

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

17cv0427
ELECTRONICALLY FILED

\$19,952.00 IN UNITED STATES
CURRENCY, \$26,000.00 IN UNITED
STATES CURRENCY
Defendants,

KURT FLODINE,
Claimant.

MEMORANDUM ORDER

Before the Court is a Motion to Strike Claim filed by the Government (ECF 8) in this forfeiture action. The Claimant had until July 12, 2017 to respond to the Motion to Strike. See Court order filed at ECF 10. Claimant, Kurt Flodine, did not respond.

For the reasons set forth below, the Court will grant the Motion to Strike.

I. Background

The United States Government filed a Complaint for Forfeiture pursuant to 28 U.S.C.A. § 881(a)(6). In its Complaint, the Government seeks forfeiture of \$19,952.00 USD and \$26,000.00 USD. The first amount (\$19,952.00) was seized by law enforcement officials when they were called to the apartment of an unconscious male on July 25, 2016. The unconscious male, Kyle Flodine, was found deceased in the apartment, but when the officers were in the apartment, they observed marijuana plants, baggies, electronic scales, and other drug paraphernalia in plain view. The officers then obtained a search warrant for the apartment, and

upon its execution, they recovered “significant amounts of material used to process, weigh, package, and brand heroin for illegal distribution.” ECF 1, ¶ 6. The officers also recovered and seized \$19,952.00 in United States currency from the apartment.

On October 27, 2016, law enforcement officers went to the home of Eileen Flodine, Kyle Flodine’s grandmother, to investigate the death of Kyle. Eileen Flodine resided with her three adult sons, one of which, Kurt Flodine (“Kurt”), is the father of Kyle. Kurt granted permission to the officers to search his bedroom in the home, and during this search the officers recovered “26 bundles of currency wrapped in black rubber bands, later determined to total \$26,000.00.” Id. at ¶ 13.

With respect to both amounts of money, the smell of marijuana was present on the currency, law enforcement conducted canine scans of the seized currency, and the drug dogs alerted to the presence of a controlled substance.

In addition, Kurt admitted to law enforcement officials that he and his son, Kyle, would often exchange money and he “acknowledged that the \$26,000.00 in United States currency may contain illegal drug proceeds.” Id. at ¶ 17. Kurt also acknowledged that Kyle had previously stored \$12,000.00 in United States currency at Eileen’s home. Id. at ¶ 18.

Based on these facts, the Government filed its Complaint for Forfeiture (ECF 1) and contends that these proceeds (the \$19,952.00 and the \$26,000.00) constitute moneys furnished or intended to be furnished by any person in exchange for a controlled substance and/or moneys used or intended to be used to facilitate any violation of the Controlled Substances Act.

In response to the Complaint, Kurt filed a claim for the proceeds (ECF 5) and an Answer to the Complaint (ECF 6), wherein he claimed that he was entitled to the \$19,952.00 and the \$26,000.00. In support of his claim, Kurt argued that he was entitled to recover the \$19,952.00

amount, because this amount was found in his son's apartment and he is the executor of his son's estate. Kurt's claim further contends he is entitled to recover the \$26,000.00 amount because it is his own property. Kurt also filed an Answer to the Complaint for Forfeiture. ECF 6.

The Government filed a Motion to Strike Claim (ECF 8), and in its Brief in Support of its Motion claimed that Kurt lacks standing to file a claim for the currency at issue. ECF 9.

II. Standard of Review

To establish statutory standing in a forfeiture action, a potential claimant must comply with both the statutory and procedural requirements delineated in 18 U.S.C. § 983(a)(4)(A) and the corresponding Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions ("Supplemental Rules"), specifically Rules G(5)(a)(i).

In pertinent part, 18 U.S.C. § 983(a)(4)(A) provides:

In any case in which the Government files in the appropriate United States district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims, except that such claim may be filed not later than 30 days after the date of service of the Government's complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the complaint.

In addition, Supplemental Rule G(5)(a)(i) states:

A person who asserts an interest in the defendant property may contest the forfeiture by filing a claim in the court where the action is pending. The claim must: (A) identify the specific property claimed; (B) identify the claimant and state the claimant's interest in the property; (C) be signed by the claimant under penalty of perjury; and (D) be served on the government attorney designated under Rule G(4)(a)(ii)(C) or (b)(ii)(D).

Finally, Supplemental Rule C(6) indicates in pertinent part:

(a) Statement of Interest; Answer. In an action in rem:

(i) a person who asserts a right of possession or any ownership interest in the property that is the subject of the action must file a verified statement of right or interest:
(A) within 14 days after the execution of process, or
(B) within the time that the court allows;

(ii) the statement of right or interest must describe the interest in the property that supports the person's demand for its restitution or right to defend the action;

III. Discussion

At issue here, is whether Claimant sufficiently identified his ownership interest in one or both sums of money described above, through either his Claim or his Answer. There are different views on the amount of information that is necessary to satisfy a claim of ownership. Moreover, Supplemental Rules G(5)(a)(i)(B) is silent as to the amount of information necessary to satisfy a claim of ownership.

Some courts have held that a simple claim of ownership will suffice. *See, e.g., U.S. v. \$191,910.00 in U.S. Currency*, 16 F.3d 1051, 1058 (9th Cir. 1994) (“a simple claim of ownership will be sufficient to create standing to challenge a forfeiture”), *superseded by statute on other grounds as stated in U.S. v. \$80,180.00 in U.S. Currency*, 303 F.3d 1182, 1184 (9th Cir. 2002); *U.S. v. \$40,000 in U.S. Currency*, 763 F.Supp. 1423, 1427 (S.D. Ohio 1991) (holding that potential claimant “need not supply facts” in identifying ownership interest and that such information “become[s] important later in a forfeiture proceeding”); *U.S. v. \$80,760.00 in U.S. Currency*, 781 F.Supp. 462, 467 n. 15 (N.D. Tex. 1991) (stating that a demand “that claimants show a legitimate source [explaining their interest in the property] for the purpose of establishing standing improperly accelerates the claimants’ ultimate burden”).

However, the United States Court of Appeals for the Third Circuit has held that a purported verified claim was deficient because it “contain[ed] no description of [potential claimant’s] interest in the property, which Rule C(6) requires.” *U.S. v. \$487,825.000 in U.S. Currency*, 484 F.3d, 662, 665 (3d Cir. 2007).

Turning to the instant case, and applying Supplemental Rules G(5)(a)(i) and C(6), the Court concludes that Kurt’s only support for his claim to the \$19,952.00, which was seized from his son’s apartment, is that he is the executor of son’s estate and the father of the decedent. Kurt’s familial relationship with the decedent and his position as executor over his son’s estate fall short of providing the Court with any factual basis as to how Kurt and/or his son has or had any legal interest in the first sum of money – \$19,952.00. As such, Kurt has failed to comply with the statutory requirements under G(5)(a)(i) and/or C(6). *See, i.e., U.S. v. \$487,825.000 in U.S. Currency*, 484 F.3d, 662, 665 (3d Cir. 2007) (holding that a purported verified claim was deficient because it “contain[ed] no description of [potential claimant’s] interest in the property, which Rule C(6) requires.”); and *U.S. v. \$39,557.00 More or Less, in U.S. Currency*, 683 F.Supp. 2d 335, 339 (D.N.J. 2010) (a “claim” fails to sufficiently identify [claimant’s] interest in the currency, instead offering a bald assertion of ownership).

Next, Kurt alleges that the \$26,000.00 which the police recovered from his, his brothers’, and his mother’s residence “was earned and saved” by him, not his son, Kyle, and he claims it was “not contraband.” ECF 5. These bald allegations with nothing more are insufficient to preserve his claim.

As summarized by the United States District Court for the District of New Jersey:

To perfect Article III standing, a potential claimant must demonstrate ownership or interest in the money sufficient to create a “case or controversy.” *In re Friko Corp.*, 971 F.2d at 984. The potential claimant bears the burden of proving ownership by a preponderance of the

evidence. See Supp. R. G(8)(c)(ii)(B). To create a “case or controversy” the potential claimant must demonstrate a colorable interest in the money. *Munoz–Valencia v. U.S.*, 169 Fed.Appx. 150, 152 (3d Cir. 2006). A colorable interest is established where a potential claimant exercises dominion or control over the property. *Id.* Physical possession of the property alone does not necessarily constitute dominion or control. *Id.*

Here, Kurt has failed to demonstrate a colorable interest in the seized money sufficient to confer Article III standing. First, the money’s location – in his, his brothers’, and mother’s residence – is not sufficient, especially in light of the fact that Kurt told police he and his son would “exchange money” and that the \$26,000.00 could “contain illegal drug proceeds.” ECF 1. In addition, the \$26,000.00, which smelled of marijuana and was found bundled and wrapped in black rubber bands (indicative of how drug proceeds are separated and stored), caused a trained narcotics canine to alert to the presence of a controlled substance. ECF 1. This information weighs against Kurt’s allegations that he “earned” these proceeds and “saved” them in a black leather shaving bag in his bedroom.

IV. Conclusion

Based on the foregoing law and authority, the Court finds that the claim of Kurt Flodine shall be struck for want of statutory standing and Article III standing.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

ORDER OF COURT

AND NOW, this 20th day of July, 2017, upon consideration of the United States' Motion to Strike Claim, ECF 8, and given that Claimant failed to file a Response, it is hereby ORDERED that the United States' Motion is GRANTED; and it is FURTHER ORDERED that the Claim filed by Kurt Flodine is dismissed with prejudice.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All ECF Registered Counsel of Record
and
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