

**COPY**

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

**FILED**  
CHARLOTTE, N.C.

**JAN 7 2002**

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. )

Consolidated  
Civil Actions Nos.  
3:01CV205-McK  
&  
3:98mc96

NOW COMES INTERVENER, RICHARD VASQUEZ, by and through the undersigned counsel, and files this Objection to A.C.W. Mohr's Motion for Return of Property Seized.

1. On December 11, 2001, A.C.W. Mohr, through local counsel, filed a Motion for Return of Property Seized. Mohr seeks return of the \$18,756,420.97, more or less, seized from the Bank of America (formerly NationsBank) account in the name of MM APMC Banque de Commerce, Inc.

No Verification in Mohr's Filing

2. Mohr asserts that 18 U.S.C. § 983 requires that the subject property be returned to him as President of MM APMC Banque de Commerce, Inc. Section 983, however, requires that any party asserting any claim to property must file a verified claim. "A claim shall ... be under oath, subject to penalty of perjury." 18 U.S.C § 983(a)(2)(C)(iii). Upon information and belief,

Mohr does not want to file a verified claim since he is under criminal prosecution in Norway for the Ponzi scheme, which in part generated the subject property. Since his claim is not verified, his motion seeking release of the property should be summarily dismissed.

Section 983 Notice Provisions Inapplicable

3. Mohr alleges that the government failed to comply with the requirements of 18 U.S.C. § 983 regarding notices in forfeiture actions. As the government rightfully pointed out, the instant seizure occurred two years before section 983 was enacted into law and arguably does not even apply to this action.

4. Nonetheless, assuming *arguendo* that section 983 applies, Mohr misunderstands the purpose of section 983. Enacted as part of the Civil Asset Forfeiture Reform Act of 2000, the section 983 notice provisions were intended to prevent the government from seizing assets for forfeiture from a *purported property owner or a person who may lawfully possess the property* and then waiting months and even years before initiating the forfeiture proceeding. The Act was intended to prevent the government from de facto denying the property owner his procedural due process rights to contest the forfeiture. The Act and section 983 does not apply to people who *may not lawfully possess* the property; the section explicitly states that the Government “*shall not be required to return contraband or other property that the person from whom the property was seized may not legally possess.*” 18 U.S.C. § 983(a)(1)(F) (italics added). Thus before a person can assert a violation of section 983, the person must first show that they may lawfully possess the property.

5. Mohr’s argument is legally unfounded. Although the government did seize the money using a Seizure Warrant which referenced the federal money laundering forfeiture statute (18 U.S.C. § 981), it seized the money as part of its criminal investigation of Mr. Mohr, Mr.

Frederic Gilliland and others, after a probable cause finding that the money was at least in part proceeds of the Ponzi scheme operated by Mohr and Gilliland. The Court found by probable cause that Mohr and Gilliland had obtained the money *by false pretenses* and were not entitled to possess it in the first place. The Government has never attempted to forfeit this money but rather readily admitted that the property belonged to victims of the Ponzi scheme. The government requested and consented to the appointment of Receiver Michael J. Quilling to return the property to its lawful owners. Mohr like any other party has an opportunity to file a claim with Receiver Quilling, although he must provide the factual basis for the legitimacy of his claim and his personal right to possess the money, not merely his claim that he is President of MM ACMMC Banque de Commerce.

6. Thus, for Mohr to possess the subject property under section 983, he must show in an evidentiary hearing that (1) he personally has standing to claim the money and (2) he personally may legally possess the property.

#### Compel Discovery and Hold Evidentiary Hearing

7. Upon information and belief, Mohr will likely neither comply with discovery requests nor appear at an evidentiary hearing since he is under criminal prosecution in Norway.

8. Although the fugitive disentitlement doctrine was re-instated into law by the Civil Asset Forfeiture Reform Act of 2000, the Supreme Court decision, which temporarily vacated the doctrine, explained that Courts have extraordinary powers to deny claims of dubious parties who fail to comply with basic discovery requirements. *Degen v. United States*, 517 U.S. 820 (1996). In *Degen*, the High Court explained that the government could achieve the effect of the fugitive disentitlement doctrine by simply giving notice to depose the fugitive-claimant in the

district where the civil forfeiture action was pending. A claimant's failure to appear or comply with discovery requests would be sufficient to dismiss the claim

9. Therefore the Court should hold an evidentiary hearing as soon as practicable, giving both Mohr and Frederic Gilliland (who upon information and belief is a fugitive from an indictment in the Northern District of Florida) the opportunity to appear in Court in the Western District of North Carolina (but also subjecting them to suit by the victims of the Ponzi scheme). Mohr's failure to personally appear would be sufficient to dismiss his motion summarily.

WHEREFORE, Intervenor Vasquez concurs with the United States, Receiver Quilling, and Plaintiffs George and Delores Rollar that Mohr's motion for return of property seized be denied;

AND FURTHERMORE, Intervenor Vasquez prays the Court to hold an evidentiary hearing providing Mohr his procedural due process rights but also requiring him to make a showing why he may legally possess the money;

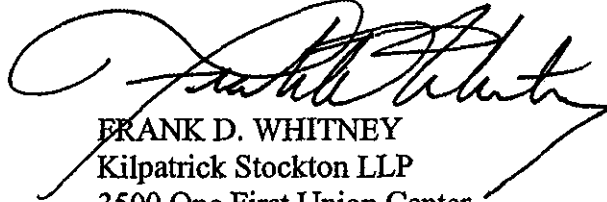
AND FURTHERMORE, if Mohr fails to surrender himself to the jurisdiction of this Court for the evidentiary hearing, Intervenor Vasquez prays the Court to dismiss his motion with prejudice;

AND FINALLY, if Mohr does appear and surrenders himself to the jurisdiction of the

Court, Intervenor Vasquez will then seek leave of the Court to file a cross-claim against Mohr for RICO Conspiracy and other remedies available under federal and state law.

Respectfully submitted this the 7<sup>th</sup> day of January 2002.

COUNSEL FOR RICHARD VASQUEZ



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CERTIFICATE OF SERVICE

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

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This the 7<sup>th</sup> day of January 2002.

  
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