UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE: ALL FUNDS ON DEPOSIT IN ACCOUNT NUMBER 000669829075 IN THE NAME OF MMAC BANQUE DE COMMERCE, INC., AT NATIONSBANK, N.A., CONSISTING OF $18,756,420.97, MORE OR LESS	)	NO. 3:98mc96-K
GEORGE AND DOLORES ROLLAR, Plaintiffs,	)	
v.	)	NO. 3:01CV205-K
UNITED STATES OF AMERICA, et al., Defendants.	)	
v.	)	**(CASES CONSOLIDATED)**
RICHARD VASQUEZ, Intervenor.	)	

GOVERNMENT'S RESPONSE AND NOTICE REGARDING RECEIVER'S FINAL REPORT AND CLAIM OF OBASI JOHN VALENTINE

NOW COMES the United States of America, by and through Gretchen C.F. Shappert, United States Attorney for the Western District of North Carolina, and hereby respectfully submits this response and notice regarding the Final Report and Proposed Distribution Plan filed by Receiver Michael J. Quilling on November 2, 2006, and to the claim and related filings submitted by and on behalf of Claimant "Obasi John Valentine" (or "Valentine Obasi"; hereinafter "Valentine"). The government supports the receiver's report and opposes Valentine's claim. This response and notice is also intended to assist the Court by summarizing the early history of this case, including events that occurred before Judge McKnight appointed the receiver on October 29, 2001.

INTRODUCTION

This case involves the equitable disbursement of more than $18 million seized in December of 1998, plus interest. Since the Consent Order filed herein on October 11, 2001, which led to the appointment of the receiver, it is a matter of record that the government has no financial stake in this case. See Consent Order at ¶8. Indeed, although the government initially used a forfeiture theory to obtain the original seizure warrant, see Affidavit of FBI Special Agent James T. Walsh at ¶46 and the government's Memorandum of Law, both filed on December 3, 1998, in support of the warrant application, the government has never sought to forfeit the seized funds. Rather, the government's position from the beginning of this investigation has been that the money in question should be disbursed to those entitled to it under principles of equity, primarily the victims of crimes committed by Fred Gilliland and August C. W. Mohr, as described in Agent Walsh's affidavit.

Despite the fact that the government has no present ***financial*** interest in this case, the government has a continuing ***law enforcement*** interest in the equitable and just disbursement of the funds in question, which are clearly criminal proceeds, to the true victims of those crimes. The government therefore has standing to assert and argue its position with regard to matters that may come before the Court until the receiver's work is completed and the case is closed. See Government's Sur-Reply filed on December 4, 2003, at 2-4.

During 1999-2000, it was apparent that there were hundreds if not thousands of potential claimants whose money might have to be traced, and the only criminal case against Mohr (from whose account the money was seized) was pending in Norway. Accordingly, the government believed that a civil judicial case with an equitable receivership was the only practical way for all claims to be resolved and the money distributed to the proper parties.

The government believed that a receivership could best be implemented by the Securities and Exchange Commission in a civil enforcement proceeding, but the Rollars filed their lawsuit before the SEC could act. The government then responded to the complaint by asserting an interpleader defense, among others, and obtained the appointment of Mr. Quilling as the receiver by consent of all the parties who were then before the Court. Since his appointment, based on the undersign's experience with similar fraud cases involving receivers and special masters, Mr. Quilling's performance of his duties in this case has been exemplary and has provided a valuable service at a reasonable cost to this Court and the claimants. See, e.g., his letter to Valentine dated February 4, 2003, attached to Valentine's petition for an emergency distribution and supporting declaration filed herein on or about January 20, 2005. That letter clearly demonstrates Mr. Quilling's diligence and fairness in gathering all the facts necessary to make a well-founded recommendation to this Court. In the opinion of the undersigned, the Court should have a high degree of confidence in the receiver's judgment and recommendation on any particular claim in this case.

As to Valentine, the government has no information to suggest that he was personally involved in the crimes of Gilliland and Mohr, or that he knew about the criminal nature of those schemes before he "invested." However, two things are clear. First, Valentine has not provided documentation that is necessary to determine his claim in this proceeding, despite having had several years to do so. Second, Valentine's repeated sworn statements herein, consisting entirely of conclusory assertions of ownership, should be evaluated in light of his federal criminal conviction in Minnesota, following a jury trial in July 2004, on eight counts of mail fraud, twenty-five counts of wire fraud, and four counts of money laundering. See Indictment submitted herewith and

Receiver's Response filed on or about February 7, 2005, Exhibits A and B (attached copies of judgment and news release). Regardless of whether Valentine's crimes have any underlying connection to the present case, they clearly support inferences that he is an "aggregator" of funds owned by others and that he has no credibility; and his unsupported declarations should be given no weight whatsoever. Based on these factors, which are sufficient both as a matter of law and under principles of equity (as argued below), the government urges that the Court approve the receiver's recommendation and deny Valentine's claim.

BACKGROUND

On December 11, 1998, FBI agents executed a seizure warrant on funds totaling more than $18.7 million in a Charlotte account at NationsBank (now Bank of America). In connection with issuing the warrant, this Court found probable cause to believe that the seized funds were subject to forfeiture as proceeds of mail and wire fraud and money laundering from a large-scale "Ponzi" investment scheme. While related criminal investigations and prosecutions were proceeding in a number of jurisdictions, including Norway, the seized funds were initially placed in the custody of the Marshals Service and held in an interest-bearing account.

The NationsBank account in question was in the name of MM ACMC Banque de Commerce, Inc., a North Carolina corporation. Mohr, who controlled MM ACMC Banque de Commerce, was later tried and convicted on related criminal charges in Norway.

In August of 2000, Attorney Frank Blanchfield, of the firm then known as Mayer, Brown, & Platt, contacted the undersigned on behalf of the Rollars and requested a meeting to discuss the situation regarding the seized funds. The undersigned met with Mr. Blanchfield and explained that the Rollars might be entitled to recover some portion of the seized funds. Among other things, there

was discussion of alternative theories that a court might ultimately follow in dividing the seized funds among the Rollars and other victims, such as a tracing theory and an equitable pro rata distribution theory. See SEC v. Credit Bancorp, Ltd., 2000 WL 1752979, at 11-12 (S.D.N.Y.), aff'd 290 F.3d 80 (2d Cir. 2002) (discussing differences between these two theories).

The Rollars filed their original complaint on May 1, 2001, and an amended complaint on August 20, 2001, asking the Court to order the government to pay them $12.5 million plus interest from the seized funds. In their complaint, the Rollars asserted Fed. R. Crim. P. 41(e) and the Due Process Clause of the Fifth Amendment as grounds for relief. In essence, the Rollars acknowledged that the government was working on returning the money to the victims, but they filed their lawsuit because the government was moving too slowly to suit them. On June 15, 2001, in its initial response to this lawsuit, the government filed a motion to stay the proceedings and to appoint an interim receiver.

One other claimant to the seized funds, Richard Vasquez, filed a motion to intervene on July 2, 2001, and a complaint on July 18, 2001. None of the other victims has filed a complaint (presumably because their claims could be resolved through the work of the receiver who was to be appointed).

The Rollars contested the government's motion for an interim receiver and aggressively asserted their claim to $12.5 million. On or about July 12, 2001, in a response opposing the appointment of an interim receiver, the Rollars argued against the equitable pro rata distribution theory that was ultimately adopted by this Court. On August 30, 2001, the defendants in this case filed their Motion to Dismiss or (In the Alternative) Motion for Compulsory Joinder. The next day, counsel met with the Court in chambers for a status conference. With the benefit of this discussion,

the parties were able to agree to a consent order that provided for appointment of "either a receiver under Fed. R. Civ. P. 66 or a special master under Fed. R. Civ. P. 53 . . . ." As noted above, that order was filed on October 11, 2001, and the Court's order appointing Mr. Quilling as the receiver was filed on October 29, 2001.

On or about December 11, 2001, A. C. W. Mohr, through counsel, filed a motion for return of the seized funds in the Court's seizure warrant case file, No. 3:98mc96. In his motion, Mohr relied on the notice provisions of 18 U.S.C. §983(a)(1)(A)(i), which had been recently enacted as part of the Civil Asset Forfeiture Reform Act of 2000, Pub. L. No. 106-185, 114 Stat. 202 (2000) ("CAFRA") (effective August 23, 2000). The government filed a response in opposition to this motion on December 20, 2001, and the receiver filed a similar response the next day. Also on December 21, 2001, an order was filed consolidating No. 3:01CV205 and No. 3:98mc96. On or about January 7, 2002, the Rollars filed their response in opposition to Mohr's motion. After several months of further litigation, including Mohr's deposition and an extensively-briefed motion for summary judgment filed jointly by the Rollars, Vasquez, and the receiver on or about May 8, 2002, this Court denied Mohr's motion for the return of the seized funds in an order filed on July 30, 2002, directing him to submit any remaining claims he might have to the receiver.

On or about February 20, 2002, the receiver filed an Unopposed Motion to Establish Claim Procedures and to Approve Claim Form. Attached as Exhibit A was a proposed Official Court-Approved Claim Form. Judge McKnight entered an order granting this motion on February 25. By doing so, this Court specifically approved the question on the claim form as to whether a claimant's investment included "any money provided by anyone other than yourself, such as a partnership or an investment pool?" The approved form further requires copies of documents proving "***your***

investment amount" (emphasis supplied). Taken together, these sections of the claim form clearly establish that all claimants must prove their ***individual*** losses, as opposed to an aggregated loss suffered by a group of investors whose individual identities are not disclosed. Implicitly, if a claimant cannot demonstrate that he or she is not an "aggregator" of money received from others, within the parameters of the receivership process in this case, then the claim must be denied.

On March 27, 2002, while Mohr's motion for return of property in this case was being litigated, the SEC filed a civil enforcement action in this district against Frederick J. Gilliland and MMAC Banque de Commerce, Inc., Docket No. 3:02CV1280. On May 22, 2003, Mr. Quilling was also appointed as receiver in that case, primarily to deal with any assets recovered from Gilliland and his associated companies.

On or about September 26, 2002, the receiver filed a Receiver's Unopposed Motion to Establish Distribution Procedures and Request for Evidentiary Hearing in this case. After the hearing, and with the express consent of the Rollars and the government, Judge McKnight entered an order on October 11, 2002, approving an equitable pro rata distribution process, which has since been followed as a number of interim distributions have been made to victims.

CLAIM SUBMITTED BY VALENTINE

Despite repeated requests by the receiver, Valentine has provided no documentation that supports his claim of a legitimate ownership interest in the funds wired from accounts under his control. Even if his corporate shells had a legitimate business purpose, which is doubtful, he has submitted only papers reflecting transfers made ***by*** those entities; there is not a single document to show when and how he or they ***acquired*** the funds in question, much less whether the acquisition gave him a legal, personal ownership interest as to those funds. Valentine belatedly asserts that he

obtained from his father "substantial monies" which he "placed with the Gilliland/Sterling Asset Management operation." See Supplemental Declaration filed on December 5, 2006, ¶6. However, this assertion is unsupported by evidence of any specific transfers to him, either as gifts or from a trust or an estate, and thus fails to satisfy the claim requirements previously established by the Court.

In other areas of the law, including asset forfeiture, these circumstances would raise the familiar issue of ***standing***, as well as ownership, and the forfeiture case law is therefore applicable by analogy. See generally B. Frederic Williams and Frank D. Whitney, Federal Money Laundering: Crimes and Forfeitures §4.4.2 (1999) ("The law applicable to trusts, constructive trusts, equitable liens, and restitution is especially well-developed in this area, and seems a natural body of law for courts to apply when accounting rules for tracing are necessary."); see also id. at §12.4.2.1 ("If . . . the crime was large scale over a significant period of time and its proceeds were substantial in comparison to any untainted sources, proof that any particular asset obtained after the beginning of the criminal activities has no tainted money in it may be difficult. It is impossible to believe testimony that the criminal maintained a [C]hinese wall between his illegal and his legal activities and between the money flows from these absolutely separate sources, all the illegal money vanished, and the assets were derived exclusively from the legal receipts."); id. at §12.5.3.2 ("The courts have uniformly held that nominees are neither legal nor equitable owners . . . [and therefore lack standing]. There are, however, claimants who have standing but are neither legal nor equitable owners. For instance, a bailee has standing because of a possessory interest . . . and is specifically allowed to file a claim [but] has no legal or equitable ownership . . . ."). At most, on the record in this case, Valentine is a bailee who has not disclosed the true bailor(s) of the funds he wired to Gilliland; there is no documentary evidence to support a finding that he is an owner of those funds.

A forfeiture claimant must demonstrate both standing and ownership. See United States v. Real Property Located at 5201 Woodlake Drive, 895 F.Supp. 791, 793 (M.D.N.C. 1995) ("'Standing . . . is literally a threshold question for entry into a federal court', because of the constitutional limitation of federal court jurisdiction to cases and controversies."), quoting United States v. $321,470.00, United States Currency, 874 F.2d 298, 302 (5th Cir. 1989). Moreover, "a claimant must come forward with some evidence of ownership; a mere assertion thereof without proof is insufficient to establish standing." United States v. Real Property Described in Deeds, 962 F.Supp. 734, 737 (M.D.N.C. 1997) (Thornburg, J.); see also Kadonsky v. United States, 216 F.3d 499, 501, 508 (5th Cir. 2000) (holding, in a civil forfeiture case, as to $51,400 found in a locker, that "Kadonsky's unsupported assertion of ownership is insufficient to establish standing"); United States v. Phillips, 185 F.3d 183 (4th Cir. 1999) (affirming the judgment of the district court in a criminal forfeiture case, the Fourth Circuit held that the defendant's father, who had bid at foreclosure sales but had not yet purchased the properties, lacked standing to challenge the forfeiture and dismissed the appeal for lack of standing).

Despite having some limited experience in this area, the undersigned is not an expert on equitable receiverships. Mr. Quilling, however, is such an expert, and common sense supports his position that this receivership should not be kept open indefinitely merely because Valentine cannot satisfy the same standard for documentation of his claim, as reflected in the Court-approved claim form, that all the other claimants have been required to meet. He has had more than a reasonable time in which to do so, and the true victims are entitled to their money.

Finally, even if this Court were to approve payment to Valentine of the full $443,850 "contingently-approved" by the receiver in his letter of February 24, 2003, Valentine would not get

any of the money. Based on his criminal conviction in Minnesota, there are forfeiture money judgments against him for a total of $466,150.00, and he is also subject to a restitution order of $368,578.80 for the benefit of the victims in that case. See the Judgment and the Preliminary Order of Forfeiture attached as Exhibits A and B to the Receiver's Response filed herein on February 7, 2005. The government has confirmed that these judgments remain unsatisfied. If Valentine becomes entitled to any funds from the receivership in this case, the government will immediately execute the Minnesota judgments against those funds before they are disbursed. However, for all the reasons stated previously, the government respectfully submits that Valentine is not entitled to any of the receivership funds in this case, and he should have to satisfy his Minnesota obligations out of other assets if and when he is able to do so.

This the 8th day of January, 2007.

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I hereby certify that on the 8th day of January, 2007, the foregoing document was served on those persons listed below either by submitting it to the Court for electronic notice or by mailing a copy thereof, postage prepaid and properly addressed as follows:

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This the 8th day of January, 2007.

s/ William A. Brafford
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