

COPY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, N.C.

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U.S. DISTRICT COURT
W. DIST. OF N.C.

NO. 3:98MC96-McK

IN RE: ALL FUNDS ON DEPOSIT IN)
ACCOUNT NUMBER 000669829075 IN)
THE NAME OF MM APMC BANQUE DE)
COMMERCE, INC., AT NATIONSBANK,)
N.A., CONSISTING OF \$18,756,420.97,)
MORE OR LESS.)

**GOVERNMENT RESPONSE
TO MOTION FOR
RETURN OF PROPERTY**

NOW COMES the United States of America, by and through Robert J. Conrad, Jr., United States Attorney for the Western District of North Carolina, and hereby submits this response to the motion of A. C. W. Mohr ("Mohr") for return of property filed on or about December 11, 2001.¹ The government requests that the Court either deny this motion or, in the alternative, treat it as a claim submitted to the receiver who has been appointed in a related civil case, No. 3:01CV205-McK, to receive all claims and to advise the Court as to disbursement of the funds in question. In support of this request, the government respectfully shows the Court the following:

1. The funds in question (hereinafter the "seized funds") were seized from a NationsBank account in the name of MM APMC Banque de Commerce, Inc., pursuant to the seizure warrants issued in this case in December of 1998 and May of 2000. Based on affidavits submitted by FBI Special Agents James T. Walsh and James R. Walker, respectively, this Court found probable cause to believe that the seized funds were subject to seizure and forfeiture as proceeds of fraud and money laundering crimes. The information presented by the agents' affidavits includes a

¹The copy of the motion served on the government has been stamped "received" rather than "filed" by the clerk's office.

history of numerous investigations of Mohr for suspected financial crimes and one resulting 1994 conviction in Luxembourg involving forged bank documents, as well as evidence that the assets of MM ACMC Banque de Commerce were proceeds of fraudulent schemes conducted by Mohr and Frederick J. Gilliland / Sterling Asset Service(s), Ltd. Recently, Mohr has been indicted and tried on criminal charges in Norway, including one count of fraud specifically involving the seized funds, and he is presently awaiting a verdict in that case.

2. As Mohr correctly states, there has been no indictment or civil forfeiture complaint filed in this district. However, the government has sought the appointment of a receiver in a related civil case filed by George and Dolores Rollar, No. 3:01CV205-McK. In that case, this Court appointed Michael J. Quilling as receiver by an order filed on October 29, 2001. In obtaining the seizure warrants and then seeking the appointment of a receiver, the government has exercised its forfeiture rights temporarily in order to secure the seized funds for restitution to victims of crimes committed by Mohr and/or Gilliland.

3. Also in No. 3:01CV205-McK, in a prior consent order filed on October 11, 2001, this Court found that “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.” (Order at 4, ¶8.) In addition, the consent order further provides “(1) that all of the seized funds shall remain under the jurisdiction of the Court until actually disbursed; [and] (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” (Order at 2, ¶1.d.) Accordingly, it appears that the seized funds are being held by the Court in an equitable receivership proceeding subject to any and all claims that may be submitted to Mr. Quilling, including claims already made by the parties in that case. At a

minimum, therefore, the Court should not even consider granting Mohr's present motion unless copies are served on all parties in No. 3:01CV205-McK and they are given an opportunity to respond.²

4. The government's position is that Mohr has no legitimate claim to the seized funds, since the true equitable owners of this money are the victims of crimes committed by him and/or Gilliland. Moreover, in addition to the evidence of Mohr's criminal activities outlined above, the documents filed in support of his motion show only purported agreements in the names of "M. M. Aug. C. Mohr & Cie." and "M. M. ACMC Fiduciary & Nominees BA." These papers fail to make a prima facie showing of a valid interest held in the seized funds either by Mohr individually or by MM ACMC Banque de Commerce, Inc., the corporate entity whose name was on the NationsBank account in question.³ However, the government has no objection to treating the present Rule 41(e) motion as a claim which can be reviewed and evaluated by Mr. Quilling and then determined by the Court along with all other claims in No. 3:01CV205-McK.

5. As to Mohr's claim that the notice required by 18 U.S.C. §983(a) was never sent to him, this statutory provision was not in effect at the time of the seizures and at least arguably does not apply to seizures which took place prior to its effective date.⁴ If §983(a) applies, however, the government is relying on §983(a)(1)(A)(v) for the proposition that no notice was

²The government has sent copies of Mohr's motion and the supporting papers to Mr. Quilling, the Rollars, and intervenor Richard Vasquez in No. 3:01CV205-McK.

³The documents served on the government along with Mohr's motion do not include a copy of the purported "Default Judgment issued in Norway on May 9, 2000 against Mr. Frederick Gilliland" (Motion at ¶13.)

⁴Section 983 was enacted as part of the Civil Asset Forfeiture Reform Act of 2000, Pub. L. No. 106-185, 114 Stat. 202 (2000) ("CAFRA") (effective August 23, 2000)

required because the government made no final determination of the identities or interests of the persons who may have an ownership interest in the seized funds and would therefore be entitled to notice under §983(a). Such a determination is being made by the Mr. Quilling as part of his duties as the receiver appointed in No. 3:01CV205-McK. The government understands that Mr. Quilling has given or will give notice to more than 200 individuals or entities in connection with the receivership, and such notice should constitute substantial compliance with the requirements of §983(a).

WHEREFORE, the government requests that the Court deny this motion or, in the alternative, that the Court enter an order directing the Clerk to forward copies of the motion and supporting papers to Mr. Quilling with instructions to treat it as a receivership claim in No. 3:01CV205-McK.⁵

This the 20th day of December, 2001.

ROBERT J. CONRAD, JR.
UNITED STATES ATTORNEY



WILLIAM A. BRAFFORD
ASSISTANT UNITED STATES ATTORNEY

⁵If the Court simply denies the motion, there is nothing to prevent Mohr from submitting a claim to Mr. Quilling on the appropriate claim form.

CERTIFICATE OF SERVICE

This is to certify that on this date, in accordance with Judge Mullen's order filed herein on July 9, 2001, I am serving the a copy of the foregoing Government Response to Motion for Return of Property by depositing in the United States mail a copy of the same in an envelope addressed as follows:

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In the event these documents are not served in the manner and on the date described herein, the United States will immediately notify the Court and the above party of the factually correct method of service.

This the 20th day of December, 2001.


WILLIAM A. BRAFFORD
Assistant United States Attorney