UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	
Plaintiff,	**Civil Action No. 08-1345 (RMC)** **ECF**
v.	
8 GILCREASE LANE, QUINCY FLORIDA 32351, *ET AL.*,	**Plaintiff's Opposition to Emergency Motion for Return of Seized Funds and/or for Evidentiary Hearing**
Defendants.	
Thomas A. Bowdoin, Jr. Bowdoin/Harris Enterprises, Inc. & Adsurfdaily, Inc.	
Claimants.	

PLAINTIFF'S OPPOSITION TO CLAIMANTS' EMERGENCY MOTION FOR RETURN OF SEIZED FUNDS

COMES NOW, plaintiff United States of America, by and through its attorney, the United States Attorney for the District of Columbia, to oppose the Emergency Motion for Return of Seized Funds that several of the current "claimants" to some of the defendant properties have, through their counsel, filed in this case.[1]

[1] An entity known as Adsurfdaily, Inc. (aka "ASD") filed a claim to what it identifies as the approximately $53 million previously held on deposit . . . in accounts in the names of Thomas A. Bowdoin, Jr., sole proprietor, d/b/a Adsurfdaily." See Docket, Document 6-2. But, apparently out of concern about the questionability of a corporation's effort to claim funds that Thomas Bowdoin held in bank accounts he opened and exclusively controlled (for what he told the bank was his "sole proprietorship"), Thomas Bowdoin has also filed a claim indicating that the funds might be his. These inconsistent ownership claims cannot both be true and can be expected to be explored during discovery. In any case, because Bowdoin calls himself ASD's president, secretary, treasurer, and director, for purposes of "their" motion for return of property, Bowdoin and ASD can be treated as *alter egos*.

BACKGROUND

The government brought this Complaint on August 5, 2008. On August 15, 2008, the Court docketed a pleading styling itself as containing verified claims by: (1) Bowdoin/Harris Enterprises, Inc.; (2) Adsurf Daily, Inc.; and (3) Mr. Thomas A. Bowdoin, Jr. The same counsel filed the pleading attaching all three claims.

Civil forfeiture cases are governed by the procedures codified at 18 U.S.C. § 983 and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (particularly Supplemental Rule G). Section 983 sets forth the procedures that a "claimant" within the meaning of subsection 983(a) must satisfy before a Court may release property that has been seized for civil forfeiture. One of those requirements is that the claimant "must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (1) [subsection 983(f)(1)] are met." Neither Bowdoin, nor his lawyers, satisfied this statutory prerequisite. The conditions they now suggest to the Court were never vetted to the government. Nor does Bowdoin's submission here ever discuss the requirements of section 983(f)(1). For this reason alone, this motion could be denied.

Instead, on August 18, 2008, Bowdoin/Harris Enterprises, Inc.; Adsurf Daily, Inc.; and Mr. Thomas A. Bowdoin, Jr., as claimants, fired off an "Emergency Motion For Return Of Seized Funds . . . And Motion To Dismiss" by which Bowdoin asks the Court to release the funds agents seized from his bank accounts because, he says, without "emergency relief[,] the company will soon collapse completely. Its member base, its most important asset, will disappear, and its employees will be out of work." Emergency Motion at 1. Furthermore, says Bowdoin, an emergency exists because "[ASD] has been unable to pay . . . its landlord and is

hurtling down into a steep financial tailspin." Id.

Bowdoin knows from personal experience why ASD's customers will stop paying ASD for advertising services if ASD is unable to use the seized funds to pay the so-called rebates it promised. To secure some of ASD's rebates himself, Bowdoin promoted a bogus website through ASD. Bowdoin explained to the Secret Service that he used the "advertising" he secured from ASD to promote GPS Tech, an unsuccessful business endeavor that had already been dissolved.[2] When Bowdoin (through his attorneys) tells this Court that "[t]he members paid solely for ASD's advertising services" (Emergency Motion at 13), he continues to perpetuate a scheme that provided him with handsome profits.[3]

Most of the remaining twenty pages of Bowdoin's Emergency motion are not just irrelevant to the emergency relief he requests, but utter nonsense. Bowdoin says that he has hired a lawyer named Gerald Nehra, who fashions himself as the country's foremost expert in refuting Ponzi schemes, to prove that ASD was not one. Remarkably, Bowdoin attaches an affidavit from this lawyer to the very same pleading in which Bowdoin says that *his customers will evaporate unless he is permitted to pay them* with the funds they supposedly paid to him for advertising!

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[2] Bowdoin also acknowledged that he modeled ASD after12dailypro, that ASD had no significant income (except maybe a couple thousand dollars) other than what its members paid in (and expected back as rebates). Bowdoin said he was not sure how ASD differed from 12dailypro except, he said, ASD did not guarantee a particular percentage, and its payments were only based on its sales. Bowdoin acknowledged that representations that he had met with the Securities and Exchange Commission (SEC) in Washington, DC, and representations that a team of SEC attorneys that he hired had approved of his operation were made up, as was ASD's representation that Bowdoin had been awarded a Medal of Distinction by President Bush for business acumen.

[3] In the Complaint, the government highlighted some of Bowdoin's recent purchases. Thereafter, Bowdoin told his followers that the lake-front real estate and water toys he bought was for their use when they visited him in Quincy.

Bowdoin concludes his motion by arguing, for several pages, that this Court should provide him with a Franks[4] hearing which, as this Court knows, explores whether his Fourth Amendment rights might have been violated. Apparently, he forgets that this is a civil forfeiture case. See Rule G(8)(a); INS v. Lopez-Mendoza, 468 U.S. 1032, 1039-40 (1984) (noting, in *dicta*, that forfeiture proceedings against forfeitable property are not precluded by an unlawful seizure); United States v. Property, Parcel of Aguilar, 337 F.3d 225, 234 (2d Cir. 2003) (an illegal seizure, standing alone, does not immunize property from forfeiture; it only precludes the Government from introducing evidence gained by the seizure in the forfeiture case).

Bowdoin's only relevant legal discussion is buried in a footnote at the outset of his Emergency Motion. In footnote 1, Bowdoin acknowledges his awareness of 18 U.S.C. § 983(f), the statute that governs all requests for the pre-trial release of property that has been seized for civil forfeiture. See e.g., United States v. Douleh, 220 F.R.D. 391, 396 (W.D.N.Y. 2003) (section 983(f) is the exclusive remedy for seeking pre-trial release of property to avoid a hardship; Rule 41(g) motion dismissed). But, says Bowdoin, this Court should decide his Emergency Motion outside the parameters of section 983(f) because he has crafted conditions that work better for him than the requirements Congress imposed. In short, Bowdoin prays that the Court will ignore applicable law and entrust these funds, instead, to a convicted fraudster.

ANALYSIS

Section 983(f) motions are, by the terms of the statute, limited to cases where pretrial release of seized property subject to civil forfeiture is necessary to prevent substantial hardship. Even then, a court may return property pending its forfeiture only where a claimant seeking

[4] Franks v. Delaware, 438 U.S. 154 (1978).

release establishes that the substantial hardship outweighs the risk that the property will not be available for forfeiture. See e.g., United States v. Undetermined Amount of U.S. Currency, 376 F.3d 260 (4th Cir. 2004) (under section 983(f)(1)(D), court must make three findings: (1) the risk that the property will not be available; (2) the hardship to the claimant; and (3) whether the hardship outweighs the risk)). As shown below, the arguments claimants offer in their section 983(f) motion fall far short of meeting their threshold showing. Moreover, under section 983(f)(8), the balancing test does not come into play because, by statute, no pretrial release of currency, other monetary instruments or electronic funds is available "unless such currency, or other monetary instrument, or electronic funds constitutes the assets of a legitimate business which has been seized." Claimants' business (legitimate or otherwise) has not been seized.

1. The Funds Will Not Be Available For Forfeiture If Released.

In drafting section 983(f), Congress recognized that cash was almost never likely to be available for trial if released pretrial and, therefore, it precluded the release of cash in almost all civil forfeiture cases. See 18 U.S.C. § 983(f)(8); see also United States v. $1,231,349.68 in Funds, 227 F. Supp.2d 125, 129 (D.D.C. 2002) (denying pretrial release of seized cash because the likelihood that it would be unavailable for trial is "almost assured"). In this case, as further discussed in subsection 3, a statutory prohibition bars the requested relief.

But, even were a blanket prohibition inapplicable, rejecting ASD's 983(f) motion should prove easy because ASD concedes that the seized funds will not be available for forfeiture should they be released now. According to ASD, it needs this Court to order the seized funds returned so that ASD can sustain its membership base by paying 125% (and better) "rebates." (This, of course, assumes that a financial institution will agree to do business with Bowdoin/ASD.) In its

emergency motion, ASD acknowledges that the rebates were what induced individuals to purchase so-called ad packages in the first place. In other words, ASD wants the funds so it can pay them out. Emergency Motion at 5 ("seizure . . . prevents ASD from paying all of its general creditors, including the members who wanted to cash out their ASD memberships.").

Of course, a representation that the funds will be transmitted to third parties, ASD's general creditors and so-called customers, flouts ASD's duty under section 983(f)(1)(B) to show that the funds will be available for forfeiture at the time of trial (show to this Court and, even before that, to the government in the request it was obligated by section 983(f)(2) to have submitted to it before charging into a court). Given that ASD intends to dissipate the funds upon their return, the property's unavailability is assured. No alleged hardship outweighs certain dissipation of the defendant *res*.

2. Bowdoin Cannot Demonstrate That A Substantial Hardship Exists.

Within the many pages Bowdoin uses to throw dirt at the government's prosecution of this forfeiture case, Bowdoin actually digs himself into a deeper hole. To this Court, Bowdoin reports that a hardship now exists because, he says, "[i]t is the Government's seizure of ASD's bank accounts which prevents the ASD members from continuing to advertise." Id. at 5. But, Bowdoin fails to explain why a seizure of ASD's sales proceeds would preclude ASD's members from continuing to buy ASD's advertising. One would expect customers to flock to any business that sold a needed and legal service in a cost-effective manner.

Of course, free (and here, better than free) advertising is no "sale" at all. Bowdoin's dilemma is that, without access to the seized money, he cannot pay the rebates that have fostered his ability to expand the base of contributing members. Unless individuals continue to be paid

the profitable rebates Bowdoin has promised to pay to them (on page 5 of his Emergency Motion, Bowdoin calls this "cash[ing] out their ASD memberships"), individuals will not continue to send their money to Bowdoin. When he recognizes that unless ASD is permitted to pay its so-called customers the promised returns, they'll go away, Bowdoin also admits that his business is not to sell advertising.

Bowdoin also insists that he needs the $53 million released to pay rent. Bowdoin's omission of how much rent is due, or to whom rent is due, may be calculated. Bowdoin, or one of the other claimants that he owns or controls, owns one of the office buildings from which ASD operates (after purchasing the old Masonic Temple at 2 North Adams, Quincy FL, for $800,000 cash), and Bowdoin's wife owns the other (her former flower shop at 11 South Calhoun Street, Quincy, FL).

Without much investigation, ASD's attorneys would have known that many of their other "allegations and other factual contentions [lack] evidentiary support," too. See Fed. R. Civ. P. 11(b)(3). For example, Bowdoin recently told his followers that ASD was not a Ponzi because the seized funds were more than adequate to cover the cash-out balances of all the members – with millions to spare. The other story, which he tells this Court, is that litigation lasting even three months will bankrupt ASD (despite its supposed cash surplus). Emergency Motion at 2. In truth, *ASD was insolvent before the funds at issue here were seized*. According to its own records, ASD sold ad packages worth approximately $39 million during the Miami rally, worth over $29 million from the Tampa convention, and worth over $27 million from the Chicago rally. See Exhibit 1. Even without including ad "sales" that occurred over the Internet and the bonuses offered to rally participants, ASD would need assets of more than $118 million to pay

these individuals their 125% return.[5] As many of ASD's followers know, including those individuals with special side agreements, Bowdoin actually promised to return even greater percentages to many of those who agreed to join his flock and promote his get-rich-quick scheme.

Bowdoin tells this Court that ASD is out of money. But he told the Secret Service that an Antigua account (in another name), holds over one million ASD dollars. This Court should require Bowdoin to repatriate those funds before entertaining further discussion of any "emergency."

3. Even If A Balancing Of Equities Were To Cut In Bowdoin's Favor, Section 983(f)(8) Precludes The Relief He Requests.

Under applicable law, Bowdoin has no basis for requesting that the seized funds be returned to him prior to adjudication of their forfeitability. Congress, recognizing that currency other monetary instruments, and electronic funds were the type of property most likely to be dissipated upon return, prohibited the pretrial release of such property – except in cases where a legitimate business was seized (and even then, only after the legitimate business establishes that its hardship outweighs the risk of dissipation or loss). See 18 U.S.C. § 983(f)(8)(A); see also United States v. All Funds Seized from Suntrust Account xxx8359, et al., No. 05-2497 (RMC) (D.D.C. Mar. 17, 2006) (denying section 983(f) motion seeking funds of a business that has not, itself, been seized) (copy attached as Exhibit 2); United States v. Contents of Account

[5] We have received numerous calls, letters and emails from ASD followers who were told by Bowdoin to praise ASD's cost-effective advertising and protest the government's intervention before so-called "rebates" stopped flowing. Few (if any) individuals indicated that they would have purchased ASD advertising without the promised returns, and many believe the money Bowdoin controlled was owned by the members, not him.

4000393242, No. C-1-01-729 (S.D. Ohio Mar. 13, 2002) (under section 983(f)(8), claimant may not seek release of funds seized from bank account unless he establishes that they were funds from a legitimate business that was seized; the reference is to *the seizure of the business*, not to the seizure of the funds) (copy attached as Exhibit 3); $1,231,349.68 in Funds, supra, 227 F. Supp.2d at 129 (recognizing that claimants must prove legitimacy of business and denying pretrial release of seized cash).

In this case, the government seized cash from the bank accounts of an individual. But even if the funds belonged to a business, the government did not seize the business, itself. Because the business was not seized, any effort on Bowdoin's part to establish that the seized funds constitute assets of a *legitimate* business is, at this stage, irrelevant.

Ultimately, alongside Bowdoin's recent admission that he needs the seized funds to keep the membership base from evaporating, Bowdoin's acknowledgment that ASD had almost no revenue independent of what its members pay, and Bowdoin's knowledge that ASD was selling income streams, not advertising, his truthful Answer to the Verified Complaint should support a motion for judgment on the pleadings in favor of the government.

CONCLUSION

For the foregoing reasons, the United States respectfully submits that Bowdoin's/ASD's Emergency Motion for the Return of Seized Funds should be DENIED.

Respectfully submitted,

_/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Opposition to be served by means of the Court's ECF system on this 25th day of August 2008 upon claimants' counsel of record.

_/s/_____
William R. Cowden

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	)	
Claimants.	)	

O R D E R

Upon consideration of claimants' Emergency Motion for Return of Seized Funds, the Opposition thereto, and the entire record herein, it is this _____ day of _____, 2008

HEREBY Ordered that claimants' motion is DENIED.

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ROSEMARY M. COLLYER
United States District Judge