

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA**

**CIVIL ACTION**

**VERSUS**

**NO: 08-0286**

**ERIN SCHMIDT, KEITH NUNEZ,  
AND MICHAEL O'KEEFE, SR.**

**SECTION: "S" (5)**

**ORDER**


**IT IS HEREBY ORDERED** that the United States of American's "Motion for Reconsideration," pursuant to Federal Rule of Civil Procedure 59(e), of the denial of the motion for summary judgment against Keith Nunez or, alternatively, for reconsideration of the quantum of damages awarded against Erin Schmidt, is **DENIED**. (Document #93.)

The evidence does not establish that Keith Nunez had dominion or control over the funds deposited in the account in his name in the Whitney Bank or that he had the right to put the transferred funds to his own purpose. The government's assertion that Nunez could have ignored O'Keefe and others and spent the money is speculative and inconsistent with the facts before the court.

Moreover, the government seeks a remedy against Schmidt in its Rule 59(e) motion that

it could have raised prior to the judgment.<sup>1</sup> Instead of seeking the full amount, the motion for summary judgment sought a judgment against Schmidt of \$27,770.88, plus interest, costs, and expenses, not the \$92,645.55 that was placed in the Whitney account. The government may not raise this issue in a Rule 59(e) motion. See Mincey v. Head, 206 F.3d 1106, 1137 (11<sup>th</sup> Cir. 2000).

New Orleans, Louisiana, this 13<sup>th</sup> day of January, 2010.

  
MARY ANN VIAL LEMMON  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> It is noteworthy that O’Keefe was sentenced in 1999, but the United States did not file applications for writs of execution against the Whitney and Capital One bank accounts until December 13, 2007, and a civil complaint against the defendants until January 10, 2008.