IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 21-cr-00165-RM-2

UNITED STATES OF AMERICA,

Plaintiff,

v.

2. CHANDLER SIMBECK,

Defendant.

UNITED STATES' MOTION FOR PRELIMINARY ORDER OF FORFEITURE FOR SPECIFIC ASSETS AND FOR A PERSONAL MONEY JUDGMENT

COMES NOW the United States of America, ("United States") by and through United States Attorney Cole Finegan and Assistant United States Attorney Elizabeth Young, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. Rule 32.2(b), and incorporating the Plea Agreement entered into with defendant Chandler Simbeck, and respectfully requests that this Court enter a Preliminary Order of Forfeiture for Specific Assets and a Forfeiture Money Judgment in this case as to defendant Simbeck.

I. Background

1. On May 18, 2021, the grand jury charged defendant Chandler Simbeck by Indictment in Count 12 with conspiring to defraud the United States and any agency thereof in violation of 18 U.S.C. § 371, and in Count 13 with violations of 18 U.S.C. §§ 1343 and 2. (Doc. 1 at 1, 9-13).

2. The Indictment also contained a forfeiture allegation providing the

defendant with notice that the United States, pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)[1], would seek forfeiture in all property constituting and derived from any proceeds he obtained directly and indirectly as a result of the alleged offenses and provided notice of the United States' intent to seek a money judgment in the amount of the proceeds that he obtained as a result of the scheme charged in Counts 12 and 13 of the Indictment. (Doc. 1 at 13-15).

3. On April 21, 2023, the United States and defendant Chandler Simbeck entered into a Plea Agreement, in which the defendant agreed, among other things, to plead guilty to Count 12, agreed to forfeiture of specific items identified below[2], agreed to the entry of a money judgment in the amount of $151,000, admitted the forfeiture allegations, and agreed to facts that provide a nexus between the forfeiture order sought and the crime to which defendant has pleaded guilty. (Doc. 105 at 1-2, 4-6, 7-14). The specific items defendant Simbeck agreed to forfeit are:

a. Approximately $36,106.22 seized from Citizens Bank account #6441 held in the name of Etola Leipply; and

b. Approximately $282.49 seized from FanDuel account #5854 held in the name of Chandler Simbeck.

(Doc. 105 at 4-6).

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[1] Title 28, United States Code, Section 2461(c) provides for the criminal forfeiture of any property that may be forfeited civilly. Title 18, United States Code, Section 981(a)(1)(C) provides for the forfeiture of any property constituting or derived from proceeds traceable to a "specified unlawful activity" as defined in 18 U.S.C. § 1956(c)(7), which includes any act identified in 18 U.S.C. § 1961(1) within the definition of "specified unlawful activity." Violation of 18 U.S.C. § 1343 is included in 18 U.S.C. § 1961.

[2] The parties agree that the appropriate forfeiture statutes are 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), as listed in the Indictment.

4. As set forth in the Plea Agreement, the defendant and United States agree that between in or about June 2020 and on or about December 7, 2020, in the State and District of Colorado, defendant Chandler Simbeck and co-defendant Russell Foreman did knowingly and unlawfully conspire to defraud the United States by submitting 4 fraudulent EIDL loan applications and attempting to obtain 3 fraudulent PPP loans. (Doc. 105 at 9-17). The defendant and United States further agree that the defendant then caused fraudulent proceeds to be transferred into bank accounts in his control and to accounts in the control of others. (Doc. 105 at 11-12).

5. Specifically, defendant Simbeck submitted a fraudulent EIDL application to the Small Business Association containing materially false information, which was approved on August 27, 2020 in the amount of $150,000. (Doc. 111-2 at 35-40).

6. Additionally, on March 30, 2020, defendant Simbeck submitted a fraudulent EIDL application, which was partially funded by the SBA on or about April 16, 2020, with a $1,000.00 EIDL Cash Advance Grant. (Doc. 105 at 12). In total, $151,000.00 represents the proceeds obtained by the defendant through commission of the conspiracy to commit violations of 18 U.S.C. § 1343. (Doc. 105 at 5).

II. Analysis

Pursuant to Fed. R. Crim. P. 32.2(b)(1)(A), the Court must determine what property is subject to forfeiture under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), as soon as practicable after a plea of guilty. Once the property is determined to be subject to forfeiture, the Court must promptly enter a Preliminary Order of Forfeiture. Fed. R. Crim. P. 32.2(b)(2)(A). When a personal money judgment is sought, "the court must determine the amount of money that the defendant will be ordered to pay." Fed. R.

Crim. P. 32.2(b)(1)(A).

Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to a conspiracy to commit violations of 18 U.S.C. § 1343 is forfeitable to the United States.

As explained in more detail above and in the Plea Agreement, there is a nexus between the crimes to which defendant Simbeck has pleaded guilty and the items identified for forfeiture. Further, defendant Simbeck agrees to forfeiture of (a) the approximately $36,106.22 seized from Citizens Bank account #6441 held in the name of Etola Leipply; and (b) the approximately $282.49 seized from FanDuel account #5854 held in the name of Chandler Simbeck. In addition, defendant Simbeck has agreed to entry of a money judgment in the amount of $151,000.

Accordingly, the defendant's interest in the following assets is subject to forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c):

a. Approximately $36,106.22 seized from Citizens Bank account #6441 held in the name of Etola Leipply; and
b. Approximately $282.49 seized from FanDuel account #5854 held in the name of Chandler Simbeck.

In addition, entry of a money judgment in the amount of $151,000 is appropriate.

A Preliminary Order of Forfeiture is necessary in order for the United States to seize the property subject to forfeiture. In addition, 21 U.S.C. § 853(n) requires that third parties who may have an interest in the property receive notice, via publication, or to the extent practical, direct written notice, of the forfeiture and the United States' intent to dispose of the property. The United States cannot accomplish the seizure, notice, and publication without a Preliminary Order of Forfeiture.

III. Conclusion

Accordingly, the United States respectfully requests that this Court enter the Preliminary Order of Forfeiture for a Forfeiture Money Judgment and Specific Assets tendered herewith, for the reasons set forth above.

Dated: December 6, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of December 2023, I electronically filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record.

s/ *Jody Gladura*
FSA Federal Paralegal
Office of the U.S. Attorney