United States Of America v. $670,706.55 SEE ORDER #75 re FILINGS FROM RHONDA FLEMING Doc. 82

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	CIVIL ACTION H-05-718
	§	
$670,706.55 (SIX HUNDRED SEVENTY THOUSAND SEVEN HUNDRED SIX DOLLARS AND FIFTY CENTS, et al.,	§	
	§	
Defendants.	§	

OPINION AND ORDER

Pending before the Court in the above referenced action for forfeiture in rem is Movant-Petitioner Rhonda Fleming's request for permission[1] to submit motion to void forfeiture under Rule 60(b)(4)(instrument #81).

The forfeiture of Fleming's property pursuant to 18 U.S.C. § 981(a)(1)(C) and § 981(a)(1)(A) was based on her convictions for health care fraud, wire fraud, and money laundering in activities that defrauded Medicare. Her present motion argues that in *Skilling v. United States*, 130 S.Ct. 2896 (2010) the United States Supreme Court not only held that 18 U.S.C. § 1346, addressing honest services fraud, was unconstitutionally vague unless limited to bribery and kickback schemes, but it simultaneously limited in the same way 18 U.S.C. §§ 1343 (addressing wire fraud) and 1347

[1] This Court had previously ordered Fleming to obtain permission from the Court before filing any documents (#75).

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(addressing healthcare fraud). She contends that the Government never presented evidence that the forfeiture of her property was based on convictions that involved bribery or kickbacks and therefore asks permission to file a motion to set aside the forfeiture and return her property to her.

Fleming has misunderstood the Supreme Court's ruling, which dealt only with the provision addressing the intangible right of honest services under 18 U.S.C. § 1346, which in turn had nothing to do with Fleming's conviction or forfeiture. Accordingly, because her argument to void her forfeiture lacks merit as a matter of law, the Court

ORDERS that Fleming's motion for permission to submit a motion to void forfeiture (#81) is DENIED.

SIGNED at Houston, Texas, this 3rd day of ~~July~~ August, 2010.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE