

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA

v.

**Case No. 6:21-cr-16-WWB-DCI
(Forfeiture)**

DON V. CISTERNINO

**UNITED STATES' MOTION FOR
FINAL JUDGMENT OF FORFEITURE**

The United States, pursuant to Rule 32.2(c) of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(n)(7), respectfully moves this Court for a Final Judgment of Forfeiture for the following:

1. approximately \$446,580.86 seized from Wells Fargo Bank account #1040205207573, held in the name of Victor A. Cisternino and/or Mary Jo Cisternino;
2. approximately \$439,576.96 seized from TD Bank account #7919290655, held in the name of Victor A Cisternino and/or Mary J Cisternino;
3. approximately \$94,726.07 seized from JP Morgan Chase Bank account #650710970, held in the name of Victor A. Cisternino and/or Mary J. Cisternino;
4. approximately \$5,000.21 seized from JP Morgan Chase Bank account #3838760727, held in the name of Victor A. Cisternino and/or Mary J. Cisternino; and
5. approximately \$86,039.88 seized from Citibank account #6866323510, held in the name of Denise L. Pieck and/or ITF Keith Pieck.

In support of its motion, the United States submits the following memorandum of law.

MEMORANDUM OF LAW

I. Statement of Facts

1. On November 3, 2022, the Court entered a Preliminary Order of Forfeiture for the above-referenced assets pursuant to Federal Rule of Criminal Procedure 32.2(b)(2), 18 U.S.C. § 981(a)(1)(C), and 28 U.S.C. § 2461(c). Doc. 37.

II. Notice to Parties with a Potential Interest in the Subject Assets

2. The only persons or entities, other than the defendant, known to have a potential interest in any of the above-referenced assets are: Victor and Mary Jo Cisternino (the defendant's parents) and Denise and Keith Pieck (the defendant's sister and brother-in-law).¹

3. On December 23, 2022, the United States sent direct, written notice of this forfeiture action² by FedEx and regular mail to Victor Cisternino. See Declaration of Paralegal Specialist Beverly Williams, Exhibit 1 at ¶¶3 and Exhibit 2.

¹ As outlined in the United States' Motion for Preliminary Order of Forfeiture (Doc. 36), the Defendant's PSR (Doc.39), and the United States' Sentencing Memorandum (Doc. 43), the defendant gave his parents approximately \$1.4 million of the fraudulently obtained PPP loan proceeds because he owed his parents money. While the defendant's parents kept some of the money, they then transferred a portion of those fraudulently obtained funds to accounts controlled by the defendant's sister and her husband. Doc. 36 at pp. 6-7. Those fraudulently obtained funds that were seized from the defendant's parents' and sister's accounts are the subject of this motion.

² All notice packages advise potential claimants that they can file a claim to contest the forfeiture of the assets in these proceedings, and/or pursuant to 28 C.F.R § 9, file a petition for remission or mitigation, which pardons the property from forfeiture once the property has been judicially forfeited (and provides instructions on how to do so).

On December 30, 2022, Victor Cisternino signed and returned the Acknowledgment of Receipt of Notice of Forfeiture, thereby acknowledging that he received notice of these proceedings. See Exhibit 1 at ¶3 and Exhibit 3.

4. On December 23, 2022, the United States sent direct, written notice of this forfeiture action by FedEx and regular mail to Mary Jo Cisternino. Exhibit 1 at ¶4 and Exhibit 4. On December 30, 2022, Mary Cisternino signed and returned the Acknowledgment of Receipt of Notice of Forfeiture, thereby acknowledging that she received notice of these proceedings. See Exhibit 1 at ¶3 and Exhibit 5.

5. On December 23, 2022, the United States sent direct, written notice of this forfeiture action by FedEx and regular mail to Denise Pieck. See Exhibit 1 at ¶5 and Exhibit 6. The notice sent via FedEx was delivered on December 28, 2022. See Exhibit 1 at ¶5 and Exhibit 7. The notice sent by first class mail was not returned and there is no indication that the mail was not received. See Exhibit 1 at ¶5.

6. On December 23, 2022 the United States sent direct, written notice of this forfeiture action by FedEx and regular mail to Keith Pieck. Exhibit 1 at ¶6 and Exhibit 8. The notice sent via FedEx was delivered on December 28, 2022. See Exhibit 1 at ¶6 and Exhibit 9. The notice sent by first class mail was not returned and there is no indication that the mail was not received. See Exhibit 1 at ¶6.

III. Unknown Third Parties

7. In accordance with the provisions of 21 U.S.C. § 853(n), the United States published notice of the forfeiture, and of its intent to dispose of the subject assets, on the official government website, www.forfeiture.gov, beginning on November 29, 2022 and ending on December 28, 2022. Doc. 45. The publication gave notice to all third parties with a legal interest in the subject assets to file with the Clerk of the Court, 401 W. Central Blvd., Suite 1200, Orlando, Florida 32801-0120, a petition to adjudicate their interest within 60 days of the first date of publication.

8. No persons or entities, other than the defendant, whose interest was forfeited to the United States in the Preliminary Order of Forfeiture, and Victor and Mary Jo Cisternino and Denise and Keith Pieck, who received notices but did not file a claim, are known to have an interest in the subject assets. To date, no third party has filed a Petition to Adjudicate Interest in the subject assets, and the time for filing such Petition has expired.

IV. Legal Argument

A. Notice Requirements

1. Known Potential Claimants

The United States must provide direct written notice of the ancillary forfeiture proceeding to any known potential claimants using the means described in Rule 32.2(b)(6)(C) and (D). Rule 32.2(b)(6)(D) permits notice to be

“sent in accordance with Supplemental Rules G(4)(b)(iii)-(iv) of the Federal Rules of Civil Procedure.” Rule G(4)(b)(iii)(A) requires that “[t]he notice must be sent by means reasonably calculated to reach the potential claimant.” The notice provisions of Rule G(4)(b)(iii) simply codify and restate prevailing due process requirements governing adequate notice – that the United States is required to “send notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Due process does not require that an interested party actually receive notice of the proceedings, nor does it demand that the Government employ the best or most reliable means of ensuring notice. *United States v. Davenport*, 668 F.3d 1316, 1323 (11th Cir. 2012) (internal citations omitted).

In this case, the notices sent via FedEx to Victor and Mary Jo Cisternino and Denise and Keith Pieck were confirmed delivered, and the notices that were sent via regular mail were not returned as undeliverable. Accordingly, the United States maintains that proper notice was provided to Victor and Mary Jo Cisternino and Denise and Keith Pieck.

Those parties receiving direct written notice of a forfeiture proceeding have to file their claims within 30 days of final publication of notice or receipt of direct written notice, whichever is earlier. 21 U.S.C. § 853(n)(2). Victor Cisternino, Mary Jo Cisternino, Denise Pieck, and Keith Pieck’s claims were due on January 23, 2023.

However, they did not file claims to contest the forfeiture of the funds, and the time to do so has expired.

2. Those Receiving Notice by Publication

As required by 21 U.S.C. § 853(n), the United States published notice of the forfeiture on the official government website, www.forfeiture.gov, from November 29, 2022 through December 28, 2022. Doc. 45. Publication by internet is permitted in civil cases pursuant to Rule G(4)(a)(iv)(C) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, of the Federal Rules of Civil Procedure. Federal Rule of Criminal Procedure 32.2(b)(6)(C) provides that publication of notice of criminal forfeiture may be by any means described in Supplemental Rule G(4)(a)(iv). Publication gave notice to all those who might have an interest in the assets of the United States' intent to dispose of the property, and gave instructions on filing a petition to adjudicate their interests in the assets. In accordance with those provisions, a person or entity had 60 days from the first date of publication to file a petition with the District Court to adjudicate his interest. In this instance, the first date of internet publication was November 29, 2022. Accordingly, the final date for those who did not receive direct written notice to file a petition to adjudicate an interest in the assets was January 28, 2023, and the time for filing such petition has expired.

B. Appropriate Time to Enter a Final Order of Forfeiture

Pursuant to 21 U.S.C. § 853(n)(7), following the disposition of all petitions, or if no petitions are timely filed in accordance with 21 U.S.C. § 853(n)(2), “the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.”

21 U.S.C. § 853(n)(7). It is then appropriate for the Court to enter a final order of forfeiture in accordance with Rule 32.2(c)(2).

Publication having been effected, and no claim or petition to adjudicate an interest having been filed, it is now appropriate for the Court to enter a Final Judgment of Forfeiture for the assets.

V. Conclusion

The United States respectfully requests that this Court, pursuant to the provisions of Rule 32.2(c)(2) and 21 U.S.C. § 853(n)(7), enter a final order forfeiting

to the United States all right, title and interest in the above-referenced assets for disposition according to law, and vesting clear title to the assets in the United States.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Michael Shay Ryan, Esquire

By: s/Nicole M. Andrejko
Nicole M. Andrejko
Assistant United States Attorney