

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

v.

Case Number 3:15-CR-196-01(FLW)

**BOBBY BOYE a/k/a
"Bobby Ajiboye" a/k/a
"Bobby Aji-Boye"**

Defendant.

**CERTIFICATION OF DEFENDANT BOBBY BOYE IN SUPPORT OF
DEFENDANT'S PETITION UNDER 28 U.S.C. § 2255**

BOBBY BOYE, of full age, hereby certifies as follows:

1) I am the defendant in this action. I make this Certification in support of my accompanying petition for relief under 28 U.S.C. § 2255.

2) At the trial level (through plea and sentencing), I was represented by K. Anthony Thomas of the Office of the Federal Public Defender.

3) Following the appointment of Mr. Thomas as my Public Defender, on or about the last week of November, 2014, I had my first meeting with him at his office to brief him about my side. There were two other persons present at the meeting including another employee of the Public Defender's office who was designated as the "investigator" assigned to my case and another person introduced

as an "intern." After I briefed Mr. Thomas about the facts of the case and answered all his questions, I presented the following documents to him for his review and comments, namely:

(a) The advertisement placed in The Economist newspaper by the Timor-Leste's Ministry of Finance, soliciting interested persons or firms for the performance of professional services including Tax & Accounting Audit, Tax Regulations and Engineering (attached hereto as Ex. A);

(b) Copy of the bid submitted by Opus & Best LLC specifically for the performance of writing the TDA and TBUCA Regulations only (attached hereto as Ex. B);

(c) Copy of the service contract between the Timor-Leste's Ministry of Finance and Opus & Best LLC in respect of the TDA & TBUCA Regulations (attached hereto as Ex. C);

(d) Copies of scoring sheet, the scoring mechanism used by the seven (7) member Evaluation Team set up solely by the Timor-Leste Minister of Finance in assessing the bids submitted by all the service providers that bided in respect of the TDA & TBUCA Regulations (attached hereto as Ex. D);

(e) After the successful completion of the TDA & TBUCA Regulations by Opus & Best LLC to the satisfaction of the Timor-Leste Government, the Timor-

Leste Government at its own discretion invited and awarded two (2) other "NO-BID" contracts to Opus & Best in respect of the Transfer Pricing and the Interpretative Guidelines for TDA & TBUCA projects. Copies of the documents evidencing the NO-BID contracts awarded by the Timor-Leste Government in respect of the two (2) NO-BID contracts, including the rationale (some of which included an acknowledgment that the Timor-Leste received value in respect of the TDA & TBUCA project, excellent and timely services and a meeting with the representative of Opus & Best LLC) for awarding the NO-BID contracts (attached hereto as Ex. E). Mr. Thomas indicated that he was going to prepare a motion to compel Government to provide him with the executed copies of Ex. E but never did. I pressed him several times about the motion but Mr. Thomas kept on avoiding the issue.

(f) Copies of the service contracts between Timor-Leste's Ministry of Finance and Opus & Best LLC in respect of the Transfer Pricing and TBUCA Guideline projects (attached hereto as Ex. F);

(g) Copy of the 2012 Annual Report of the Timor- Leste Ministry of Finance wherein (page 64-69) the Timor-Leste Government acknowledged the receipt of value for the different professional services procured for the Petroleum Tax Office (attached hereto as Ex. G);

(h) Copies of some of the correspondences including billings, progress reports, drafts, schedules etc. from other sub-contractors hired by Opus and Best LLC in the performance of the Timor-Leste projects, namely Messrs Peter Chen, an attorney and a CPA and also Kaushal Kapadia, an economist (attached hereto as Ex. H). Copies of Opus & Best bank statements from Chase Bank evidencing wire transfers for payment in respect of the professional services rendered by Messrs Chen and Kapadia were also provided to Mr. Thomas. Mr. Thomas promised to contact both Messrs Chen and Kapadia but failed throughout the course of this matter to contact any of them;

(i) Copy of the Proposal for sub-consulting services from Boughton Peterson Yang Anderson (now known as "ZHONG LUN LAW FIRM") to Opus & Best LLC in respect of the contracts between Opus & Best LLC and the Timor-Leste Government, including the print out of the webpage of Boughton Peterson Anderson, a prominent Hong Kong Law Firm, and the employer of Peter Chen from 2010 to date (attached hereto as Ex. I). Part of the professional accomplishments of Peter Chen on the website of ZHONG LUN LAW FIRM included a reference to the Timor-Leste contracts, in which Peter Chen acted as a sub-contractor, and which fact was pointed out to Mr. Thomas. By any standard of measurement, Peter Chen is a distinguished and an accomplished tax attorney and a CPA. He is a Partner in the law firm also as clearly indicated on their website;

(j) Copies of the final work products submitted by Opus & Best LLC, namely TDA & TBUCA Regulations, Transfer Pricing Study relating to the Bayu-Undan Contractors and the Interpretative Guidelines for the TDA & TBUCA (attached hereto as Ex. J);

(k) Emails showing that the same Peter Chen not only worked for Opus & Best LLC in executing the consulting contracts with the Timor-Leste Government, but also for another US company called Charles River Associates (CRA), in respect of the Gas Pipeline Audit & Consulting services between CRA and the Timor-Leste Government. Copies are attached and marked as Exhibit K. Peter Chen worked as an independent contractor of CRA & Opus & Best LLC concurrently in respect of the professional service contracts awarded by the Timor-Leste Government to opus & Best LLC as well as CRA;

(l) Copies of the correspondences showing that Emilia Pires, the Timor-Leste Finance Minister, did meet with Peter Chen in Dili in the course of the execution of both the CRA and Opus & Best consulting contracts with Timor-Leste are (attached and marked as Exhibit L);

(m) Proof that Arent Fox, the outside Law Firm advising Timor-Leste Government, acknowledged that Peter Chen is a "good choice" and the plan to use Peter Chen's tax and accounting expertise in a pending dispute between Timor-

Leste, Conoco Phillips and others before the Singapore Arbitration are (attached hereto as Exhibit M);

(n) Copies of the relevant laws and policy of Timor-Leste government governing the bidding and award of contracts, be it for goods and or services, and which are (attached hereto as Exhibit N);

(o) A copy of the Organizational Structure of the Timor-Leste Ministry of Finance during the period between 2010 and 2013, (attached hereto as Exhibit O). As an advisor to the Ministry of Finance in Timor-Leste on the limited matter of Petroleum taxation, I was neither a civil servant nor a part of the management team, known as CCM (consisting of key employees of the Ministry of Finance and three (3) other advisors). As at the time the three (3) contracts were awarded to Opus & Best LLC, there was another full time Legal Advisor (Mr. Maguire) heading the Revenue & Tax Department. Separately, the Ministry of Finance had its own separate legal department staffed with more than seven (7) advising the Minister and other key employees on matters covering due diligence, legislative issues, contract vetting etc. The document was given to Mr. Thomas for the purpose of challenging the false picture painted by the Government that I was the "alpha and omega" at the Ministry of Finance in Timor-Leste. Like every other documents that I presented to Mr. Thomas for the purposes of contradicting the version of the Government's story, he did absolutely nothing with it;

(P) Copy of the email from Arent Fox, the outside counsel to Timor Leste Government regarding the TBUCA Regulations and wherein the work product of Opus & Best LLC was acknowledged as a "great job" is (attached hereto as Exhibit P);

(q) A copy of the Criminal Information Complaint containing the narrative of the US Government's case against me is (attached hereto as Exhibit Q);

(r) Sample representative copies of some of my work products while employed as the Petroleum Tax Advisor by the Timor-Leste Government and which are now part of the body of laws governing the taxation of Minerals, Oil and Gas in Timor-Leste are (attached hereto as Exhibit R). I was called to the Nigerian Bar as a Barrister & Solicitor of the Supreme Court of Nigeria in 1984 and practiced tax law consistently since my call to the bar. I have postgraduate degrees in Law and Taxation from prominent universities in the US. I was variously employed at high levels at KPMG (an accounting firm), 3D Systems Corporation (a multinational company and where I served as the Tax Director for several years) and also at MasterCard Corporation as Vice President (which designation was later changed to a Senior Business Leader of International Tax, as a result of company-wide change of titles). I was singularly responsible for the drafting and negotiating of the pertinent portions of the one and ONLY existing Timor-Leste Income Tax

Treaty (Timor Leste - Portugal Income Tax Treaty) and which Treaty was ratified by the parties in 2012;

(s) Copies of the final bills totaling approximately \$1.4 million that remain unpaid by the Timor-Leste Government in respect of the consulting services relating to the Transfer Pricing and Interpretative Guideline projects and which projects were satisfactorily and professionally executed by Opus & Best LLC and accepted by the Timor-Leste Government, are collectively (attached as Exhibit S);

(t) Copy of a separate Tax Consulting business proposal made by Peter Chen through a company called Fortunare (H.K.) Co., Ltd and which is wholly owned and controlled by Peter Chen in Hong Kong dated January 10 2013 to the Timor-Leste Government is (attached hereto as Exhibit T); and

(u) Copy of the correspondence referenced in paragraph 7 of my Certification and issued by the Office of the NY Secretary of State regarding the incorporation of Opus & Best LLC is (attached hereto as Exhibit U).

4) At the end of the meeting referenced above, Mr. Thomas said to me that in his own opinion the Government has no case against me for any money claim and at best I am only guilty of making false representation about Opus & Best LLC but certainly no loss was incurred by Timor Leste because the contracts were executed as agreed upon by the parties. Mr. Thomas went further that the

employee of the Federal Defender's office designated as the "Investigator" would be starting some work to assist him on discovery issues. Mr. Thomas never produced the result of any "investigative work" that he promised and I believe that no investigation whatsoever was done by Mr. Thomas contrary to his promise.

5) Between December 2014 and mid-February 2015, Mr. Thomas and I met once and spoke on the phone twice. On each occasion, Mr. Thomas reiterated to me that the amount paid by the Timor-Leste Government in the sum of \$3.5 million cannot be interpreted as "loss" in the circumstances that I narrated to him and based on his review of the documents enumerated in Paragraph 3 above.

6) Sometimes in the month of March or thereabout, Mr. Thomas and I met with the Federal Prosecutor and the FBI Agent investigating the case at the U.S. Attorney's office in Newark. At that meeting the Federal Prosecutor narrated the Government's version about its case against me and other unnamed "co-conspirators" who participated in the "fraud" against the Timor-Leste Government in relation to the three contracts. The Federal Prosecutor said that the Government had copies of all the emails sent out or received in the email accounts of Opus & Best as well as my personal email account. The Federal Prosecutor said that I submitted fraudulent bids to secure the three contracts forming the subject of the Criminal Information filed against me and that at the time that I submitted the bids, Opus & Best was non-existent. The Federal Prosecutor said affirmatively that the

Government of Timor- Leste suffered a monetary loss in the sum of \$3.5 million, been the amount paid by the total amount of the contracts that I fraudulently obtained.

7) Since I was not allowed to speak at the meeting referenced above with the Federal Prosecutor and the FBI Agent, I met with Mr. Thomas immediately after the meeting at the lobby of the U.S. Attorney's office. I informed Mr. Thomas that the version of the events surrounding the formation of Opus & Best LLC and the award of the three contracts were fundamentally different from the case presented by the U.S. Attorney. I explained that the documents for the incorporation of Opus & Best LLC was submitted in February 2012 by a firm called "Rocket Lawyers" and they advised in early March that the firm has been incorporated. It was not until March 15 that I received a letter from the New York Secretary of State rejecting the name and asking for a different name from what was submitted by the Rocket Lawyers in February 2012. A new name "Opus & Best LLC" was provided to the N.Y. Secretary of State on or about March 17; the Bid for the TDA & TBUCA Regulations was submitted on or about March 25, 2012. I also reminded Mr. Thomas that Opus & Best LLC submitted only one bid regarding the TDA & TBUCA Regulations, and that the two subsequent contracts (Transfer Pricing and Interpretative Guidelines for TDA & TBUCA) were no bid contracts awarded without any representations to the Timor-Leste Government. I

also reminded Mr. Thomas that contrary to the version of the U.S. Attorney's version, the aggregate amount of the three contracts was \$4.9 million and that the Timor- Lester Government still owes an outstanding amount in the sum of \$1.4 million that remains unpaid after the satisfactory completion of the consulting projects. Mr. Thomas' response to me was that he was going to begin a discovery process to obtain documents that the Federal Prosecutor said that they were relying upon against me. I told Mr. Thomas that in view of the all the documents that I gave him and some of which are exhibited hereto, the Government's case as put forth by the Prosecutor did not make sense. To my surprise and total disillusionment, Mr. Thomas said that to me that I submitted too many documents and that he had been very busy and had had no time to review any of the documents to date!

8) Approximately a week or so after the meeting at the U.S. Attorney's office in Newark, I received an email from Mr. Thomas to report at his office to discuss my case and to review some documents that the Federal Prosecutor shared with him. At the meeting, Mr. Thomas gave me some email correspondences between myself and others including Mr. Peter Chen and one Mr. Kapadia (some of the other professionals that worked with me on the projects) and advised me that the matter should not be taken to trial but find a way to obtain a "Plea Bargain" with the U.S. Attorney. I told him that was not acceptable to me and that my prior

private attorney and I had rejected the "Plea Bargain" offered by the U.S. Attorney in August 2014. Mr. Thomas told me that the correspondences that were shared with him by the U.S. Attorney seem to suggest that I abused my position with the Timor Leste Government to obtain the contracts and that since the complainant is a sovereign foreign government, it would be extremely difficult to obtain relevant documents and subpoena the relevant government officials that I may need as my own witnesses. Furthermore, Mr. Thomas told me at the meeting that his view now is that the entire amount, the \$3.5 million, paid to Opus & Best LLC may be regarded as a "loss" for the simple fact that I misled the Timor Leste Government in the bidding documents that I submitted. I reminded Mr. Thomas that his new position on the issue was contrary to all his prior representations and more specifically on the "loss" issue and my own conviction that that the Timor Leste Government suffered neither economic nor any monetary loss as a result of contracts that were faithfully executed and applauded by the same Timor-Leste Government.

9) I told Mr. Thomas during this same meeting that while I am willing to readily concede the fact that I made false representations in securing the first contract (TDA & TBUCA Regulations) through a bid and which was awarded in the sum of \$2.4 million, I was not prepared to concede that the Timor-Leste Government suffered any economic loss in the circumstances of the case.

Furthermore, I told Mr. Thomas that the other two subsequent contracts for Transfer Pricing and Interpretative Guidelines for TDA & TBUCA) were awarded by the Timor-Leste Government on a no-bid basis and as a result of what the Timor Leste Government described as excellent services in regard to the TDA & TBUCA Regulations. I asked Mr. Thomas how the Timor Lester Government could have suffered a "loss" for what it acknowledged as "excellent services" and for work products that it continued to use. I also asked Mr. Thomas to explain his new position vis-a-vis the fact that the two subsequent contracts that were awarded solely at the prompting of the Timor Leste Government and without any representations whatsoever by Opus & Best. Finally, I reminded Mr. Thomas that the Timor Leste Government still owed the sum of \$1.4 million, having paid only \$3.5 million out of the aggregate sum of \$4.9 million for the three contracts. I pointedly asked Mr. Thomas to explain to me how Timor Leste can legally claim that it sustained a "loss" when it has received something of value in the sum of \$4.9 million and paid only \$3.5 million. I further asked him if Opus & Best LLC was not entitled to credit for services rendered pursuant to the contractual obligation of the Timor Leste Government. Mr. Thomas said to me that I may be able to sue the Timor Leste Government in a civil court to recover the amount agreed upon under the three contracts and that he will further research the legal

answer to all the matters that I raised concerning the criminal issue of "loss" then get back to me.

10) Approximately a week or two after my last meeting with Mr. Thomas referenced in Paragraphs 8 and 9 above, I received an email from Mr. Thomas with a draft copy of a Plea Bargain offered by the U.S. Attorney, asking me for my comment. Mr. Thomas and I agreed to meet on April 23, 2015 to discuss the factual basis questions in the Plea Bargain dated March 12, 2015.

11) On or about April 23, I met with Mr. Thomas in his office to discuss the Plea Bargain. I reiterated my disagreement regarding the issue of loss and restitution in the sum of \$3.5 million and my concerns with the way the case was characterized by the U.S. Attorney in the draft Plea Bargain. I made it clear to Mr. Thomas that I do not believe that I should be subject to any restitution at all and that the Government of Timor Leste did not suffer any economic loss having obtained all the benefits under the contracts and without even paying the remaining balance of \$1.4 million as contractually agreed upon by the parties. I also pointed out to Mr. Thomas that the Government's case that I submitted fraudulent bids for three contracts was factually incorrect as I have explained to Mr. Thomas over and over again that the ONLY bid that was submitted to Timor-Leste was in respect of the TDA & TBUCA contract, and that the two subsequent contracts were awarded at the instance of Timor Leste on a no bid basis and partly on the reasoning that

Opus & Best LLC performed the first contract excellently as memorialized in the document supporting the no-bid contracts. I asked Mr. Thomas why Timor Leste is able to keep the work products they received from me without paying for same and I am now required to refund the whole amount without any credit whatsoever for the value received by the Timor Leste Government. Mr. Thomas' response was that he does not believe that I could prevail on those issues if I went to trial and that the Federal Prosecutor was of the view that Timor Leste sustained a loss as a result of my misrepresentations in securing the contracts and that I was not entitled to any credit for the value of my work products. Mr. Thomas further told me that he has never tried a "white collar" crime before in his career and that he was not familiar with how "losses" are calculated or determined other than the value of the contract sum. He went further to say that if I took the matter to trial and lost that I might be sentenced up to 20 years.

12) Mr. Thomas also reiterated the fact that I will need witnesses from Timor Leste if I took the matter to trial or insisted on having a hearing on the "loss issue," and in both circumstances it would be near impossible to subpoena them to appear in a U.S. Court. Mr. Thomas became angry at some point during the meeting specifically on the "loss" issue and told me that my reasoning on the "loss" would only be relevant in a civil litigation and not in a criminal matter. He chastised me for not being able to make the distinction between civil and criminal

law in relation to the value that Timor-Leste received pursuant to the three contracts.

13) Sometimes around September 2015, Mr. Thomas asked to me to prepare a "Statement of Responsibility" to be forwarded to the Probation Officer as part of the documents to be included in my PSI and which document was intended to be submitted to the presiding Judge. The first two drafts that I prepared were rejected by Mr. Thomas. He called me on the phone and directed me to rewrite the first draft and the second draft and his reasoning was that I was focusing too much on making a point that Timor-Leste did not suffer any economic loss in the peculiar circumstances of my case. In both drafts I took responsibility for any misleading statements that I made in respect of the one and only bid document relating to the first contract (TDA & TBUCA Regulations) awarded by the Timor Leste Government to Opus & Best LLC but I rejected the notion that Timor Leste suffered any loss. Mr. Thomas advised me that I change the draft because both the Judge and the Probation Officer may be angered by such explanation relating to the loss issue and that I may lose the point associated with the "admission of responsibility" and be sentenced to a longer term of imprisonment. I followed Mr. Thomas' advice and made the changes that led to the final (third) draft submitted to the probation Officer. Each of the three drafts were sent to Mr. Thomas by email. In light of all the correspondences between Messrs Chen and Kapadia and

myself and which documents were in possession of Mr. Thomas at all times from the beginning of his representation until the sentencing day, his failure to challenge the false impression created by the Government relating to the persons that actually performed the three (3) contracts awarded to Opus & Best LLC amounts to a shocking sub-standard counseling and effective legal representation. Mr. Thomas did not even bring up neither the correspondences nor the fact that the contracts were indeed performed by professionals i.e. Messrs Chen and Kapadia and I. As a direct result of the sub-standard service rendered by Mr. Thomas, I received a substantially higher sentence than I should have received and therefore I was constitutionally prejudiced. Furthermore, the argument proffered by Mr. Thomas during the sentencing hearing wherein he likened the "loss" issue to contract was totally misplaced and fell substantially below the standard of effective representation. Furthermore, Mr. Thomas did not provide me with a copy of the Government Sentencing Brief nor discussed same with me and thereby denied me the opportunity to dispute the false claim made by the Government that the contracts were executed by unqualified persons. He did not provide me with a copy of the Sentencing Brief that he filed on my behalf nor discussed same with me, and therefore deprived me of the opportunity to address the "loss" issue that was so critical to my sentencing.

14) I was astonished during the sentencing hearing on October 15 2015 that in spite of having documentary proof (see Exhibits H, I, L, M & P) that it was Messrs Peter Chen and Kapadia and myself (Peter Chen and I are tax lawyers, Peter Chen and Kapadia are also CPAs as well) that executed the three (3) contracts awarded by the Timor-Leste Government to Opus & Best LLC, he completely failed to rebut the Government's erroneous representation to the Court that the three (3) contracts were executed by some random unqualified persons and that I was therefore not entitled to receive credit for the value of my work products, and which products were received and accepted without any complaints from the Timor-Leste Government.

15) Immediately after my sentencing on October 15, 2015, Mr. Thomas and I spoke on the phone and I told him that I was displeased completely with the loss issue and especially his oral submission on the matter. I told him of my decision to appeal the sentence and requested him to file a Notice of Appeal on my behalf. Mr. Thomas did nothing in respect of my request to file a Notice of Appeal.

16) That the Government was in possession of all of my emails associated with my personal gmail account as well as the email accounts set up by Opus & Best LLC. Furthermore, the government was in possession of my Sony Laptop computer from the day of my arrest at the Newark about on or about June 18, 2014

and knew that all the emails regarding the contracts with Timor-Leste Government were sent out by me personally from that same Sony Laptop computer and that the work products associated with the contracts were done principally by Peter Chen, Kaushal Kapadia and myself, and not by "quacks" as falsely alleged during the sentencing hearing on October 15, 2015.

17) The same Peter Chen that was hired by Opus & Best LLC to do some of the work associated with the contracts awarded to Opus & Best LLC was also hired by CRA (a US company) as a subcontractor in respect of the contract for auditing services awarded by Timor-Leste to CRA, and in this case did more than 90% of the work and yet CRA is not accused of using a "quack" to execute the contract.

18) With Timor-Leste having received value in the sum of \$4.9 million being the total face value of three contracts awarded to Opus & Best LLC, and which contracts were executed with the highest professional standard and to the satisfaction of the Timor-Leste Government, I should not be subjected to the payment of any restitution whatsoever.

19) On or about November 12, 2015, I sent Mr. Thomas an email specifically on the "loss" issue and indicated my displeasure and my plan to appeal the matter. I also referenced our prior conversation on the same issue. (A copy of this email is attached hereto as Ex. V.) Mr. Thomas did not respond to the email.

20) In the circumstances, I firmly believe that throughout this case, Mr. Thomas failed to adequately represent my interest and his professional assistance is sub-standard and grossly ineffective. I believe that I would have received a much lower sentence if Mr. Thomas had represented me effectively by investigating the case and presented all the relevant facts, and more particularly on the issue of "loss" and the appropriate credit for the value of the services that Peter Chen, Kaushal Kapadia and I rendered to the Timor-Leste Government in furtherance of the contracts forming the subject matter of this case.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATE: SEP. 15th, 2016



BOBBY BOYE