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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
- CHARLOTTE DIVISION -**

NO. _____

3:01cv205-mck

GEORGE AND DOLORES ROLLAR,

Plaintiffs,

v.

UNITED STATES OF AMERICA,
LOUIS P. FREEH, Director of the Federal
Bureau of Investigation, in his official and
individual capacities,
CHRIS SWECKER, Special Agent in Charge
of the Federal Bureau of Investigation,
Charlotte Division, in his individual capacity,
JAMES T. WALSH, Supervisory Special
Agent, Federal Bureau of Investigation,
Charlotte Division, in his individual capacity,
FBI SPECIAL AGENTS JOHN DOES, in
their individual capacities, and
ROBERT S. CONRAD, United States
Attorney for the Western District of North
Carolina, in his official and individual
capacities,

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs George and Dolores Rollar (hereinafter "plaintiffs" or "the Rollars") file this Complaint against the defendants and allege the following:

NATURE OF THE ACTION

1. This is an action by the Rollars — the innocent victims of a sophisticated and fraudulent investment scam — for the return of property (funds represented by a bank account) that was seized from the perpetrators of the scam by government agents in 1999 and which the government has held since that time in violation of the Rollars' rights under federal law and the Constitution. The

Rollars seek the return of their property pursuant to Fed. R. Crim. P. 41(e) and the Due Process Clause of the Fifth Amendment to the Constitution.

II. THE PARTIES

2. Plaintiffs are George J. Rollar and Dolores P. Rollar. Both are citizens of the United States.

George Rollar retired after years of hard work in the construction and mobile home park business.

The Rollars recently sold their residence in Florida and moved to the Cayman Islands to live out and enjoy their retirement years.

3. Defendant the UNITED STATES OF AMERICA is holding funds belonging to the Rollars that the United States recovered from the perpetrators of a sophisticated fraud on the Rollars. The United States may be served with process by serving the Civil Process Clerk, Office of the United States Attorney for the Western District of North Carolina, Suite 1700, The Carillon, 227 W. Trade St., Charlotte, NC 28202 and by serving United States Attorney General John Ashcroft, United States Department of Justice, 950 Pennsylvania Ave., NW, Washington, D.C. 20530-0001.

4. Defendant LOUIS FREEH, Director of the Federal Bureau of Investigation, is being sued in his official and individual capacities. Freeh is the director of the agency responsible, in whole or in part, for seizing the account containing the Rollars' funds and the agency responsible, in whole or in part, for failing to return the Rollars' property to them or to cause other Department of Justice officials or other federal officials to initiate a judicial forfeiture proceeding or other proceeding in which the Rollars would be afforded the right to seek the return of their property. Freeh may be served with process at the Federal Bureau of Investigation, Office of the Director, J. Edgar Hoover F.B.I. Building, 935 Pennsylvania Ave., NW, Washington, D.C. 20535.

5. Defendant CHRIS SWECKER, Special Agent in Charge of the Federal Bureau of Investigation, Charlotte Division, is being sued in his individual capacity. On information and

belief, Swecker is responsible, in whole or in part, for seizing the account containing the Rollars' funds and is responsible, in whole or in part, for failing to return the Rollars' property to them or to cause other Department of Justice officials or other federal officials to initiate a judicial forfeiture proceeding or other proceeding in which the Rollars would be afforded the right to seek the return of their property. Swecker may be served with process at his place of business at the Federal Bureau of Investigation, Suite 900, Wachovia Bldg., 400 S. Tryon St., Charlotte, North Carolina 28285-0001.

6. Defendant JAMES T. WALSH, Supervisory Special Agent with the Federal Bureau of Investigation, Charlotte Division, is being sued in his individual capacity. On information and belief, Walsh is responsible, in whole or in part, for seizing the account containing the Rollars' funds and is responsible, in whole or in part, for failing to return the Rollars' property to them or to cause Department of Justice officials or other federal officials to initiate a judicial forfeiture proceeding or other proceeding in which the Rollars would be afforded the right to seek the return of their property. Walsh may be served with process at his place of business at the Federal Bureau of Investigation, Suite 900, Wachovia Bldg., 400 S. Tryon St., Charlotte, North Carolina 28285-0001.

7. Defendants JOHN DOES, on information and belief, are Agents (identities unknown) with the Federal Bureau of Investigation, Charlotte Division, who are being sued in their individual capacities. On information and belief, the John Doe agents were responsible, in whole or in part, for seizing the bank account that contains the Rollars' property and may be responsible, in whole or in part, for failing to return the Rollars' property to them or for failing to cause Department of Justice officials or other federal officials to initiate a judicial forfeiture proceeding or other proceeding in which the Rollars would be afforded the right to seek the return of their property.

Plaintiffs believe that Doe may be served with process at his place of business at the Federal Bureau of Investigation, Suite 900, Wachovia Bldg., 400 S. Tryon St., Charlotte, North Carolina 28285-0001.

8. Defendant ROBERT S. CONRAD, United States Attorney for the Western District of North Carolina, is being sued in his official and individual capacities. Defendant Conrad is an official with the United States Department of Justice who has the authority under federal law to institute judicial forfeiture proceedings. On information and belief, Conrad acting personally or through his agents, is responsible, in whole or in part, for seizing the account containing the Rollars' funds and is responsible, in whole or in part, for failing to return the Rollars' property to them and for failing to initiate a judicial forfeiture proceeding or other proceeding in which the Rollars would be afforded the right to seek the return of their property. Conrad may be served with process at his place of business at Suite 1700, The Carillon, 227 W. Trade St., Charlotte, North Carolina 28202.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this case arises under the constitution, laws, or treaties of the United States. Jurisdiction also is proper under Fed. R. Crim. P. 41(e) and this Court's equitable powers.

10. Venue in this District is proper under 28 U.S.C. § 1391(b)(2) because a substantial portion of the events or omissions giving rise to the claims asserted herein occurred in this District and because the funds at issue were seized in this District.

IV. FACTUAL BACKGROUND

11. After years of tireless work in the construction business followed by years of hard work in the business of developing and running mobile home parks, George Rollar retired in 1998. At one time, the Rollars his wife owned twenty-one mobile home parks in Connecticut, Florida and Texas.

In January 1998, the Rollars sold the last fifteen of their mobile home parks for \$40 million dollars. After the sale of their mobile home parks, the Rollars fell victim to a sophisticated fraud scheme perpetrated against them by, among others, Frederick J. Gilliland (hereinafter "Gilliland").

12. On or about March 8, 1998, George Rollar met Gilliland at the Rollars' then residence in Belleair Shore, Florida. Gilliland was purportedly acting as an agent for Sterling Asset Services, Ltd. (a/k/a Sterling Management Services, Inc.) (hereinafter "Sterling"), a company Gilliland claimed to own and/or control.

13. At that meeting, and in discussions thereafter, Gilliland pitched an investment program in medium term notes ("MTNs"). During these discussions, Gilliland made a number of oral representations and provided documents to the Rollars concerning the MTN investment program through Gilliland and/or Sterling. The Rollars relied on Gilliland's oral representations as well as the information contained in the documents Gilliland furnished to the Rollars in deciding to invest funds through Gilliland and/or Sterling. On information and belief, most, if not all, of Gilliland's oral and written representations to the Rollars concerning the MTN investment program were false and misleading.

14. Based upon the false and misleading information provided by Gilliland to the Rollars in March 1998 and thereafter, they invested and/or deposited a total of \$12.8 million with Gilliland and/or Sterling.

15. At first the Rollars invested \$300,000 with Gilliland, consisting of three \$100,000 investments each month from April to June 1998.

16. Encouraged by the fact that they had received some of the "returns" promised on their initial investments (the three \$100,000 investments in April through June of 1998, which are not

part of this claim), the Rollars made a separate deposit of funds with Gilliland and/or Sterling totaling \$12.5 million.

17. Specifically, on or about July 14, 1998, the Rollars made a \$10,500,000 wire transfer from the Rollars' bank account in Florida to the ultimate credit of Sterling. Then, on or about August 26 and 27, 1998, based upon false and misleading information provided by Gilliland, the Rollars made an additional \$2 million investment through Gilliland and Sterling. All of the monies were drawn from accounts belonging to the Rollars and wired for final credit to an account in the name of Sterling according to wiring instructions provided by Gilliland.

18. Rollar was advised by Gilliland that the \$12.5 million transferred by the Rollars to Gilliland and/or Sterling in July and August 1998 were being placed in an account "jointly owned" by Rollar and Gilliland/Sterling. Gilliland told Rollar that because of the nature of the MTN investment program, the funds would remain in the "jointly owned" account and would not be transferred out of the account for the duration of any investment they made. In this regard, in October 1998, Gilliland and George Rollar signed an agreement that the funds that had been deposited by the Rollars with Gilliland and/or Sterling were "owned jointly" and would be jointly controlled.

19. In approximately November 1998, agents from the FBI contacted George Rollar and informed him that there was an account at NationsBank, N.A. (now Bank of America) that contained \$18-20 million. By December 1998, George Rollar came to understand that this NationsBank account was controlled by Gilliland and/or August Christian Mohr and that the Rollars' funds had been transferred from the Sterling account to the NationsBank account in direct contradiction to Gilliland's representations that the funds would not be transferred out of the "jointly owned" Gilliland/Sterling account to which Rollar had transferred the investment funds.

20. On information and belief, between January 1, 1999 and July 20, 1999, the FBI seized \$18,823,635.73 from a bank account at NationsBank, N.A. (now Bank of America) in Charlotte (hereinafter "seized funds"). According to a letter dated July 20, 1999, from James T. Walsh, FBI Supervisory Special Agent, Charlotte Division, (signed on behalf of Chris Swecker, Special Agent in Charge, Charlotte Division), these funds were seized "as a result of" an "investigation concerning potential violations of federal criminal statutes by representatives of STERLING MANAGEMENT SERVICES, INC., St. Petersburg, Florida, including FREDERICK J. GILLILAND" (emphasis in original). The July 20 letter further noted that the funds in the NationsBank account had been seized "for forfeiture purposes." A copy of the July 20, 1999 letter is attached as Exhibit 1. This seizure has been numerically designated by the FBI as FBI Seizure 3140-1999-F-112.

21. On information and belief, the seized account was in the name of August Christian Mohr and/or Frederick Gilliland or entities owned or controlled by them.

22. On information and belief, any individuals or entities which owned or controlled the seized account have disavowed any interest in the funds in the seized account.

23. On information and belief, August Christian Mohr has been or is being prosecuted by the Norwegian authorities for perpetrating fraud in connection with the fraudulent investment scam to which the Rollars fell victim. On information and belief, the United States government has assisted or is assisting the Norwegian authorities in that prosecution.

24. On information and belief, the United States government has or is investigating Frederick Gilliland for fraudulent conduct in connection with the fraudulent investment scam to which the Rollars fell victim.

25. On information and belief, the government has traced a significant portion of the funds in the seized account as originating from accounts owned or controlled by the Rollars.

26. In the fall of 2000, Bill Brafford, an assistant U.S. attorney in Charlotte informed the Rollars' present counsel that the government believed that a substantial portion of the seized funds in the NationsBank account could be traced directly to the Rollars. Brafford also advised the Rollars' counsel that the government intended to initiate judicial proceedings (described as "an interpleader action") to request the court to distribute the seized funds to their rightful owners. Brafford said that he anticipated that such an action would be commenced by the end of the calendar year 2000.

27. By January of 2001, neither the Justice Department, Brafford, any United States attorney or any government agency had initiated any judicial proceedings in which the Rollars would have the right to seek the return of their property. Instead, upon inquiry from the Rollars' counsel, Brafford advised that the government was considering a transfer of the investigation from the U.S. Attorney's Office to the SEC. In early February, the Rollars' counsel was advised by Brafford and the SEC that responsibility for the investigation relating to the seized funds had been transferred to the SEC. Between February and April 2001, upon inquiries from the Rollars' counsel, the SEC advised counsel that it was in the process of initiating an investigation of the fraud perpetrated against the Rollars but that it had not determined whether it has jurisdiction over the matter and, consequently, did not know whether or when it would initiate any civil or administrative proceeding in connection with the seized funds. The SEC also advised Rollars' counsel that if it decides that it lacks jurisdiction to initiate an enforcement action, it will transfer the investigation back to the United States Attorney.

28. The United States and/or its agents has possession and control of the seized funds to the exclusion of all others.

29. On information and belief, the government has no legitimate interest in further retaining the seized funds. Neither the FBI nor any other federal law enforcement agency has any continuing law enforcement need for the seized funds and the seized funds themselves are not needed by the government for any investigation or as evidence in any criminal case or other proceeding.

30. Because a substantial portion of the seized funds is directly traceable to accounts belonging to the Rollars and the Rollars have a joint ownership interest in that portion of the seized funds, the Rollars have a legal interest in the seized funds as a bailment or otherwise.

31. Because a portion of the seized funds is directly traceable to accounts belonging to the Rollars and the funds were unlawfully obtained from the Rollars as a result of fraud, the Rollars have a legal interest in the seized funds.

32. Because a portion of the seized funds was unlawfully obtained from the Rollars as a result of fraud, the United States and/or its agents hold that portion of the seized funds in a constructive trust or otherwise for the Rollars under North Carolina law, and thus the Rollars have an equitable interest in the seized funds.

33. Since December 1998 (prior to being advised of the FBI's seizure of the NationsBank account), the Rollars have fully cooperated with the government by voluntarily providing the government with all requested information concerning their investments with Gilliland and/or Sterling and the fraud that was perpetrated on them. In particular:

- a) in December 1998, George Rollar voluntarily submitted to an extensive interview with the FBI;

- b) in the summer of 1999, Rollar submitted to a government questionnaire (attached to the July 20, 1999 letter from the government advising the Rollars of the seizure);
- c) in January 2000, the Rollars, through former counsel, provided the government with a 207-page submission detailing the investment and providing documentary proof of the origin of the funds (the sale by the Rollars of their trailer parks) and the accounts from which the funds were transferred; and
- d) in November 2000, at the government's request, George Rollar voluntarily appeared in Charlotte to provide testimony in the Norwegian criminal prosecution of August Christian Mohr.

34. Since the seizure of plaintiffs' property in 1999, and notwithstanding the full cooperation of the Rollars and their repeated inquiries concerning their return of their property, defendants have not returned the Rollars' property to them or initiated judicial forfeiture proceedings or any other judicial or administrative proceeding in which the Rollars could seek the return of their property.

COUNT ONE

Application For Return Of Property Pursuant to Fed. R. Crim. P. 41(e)

35. Plaintiffs incorporate paragraphs 1-34 herein as if set forth in full.

36. Plaintiffs are the true and rightful owners of at least \$12.5 million of the \$18.5 million seized from the account at NationsBank, as plaintiffs have a legal and/or equitable interest in that amount of the seized funds.

37. Because plaintiffs' property has been seized by the FBI and the defendants have neither instituted judicial forfeiture proceedings nor returned plaintiffs' property to them, plaintiffs are "aggrieved * * * by the deprivation of property" within the meaning of Fed. R. Crim. P. 41(e).

38. Plaintiffs are suffering irreparable harm as a result of the continuing deprivation of their property by the defendants and have no adequate remedy at law to effect the return of their property.

39. Defendants' continuing deprivation of plaintiffs' property is unreasonable under the circumstances and is outweighed by the plaintiffs' right to have their property returned to them. Neither the FBI nor any other federal law enforcement agency has any continuing law enforcement need for the seized funds. The seized funds themselves have no evidentiary value for any ongoing investigation or subsequent prosecution and the defendants have no other reasonable basis to retain plaintiffs' property.

COUNT TWO Due Process

40. Plaintiffs incorporate paragraphs 1-39 herein as if set forth in full.

41. Plaintiffs are the true and rightful owners of at least \$12.5 million of the \$18.5 million seized from the account at NationsBank, as plaintiffs have a legal and/or equitable interest in that amount of the seized funds.

42. Since the seizure of plaintiffs' property in 1999, defendants have neither returned plaintiffs' property to them nor initiated judicial forfeiture proceedings or any other judicial or administrative proceeding relating to the funds. This is so despite the fact that one or more of the defendants (or their agents) have acknowledged that a portion of the seized funds is directly traceable to plaintiffs' accounts.

43. Plaintiffs repeatedly have asserted to the government their legal and/or equitable interest in the seized funds and have repeatedly advised the government of their desire to get their property back.

44. The defendants' failure to initiate judicial forfeiture proceedings or any other proceedings in which the Rollars would have the right to seek the return of their property is without justification.

45. Plaintiffs have been severely prejudiced by the defendants' failure to return their property or even to initiate judicial forfeiture proceedings or any other proceedings in which the Rollars would have the right to seek the return of their property because they have been deprived of the enjoyment and use of millions of dollars which rightfully belongs to them. Moreover, plaintiffs are aware of no plans by the defendants to return their property to them or of any plans on the part of defendants or any other federal law enforcement officials to initiate any proceedings (judicial or otherwise) in which the plaintiffs would have the right to seek the return of their property. Accordingly, the deprivation of plaintiffs' property by the government is expected to continue.

46. Under these circumstances, defendants have deprived plaintiffs of their property without due process of law in violation of the Fifth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that they have a trial by jury on all issues for which they have a right to a jury trial, and that the Court award the following relief:

1. Order the defendants to return to plaintiffs that portion of the seized funds that belongs to them, \$12.5 million, plus any interest accrued thereon;
2. Award Plaintiffs costs and expenses necessary and incidental to this action, including attorneys' fees as allowed by law;

3. Award Plaintiffs such other and further relief as the Court shall deem equitable and proper.

Respectfully submitted,



MAYER, BROWN & PLATT

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COUNSEL FOR PLAINTIFFS

Dated: May 1, 2001

U.S. Department of Justice



Federal Bureau of Investigation

In Reply, Please Refer to
File No. 196C-CE-81615 FF1

400 South Tryon Street, Suite 900
Charlotte, North Carolina 28285
July 20, 1999

CERTIFIED RETURN RECEIPT

Fraser & Fraser
Attorneys of Law
1827 Powers Ferry Road, N.W.
Building 21, Suite 150
Atlanta, GA 30339

Attention: Mark S. Fraser

Re: \$18,823,635.73 from
Bank Account
FBI Seizure 3140-1999-F-112

Dear Mr. Fraser:

The Federal Bureau of Investigation (FBI), Charlotte Division, is conducting an investigation concerning potential violations of Federal criminal statutes by representatives of STERLING MANAGEMENT SERVICES, INC., St. Petersburg, Florida, including FREDERICK J. GILLILAND. As a result of this investigation, the above property has been seized for forfeiture purposes.

During the course of this investigation, you have been identified as a person who MAY HAVE suffered a financial loss due to the activities of aforementioned individuals or entities. If you have suffered a monetary loss as a direct result of the commission of a criminal offense committed by the above company and the FBI has seized or restrained property for forfeiture in connection with this investigation, YOU MAY BE entitled to some or all of that monetary loss. Such relief, if available to you, may be obtained pursuant to regulations governing the remission or mitigation of forfeited property. See Title 28, Code of Federal Regulations (C.F.R.), Part 9.

You may also have been part of a joint venture arrangement in which a number of other individuals "pooled" their money for the investment. If so, we are seeking the names and addresses of others so they also may be notified and be able to make their own claims for this money.

In order to have property restored under these regulations, a vested interest in the seized property must be shown by the person claiming a right to restoration. The demonstration of a loss MAY NOT, in and of itself, justify restoration. Your response to this letter is important. However, your response

will not limit your options of pursuing other remedies that may be available to you under the law.

Any decision to restore property to you will be based upon the information YOU SUBMIT TO THE FBI. Your proof of claim along with information obtained by the FBI during the course of its investigation will be the basis for any decisions as to the restoration of your interest in the above property.

If you can provide documentation or information that sufficiently supports your interest in the seized property, you will be contacted by letter and advised of the procedures to follow to have your interests restored.

In order to determine whether or not you are eligible to pursue such relief, the FBI requests that you complete the enclosed Victim Restitution Form, the Personal Property Form and the Sterling Questionnaire.

Failure to provide requested information and any necessary documents needed to support your position may hamper the determination of your eligibility. To ensure consideration, the requested information should be sent NO LATER THAN AUGUST 5, 1999, to the

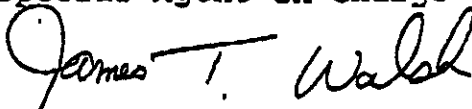
Federal Bureau of Investigation
Attn: SA WALKER
400 South Tryon Street, Suite 900
Charlotte, NC 28285

If you have any questions regarding this letter, please contact Special Agent Randy Walker or Paralegal Specialist Ms. Brassington at 704/377-9200.

When responding to this letter, please complete the enclosed forms and provide them along with COPIES OF receipts, canceled checks or other documents which may furnish proof of your loss. DO NOT SEND ORIGINALS. KEEP ORIGINAL documents in your possession.

Sincerely yours,

Chris Swecker
Special Agent in Charge


By:

James T. Walsh
Supervisory Special Agent

Enclosures 3