

COPY

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

FILED
CHARLOTTE, N.C.
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U.S. DISTRICT COURT
W. DIST. OF N.C.

GEORGE AND DOLORES ROLLAR,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES OF AMERICA, et al.,)
)
Defendants,)
)
RICHARD VASQUEZ,)
)
Intervener.)

Civil Action No. 3:01CV205-McK

MOTION TO INTERVENE

NOW COMES INTERVENER, RICHARD VASQUEZ, by and through the undersigned counsel, and pursuant to Fed. R. Civ. P. 24(a) moves to intervene as a matter of right in the above-captioned matter. In the alternative, pursuant to Fed. R. Civ. P. 24(b), intervener moves for permissive intervention.

INTERVENTION OF RIGHT

1. Rule 24(a)(2) authorizes intervention of right "when the applicant claims an interest relating to the property . . . which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." *See also Gould v. Alleco, Inc.*, 883 F.2d 281 (4th Cir.), cert. denied, 110

S.Ct. 870 (1989) (intervention of right requires moving party to establish interest, impairment of interest, and inadequacy of representation).

2. Interest of Intervener. As the government notes in its Motion to Appoint Interim Receiver, intervener is similarly situated to plaintiffs George and Dolores Rollar. See Note 3, United States Motion to Appoint Interim Receiver and to Stay All Other Proceedings in this Case (Except One Motion to Dismiss) (June 15, 2001). Intervener is a victim of the same criminal conduct which led to the seizures of the \$18.7 million and the \$32,134.96. Like plaintiffs, intervener's money is directly traceable to the seized funds. In all material respects (except for the amount of the claim), intervener's claim to the seized funds is identical to plaintiffs' claim.¹

3. Impairment of Interest. Intervener's interest are directly impacted by this action. Upon information and belief, there are as many as one hundred victims of this "ponzi" scheme and somewhere between \$30 and \$100 million in losses. Because the government only has been able to embargo and seize approximately \$19 million, the victims will be competing over a pool of funds substantially less than the total losses. Victims will undoubtedly take different positions as to how the funds should be divided and who should have standing to claim a portion of the seized funds.

4. Adequacy of Interest. While intervener agrees with plaintiffs' request that this matter be expedited, for the same reasons as set forth in paragraph 3 above plaintiff can not fairly and adequately represent intervener. *Hardy-Latham v. Wellons*, 415 F.2d 674, 676 (4th Cir. 1968) (where intervener and plaintiff-broker claimed interest in same transaction and same funds and, if entire amount were paid to plaintiff-broker making it difficult for intervener to collect his

¹ Intervener has presented documents and affidavits to the United States Attorney's Office, the FBI, and the SEC supporting intervener's factual claim that he is a victim of the crime and his moneys are directly traceable to the seized funds.

share, then plaintiff could not adequately represent intervener, and intervener was entitled to intervention as of right).

PERMISSIVE INTERVENTION

5. Rule 24(b)(2) authorizes permissive intervention "when an applicant's claim . . . and the main action have a question of . . . fact in common."

6. As set forth above, intervener's claim and the main action have a common question of fact.

CONCURRENCE WITH GOVERNMENT

7. Intervener concurs with the motion of the government to appoint an interim receiver and to stay all other proceedings in this case (except for this application for intervention and the motion to dismiss as to the individual defendants in their individual capacities).

8. Intervener concurs with the government's recommendation to appoint Michael J. Quilling of Dallas, Texas, as the interim receiver.

9. Intervener does not oppose the motion to dismiss as to the individual defendants in their individual capacities.

PRAYER FOR RELIEF

WHEREFORE, Intervener prays the Court to:

1) Grant intervention as a matter of right or, in the alternative, to grant permissive intervention;

2) Appoint Michael J. Quilling interim receiver; and,

2) Stay this proceeding except for this application to intervene and the motion to dismiss against the individual defendants in their individual capacities.

Respectfully submitted this the 2nd day of July, 2001.

COUNSEL FOR RICHARD VASQUEZ



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CERTIFICATE OF SERVICE


The undersigned certifies that on this date a copy of the foregoing application was placed in First Class United States Mail to the following:

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This the 2nd day of July, 2001.


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