

THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES,

Plaintiff,

v.

ERIC SHIBLEY,

Defendant.

No. 2:20-cr-00174-JCC

(Ninth Circuit Court of Appeals Case Nos:
22-30043 consolidated with 22-30113)

STATEMENT BY DEFENDANT ERIC
SHIBLEY IN RESPONSE TO
GOVERNMENT'S MOTION FOR FINAL
ORDER OF FORFEITURE

The government's motion seeks a final order or forfeiture of five specifically identified bank accounts into which monies that Mr. Shibley tried to obtain by fraudulent schemes was placed by the five lenders who are the victims of Mr. Shibley's schemes. Mr. Shibley claims no right to legal ownership of the five accounts, or the monies deposited in those accounts. Thus, Mr. Shibley has no basis to object to the order of forfeiture.

Mr. Shibley, however, does have an interest in how those funds are distributed by the government. Mr. Shibley's pending appeal claims the monies in the five forfeited accounts should be restored to the lender victims and thus reduce Mr. Shibley's restitution obligation. By not objecting to the entry of the final order of forfeiture, Mr. Shibley is not waiving any claims on appeal.

Further, Mr. Shibley is not seeking a stay pending appeal based on the government's statement in its motion that not proceeding with entry of a final order "would impede application of any of the forfeited funds to victims." DKT 180 at p. 4. That course of action is consistent with what the government should be doing. Indeed, if the government does not intend to use the forfeiture to return monies taken from the lender victims, there is a significant problem with the government's motion.

As the Court ordered and the government concedes, it is obligated to give specific notice of the final order of forfeiture to persons who have a potential interest in the forfeiture. The five bank accounts at issue contain monies lawfully belonging to the five lender victims. The government has made no representation that it has given notice of the forfeiture to any of the five lender victims. Such failure to provide notice is only appropriate if those forfeited funds are in fact going to be returned to the victim lenders. Otherwise, those victim lenders would have standing to object to the forfeiture of assets to which they have legal title. That is especially true here where Mr. Shibley has filed for bankruptcy and there is no assurance that the victim lenders otherwise will have their losses paid.

DATED this 14th Day of September 2022.

Respectfully submitted.

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