

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

NAJEH MUHANA,)	
)	
Petitioner,)	
)	Cause No.
V.)	
)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
)	
Respondent.)	

MOTION TO SET ASIDE FORFEITURE PURSUANT TO 18 U.S.C. §983(e)

INTRODUCTION

Petitioner Najeh Muhana (“Mr. Muhana”) moves this Court pursuant to 18 U.S.C §983(e) to set aside the U.S. Customs and Border Protection’s (the “Agency”) declaration of forfeiture relating to “three bags of currency” (approximately \$240,00.00) (the “Currency”). The motion should be granted because the Agency never provided Mr. Muhana with the required written notice that the Agency had seized the Currency or intended to seek forfeiture of the Currency, and the Agency knew, or reasonably should have known, of Mr. Muhana’s interest in the Currency. 18 U.S.C. §983(e)(A). Mr. Muhana attempted over the course of several months, beginning in December 2015, to make inquiry regarding the status of the Currency, and then to make a claim to the Currency. Instead of responding or providing written notice, the Agency waited until February 6, 2016, and then expressly declared that, “The currency has been forfeited and the case is closed.” *See* 18 U.S.C. §983(e)(B). Consequently, Mr. Muhana is entitled to an order from this Court setting aside the declaration of forfeiture.

JURISDICTION

This Court has subject matter jurisdiction and is the proper venue because the Currency was taken into the possession of the Agency in Hancock County, Indiana, which is within the jurisdiction of the U.S. District Court for the Southern District of Indiana. *See* 28 U.S.C. §§ 1345 and 1355(a) (jurisdiction of civil proceedings commenced by the United States or an agency or officer thereof, and of actions to recover or enforce penalties or forfeitures under acts of Congress, respectively); 28 U.S.C. §§ 1355 (placing venue for a civil forfeiture action where the acts giving rise to the forfeiture occurred) and 1395 (placing venue for a civil forfeiture proceeding where the property is found); United States v. Approximately \$13,000 In U.S. Currency, No. 2:13-CV-1330 GEB AC, 2014 WL 670204, at *4 (E.D. Cal. Feb. 20, 2014)

FACTS

1. Mr. Muhana is a resident of New Jersey. On November 6, 2015, Mr. Muhana was driving his vehicle along Interstate 70 in Hancock County, Indiana. It was late in the evening when Mr. Muhana was stopped by officers of the Hancock County Sheriff's Department for allegedly failing to signal a lane change. (Affidavit of Najeh Muhana, attached hereto as Exhibit A at ¶ 2).

2. Without consent, a warrant or probable cause, the officers searched Mr. Muhana's vehicle. The officers did not find any drugs in the vehicle, and even brought a dog to the scene. The officers did not find any contraband in the vehicle. Finally, the officers located the Currency inside the vehicle. (*Id.* at ¶ 4).

3. During the search, several additional vehicles arrived at the scene. The individuals exiting those vehicles were not wearing uniforms. They were dressed casually,

especially for the season, with two individuals wearing shorts. Mr. Muhana did not believe that these additional individuals were actual law enforcement officers. (Id. at ¶ 3).

4. Given the amount of money he was carrying in his vehicle, the fact that he was in the middle of nowhere, late in the evening, Mr. Muhana became very concerned for his personal safety. Mr. Muhana also believed that there was a substantial chance that the individuals and/or the officer would steal the Currency. (Id. at ¶ 5).

5. In order to protect himself, Mr. Muhana told the Hancock County Deputy Sheriff that had made the stop that he (Mr. Muhana) had been on the telephone with the person who owned the money when the traffic stop was being made, and that the person knew what was happening. Mr. Muhana believed that this story, although not true, would dissuade any officer from acting improperly, including the use of physical harm or stealing the Currency. (Id. at ¶ 6).

6. The deputy became very angry upon hearing the story. The deputy and the other individuals at the scene spent the next hour talking outside of the vehicles and away from Mr. Muhana. (Id. at ¶ 7).

7. Finally, Special Agent Scott Thompson from the Agency arrived at the scene. Special Agent Thompson took possession of the Currency and provided Mr. Muhana with a “Receipt for Property” indicating he had taken “three bags of currency”. Nothing on the Receipt for Property indicated that the Currency had been seized or was subject to forfeiture. The Hancock County officers then took Mr. Muhana’s telephone and debit cards. (Id. at ¶ 8).

8. Mr. Muhana speaks only very minimal English. Arabic is his first language. He cannot read or write English at all. (Id. at ¶ 9).

9. Thereafter, Mr. Muhana was arrested and cited for a traffic stop that had occurred *four months earlier*. As part of that prior traffic stop, Mr. Muhana had not been cited for any wrongdoing. Mr. Muhana was taken to the station, booked and released on bond. (*Id.* at ¶ 10).

10. Beginning in December 2015, counsel for Mr. Muhana began to make inquiries regarding the status of the Currency. Counsel had several conversations with Special Agent Thompson. In addition, counsel placed calls to the Hancock County Sheriff's Department to discuss the status of the Currency. (Affidavit of Jay L. Kanzler, attached as Exhibit B, at ¶ 3).

11. The Currency taken from the vehicle was in Mr. Muhana's possession because he is in business with his brother, Fares Muhana. Therefore, Mr. Muhana's possession was both in his individual capacity as part of the family business and as a bailee for his brother Fares Muhana (as bailor). (Najeh Muhana Aff. at ¶ 11). Fares Muhana can establish that the Currency is part of the family business, which is the legal buying and selling of wholesale beauty products, as well as auction automobiles. (Affidavit of Fares Muhana, attached as Exhibit C, at ¶2).

12. Eventually, sometime in January 2016, Special Agent Thompson indicated that he was told the matter had been turned over to the U.S. Customs and Border Protection Office in Cleveland, Ohio. (Kanzler Aff. at ¶ 4).

13. On or before January 19, 2016, Mr. Muhana's counsel contacted Eartha Graham, Paralegal Specialist, U.S. Customs and Border Protection in Middleburg, Ohio regarding the status of the Currency. (*Id.* at ¶ 5).

14. On January 19, 2016, Ms. Graham responded via email to counsel, stating, "I will need something in writing preferably on company letterhead stating you are representing Mr. Muhana asap." (*Id.* at ¶ 6; *see* Exhibit D).

15. The same day, counsel responded via email, “Ms. Graham. I am traveling today, but wanted to confirm that I do represent Mr. Muhana. I will be happy to confirm on letterhead tomorrow.” (*Id.* at ¶ 7; *see Exhibit E*).

16. On January 20, 2016, counsel followed up with a facsimile to Ms. Graham, in writing,

In response to your email to me yesterday, this will confirm that I represent Najeh Muhana relating to the seizure of three (3) bags of currency by the U.S. Customs Service on or about November 6, 2015, in Indiana. The seizing officer was Special Agent Thompson. ***Mr. Muhana is requesting return of the money.***

(*Id.* at ¶ 8; *see Exhibit F*). (emphasis added).

17. On January 26, 2016, counsel again contacted Ms. Graham related to the Currency, asking, “Will the agency be sending me some notification regarding its intentions relating to the seized money?” (*Id.* at ¶ 9; *see Exhibit G*). She responded, “Yes, we will be sending something out soon.” (*Id.* at ¶ 9; *see Exhibit H*).

18. On February 1, 2016, Ms. Graham followed up again with an email to counsel stating, “I just received word from our counsel to request a written statement sign (sic) by Mr. Muhana, stating you will be representing him for currency case.” (*Id.* at ¶ 10; *see Exhibit I*). So, on the same day, Mr. Muhana’s counsel sent Ms. Graham an email with a copy of the law firm’s engagement letter attached. (*Id.* at ¶ 10; *see Exhibit J*).

19. On February 8, 2016, counsel received a letter from Tessie Douglas, FP&F Officer, U.S. Customs and Border Protection, Middleburg, Ohio, dated February 4, 2016. In the letter Ms. Douglas stated,

This is with reference to your inquiry on behalf of your client Mr. Najehm Muhana, about the currency that was seized on November 6, 2015.

The circumstances of this case have been reviewed. It has been determined that since your client waived his rights to the currency by signing the abandonment

form, he cannot make claims on the currency. The forfeiture process was completed on February 1, 2016.

If you have any questions, please contact Paralegal Specialist Eartha Graham at (440) 891-XXX.”

(Id. at ¶ 11; *see* Exhibit K).

20. On February 9, 2016, counsel made the following contact via email with Ms. Graham as instructed in Ms. Douglas’ letter:

Ms. Graham:

I have received the letter of Tessie Douglas dated February 4, 2016. Ms. Douglas states that, “It has been determined that since your client waived his rights to the currency by signing the abandonment form, he cannot make claims on the currency.”

First, I have never been provided with such a form indicating that such waiver occurred. I would request that your send me a copy immediately. Second, Mr. Muhana’s command of the English language is minimal. He speaks Arabic as his first language. Moreover, he was not provided with the assistance of counsel to make any such determination.

And finally, as my correspondence with you indicated, Mr. Muhana is and was making a claim to the currency. Even if there is a form, there is nothing to prevent Mr. Muhana from correcting a mistake once he understood what was occurring.

Therefore, we again are demanding that this matter be referred to the U.S. Attorney for determination.

(Id. at ¶ 12; *see* Exhibit L).

21. There was no response until March 7, 2016. This time, counsel received an email from Rose Parks, Paralegal Specialist, U.S. Customs and Border Protection, FP&F Cleveland, which stated as follows:

The subject-referenced case has been re-assigned to me, as Ms. Graham has left our department. Per my supervisors, we do not provide copies of abandonment forms. To obtain a copy of the form, you would need to file a FOIA request.

(Id. at ¶ 13; *see* Exhibit M).

22. Counsel responded the same day with the following:

Ms. Parks:

Thank you for your message. Please confirm that the Agency has referred this matter to the US Attorneys' Office per my prior email for determination regarding forfeiture. *Again, my client is making claim to the money.* I understood from my conversations with Ms. Graham that the case had been re-assigned to the US Attorney for that purpose. If I have misunderstood her, please let me know immediately.

(Id. at ¶ 14; *see* Exhibit N).

23. Ms. Parks then stated as follows in her follow-up response: "The currency has been forfeited and the case is closed. No referral is being made."

(Id. at ¶ 15; *see* Exhibit O).

24. Pursuant to 18 U.S.C. §983(e),

(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property, which motion shall be granted if,

(A) the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and

(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely request.

25. Mr. Muhana can find no indication after a search to demonstrate that the Government published notice of the seizure. (Kanzler Aff. at ¶ 16).

26. It is not unusual for agencies to return money taken from persons during traffic stops without resorting to an administrative procedure. These decisions are made by the agencies and or in conjunction with the U.S. Attorney's Office. (Id. at ¶ 17).

LEGAL ARGUMENT IN SUPPORT OF MOTION

I. The Agency's Actions Relating to the Currency Are Governed by CAFRA.

The Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), codified at 18 U.S.C. §983, outlines the general rules for forfeiture proceedings. "The government may administratively forfeit, without judicial involvement, money totaling less than \$500,000 only after (1) furnishing *written notice* of the government's intent to forfeit to parties with a *known* interest in the money *and* (2) providing notice of the government's intent to forfeit to parties with an *unknown* interest in the money by *publishing notice* once a week for at least three consecutive weeks in a newspaper of general circulation in the jurisdiction of the seizure. 19 U.S.C. § 1607(a)." Adams v. U.S. Department of Justice, 74 F.Supp.3d 826, 828 (E.D. Tex. 2014) (emphasis in original).

II. Under CAFRA, Petitioner's Remedy Is A Motion To Set Aside The Declaration Of Forfeiture Pursuant To 18 U.S.C. §983(E).

Najeh Muhana was entitled to written notice from the Agency about the Agency's intention to seek forfeiture of the Currency because his ownership and claim were *known* to the Agency. Because he did not receive that written notice, Mr. Muhana is entitled to an order setting aside the Agency's declaration of forfeiture of the Currency, pursuant to 18 U.S.C. §983(e), which states in pertinent part,

(1) Any person entitled to written notice in any nonjudicial civil forfeiture proceeding under a civil forfeiture statute who does not receive such notice may file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property,...

A motion to set aside declaration of forfeiture under §983(e) is the exclusive remedy for a person whose property was lost through civil forfeiture. 18 U.S.C. §983(e)(3)(5).

Mr. Muhana is the owner of the Currency, and therefore, he was entitled to written notice under the statute. It is undisputed that Mr. Muhana never received written notice from the

Agency regarding its intent to seek forfeiture. Consequently, the declaration of forfeiture was invalid and should be set aside.

A. Mr. Muhana Was “Known” To Be The Owner Of The Currency.

The Agency was required to give Mr. Muhana written notice of its intent to seek forfeiture of the Currency because his claim to ownership and his demand for return of the Currency were known to the Agency *before* the declaration of forfeiture on February 1, 2016.

Special Agent Thompson took possession of the Currency on November 6, 2015. According to the Agency’s correspondence, Mr. Muhana allegedly executed some form denying ownership of the Currency, however, the Agency has refused to produce the form. Accepting this as true for purposes of argument, on November 6, 2015, the Agency did not know the owner of the Currency.

Beginning in December 2015, counsel for Mr. Muhana contacted Special Agent Thompson to inquire about the location and status of the Currency. During those conversations, it was made clear to Special Agent Thompson that Mr. Muhana was the owner of the Currency and was seeking to recover it. Special Agent Thompson indicated he would look into the matter. Therefore, as of December 2015, the Agency knew or should have known that Mr. Muhana was the owner of the Currency, and therefore, he was entitled to written notice from the Agency.

Eventually, sometime in January 2016, Special Agent Thompson indicated that the matter had been turned over to the U.S. Border Customs and Border Protection Office in Cleveland, Ohio. Throughout the months of January, February and into the first week of March, counsel for Mr. Muhana spoke with and corresponded with various persons within the Agency about the currency, its status, and about Mr. Muhana’s desire to receive back the Currency from the

Agency. In particular, in the correspondence dated January 20, 2016, counsel for Mr. Muhana indicated that “*Mr. Muhana is requesting return of the money.*”

Therefore, it is undisputed that *no later than January 20, 2016*, the Agency knew both that Mr. Muhana was the owner of the Currency *and* that he was making a claim for return of the Currency. As such, Mr. Muhana was entitled to written notice regarding the intention of the Agency to seek forfeiture, and that written notice was never given to Mr. Muhana by the Agency.

Despite this continued correspondence and conversation between counsel and the Agency, Ms. Douglas from the Agency wrote to counsel on February 4, 2016, indicating that Mr. Muhana would not be permitted to make a claim and that, “[t]he forfeiture process was completed on February 1, 2016.”

B. Because The Agency Knew That Petitioner Was The Owner Of The Currency Before The Date It Declared The Forfeiture, The Agency Was Obligated To Provide Petitioner With Notice Of Its Intent To Seek Forfeiture.

“The plain language of 18 U.S.C. §983(a)(1)(A)(v) obligates the government to provide written notice of its intent to forfeit when the Government determines the identity of a person who has an interest in the seized property *after* the seizure but *before* a declaration of forfeiture.” Adams, 74 F.Supp.3d at 830. Here, the Agency knew in December 2015, and in any case no later than January 20, 2016, that Mr. Muhana was claiming ownership of the Currency and seeking its return. According to the Agency, the final declaration of forfeiture did not occur until February 1, 2016. Consequently, the Agency failed in its obligation to provide written notice to Mr. Muhana.

The facts here are very similar to those in Adams. In the Adams case, the plaintiff’s son was stopped and \$105,099 in currency was seized by the Drug Enforcement Agency (DEA). 74

F.Supp.3d at 827. Ms. Adams opened a letter addressed to her son, Donyell Hatfield, notifying him that the DEA had seized the currency and described how Mr. Hatfield could contest the forfeiture of the property. Id. The DEA also published notice of the seizure in the *Wall Street Journal*. Id. at 827-28. On December 22, 2013, Ms. Adams retained an attorney and sent a letter to the DEA making claim to the money on her own behalf. Id. at 828. The DEA wrote back and informed Ms. Adams that the last day for her to make a claim had expired on December 6, 2013, while her letter was received on December 26, 2013. Id. Therefore, the DEA denied her claim. Id. It was not until February 20, 2013, however, that the DEA entered its Declaration of Forfeiture. Id.

The court found that the government was obligated – but failed – to provide written notice to the owner identified prior to the declaration of forfeiture. “Under the plain language of section 983(a)(1)(A)(v), the DEA’s ‘obligations to notify additional parties terminate only once a declaration of forfeiture is made.’” Id. at 831 (quotation omitted). The Adams court went on to explain its rationale:

This reading of the statute also comports with the three goals of Congress in passing CAFRA: (1) ‘to increase the due process safeguards for property owners whose property has been seized;’ (2) ‘to provide a more just and uniform procedure for Federal civil forfeitures;’ and (3) to ‘provide enhanced protections to private property owners and at the same time ... not undermine, in a real and significant and unnecessary way, the ability of law enforcement agencies to seize and forfeit assets from illegal drug dealers.’ H.R.Rep. No. 106-192 at 2 (1999); Civil Asset Forfeiture Reform Act of 2000, Pub. L. 106-185, 114 Stat. 202 (2000); 146 Cong. Rec. S1762 (daily ed. March 27, 2000) (statement of Sen. Sessions).

Id.

Here, like in Adams, having discovered the identity of the owner of the Currency in December 2015 (or no later than January 20, 2016), the Agency was obligated to provide Mr.

Muhana with written notice prior to the declaration of forfeiture – but it did not do so. This failure constitutes a violation of the statute and merits the Court granting this Motion.

C. Mr. Muhana Did Not Know That The Agency Had “Seized” The Currency Until After The Declaration Of Forfeiture.

At the time that Special Agent Thompson took possession of the Currency, Mr. Muhana did not understand that the Currency had been “seized” by the Agency or that the Agency intended to seek forfeiture of the Currency. The Currency was taken into the possession of Special Agent Thompson on November 6, 2016, and Mr. Muhana was given a “Receipt for Property”, implying that the property would be returned after any investigation was concluded.

Counsel for Mr. Muhana made repeated inquiries as to the location, status and intentions of the Agency related to the Currency, first with Special Agent Thompson, and then again in an email on January 26, 2016, which expressly asked, “Will the agency be sending me some notification *regarding its intentions relating to the seized money?*” (Ex. F) (emphasis added).

It is not unusual for Agencies to return money taken from persons during traffic stops without resorting to an administrative procedure. These decisions are made by the agencies and or in conjunction with the U.S. Attorney’s Office. Here, Mr. Muhana can find no indication that notice was ever published by the Agency relating to the Currency

It was not until February 6, 2016, five days after purportedly declaring the Currency to be forfeited, that the Agency provided its first indication to Mr. Muhana or his counsel about what it intended to do with the Currency – the Agency declared the Currency forfeited. Mr. Muhana immediately demanded that the matter be referred to the U.S. Attorney.

III. Because Petitioner Was Known To The Agency Through Repeated Requests Related To The Status And Return Of His Currency, And Because The Agency Never Sent Written Notice to Petitioner, And Because The Agency In Fact, Misled Petitioner Until After Declaring The Forfeiture, The Court Should Grant Petitioner's Motion.

Individuals whose property interests are at stake due to government actions *are entitled to notice of the proceedings and an opportunity to be heard*. See Dusenbery v. United States, 534 U.S. 161, 167–68 (2002) (emphasis added). “The notice necessary to satisfy due process requires only that interested persons be given “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action *and afford them an opportunity to present their objections.*” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (emphasis added).

Here, the Agency knew that Mr. Muhana was claiming to be the owner of the Currency through the repeated inquiries of his counsel. Rather than acknowledge those inquiries and respond to them, the Agency delayed any response until after February 1, 2016, when it unilaterally declared a forfeiture of the Currency. Thus, despite actual knowledge that Mr. Muhana was the owner of the Currency, the Agency refused to provide written notice to him about the Currency being seized and the Agency’s intention to declare a forfeiture.

As a result, Mr. Muhana did not know either: (i) that the Agency intended to seize the Currency, or (ii) that the Agency intended to seek forfeiture of the Currency, *until after February 1, 2016*, the date upon which the Agency purportedly declared the forfeiture of the Currency.

The Agency was grossly deficient in protecting the due process rights afforded Mr. Muhana under CAFRA. Mr. Muhana, despite repeated efforts and inquiries, was never afforded

an opportunity to present his objections to the Agency. Consequently, Mr. Muhana has met the statutory criteria for his Motion to Set Aside Forfeiture pursuant to 18 U.S.C. §983(e).

CONCLUSION

The Motion should be granted because the Agency never provided Mr. Muhana with written notice that the Agency had seized the Currency or that the Agency intended to seek forfeiture of the Currency, and the Agency knew, or reasonably should have known, of Mr. Muhana's interest in the Currency. 18 U.S.C. §983(e)(A). Mr. Muhana attempted over the course of several months to make inquiry regarding the status of the Currency, and then to make a claim to the Currency. As such, Mr. Muhana was not aware that the Agency considered the Currency to be "seized" and was seeking forfeiture until after February 6, 2016, when the Agency expressly declared that, "The currency has been forfeited and the case is closed." See 18 U.S.C. §983(e)(B). Consequently, Mr. Muhana is entitled to an order from this Court setting aside the declaration of forfeiture. 18 U.S.C. §983(e).

VERIFICATION

Najeh Muhana, pursuant to 28 U.S.C. §1746, and under penalty of perjury, subscribes and affirms that the allegations of fact set forth in this motion are true and correct to the best of my knowledge.

NAJEH MUHANA
Najeh Muhana

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