

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

JESSE L. JACKSON, JR.,

Defendant.

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CASE NO. 13-cr-58 (ABJ)

**GOVERNMENT’S MOTION TO AMEND ORDER OF FORFEITURE TO
INCLUDE SUBSTITUTE PROPERTY**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully moves the Court, pursuant to Federal Rule of Criminal Procedure 32.2(e)(1)(B), to amend the Consent Order of Forfeiture (“Consent Order”) to forfeit the following substitute property of the defendant: (a) the real property located at 2034 O Street, NW, Washington, DC, 20036 (“the O Street property); (b) the real property located at 2559 East 72nd Street, Chicago, IL, 60649 (“the 72nd Street property); and (c) H Beck, Inc., Account Number XXX-XXXX5986 (“the H Beck Account”).

Factual Background

On February 20, 2013, the defendant pled guilty to Count One of an Information charging Conspiracy to Commit False Statements, Mail Fraud, and Wire Fraud, in violation of 18 U.S.C. § 371. Information, ECF No. 1. The Information stated that upon conviction of the offense in Count One, the defendant shall forfeit to the United States, any property, real or personal, which constitutes or is derived from proceeds traceable to the violation alleged in Count One, and that the United States will seek a forfeiture money judgment in the amount of \$750,000.00. The Information provided notice to the defendant that, pursuant to 21 U.S.C. § 853(p), substitute property of the defendant was subject to forfeiture.

On February 20, 2013, this Court entered a Consent Order of Forfeiture (“Consent Order”) against the defendant. Consent Order of Forfeiture, ECF No. 12. As part of the Consent Order, the Court entered a forfeiture money judgment against the defendant in the amount of \$750,000, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). The Consent Order provides that this Court shall retain jurisdiction to enforce the Order, and to amend it as necessary, pursuant to Federal Rule of Criminal Procedure 32.2(e).

The Consent Order also ordered the forfeiture of 24 items which were purchased by the defendant during the course of the conspiracy for \$61,910. Thus far the defendant has turned over only 12 items, which were purchased for \$21,155. The United States Marshals Service will sell these items, and the sale price after expenses will be deducted from the forfeiture money judgment. If and when the defendant turns over the remaining items, they will be sold, and the sale price of those items after expenses will also be deducted from the forfeiture money judgment. However, the sale of these items will not satisfy the forfeiture money judgment. As such, the United States seeks to forfeit the defendant’s interest in the O Street Property, the 72nd Street Property, and the H Beck Account. Presentence Investigation Report, ECF No. 24 at ¶¶ 119, 123, 124.

The 72nd Street Property and the O Street Property were originally owned by Jesse L. Jackson, Jr., and Sandra S. Jackson. However, on February 20, 2008, during the timeframe of the conspiracy to which the defendant pled guilty, the 72nd Street Property and the O Street Property were transferred to the Jesse Louis Jackson, Jr. Living Trust, of which Jesse L. Jackson,

Jr., and Sandra S. Jackson are the trustees. The H. Beck Account is an IRA¹ held for the benefit of Jesse L. Jackson, Jr. The balance as of May 31, 2013, was \$79,729.93.

Legal Authority and Procedure to Forfeit Substitute Property

“[W]hen the Government cannot reach the property initially subject to forfeiture, federal law requires a court to substitute assets for the unavailable tainted property.” United States v. Alamoudi, 452 F.3d 310, 314 (4th Cir. 2006). Title 21, United States Code, Section 853(p) governs the forfeiture of substitute property.² “[T]he substitute assets provision of § 853(p) was enacted to make the government’s forfeiture efforts more effective.” United States v. Moffitt, Zwerling & Kemler, P.C., 83 F.3d 660, 669 (4th Cir. 1996). “Section 853(p) is not discretionary; rather, the statute mandates forfeiture of substitute assets when the tainted property has been placed beyond the reach of a forfeiture.” Alamoudi, 452 F.3d at 314 (internal quotations and citation omitted); see also United States v. Carroll, 346 F.3d 744, 749 (7th Cir. 2003) (noting broad construction of substitute assets provision).

Federal Rule of Criminal Procedure 32.2(e)(1)(B) provides that “[o]n the government’s motion, the court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that is substitute property that qualifies for forfeiture under an applicable statute.” Fed. R. Crim. P. 32.2(e)(1)(B) (emphasis added). The standard of proof for

¹ “IRAs are not shielded from criminal forfeiture.” United States v. Vondette, 352 F.3d 772, 775 (2d Cir. 2003) (forfeiting IRA accounts as substitute assets), vacated and remanded on other grounds, 543 U.S. 1108 (2005); accord United States v. Bollin, 264 F.3d 391, 423 (4th Cir. 2001) (finding that IRA account may be forfeited as substitute asset); United States v. Gallion, No. 2: 07-39-DCR, 2009 U.S. Dist. LEXIS 63961, at *8-9 (E.D. Ky. July 24, 2009) (forfeiting IRA account); United States v. Norton, No. 2:99 CR 10078, 2002 U.S. Dist. LEXIS 17052, at *12-14 (W.D. Va. Sept. 3, 2002) (same).

² The procedures in 21 U.S.C. § 853, other than subsection (d), “apply to all stages of a criminal forfeiture proceeding.” 28 U.S.C. § 2461(c). Subsection (d) applies only to cases brought under the Controlled Substances Act. See id.

forfeiture determinations is a preponderance of the evidence. United States v. Bader, 678 F.3d 858, 893 (10th Cir. 2012). “The court’s determination may be based on evidence already in the record, including any written plea agreement, and on any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable.” Fed. R. Crim. P. 32.2(b)(1)(B).

Section 853(p) provides that “the court shall order the forfeiture of any other property of the defendant,” if any property subject to forfeiture, “as a result of any act or omission of the defendant (A) cannot be located upon the exercise of due diligence; (B) has been transferred or sold to, or deposited with, a third party; (C) has been placed beyond the jurisdiction of the court; (D) has been substantially diminished in value; or (E) has been commingled with other property which cannot be divided without difficulty.” 21 U.S.C. § 853(p)(1)-(2) (emphasis added).

“Courts interpret this provision liberally so as to ‘thwart efforts by a defendant to circumvent the economic impact of an anticipated criminal forfeiture sentence.’” Alamoudi, 452 F.3d at 316 (quoting United States v. McHan, 345 F.3d 262, 272 (4th Cir. 2003)); see also 21 U.S.C. § 853(o) (providing that section 853 “shall be liberally construed to effectuate its remedial purpose”). Section 853(p)(1) “is written in the disjunctive,” thus only one of the five factors must be satisfied to “trigger the substitute-asset provision.” United States v. Zorrilla-Echevarria, No. 07-0448 (JAF), 2012 U.S. Dist. LEXIS 12987, at *8 n.9 (D.P.R. Feb. 2, 2012). In the case of a conspiracy, the government must demonstrate that one factor applies as a result of an act or omission by a defendant or an act or omission that is attributable to the defendant through the conspiracy. See United States v. Podlucky, No. 11-37, 2012 U.S. Dist. LEXIS 70264, at *7-8 (W.D. Pa. May 21, 2012).

In his plea agreement, the defendant agreed and stipulated that there is a factual basis to forfeit substitute property under section 853(p)(1)(B). Plea Agreement, ECF No. 8 at 8, § 11. Specifically, the defendant admitted that he transferred, sold, or deposited directly forfeitable property with a third party. Id. The defendant acknowledged that he used Campaign funds to pay down balances for personal credit card expenditures, including restaurants, nightclubs, lounges, airfare, sports clubs, alcohol, dry cleaning, tobacco shops, grocery stores, and drug stores. Statement of Offense, ECF No. 9 at 9, ¶ 24. Campaign funds were also used to pay contractors for home renovations. Id. at 13-14, ¶ 36.

The United States seeks to forfeit the O Street property, the 72nd Street property, and the H Beck Account as substitute property of the defendant to partially satisfy the balance on his forfeiture money judgment. See United States v. Mislá-Aldarondo, 478 F.3d 52, 75 (1st Cir. 2007) (“[A] money judgment can be used in the future to seek forfeiture of substitute assets by court order under § 853(p) and Rule 32.2.”); United States v. Voigt, 89 F.3d 1050, 1088 (3d Cir. 1996) (permitting government to amend forfeiture order to forfeit jewelry as substitute asset in partial satisfaction of money judgment). In his plea agreement, the defendant consented to the forfeiture of “property not specifically listed in this plea agreement up to the value of the balance on the money judgment.” Plea Agreement, ECF No. 8 at 8, § 11.

Federal Rule of Criminal Procedure 32.2(e)(2)(A) provides that “[i]f the government shows that the property is subject to forfeiture” as substitute property, “the court must enter an order forfeiting that property, or amend an existing preliminary or final order to include it.” Fed. R. Crim. P. 32.2(e)(2)(A). A court may order the forfeiture of substitute property of the defendant “up to the amount described in the money judgment.” United States v. Candelaria-

Silva, 166 F.3d 19, 42 (1st Cir. 1999). Based on the information known to the United States, the defendant's interest in the above-described property does not exceed the current balance of his forfeiture money judgment. The United States will notify the Court and move to modify the attached order if it learns otherwise.

“The possible property interest of third parties” in substitute property is not “considered” when entering a forfeiture order. United States v. Gallion, 2009 U.S. Dist. LEXIS 63961, at *8 (E.D. Ky. Jul. 24, 2009). Federal Rule of Criminal Procedure 32.2(b) applies to any possible third-party interest. See United States v. Weiss, 791 F. Supp. 2d 1183, 1220 (M.D. Fla. 2011); Gallion, 2009 U.S. Dist. LEXIS 63961, at *8; United States v. Kitchen, 2009 U.S. Dist. LEXIS 23012, at *3 (D. Utah Mar. 19, 2009); United States v. Stathakis, 2008 U.S. Dist. LEXIS 10756, at *28-29 (E.D.N.Y. Feb. 13, 2008). Under Rule 32.2(b)(2)(A), “[t]he Court must enter the [forfeiture] order without regard to any third party’s interest in the property. Determining whether a third party has such an interest must be deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).” Fed. R. Crim. P. 32.2(b)(2)(A).

Restraint and Seizure of Property Subject to Order

The United States, pursuant to 21 U.S.C. § 853(g), requests that the Court issue a restraining order to preserve the value of the 72nd Street Property and the O Street Property pending further order of the Court. Section 853(g) provides that following the entry of a forfeiture order, “the court may, upon application of the United States, enter such appropriate restraining orders . . . or take any other action to protect the interest of the United States” in forfeited property. 21 U.S.C. § 853(g); see also United States v. MacInnes, 223 Fed. Appx. 549, 552-53 (9th Cir. 2007) (noting “broad power” of court under section 853(g)); United States v.

Stazola, 893 F.2d 34, 39 (3d Cir. 1990) (same). The United States thus applies for a restraining order enjoining the defendant, and all his agents, servants, employees, attorneys, family members, and those persons in active concert or participation with them, and all persons and entities having actual knowledge of the restraining order, from selling, assigning, transferring, pledging, distributing, giving away, encumbering, taking, or causing to be taken, any action that would have the effect of depreciating, damaging, or in any way diminishing the value of the 72nd Street Property and the O Street Property.

Once a court enters a forfeiture order, “the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court deems proper.” 21 U.S.C. § 853(g); see also Fed. R. Crim. P. 32.2(b)(3) (“The entry of a preliminary order of forfeiture authorizes the Attorney General (or a designee) to seize the specific property subject to forfeiture.”).

Wherefore, the government respectfully requests that the Court grant this motion and enter the attached order.

Respectfully submitted,

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