

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

CIVIL NO. 3:01CV205-McK

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, )  
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. )

CONSENT ORDER

THIS MATTER is before the Court on motions by some or all of the defendants to dismiss and (in the alternative) for compulsory joinder, to appoint an interim receiver, and to stay all other proceedings in this case; a motion by the plaintiffs for expedited discovery; and a motion by Richard Vasquez (hereinafter "movant") to intervene as a plaintiff. It arises out of the execution of seizure warrants issued in No. 3:98MC96-MU for a total of more than \$18.7 million in December 1998 and May 2000 (the "seized funds"). Following a status conference with the Court on August 31, 2001,

the parties have agreed to the following resolution of these pending motions in order that this case may move forward expeditiously.

**IT IS THEREFORE ORDERED:**

1. The Court, in its sole and unappealable discretion, will appoint either a receiver under Fed. R. Civ. P. 66 or a special master under Fed. R. Civ. P. 53 (hereinafter the "appointee"), after determining, following a hearing, which of a receiver or a special master can properly and more effectively carry out the following duties with regard to the seized funds:

- a. To provide all persons identified by the government as possible victims of the crimes described in the agents' affidavits in No. 3:98MC96-MU and other interested persons and potential claimants with notice and the opportunity to submit a claim to the Court, through the appointee, for restitution from the seized funds.
- b. To review all claims submitted, evaluate their legal validity and sufficiency for payment from the seized funds, make recommendations to the Court as to the order and priority of payment, and provide subsequent notice of any disbursements or other actions by the Court or the appointee.
- c. To receive and submit to the Court evidence regarding any relevant matter.
- d. To receive and disburse all or part of the seized funds, provided (1) that all of the seized funds shall remain under the jurisdiction of the Court until actually disbursed; (2) that no part of the seized funds shall be transferred or disbursed without an express order of the Court following notice to the parties; and (3) that \$100,000 of the seized funds shall be transferred immediately into the custody of the appointee, in order that he may begin work, such funds to be held in a bank account of the appointee's choosing pending further order of the Court.

The appointee shall be authorized and directed to apply to the Court for such other orders as may be necessary and appropriate to carry out these duties and the mandate of the Court.

2. The appointee shall be authorized to employ such accountants and attorneys as may be necessary and proper for him in connection with the claims process. The appointee shall seek and obtain approval of this Court prior to disbursement of professional fees and expenses to the appointee or his counsel and/or accountants by presentation of a written application, which applications shall be filed

on a not less than ninety (90) day basis. All professional fees, expenses and other costs incurred by the appointee shall be paid from the seized funds after approval by the Court.

3. If the parties are unable to agree on the person to be appointed as the receiver or special master, then plaintiffs and movant will submit the names of three qualified persons in addition to Attorney Michael J. Quilling, who is the person previously recommended by the government. After opportunity for the parties to be heard on this question at the hearing described in paragraph 1 above, the Court will appoint a person from among these four individuals. If the Court decides to appoint a receiver and plaintiffs and movant fail to submit three other names as provided herein, Mr. Quilling shall be appointed as the receiver.

4. The government agrees to remain in this lawsuit under the terms and conditions of this order and hereby consents (on behalf of the government only and not as to the individual defendants) to deferral of any ruling by the Court on its motion to dismiss until all of the seized funds (together with any interest) have been finally disbursed by order of the Court. The government will provide all discoverable information in its possession to the appointee and to the other parties as soon as practicable after appointment of the appointee.

5. The parties and the appointee will disclose any financial records used to trace the seized funds and any other discoverable financial records from the related criminal investigation that constitute "matters occurring before the grand jury" (and any summaries of those records) to the Court and to any party or claimant in connection with this case, pursuant to Fed. R. Crim. P. 6(e)(3)(C)(i) and the Right to Financial Privacy Act, 12 U.S.C. §3420(a)(2) and (4).

6. Notwithstanding any other provision of the Privacy Act, 5 U.S.C. §552a *et seq.*, the Federal Bureau of Investigation and its officers, agents, employees and representatives, including defendants herein, are hereby (a) authorized under 5 U.S.C. §552a(b)(11) to release any documents or records used in tracing of the seized funds to the appointee and (b) relieved of any obligation under 5 U.S.C. §552a(c) to make an accounting of any disclosure to the receiver and of any obligation under 5 U.S.C. §552a(e)(8) to provide notice of any disclosure made under the authority of this order.

7. Upon appointment, the appointee shall file with the Clerk a bond in the sum of \$10,000.00, without need for sureties, conditioned that he will well and truly perform the duties of his office and duly account for all assets, monies and properties which may come into his hands and abide by and perform all things which he shall be directed to do by this Court.

8. Subject to the submission of a bond under the preceding paragraph, the government, as a stakeholder, is hereby deemed to have duly invoked interpleader pursuant to 28 U.S.C. §1335 and Fed. R. Civ. P. 22 with regard to the seized funds. After furnishing all discoverable information as provided above, the government shall have no further interest in or liability for the seized funds, and this case shall be stayed as to the government in all respects, except that the government may designate individual witnesses to testify by deposition or otherwise in this case. Once the seized funds (and any interest) have been finally disbursed by order of the Court, plaintiffs' complaint shall be dismissed as to the government, with prejudice. As to those claims, each party shall bear its own costs, including attorneys fees.

9. Movant's proposed complaint, as filed herein on July 18, 2001, asserts claims and seeks relief as to the United States only and not as to any individual defendants. Movant hereby agrees not to amend the complaint to add any individual defendants and that all of the terms and conditions of this consent order shall apply to his complaint. Subject to the foregoing, the motion by the movant to intervene is hereby granted. To the extent that any allegations of movant's complaint are not fully resolved under this consent order, they are deemed to have been denied by the government, and the government shall have no further obligation to file an answer or any other responsive pleading or motion. Once the seized funds (and any interest) have been finally disbursed by order of the Court, movant's complaint shall be dismissed as to the government, with prejudice. As to those claims, each party shall bear its own costs, including attorneys fees.

10. By plaintiffs' signatures and the signature of their counsel below, plaintiffs' motion for expedited discovery is hereby withdrawn.

11. After the appointee has been appointed, the Court, on its own motion or the motion of a party, may order interim distributions from the seized funds if, in the Court's judgment, such distributions can be made without prejudice to claimants or potential claimants who may have a cognizable interest in the seized funds.

12. Subject to the terms and conditions of this order, plaintiffs and movant expressly reserve the right to assert in this case any and all claims for distribution from the seized funds, in accordance with the applicable law and their respective complaints.

13. After receiving the recommendations of the appointee and considering all the evidence and arguments of the parties with respect to distribution, the Court will enter one or more orders of disbursement of the seized funds.

14. Claims against the individual defendants in their individual capacities have been dismissed (without prejudice) pursuant to Fed. R. Civ. P. 41(a)(1). As to those claims, the parties shall bear their own costs, including attorneys fees.

Signed this the 11<sup>th</sup> day of October, 2001.

  
H. BRENT McKNIGHT  
UNITED STATES MAGISTRATE JUDGE

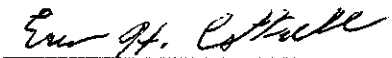
ON MOTION OF AND BY CONSENT OF THE PARTIES:

FOR THE DEFENDANTS:

  
WILLIAM A. BRAFFORD  
ASSISTANT UNITED STATES ATTORNEY

DATE: October 15, 2001

MAYER, BROWN, & PLATT  
ATTORNEYS FOR PLAINTIFFS by

  
RODNEY E. ALEXANDER  
*Eric H. Cottrell*

DATE: 10/9/01

KILPATRICK STOCKTON LLP  
ATTORNEYS FOR MOVANT by

  
FRANK D. WHITNEY

DATE: 10/5/01