appears that he wants the discs so that he can print out exhibits showing that he left approximately \$164,000 in receivables to use for payment of his bill from Aerotech Laboratories, Inc., as well as two emails that he asserts will support his intent to pay the Aerotech bill. The request will be denied. The discs to which defendant refers are not in the court’s custody. If he thinks that the government has them, he should make his request to Assistant United States Attorney Peter Jarosz, who is prosecuting his case.

Defendant should know, however, that his efforts to repay his debt to Aerotech will not affect the determination of loss for sentencing purposes and they will affect his

restitution obligation only to the extent that payments were actually made. The only kind of evidence that might affect the loss determination would be a showing that he turned over to Aerotech the \$66,339.19 that the tribe paid him for reimbursement of the Aerotech invoices.

I understand from defendant's May 26 letter that he wishes to go forward to sentencing without counsel. A hearing has been scheduled for June 12, 2006, for that purpose.

In his second letter, dated May 28, 2006, defendant asks the court to make some "predicate rulings" in writing regarding his sentencing. First, he wants to know whether the court recognizes the Wisconsin Department of Regulation and Licensing as the body to determine licensing requirements for professions. Second, he wants to know whether a person can be considered to be holding himself out as a licensed professional if the profession he claims is not one recognized by the state; and if not, must the court credit the actual value of the work done against the amount charged the victim? The second question arises because Application Note 3(F)(v) of U.S.S.G. § 2B1.1 specifies that no credit may be provided for the value of services rendered "by persons falsely posing as licensed professionals." I will reserve a final ruling on these two questions until the sentencing hearing so that I can hear any additional arguments defendant wishes to make. My tentative view is that posing as a mold expert and claiming to have had a 30-year career in the United

States Department of Agriculture and directing the largest USDA lab in Washington, D.C. are the equivalent of posing as a licensed professional and should be treated that way for the purpose of applying Application Note 3(F)(v).

Third, defendant asks whether making false promises to pay is a breach of contract and whether breach of contract is a crime. If he is arguing that his failure to pay Aerotech Laboratories is nothing more than a breach of contract, he has a mistaken view of the crime charged against him. He is not charged with breaching a contract to pay; he is charged with mail fraud and specifically with ordering tests to be performed when he had no intention of paying for them.

Fourth, defendant wants a ruling on the sufficiency of an affidavit from Vicky Weber confirming that she sent an email to the credit manager at Aerotech Laboratories advising the credit manager to attach defendant's receivables and that she did so at defendant's request. It is not clear what defendant is asking for. In the body of his letter, he quotes an alleged affidavit from Vicky Weber. If he is asking whether he can rely at sentencing on that quotation of an affidavit, the answer is that he cannot. Moreover, if the quotation is accurate, it merely says that Weber sent "Zeba of Aerotech Labs an email telling her to attach Aetotech labs outstanding invoices to Neal Allen's receivables." This directive is not sufficient to show that defendant did not have the intent to deceive Aerotech Laboratories at the time he contracted with the lab for testing.

One further matter. Defendant did not send copies of his May 26 and May 28 letters to Assistant United States Attorney Peter Jarosz or to Probation Officer Tracy Russom. On this one occasion, I will send copies of the letters to Mr. Jarosz and Ms. Russom. In the future, however, I will give no consideration to any communication from defendant unless he shows on the communication that he has sent copies to Mr. Jarosz and Ms. Russom, as he is required to do. If he lacks access to a photocopier, he may make typed or handwritten copies.

ORDER

IT IS ORDERED that defendant Neal Kenneth Allen's request for "discs on which discovery is located" is DENIED.

Entered this 2d day of June, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge