UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v. Case No. 2:23-cr-9-TPB-KCD

DENIS CASSEUS

UNITED STATES' AMENDED[1] MOTION FOR ORDER OF FORFEITURE AND PRELIMINARY ORDER OF FORFEITURE FOR DIRECT ASSET

Pursuant to 18 U.S.C. § 982(a)(2)(A) and Rule 32.2(b)(2) of the Federal Rules of Criminal Procedure, the United States of America moves for an Order of Forfeiture in the amount of $298,875.00, representing the amount of proceeds the defendant admits he obtained as a result of the offenses charged in Counts One and Two of the Indictment, as well as forfeiture of the following asset:

> The real property located at 132 SW 10th Place, Cape Coral, FL 33991, including all improvements thereon and appurtenances thereto, the legal description for which is as follows:
>
> Lots 24 and 25, Block 3624, Cape Coral Subdivision, Unit 49, according to the plat thereof recorded in Plat Book 17, Pages 145 through 154, inclusive, of the Public Records of Lee County, Florida.
>
> Parcel Number: 1 5-44-23-C2-03624.0240
>
> Title Owner: Ismaelle Manuel.[2]

[1] The United States is filing the amended motion to correct the address of the real property.

[2] The United States intends to seek forfeiture of Ismaelle Manuel's interest in the real property identified above. *See United States v. Ismaelle Manuel*, Case No. 2:23-cr-3-TPB-KCD.

In accordance with Rule 32.2(b)(4) and the defendant's plea agreement (Doc. 30 at 12), the United States asks that the order of forfeiture become final at the time it is entered. In support, the United States submits the following memorandum of law.

MEMORANDUM OF LAW

I. Statement of Facts

A. Allegations Against the Defendant

1. The defendant was charged in an Indictment, in relevant part, with bank fraud, in violation of 18 U.S.C. § 1344 (Counts One and Two), and money laundering, in violation of 18 U.S.C. § 1957(a) (Count Five). Doc. 1.

2. The forfeiture allegations in the Indictment notified the defendant that, pursuant to 18 U.S.C. § 982(a)(2)(A), the United States was seeking forfeiture of any property, real or personal, which constitutes or is derived from proceeds traceable to the offense, including a $298,875.00 Order of Forfeiture, representing the amount of proceeds the defendant personally obtained and the assets identified above. *Id.* at 4-6.

B. Finding of Guilt and Admissions of Fact

3. On May 23, 2023, the defendant pleaded guilty to Counts One, Two, and Five of the Indictment pursuant to a written plea agreement before United States Magistrate Judge Kyle C. Dudek, who recommended that his plea be accepted. Docs. 35, 36. On May 26, 2023, United States District Judge Thomas P. Barber accepted his plea and adjudicated him guilty. Doc. 38. The defendant's sentencing is currently scheduled for August 18, 2023. *Id.*

5. In his plea agreement (Doc. 30 at 22-28), the defendant agreed to a factual basis which describes the conduct underlying the charge in the Indictment and provides support for a $298,875.00 order of forfeiture which represents the amount of proceeds the defendant admits he personally obtained and forfeiture of the asset identified above.

C. Admissions Related to Forfeiture

6. In his plea agreement, the defendant admitted and agreed that, pursuant to 18 U.S.C. § 982(a)(2)(A), the United States is entitled to a $298,875.00 Order of Forfeiture, which represents the amount of proceeds the defendant admits he personally obtained, as well as the forfeiture of the asset identified above, which was purchased or funded with proceeds of the offenses charged in Counts One and Two to which the defendant is to pled guilty. Doc. 30 at 11. Moreover, the defendant agreed that the United States is entitled to forfeit any of the defendant's property as substitute assets to satisfy the Order of Forfeiture, and that the order of forfeiture would be final upon entry. *Id.* at 12.

II. Applicable Law

A. Forfeiture Statute

Criminal forfeiture of property for bank fraud, in violation of 18 U.S.C. § 1344, is governed by 18 U.S.C. § 982(a)(2)(A) which provides for the forfeiture of any property constituting, or derived from, proceeds the defendant obtained, directly or indirectly, as a result of such violations. *See* 18 U.S.C. § 982(a)(2).

B. Court's Determination of Forfeiture

Rule 32.2, Federal Rules of Criminal Procedure, governs the criminal forfeiture of property based on a defendant's conviction for the offenses giving rise to the forfeiture. Rule 32.2(b)(1) requires that as soon as practical after a verdict or finding of guilty, or after a plea of guilty is accepted, the Court must determine what property is subject to forfeiture under the applicable statute. Fed. R. Crim. P. 32.2(b)(1)(A). The Court's determination may be based on evidence already in the record, or any additional evidence submitted by the parties and accepted by the Court as relevant and reliable. Fed. R. Crim. P. 32.2(b)(1)(B).

Because the United States could not locate all the specific property involved in the offenses, the United States seeks an order of forfeiture against the defendant in the amount of $298,875.00, pursuant to Federal Rule of Criminal Procedure 32.2(b)(2). As the defendant has agreed, he personally obtained $298,875.00 in proceeds of the offenses. If the Court finds that the defendant obtained at least $298,875.00 of criminal proceeds, and that the defendant has dissipated the proceeds, then it is appropriate for the Court to enter an order of forfeiture against the defendant in that amount pursuant to Rule 32.2(b)(2).

The United States asserts, and the defendant has agreed, that the asset identified above, was purchased or funded with proceeds of the offenses charged in Counts One and Two and is thus forfeitable under 18 U.S.C. § 982(a)(1).

III. Conclusion

For the reasons stated above, the United States requests that the Court, pursuant to 18 U.S.C. § 982(a)(2)(A) and Rule 32.2(b)(2), Federal Rules of Criminal Procedure, enter an Order of Forfeiture against the defendant in the amount of $298,875.00, for which he is personally liable, and a Preliminary Order of Forfeiture for the asset identified above, subject to the provisions of 21 U.S.C. § 853(n). The forfeited asset will be credited towards the satisfaction of the defendant's order of forfeiture.

The United States further requests that, in accordance with his Plea Agreement (Doc. 30 at 12), the order of forfeiture become final as to the defendant at the time it is entered.

As required by Federal Rule of Criminal Procedure 32.2(b)(4)(B), the United States requests that the Court include the forfeiture when orally pronouncing the sentence and include the forfeiture order, directly or by reference, in the judgment. *See* Fed. R. Crim. P. 32.2(b)(4)(A) and (B).

Finally, the United States further requests that the Court retain jurisdiction to address any third-party claim that may be asserted in these proceedings, to enter any further order necessary for the forfeiture and disposition of such property, and to order any substitute assets forfeited to the United States up to the amount of the order of forfeiture.

Respectfully Submitted,

ROGER B. HANDBERG
United States Attorney

By: *s/James A. Muench*

JAMES A. MUENCH
Assistant United States Attorney
Florida Bar Number 472867
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
(813) 274-6000 – telephone
E-mail: james.muench2@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system that will send a notice of electronic filing to counsel of record.

s/James A. Muench
JAMES A. MUENCH
Assistant United States Attorney