UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:24-CR-60003-WILLIAMS

UNITED STATES OF AMERICA

v.

ERNEST BERNARD GONDER JR.,

Defendant.

UNITED STATES' MOTION FOR
PRELIMINARY ORDER OF FORFEITURE

Pursuant to 18 U.S.C. § 982(a)(2)(A) and 21 U.S.C. § 853(p), and the procedures set forth in 21 U.S.C. § 853 and Rule 32.2 of the Federal Rules of Criminal Procedure, the United States of America (the "United States"), by and through the undersigned Assistant United States Attorney, hereby moves for the entry of a Preliminary Order of Forfeiture against Defendant Ernest Bernard Gonder Jr. (the "Defendant") in the above-captioned matter. The United States seeks a forfeiture money judgment in the amount of $168,248.41 and the forfeiture of certain property in satisfaction thereof. In support of this motion, the United States provides the attached Declaration of Special Agent Bryan Piper of the Federal Bureau of Investigation ("FBI") and the following factual and legal bases.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On January 5, 2024, the United States filed an Information charging the Defendant in Counts 1 and 2 with wire fraud in violation of 18 U.S.C. § 1343. Information, ECF No. 1. The Information also contained forfeiture allegations. *See id.* at 7.

On March 7, 2024, the Court accepted the Defendant's guilty plea to Counts 1 and 2 of the Information. *See* Minute Entry, ECF No. 10; Plea Agreement ¶ 10, ECF No. 12. As part of the guilty plea, the Defendant agreed to the forfeiture of the real property located at 1621 NW 2nd Ave., Pompano Beach, Florida 33060-5217 and a forfeiture money judgment in the amount of $168,248.41. Specifically, among other provisions in the Plea Agreement, the Defendant agreed:

> 10. The defendant agrees, in an individual and any other capacity, to forfeit to the United States, voluntarily and immediately, any right, title, and interest to any property constituting, or derived from, proceeds obtained, directly or indirectly, as a result of such violation, pursuant to Title 18, United States Code, Section 982(a)(2)(A). In addition, the defendant agrees to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p). The property subject to forfeiture includes, but is not limited to:
>
> a. forfeiture money judgment in the sum of $168,248.41 in United States currency, which sum represents the value of the property subject to forfeiture; and
>
> c. substitute property, including, but not limited to, the real property located at 1621 NW 2nd Ave., Pompano Beach, Florida 33060-5217.

Plea Agreement ¶ 10.

In support of the guilty plea, the Defendant executed a Factual Proffer, and the Court found there was a factual basis to support the Defendant's conviction. *See* Factual Proffer, ECF No. 11. The Factual Proffer also provided a basis for the forfeiture of property. *See id.* at 4.

II. MEMORANDUM OF LAW

A. Directly Forfeitable Property

Any property constituting, or derived from, proceeds obtained, directly or indirectly, as a result of such violation, is subject to forfeiture to the United States. 18 U.S.C. § 982(a)(2(A).

B. Forfeiture Money Judgments

A forfeiture order may be sought as a money judgment. *See* Fed. R. Crim. P. 32.2(b)(1)(A), (2)(A); *see also United States v. Padron*, 527 F.3d 1156, 1162 (11th Cir. 2008) (holding that Federal Rules of Criminal Procedure "explicitly contemplate the entry of money judgments in criminal forfeiture cases"). The forfeiture money judgment is final as to the defendant "[a]t sentencing—or at any time before sentencing if the defendant consents." *See* Fed. R. Crim. P. 32.2(b)(4)(A). No ancillary proceeding is required when forfeiture consists solely of a money judgment. *See* Fed. R. Crim. P. 32.2(c)(1). As additional property is identified to satisfy the forfeiture money judgment, the Court must order the forfeiture of such property. *See* Fed. R. Crim. P. 32.2(e)(1) ("[T]he court may at any time enter an order of forfeiture or amend an existing order of forfeiture to include property that . . . is subject to forfeiture under an existing order of forfeiture but was located and identified after that order was entered; or . . . is substitute property . . . ."); *see also* Fed. R. Crim. P. 32.2(b)(2)(C).

The amount of the money judgment should represent the full sum of directly forfeitable property, regardless of the defendant's ability to satisfy the judgment at the time of sentencing. *See United States v. McKay*, 506 F. Supp. 2d 1206, 1211 (S.D. Fla. 2007) (adopting the majority rule); *see also United States v. Blackman*, 746 F.3d 137, 143-44 (4th Cir. 2014) ("The fact that a defendant is indigent or otherwise lacks adequate assets to satisfy a judgment does not operate to frustrate entry of a forfeiture order."). The Court determines the amount of the money judgment "based on evidence already in the record, including any written plea agreement, and any additional evidence or information submitted by the parties and accepted by the court as relevant and reliable." Fed. R. Crim. P. 32.2(b)(1)(B). The Court in imposing a forfeiture money judgment may rely on an agent's reliable hearsay. *See United States v. Stathakis*, 2008 WL 413782, at *14 n.2 (E.D.N.Y. Feb. 13, 2008).

C. Substitute Property

If directly forfeitable property is not available, the Court may order the forfeiture of substitute assets to satisfy a money judgment. *See* 21 U.S.C. § 853(p); Fed. R. Crim. P. 32.2(e);

United States v. Fleet, 498 F.3d 1225, 1227-31 (11th Cir. 2007) (any property of the defendant may be forfeited as a substitute asset); *United States v. Knowles*, No. 19-14309, 2020 WL 3583413, at *1 (11th Cir. July 2, 2020) ("We've held that the word 'any' in § 853(p) is a broad word that 'does not mean some or all but a few, but instead means all . . . .'") (citing *Fleet*, 498 F.3d at 1229). Substitute assets are available for forfeiture upon a showing that, due to any act or omission of a defendant, directly forfeitable property:

> (A) cannot be located upon the exercise of due diligence;
> (B) has been transferred or sold to, or deposited with, a third party;
> (C) has been placed beyond the jurisdiction of the court;
> (D) has been substantially diminished in value; or
> (E) has been commingled with other property which cannot be divided without difficulty.

21 U.S.C. § 853(p). The government may establish such unavailability through an agent's declaration. *See United States v. Seher*, 562 F.3d 1344, 1373 (11th Cir. 2009).

D. Property Subject to Forfeiture in Instant Criminal Case

From April 2021 to July 2021, the defendant submitted false and fraudulent applications for Paycheck Protection Program loans through the Small Business Administration and applications for forgiveness of these loans. Factual Proffer, at 1-2. The applications contained false and fraudulent information as to the borrower's average monthly payroll and number of employees. *Id.* Both loans were ultimately paid and forgiven, resulting in the government suffering an actual loss of $168,248.41. *Id.* at 4.

Based on the record in this case, the total value of the proceeds traceable to the offenses of conviction is $168,248.41, which sum may be sought as a forfeiture money judgment pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure.

The United States has also not been able to locate all of the directly forfeitable property. It is the conclusion of Special Agent Piper that other directly forfeitable property cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty. *See* Decl. (attached as Exhibit A to Motion). Thus, pursuant to 21 U.S.C. § 853(p), the United States is authorized to forfeit substitute property, and the following property should be forfeited to satisfy the forfeiture money judgment:

i. Real property located at 1621 NW 2nd Ave., Pompano Beach, Florida 33060-5217, including all buildings, fixtures, appurtenances, improvements, attachments and easements found therein or thereon,

   Also known as: KENDALL GREEN SEC A 43-49 B LOT 13 BLK 2

   Parcel Identification No. 484226060300.

Accordingly, the Court should issue the attached proposed order, which provides for the entry of a forfeiture money judgment against the Defendant; the forfeiture of specific property; the inclusion of the forfeiture as part of the Defendant's sentence and judgment in this case; and permission to conduct discovery to locate assets ordered forfeited.

WHEREFORE, pursuant to 18 U.S.C. § 982(a)(2)(A), and the procedures set forth in 21 U.S.C. § 853 and Rule 32.2 of the Federal Rules of Criminal Procedure, the United States respectfully requests the entry of the attached order.

LOCAL RULE 88.9 CERTIFICATION

Pursuant to Local Rule 88.9, I hereby certify that the undersigned counsel has attempted to confer with defense counsel via e-mails on March 11 and 13, 2024 regarding the Defendant's position on the relief sought, but has not yet received a response.

Respectfully submitted,

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