

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

NATHAN E. HARDWICK IV

Criminal Action No.

1:16-CR-00065-ELR-CMS

MOTION FOR PRELIMINARY ORDER OF FORFEITURE

The United States of America, by Byung J. Pak, United States Attorney, and Kelly K. Connors, Assistant United States Attorney for the Northern District of Georgia, files this Motion for Preliminary Order of Forfeiture, requesting a personal money judgment against Defendant Hardwick in the amount of \$19,907,431. The United States is also submitting a proposed Preliminary Order of Forfeiture. In support, the United States shows the following:

I. Background

On December 5, 2017, a grand jury returned a Superseding Indictment, charging Defendant Nathan Hardwick with conspiracy to commit wire fraud (Count 1), 21 counts of wire fraud (Counts 2 through 22), and 3 counts of making a false statement to a federally-insured financial institution (Counts 23 through 25). [Doc. 126]. The Superseding Indictment contained a forfeiture provision notifying the Defendant of the government's intent to pursue forfeiture of "any

property constituting or derived from proceeds obtained directly or indirectly as a result” of his offenses. [*Id.* at ¶ 16]. The forfeiture provision also stated that, under certain circumstances, the government intended to seek forfeiture of substitute assets. [*Id.* at ¶ 18].

At trial the government presented evidence showing that Defendant Hardwick engaged in a scheme to defraud his law firm, during which he stole over \$21 million. (PSR ¶ 67.) On October 12, 2018, a jury found Hardwick guilty of conspiracy to commit wire fraud (Count 1), 21 counts of wire fraud (Counts 2 through 22), and 1 count of making a false statement to a federally-insured financial institution (Count 23), and he was remanded into custody. [Docs. 126, 271, 272]. Defendant Hardwick’s sentencing is scheduled for February 11, 2019. [Doc. 313]. The government now seeks a Preliminary Order of Forfeiture entering a money judgment against Defendant Hardwick in the amount of \$19,907,431, which reflects the actual loss of the fraud, calculated by the Probation Officer to be \$21,307,431, minus the \$1.4 million Hardwick reimbursed the firm after the fraud was discovered. (PSR ¶¶ 52, 67.)

II. Applicable Law and Discussion

Criminal forfeiture is a mandatory aspect of sentencing when the defendant has been convicted of an offense giving rise to forfeiture. *See* 28 U.S.C. § 2461(c)

("the court shall order the forfeiture of the property as part of the sentence in the criminal case"). As set forth in the forfeiture provision of the Superseding Indictment, Doc. 126 ¶ 16, forfeiture pursuant to Counts 1 through 22 for wire fraud conspiracy and wire fraud, is governed by 18 U.S.C. § 981(a)(1)(C), which is made applicable to criminal cases through 28 U.S.C. § 2461(c).¹ Under § 981(a)(1)(C), Defendant Hardwick is required to forfeit "[a]ny property, real or personal, which constitutes or is derived from proceeds traceable to . . . any offense constituting 'specified unlawful activity' (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense." The definition of "specified unlawful activity" under 18 U.S.C. § 1956(c)(7)(A) includes "any act or activity constituting an offense listed in section 1961(1) of this title," and 18 U.S.C. § 1961(1) includes wire fraud. Accordingly, Defendant Hardwick must forfeit the proceeds of his wire fraud conspiracy and substantive offenses.²

¹ Section 2461(c) provides, in pertinent part, as follows:

If a person is charged in a criminal case with a violation . . . for which the civil . . . forfeiture of property is authorized, the Government may include notice of the forfeiture in the indictment If the defendant is convicted of the offense giving rise to the forfeiture, the court shall order the forfeiture of the property as part of the sentence in the criminal case.

² The forfeiture provision of the indictment also provides for forfeiture on Count 23 for making a false statement to a federally-insured financial institution

A. The Preliminary Order of Forfeiture

Rule 32.2 of the Federal Rules of Criminal Procedure, which governs criminal forfeiture, provides that

As soon as practical³ after a verdict . . . of guilty . . . on any count in an indictment . . . regarding which criminal forfeiture is sought, the court must determine what property is subject to forfeiture . . . If the government seeks a personal money judgment, 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). The Rule further provides that “[i]f the court finds that property is subject to forfeiture, it must promptly enter a preliminary order of forfeiture setting forth the amount of any money judgment, directing the forfeiture of specific property, and directing the forfeiture of any substitute property if the government has met the statutory criteria.” *Id.* 32.2(b)(2)(A). The preliminary forfeiture order becomes final as to the defendant at sentencing or at any time before if the defendant consents. *Id.* 32.2(b)(4)(A).⁴

pursuant to 18 U.S.C. § 982(a)(2). [Doc. 126 ¶ 17]. For ease of calculation, the government is seeking a money judgment on Counts 1 through 22.

³ Pursuant to Rule 32.2(b)(2), the preliminary order of forfeiture should be entered “sufficiently in advance of sentencing to allow the parties to suggest revisions.”

⁴ Where, as here, the forfeiture consists of a money judgment, no ancillary proceeding is necessary. Rule 32.2(c)(1).

Here, the government is not currently seeking forfeiture of specific property or substitute assets, as no forfeitable property has been identified by investigators. Rather, at this time, in addition to restitution, the government seeks a money judgment in the amount of \$19,907,431, which represents the proceeds Defendant Hardwick received as a result of his fraud scheme. *See United States v. Padron*, 527 F.3d 1156, 1162 (11th Cir. 2008) (stating that the rules “explicitly contemplate the entry of money judgments in criminal forfeiture cases”); *United States v. Hernandez*, 803 F.3d 1341, 1344 (11th Cir. 2015) (stating that because restitution and forfeiture serve different purposes, imposition of both is allowed).

B. Calculating the Money Judgment

A money judgment is an *in personam* judgment against the defendant for an amount representing the proceeds derived from his offenses. *Padron*, 527 F.3d at 1162 & n.6. The defendant is personally liable for forfeiture of an amount of money equal to the proceeds of the offenses whether or not he has those funds, or any other funds, at the time of sentencing. *See United States v. Newman*, 659 F.3d 1235, 1243 (9th Cir. 2011) (“Congress sought to punish equally the thief who carefully saves his stolen loot and the thief who spends the loot on ‘wine, women, and song.’”).

In this case, the term “proceeds” is defined as “property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture . . . and is not limited to the net gain or profit realized from the offense.” 18 U.S.C. § 981(a)(2)(A). Criminally forfeitable proceeds consist of property that the defendant would not have obtained “but for” the offenses. *United States v. Hoffman-Vaile*, 568 F.3d 1335, 1344 (11th Cir. 2009).

Because forfeiture is an aspect of sentencing, *see Libretti v. United States*, 516 U.S. 29, 38-41 (1995), the government bears the burden of proving the forfeiture by a preponderance of the evidence. *United States v. Cox*, 851 F.3d 113, 129 (1st Cir. 2017); *United States v. Dicter*, 198 F.3d 1284, 1289 (11th Cir. 1999). The government, however, is not required to provide a precise calculation of the proceeds subject to forfeiture. *United States v. Roberts*, 660 F.3d 149, 166 (2d Cir. 2011) (“[T]he law does not demand mathematical exactitude in calculating the proceeds subject to forfeiture.”). In determining the amount of the forfeiture order, the Court may consider any record evidence. Fed. R. Crim. P. 32.2(b)(1)(B).

C. Defendant Hardwick Is Liable for a Money Judgment of \$19,907,431

Evidence presented at trial shows that Defendant Hardwick used MHS as his personal piggy bank and illegally siphoned off millions of dollars from MHS’s accounts to pay his personal debts and expenses and to finance his extravagant

lifestyle. In so doing, Defendant Hardwick caused and directed Asha Maurya, his co-conspirator to wire transfer millions of dollars from MHS to many different people and businesses for Defendant Hardwick's personal use and benefit, including Defendant Hardwick's creditors and numerous casinos, private jet charter companies, and female social companions. Defendant Hardwick also caused and directed Maurya to wire transfer millions of dollars from MHS to Divot Holdings LLC, a company that defendant Hardwick owned. Defendant Hardwick then caused Divot to wire transfer the fraud proceeds for personal use.

Specifically, once the fraud was detected, Fidelity National Financial spent approximately \$29.4 million to cover the shortages in the MHS trust account. (PSR ¶72.) Fidelity was able to recoup approximately \$7.4 million, and Defendant Hardwick reimbursed the firm another \$1.4 million. (PSR ¶ 52, 67, 72.) The Government's money judgment request is conservative, as the evidence at trial showed that Defendant Hardwick received in excess of \$26 million. (Gov't Tr. Exs. 1001, 1004, 1005.)

D. Substitute Assets and Discovery

Pursuant to Rule 32.2(e)(1)(B), once the court enters a Preliminary Order of Forfeiture, the government may move at any time, to amend the order to forfeit specific property of the defendant, having a value up to the amount of the money

judgment, as substitute assets. *See United States v. Candelaria-Silva*, 166 F.3d 19 (1st Cir. 1999) (providing that once the Government has obtained a money judgment, it may forfeit defendant's real property in partial satisfaction of that judgment). Also, pursuant Rule 32.2(b)(3), once the court enters a preliminary order of forfeiture, the government is authorized to "to conduct any discovery the court considers proper" to identify or locate forfeitable property. *See United States v. Saccoccia*, 898 F. Supp. 53 (D.R.I. 1995) (stating that the government may conduct post-trial discovery to determine location and identity of forfeitable assets). Accordingly, the government requests that it be permitted to undertake discovery pursuant to the Federal Rules of Civil Procedure to identify, locate, or dispose of the property subject to forfeiture or substitute assets for such property.

III. Conclusion

For the foregoing reasons, and pursuant to Fed. R. Crim. P. 32(b)(1)(A), the government requests that the Court enter a preliminary order of forfeiture to

consist of a money judgment against Defendant Hardwick in the amount of \$19,907,431.

Respectfully submitted,

BYUNG J. PAK
United States Attorney

/s/ KELLY K. CONNORS
Assistant United States Attorney
600 U.S. Courthouse
75 Ted Turner Drive S.W.
Atlanta, GA 30303
(404) 581-6000
fax (404) 581-6181
Georgia Bar No. 504787
Kelly.Connors@usdoj.gov

Certificate of Service

The United States Attorney's Office served this document today by filing it using the Court's CM/ECF system, which automatically notifies the parties and counsel of record.

January 30, 2019

/s/ KELLY K. CONNORS

KELLY K. CONNORS

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

NATHAN E. HARDWICK, IV

Criminal Action No.

1:16-CR-00065-ELR-CMS

PRELIMINARY ORDER OF FORFEITURE

WHEREAS, on October 12, 2018, a jury found Defendant Nathan Hardwick guilty of conspiracy to commit wire fraud (Count 1), 21 counts of wire fraud (Counts 2 through 22), and 1 count of making a false statement to a federally-insured financial institution (Count 23), and

WHEREAS, as the result of the guilty verdict on Counts 1 through 22 of the Indictment for which the United States sought forfeiture pursuant 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), Defendant Hardwick shall forfeit to the United States, property which constitutes or is derived from proceeds of the offenses, and

WHEREAS, the government seeks a personal money judgment against Defendant Hardwick in an amount equal to the proceeds received from the offenses charged in Counts 1 through 22 of the Indictment—a total of \$19, 907,431, and

WHEREAS, the court has determined, based on the evidence already in the record, that at least \$19,907,431 represents the proceeds of the wire fraud conspiracy and wire fraud offenses for which Defendant Hardwick was found guilty, and

WHEREAS, Federal Rule of Criminal Procedure 32.2(c)(1) provides that “no ancillary proceeding is required to the extent that the forfeiture consists of a money judgment,”

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Defendant Hardwick shall forfeit to the United States the sum of \$19,907,431 pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

IT IS HEREBY FURTHER ORDERED that, upon the entry of this Order, the United States Attorney General or his designee may conduct discovery to identify, locate and facilitate the disposition of property subject to forfeiture in accordance with Fed. R. Crim. P. 32.2(b)(3).

IT IS FURTHER ORDERED that the Court shall retain jurisdiction in this case for the purpose of enforcing this Order and that pursuant to Rule 32.2(b)(3), this Order of Forfeiture shall become final as to the Defendant at the time of sentencing and shall be made part of the sentence and included in the Judgment; and

IT IS FURTHER ORDERED that the United States may, at any time, move pursuant to Rule 32.2(e) to amend this Order of Forfeiture to substitute property having a value not to exceed \$19,907,431 to satisfy the money judgment in whole or in part. The government is not required to comply with the notice provisions of 21 U.S.C. § 853(n) until such time as any property is seized in satisfaction of the judgment.

SO ORDERED this _____ day of _____, 2019.

ELEANOR L. ROSS
UNITED STATES DISTRICT JUDGE

Presented by:

/s/ Kelly K. Connors
Kelly K. Connors
Assistant United States Attorney