
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**THOMAS E. MOWER, LESLIE D.
MOWER, JAMES THOMPSON,**

Defendants.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW RELATING
TO TAX LOSS**

Case No. 2:02CR787DAK

This matter is before the court for a determination of tax loss amounts which will affect Defendants' sentences. The court held a hearing on this matter on March 13, 2006. The court took the matter under advisement. After having carefully reviewing the transcripts of the trial and the materials submitted by the parties, the court makes the following findings of fact relating to tax loss.

Domestic Commissions

1. Neways U.S. is a domestic U.S. corporation, Neways Australia is an Australian corporation, and Neways Malaysia is a Malaysian corporation. All of these corporations are closely held and controlled by Thomas E. Mower and Leslie D. Mower.
2. At all material times, Neways U.S., Neways Australia, and Neways Malaysia were network or multilevel marketing companies. In such companies, the sale of products is made through a network of independent distributors.

3. The distributors receive commissions from their own product sales as well as from the sales in their “downline,” meaning sales by other distributors located beneath them in the network. Revenue not paid out as commissions to distributors accumulates in the company.
4. The distributorship position at the top of the Neways U.S. downline listed Thomas E. Mower’s social security number as the tax identification number. Neways U.S. issued a 1099 each year for this distributorship.
5. The Mowers used various names to conceal their ownership and control of distributorships in the Neways U.S. downline.
6. The Mowers did not report all of the domestic income from Neways U.S. on their individual tax returns.

Foreign Commissions

7. The Neways Australia and Neways Malaysia downlines were set up at the suggestion and under the direction of John Hunter, then the managing director for Neways Australia. Thomas Mower was involved in the decision making.
8. Based on Mr. Hunter’s advice, the parent U.S. corporation (Neways U.S.) occupied seven positions at the top of the foreign downlines to capture the “breakage” which otherwise would have accumulated in the Australian and Malaysian companies. The distributorship names changed from “Images 1” through “Images 7” to “Neways 1” through “Neways 7” to “Mower Properties 1” through “Mower Properties 7.”
9. “Breakage” is the term commonly used in the industry to describe the revenue left in a company after distributions to the company’s distributors.

10. In this case, all payments to the Neways U.S. downlines set up by Hunter were commission checks payable to various corporate entities controlled by the Mowers. John Hunter and Michael Cunningham were not aware of who actually received the foreign commission checks once they were sent to the United States, nor were they aware of the disposition of the foreign commission checks. Members of the Neways U.S. accounting department were unaware of the overseas commission income.
11. None of the foreign commission checks paid in connection with the Australian and Malaysian downlines were payable directly to either of the Mowers. However, Thomas and Leslie D. Mower determined how that money was to be used.
12. Although there is no evidence that Leslie D. Mower was involved in the decision making regarding the set up of the downlines, there is evidence that she called Hunter, on at least one occasion to see if or when the checks were to be cut.
13. Karin Lane, former controller for Neways U.S., and Allen Davis, former corporate counsel for Neways U.S., testified that to their knowledge (1) the beneficiary of the foreign commissions was Neways U.S.; (2) the commission checks were payable to corporate entities; and (3) the funds were used to benefit the corporation through the development and purchase of corporate assets and expenses.
14. Patricia Sandberg, Thomas Mower's secretary, testified that she opened the envelopes and either gave the checks to Thomas Mower or deposited them into the Rezults bank account at the direction of Thomas Mower. The Rezults bank account signature card lists it as a sole proprietorship, with Thomas E. and Leslie D. Mower as having signature authority. No one in the Neways U.S. accounting department was aware of the Rezults

bank account.

15. The payments from the Australian and Malaysian distributorships were bonus payments made from the commission account, and, as such, were gross income to the recipient.

Savings Account

The government seeks to include \$138,372 of foreign and domestic commission income deposited into Leslie E. Mower's savings account as personal income to the Mowers for the purpose of the tax loss calculation.

16. \$138,372 of foreign and domestic commission income was deposited into Leslie E. Mower's savings account. Of this amount, \$83,069 was from domestic commission checks. For criminal tax loss calculation purposes, the Mowers accept this domestic amount as their personal income. The remaining \$55,303 of this category consists of foreign commission checks.
17. Six months after the \$55,303 was deposited into the account, the funds constituting foreign commissions were returned to corporate accounts of Neways U.S. and Mower Properties. The \$40,000 that was given to Mower Properties was then wired to Neways and then, nine days later, given back to Mower Properties.
18. The money was not reported as income. Rather, the money going from the savings account into Mower Properties was booked as a loan from Australia, and the money going from Neways back to Mower Properties was also booked as a loan from Neways.

Unknown Category

The government seeks to include \$712,111 of foreign and domestic commission income designated "unknown" as personal income to the Mowers for the purpose of the tax loss

calculation.

19. \$712,111 of foreign and domestic commission income was designated “unknown” by the government. Of this amount, \$125,120 was from domestic commission checks. For criminal tax loss calculation purposes, the Mowers accept this domestic amount as their personal income. The remaining \$586,991 in this category consists of foreign commission checks.
20. The \$586,991 in foreign commission checks were never negotiated.

Miscellaneous Category

The government seeks to include \$257,641 of foreign and domestic commission income designated “miscellaneous” as personal income to the Mowers for the purpose of the tax loss calculation. The category includes subcategories that are identified below.

21. \$257,641 of foreign and domestic commission income was designated “miscellaneous” by the government. Of this amount, \$66,537 was from domestic commission checks. For criminal tax loss calculation purposes, the Mowers accept this domestic amount as their personal income. The remaining \$191,104 of this category consists of foreign commission checks.
 - A. National Australia Bank Checks
22. \$97,203 in Australian commission checks were negotiated through the National Australian Bank.
23. These commission checks were made payable to corporate entities controlled by the Mowers.
24. These checks were not endorsed and there was no evidence of who negotiated these

checks.

25. Of the \$97,203 in Australian commission checks negotiated at the National Australian Bank, one check in the amount of \$13,272 had written on the face “please pay cash, J.H.”
26. Hunter testified that he gave the Mowers checks during a visit to Australia and that he would cash checks for them. The Government did not establish the date the Mowers visited Australia, the amount they received, or how the money was spent. Hunter was not asked to identify or quantify the checks he gave the Mowers.
27. Based on this lack of detail, the court cannot attribute the bulk of this amount to the Mowers. However, the testimony does support the inclusion of the check in the amount of \$13,272 on which Hunter wrote “please pay cash, J.H.” as income in the loss calculation.

B. International Withholding

28. Neways Australia retained \$56,356 in foreign checks for taxes and labeled them “international withholding.”
29. These “international withholding” checks were never negotiated.

C. Deposits Into Neways U.S. Operating Account

30. Neways Malaysia commission income totaling \$37,545 was wired directly into the Neways U.S. operating account beginning in April of 1997.
31. The government argued that some of this money was being deposited into a bank account with First Security Bank controlled by the Mowers and that, in one instance, one of the checks was signed over to buy a Gulf Stream Boat. These monies however appear to be domestic income for which the Mowers have agreed to accept in the loss calculation.

Mower Properties

The government seeks to include \$1,539,010 of foreign and domestic commission income deposited into the Mower Properties, Inc. (“Mower Properties”) corporate account as personal income to the Mowers for the purpose of the tax loss calculation.

32. \$1,539,010 of foreign and domestic commission income was deposited into the Mower Properties’ corporate account. Of this amount, \$445,440 was from domestic commission checks. For criminal tax loss calculation purposes, the Mowers accept this domestic amount as their personal income. The remaining \$1,093,570 of this category consists of foreign commission checks.
33. Mower Properties is a Utah corporation which owns and constructs certain real estate assets used by Neways U.S.
34. Mower Properties’ real estate includes Neways U.S.’s corporate offices and a warehouse, which are leased to Neways U.S.
35. The foreign commission checks deposited into the Mower Properties’ corporate account were used for corporate purposes, including the building of a warehouse.
36. The accountants and others at Neways U.S. knew that monies from Mower Properties were being used to build the warehouse and pay other corporate expenses.

Hobble Creek

The government seeks to include \$450,694 of foreign and domestic commission income used to purchase a parcel of land in Hobble Creek Canyon (“Hobble Creek”) as personal income to the Mowers for the purpose of the tax loss calculation.

37. \$450,694 of foreign and domestic commission income was used to purchase Hobble

- Creek. Of this amount, \$56,469 was from domestic commission checks. For criminal tax loss calculation purposes, the Mowers accept this domestic amount as their personal income. The remaining \$394,225 of this category consists of foreign commission checks.
38. The Hobble Creek property was initially titled in the name of the Mower Family Trust, a revocable living trust of which Thomas and Leslie D. Mower were trustees and beneficiaries. Australian and Malaysian commission checks were not deposited into any bank account, but were endorsed directly over to the sellers of the property.
 39. The Mowers told several individuals that they wanted to build a house on Hobble Creek.
 40. Prior to the I.R.S. contacting Thomas Mower in March, 1997, Karin Lane, Annette Jenkins and Allen Davis were unaware that Hobble Creek was a corporate asset.
 41. On March 27, 1997, I.R.S. Special Agent Ted Elder attempted to interview Thomas E. Mower at Neway U.S.'s corporate offices. Thomas Mower was not present so Elder gave the receptionist a letter for Mr. Mower informing him that he was under investigation for his personal tax liability.
 42. Allen Davis and James Thompson discussed the investigation with Thomas Mower and decided that the I.R.S. might be interested in the purchase of Hobble Creek.
 43. Thomas Mower told Davis and Thompson that Australian funds were used to purchase Hobble Creek. Thompson and Davis searched the records at Neways U.S. and found no documentation concerning the Hobble Creek property.
 44. Prior to further contact with the I.R.S., Thompson, Davis, and Thomas Mower had a conference call with Michael Cunningham of Neways Australia and requested information about the nature of the money used to purchase Hobble Creek. Cunningham

- informed then that he thought the payments were distributor payments.
45. Davis suggested that Hobble Creek be used as a distributor retreat. Thompson created a loan document to support a purported loan for Hobble Creek. The loan document indicated that Neways Australia loaned money to the Mower Family Trust to purchase Hobble Creek. There were, however, no loans between Neways Australia and the Mower Family Trust. The loan document was signed by Thomas Mower.
 46. During an interview conducted by Elder on March 31, 1997, Thomas Mower stated that the funds used to purchase Hobble Creek were a loan from Neways Australia to the Mower Family Trust. At the end of the interview, Thompson and Davis provided Elder with the purported loan document. Mower, Thompson, and Davis knew the loan document was false and fraudulent when it was presented.
 47. James Thompson attempted to contact Elder on April 4 and April 8, 1997, to dissuade Elder from investigating the matter further.
 48. Elder also interviewed Thomas Mower and James Thompson on August 11, 1997, in order to get permission to inspect Australian records. During this meeting, it was again represented to Elder that a loan from Australia existed.
 49. There were never any loans between Neways Australia and the Mowers individually, Mower Properties, and the Mower Family Trust.
 50. The Hobble Creek property was later transferred to Mower Properties as part of an effort by corporate counsel to “clean up” mistakes in Neways U.S. and Mower Properties corporate records. Hobble Creek was kept on the corporate books of Mower Properties, which corporation has been paying the property taxes on the Hobble Creek property.

51. Mower Properties subsequently purchased property adjacent to Hobble Creek, which is now occupied with a barn and large pavilion and is used by Neways U.S. as a corporate retreat.
52. Hobble Creek was a personal asset, owned by the Mower Family Trust, and not a corporate asset.
53. Leslie D. Mower, however, was not involved in the Hobble Creek transaction. She did not endorse any of the checks to purchase the property, she was not a part of the discussion, she did not attend the meetings with Elder. Davis states that he kept her informed of what was happening with the matter, but there were no specifics regarding the extent of her knowledge.
54. Leslie D. Mower was advised by the legal and accounting professionals at Neways U.S. that the Neways U.S. tax returns should be amended to include the foreign commissions used to purchase Hobble Creek.
55. Although Leslie D. Mower was a co-trustee and co-beneficiary of the Mower Family Trust and, as such, benefitted from the actions taken by Thomas E. Mower, the court does not find that she had the requisite involvement in this matter for it to be included in her tax loss calculation.

Results Account

The government seeks to include \$458,550 of foreign and domestic commission income deposited into the Results account as personal income to the Mowers for the purpose of the tax loss calculation.

56. \$458,550 of foreign and domestic commission income was deposited into the Results

- account. Of this amount, \$70,340 was from domestic commission checks. For criminal tax loss calculation purposes, the Mowers accept this domestic amount as their personal income. The remaining \$388,210 of this category consists of foreign commission checks.
57. All of the foreign commission checks deposited into the Rezults account were payable to corporate entities controlled by Thomas E. and Leslie D. Mower.
58. Leslie D. Mower opened the Rezults bank account. The Rezults bank account signature card lists it as a sole proprietorship, with Thomas E. and Leslie D. Mower as having signature authority. No one in the Neways U.S. accounting department was aware of the Rezults bank account.
59. Leslie D. Mower claims that after she opened the Rezults business account in 1993, it was entirely controlled, operated, and managed by Thomas Mower. In November of 1994, however, she made a deposit into the account from Mower Properties.
60. The Mowers argue that the government did not examine any of the disbursements from the Rezults account to determine whether the Mowers had received any money from this account or whether they received an amount in excess of the \$70,340 that they have accepted as their personal income.
61. Defense expert Gail Anger examined the disbursements from the Rezults account and determined that most of the payments from the Rezults account were for corporate expenses.
62. However, unlike entities such as Mower Properties, Rezults never filed a corporate income tax return with the I.R.S. The Mowers had control over the disposition of the funds in this account. Although the government has not clearly demonstrated how all of

the money was used, because no tax return was filed, it appears that taxes were not paid on the money regardless of how it was spent. Defendants' expert testified only that money from this account was used for corporate purposes, he did not testify that taxes were paid on the amounts that were used for such purposes.

63. Nonetheless, there is evidence that some portion this money was used for corporate purposes rather than solely for the personal uses of the Mowers, and the Mowers have already taken responsibility for \$70,340 from domestic commission. Therefore, the court will include only \$50,000 of the foreign commission checks deposited in the account in the loss calculation.

Corporate Gross Receipts

In its post-trial memorandum regarding tax loss, the government seeks to add the corporate tax of Neways U.S. in the amount of \$291,280 to the criminal tax loss calculation. The government argues that \$800,000 was transferred by Neways Australia to Neways U.S. in 1991 and that this money represented corporate gross receipts to Neways U.S., which should have been reported as income on the Neways U.S. 1991 corporate tax return. This theory was never presented to the jury for consideration.

64. Gross receipts are not taxable income.
65. Gross receipts less the cost of goods sold equals gross profit. Gross profit, not gross receipts, is subject to corporate income tax.
66. The amounts advanced to Neways U.S. by Neways Australia as pre-payment for product were repaid by the shipment of product from Neways U.S. to Neways Australia.
67. Neways U.S. would recognize taxable income when it actually shipped the product to

Neways Australia. At that time Neways U.S. would be entitled to deduct from gross receipts (or pre-payment) the cost of goods sold and shipped to Australia.

68. There was no evidence showing what the cost of goods sold was for the \$800,000 gross receipts.

CONCLUSIONS

1. The Court concludes based upon the evidence and the testimony at trial that the commission income from the Neways U.S. downline was the Mowers' personal income. All unreported commission income from the Neways U.S. downlines will be included in the tax loss calculation.
2. The Court concludes based upon the evidence and the testimony at trial that the foreign commission income from the Neways Australia and Neways Malaysia was used as personal income in some instances and as corporate income of Neways U.S. for corporate purposes in some instances. Only the amounts used as personal income will be included in the tax loss calculation.
3. The Court concludes based upon the evidence and the testimony at trial that the \$55,303 in foreign commission checks that were deposited into Leslie Mower's savings account were for the personal use and benefit of the defendants. The monies appear to have eventually ended up in corporate accounts, but they were accounted for as loans when they, in fact, were personal income. Therefore, \$138,372 of the deposits into Leslie Mower's savings account will be included in the tax loss calculation of unreported personal income.
4. The Court concludes based upon the evidence and the testimony at trial that the

\$586,991 of Australian commission checks in the “unknown” category were not negotiated and, thus, were not diverted for the personal use and benefit of the defendants. Accordingly, \$125,120 of the “unknown” category from domestic commission checks will be included in the tax loss calculation of unreported personal income.

5. The Court concludes based upon the evidence and the testimony at trial that all but \$13,272 of the \$191,104 of foreign commission checks in the “miscellaneous” category were not negotiated, were negotiated through the Australian National Bank by unknown persons, or were wired directly into a Neways U.S. account and, thus, were not diverted for the personal use and benefit of the defendants. Therefore, \$66,537 of the “miscellaneous” category from domestic commission checks and \$13,272 of the foreign commission checks will be included in the tax loss calculation of unreported personal income.
6. The Court concludes based upon the evidence and the testimony at trial that the \$1,093,570 of foreign commission checks in the “Mower Properties Account” category were not diverted for the personal use and benefit of the defendants. As a result, \$445,440 of this category from domestic commission checks will be included in the tax loss calculation of unreported personal income.
7. The Court concludes based upon the evidence and the testimony at trial that the \$394,225 of foreign commission checks used to purchase the Hobble Creek property were for the personal use and benefit of the defendants. However, because that there is not sufficient evidence of Leslie D. Mower’s knowledge or involvement with respect to this matter, the court finds that it should not be included in her tax loss calculation. Accordingly,

\$450,694 will be included in the tax loss calculation of unreported personal income for Thomas Mower.

8. The Court concludes based upon the evidence and the testimony at trial that \$50,000 of the \$388,210 of foreign commission checks deposited into the Rezults account were used for the personal use and benefit of the defendants. Therefore, in this category, \$70,340 from domestic commission checks and \$194,105 from foreign commission checks will be included in the tax loss calculation of unreported personal income.
9. The Court concludes based upon the evidence and the testimony at trial that there was insufficient evidence to establish an amount of taxable income, if any, on the \$800,000 of corporate gross receipts.
10. The Court calculates the tax loss of Thomas E. Mower's unreported personal income as follows:

Savings Account	\$138,372
Unknown	\$125,120
Hobble Creek Land	\$450,694
Rezults Account	\$120,340
Mower Properties Account	\$445,440
Miscellaneous	\$79,809
Checking Account	<u>\$219,385</u>
Gross Income	\$1,579,160
Reported Income	(\$865,679)
Total Income	\$713,481
Tax Loss (28%)	\$199,775

11. Applying the 2005 United States Sentencing Guidelines § 2T4.1 Tax Table, the Court concludes that the criminal tax loss is \$199,775, twenty-eight percent (28%) of \$713,481,

which constitutes a base level of 16.

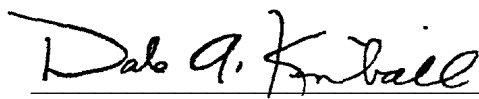
12. The Court calculates the tax loss of Leslie D. Mower's unreported personal income as follows:

Savings Account	\$138,372
Unknown	\$125,120
Hobble Creek Land	\$55,469
Rezults Account	\$120,340
Mower Properties Account	\$445,440
Miscellaneous	\$79,809
Checking Account	<u>\$219,385</u>
Gross Income	\$1,183,935
Reported Income	(\$865,679)
Total Income	\$318,256
Tax Loss (28%)	\$89,112

13. Applying the 2005 United States Sentencing Guidelines § 2T4.1 Tax Table, the Court concludes that the criminal tax loss is \$89,112, twenty-eight percent (28%) of \$318,256, which constitutes a base level of 16.

DATED this 7th day of April, 2006.

BY THE COURT:



 DALE A. KIMBALL,
 United States District Judge