| **Vance v Polyakov** |
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| 2015 NY Slip Op 31772(U) |
| September 16, 2015 |
| Supreme Court, New York County |
| Docket Number: 452927/14 |
| Judge: Martin Shulman |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

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CYRUS R. VANCE, JR.,
District Attorney for the County of New York,
as Claiming Authority,

Index No. 452927/14

Plaintiff,

**Decision & Order**

-against-

Vadim Polyakov, Daniel Petryszyn, Laurence Brinkmeyer, Bryan Caputo, Christopher Rivera and Pallavi Yetur,

Defendants.

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**HON. MARTIN SHULMAN, J.S.C.**

Plaintiff, Cyrus R. Vance, Jr., District Attorney for the County of New York, as Claiming Authority ("plaintiff" or "DA"), commenced this CPLR Article 13-A civil forfeiture action against the above-named defendants seeking the forfeiture of $1,859,000 of the criminal defendants'[1] assets as well as forfeiture of certain specifically identified financial accounts in the names of the criminal defendants and/or non-criminal defendants. The verified complaint alleges that these assets constitute the proceeds, substituted proceeds and/or instrumentalities of the criminal defendants' alleged felony crimes.[2]

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[1] Defendants Polyakov, Petryszyn, Brinkmeyer and Caputo are named as criminal defendants in this action. Defendant Yetur is named as a non-criminal defendant. Plaintiff discontinued this action against non-criminal defendant Rivera.

[2] Each of the criminal defendants is variously charged with differing degrees of money laundering and criminal possession of stolen property. Defendant Polyakov is also charged with grand larceny and identity theft.

This action arises from the criminal defendants' alleged participation "in an international cybercrime ring that allegedly took over StubHub, LLC ("StubHub")[3] user accounts, stole personal identifying information, used stolen credit card information to purchase tickets to shows, sporting events and other entertainment events offered on the StubHub website, sold the tickets to others and transferred the proceeds to themselves and to third parties in the United States, United Kingdom, Germany and elsewhere." See Goodman Aff. in Supp. at ¶2. Through their alleged actions, the DA contends that from December 2012 through March 2014 the criminal defendants "unlawfully obtained event tickets through StubHub valued at approximately $1,859,000" and moved the proceeds therefrom into and out of various financial accounts in their names and those of the non-criminal defendants. *Id.*

The DA moves by order to show cause ("OSC") seeking an order of attachment pursuant to CPLR §§ 1312 and/or 1316 and discovery in aid of attachment pursuant to CPLR §1326. On December 11, 2014, this court issued a temporary restraining order ("TRO") restraining and enjoining defendants and any garnishees "from transferring, assigning, disposing of, encumbering, or secreting" their assets pending the hearing of the OSC.

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[3] Meredith Foster ("Foster"), an analyst within the DA's Cybercrime and Identity Theft Bureau, states in her affidavit in support of plaintiff's OSC that: "Stub Hub LLC is an eBay, Inc. subsidiary that operates a public website and digital marketplace through which members of the general public may buy and sell tickets to various entertainment events." Foster Aff. at ¶ 6, Exh. C to OSC.

Defendants Petryszyn and Brinkmeyer (collectively "defendants") oppose the DA's OSC and cross-move[4] pursuant to CPLR §1312(4) to modify the TRO to release restrained funds for the payment of bona fide attorney's fees.[5] Plaintiff opposes the cross-motions.

**PLAINTIFF'S OSC**

As previously discussed in this court's interim order, CPLR §1312(3) provides in pertinent part that a provisional remedy may be granted where:

> (a) there is a substantial probability that the claiming authority will prevail on the issue of forfeiture and that failure to enter the order may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise be unavailable for forfeiture;
>
> (b) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order may operate; . . .

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[4] Brinkmeyer's cross-motion also requests the release of funds for the payment of reasonable living expenses, however, this branch of his cross-motion was resolved by stipulation dated March 3, 2015 (NYSCEF Doc. No. 32). Petryszyn and plaintiff entered into a similar stipulation, also dated March 3, 2015, with respect to the payment of reasonable living expenses (NYSCEF Doc. No. 31). Under paragraph 4(o) thereof, it is agreed that "Legal Fees in the amount of $2500 monthly" are "reasonable and necessary".

[5] While no opposition has been interposed on Caputo's behalf, this court notes that the DA and Caputo have entered into two stipulations permitting *inter alia* the release of funds for the payment of certain agreed upon living expenses. As to non-criminal defendant Yetur, this court previously issued an interim decision and order dated April 1, 2015 ("interim order") addressing her opposition to the OSC. Specifically, Yetur challenged the continued restraint of her bank account jointly held with her husband, co-defendant Petryszyn. As to her, this court denied the portion of the DA's OSC seeking an order of attachment with respect to the joint account without prejudice and continued the TRO, finding that an order of attachment was premature since the subject account had already been seized pursuant to a search warrant.

See also, *Morgenthau v Citisource, Inc.*, 68 NY2d 211, 218 (1986). In opposition to the OSC, defendants argue that the DA's request for provisional relief should be denied because plaintiff cannot meet the foregoing statutory requirements.

**Substantial Probability of Prevailing on the Issue of Forfeiture**

While defendants do not specifically address plaintiff's probability of prevailing on the issue of forfeiture, as the DA observes, their opposition attacks the sufficiency of plaintiff's proof, particularly with respect to defendants' purported knowledge as to the legitimacy of the tickets at issue. This court is persuaded by virtue of the grand jury indictment that plaintiff has satisfied its burden of demonstrating a likelihood of prevailing in this forfeiture action. *Morgenthau v A.S. Goldmen & Co., Inc.*, NYLJ, October 4, 1999, at 28, col. 4, *affd* 283 AD2d 212 (1st Dept 2001). The fact that an indictment is filed against a defendant is influential and often determinative of the issues of substantial probability of success, if combined with other facts indicative of the defendant's guilt and the strength of the claiming authority's case. *Pirro v Schaible*, NYLJ September 17, 1998, at 17, col. 6 (Sup Ct, Westchester County).

In determining whether to grant the DA provisional relief and as noted in *Morgenthau v Vinarsky*, 21 Misc3d 1137A, 875 NYS2d 821 [*3-4] (Sup Ct, NY County 2008), this court is not required to test the sufficiency of the indictment, but can otherwise weigh the adequacy of:

> [a]n . . . [i]ndictment regular on its face [which] must be presumed to have been properly returned by the Grand Jury. *People v Smith*, 128 NYS2d 90, *aff'd* 283 AD 775, 129 N.Y.S2d 492 [1st Dept 1954]. Furthermore, Grand Jury proceedings carry a presumption of regularity and to overcome that presumption, there must be a showing by the defendant of a particular need or gross and prejudicial irregularity in the proceedings or

> some other similarly compelling reason. *People v Lewis*, 98 AD2d 853, 470 NYS2d 834 [3rd Dept 1983] . . . (bracketed matter added).

*See People v Connolly*, 28 Misc3d 1117A, 856 NYS2d 500 (Sup Ct, Seneca County 2008).

Under these circumstances, the indictment coupled with the detailed affidavits of Foster and Michael Vecchio ("Vecchio"), a Principal Financial Investigator within the DA's Forensic Accounting and Financial Investigations Bureau (Exh. D to OSC), sufficiently describe the crimes charged and meet the DA's burden of showing a likelihood of prevailing on the issue of forfeiture. See *Morgenthau v Vinarsky*, 72 AD3d 499 (1st Dept 2010) (criminal indictment, assistant district attorney's affirmation and police detective's affidavit demonstrated substantial probability that claiming authority would prevail on forfeiture).

**Availability of Property for Forfeiture**

Defendants argue that plaintiff fails to establish that an order of attachment is necessary to ensure that funds will be available for forfeiture. Plaintiff claims to have met this burden by citing: (1) defendants' alleged frequent movement of proceeds among numerous bank accounts; (2) email exchanges indicating their willingness to launder money and deal in fraudulently obtained tickets; and (3) defendants' purported contacts, means and motive to conceal their assets. In response, both defendants claim: (1) any transfers they made were routine transfers between linked accounts in their own names with no evidence of an intent to hide; (2) their emails show they were unwilling to deal in fraudulently obtained tickets, with Brinkmeyer even guaranteeing the legitimacy of any tickets he sold by offering a 100% refund to purchasers; and (3) any

foreign transfers were made at Polyakov's direction and for his benefit to individuals neither defendant knew.[6]

As the DA observes and as this court reiterated in the interim decision, "[a] high degree of proof is not necessary to demonstrate that the failure to enter the order may result in the property being destroyed or otherwise unavailable for forfeiture." *Kuriansky v Natural Mold Shoe Corp.*, 133 Misc2d 489 (Sup Ct, Westchester Cty, 1986).[7] No actual assignment or dissipation of the property is necessary. *Holtzman v Samuel*, 130 Misc2d 976 (Sup Ct, Kings County, 1985).

In reply, plaintiff further posits that the criminal court, in setting the amount for defendants' bail, deemed each to be a flight risk. While each defendant's bail was ultimately reduced, for Petryszyn the criminal court added the additional requirement of a secured electronically monitored bracelet. Based upon the foregoing, the DA urges that it is reasonable for this court to conclude that defendants' "funds are also at risk of flight." Goodman Reply Aff. at ¶¶14-15.

Here, considering the nature of the criminal charges (e.g., money laundering and possession of stolen property), namely the fraudulent and deceptive nature of the alleged crimes, as well as defendants' facility at moving funds, it is more likely than not

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[6] Brinkmeyer denies initiating any foreign transfers at Polyakov's direction.

[7] Defendants also argued that since the DA is already in possession of all or most of their assets which were seized pursuant to search warrants the criminal court issued on July 2, 2014, it is impossible for these assets to be dissipated or removed from the court's jurisdiction. However, the DA subsequently advised this court that the criminal court had issued an order dated December 17, 2014 releasing the seized accounts so that custody and ownership of same could be determined in the context of this forfeiture action, thus rendering this argument moot.

that defendants may well seek to dissipate assets that could help satisfy a potential judgment. Accordingly, plaintiff meets his burden of showing that failure to enter the order may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise be unavailable for forfeiture.

**Hardship to Defendants**

The DA argues that the need to preserve assets for forfeiture outweighs any potential hardship to defendants, reasoning that defendants have no rightful claim to the restrained funds and in any event, can request the release of funds pursuant to CPLR §1312(4) for reasonable living expenses and attorney's fees, which they have done (see discussion *infra*). Citing *Morgenthau v Citisource, Inc.*, 68 NY2d at 223, defendants argue their constitutional right to hire counsel of their choice is a hardship this court must consider in weighing the need for a provisional remedy and the hardship on them from being unable to pay for counsel of their choice outweighs plaintiff's need to preserve the availability of property by means of an order of attachment, particularly where Stub Hub, the victim, presumably recovered the money it lost through insurance claims. Plaintiff replies by noting that the amount of funds located and restrained thus far comprises only a small fraction of Stub Hub's total out of pocket losses[8] and that defendants "have spent the last few years enjoying the money they made through the sale of illegal tickets." Goodman Reply Aff. at ¶18.

At the outset, this court notes that the Court of Appeals in *Morgenthau v Citisource, Inc.*, *supra*, has held that Article 13-A's statutory scheme on its face does

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[8] Plaintiff's counsel indicates that $171,609.46 in Petryszyn's assets and $16,399.88 in Brinkmeyer's assets have been restrained. Goodman Reply Aff. at ¶2.

not violate the Sixth Amendment right to counsel. *Id.* at 223. Moreover, financial disclosure of a criminal defendant's assets is required in order for the court to be in a position to weigh the parties' conflicting needs and safeguard their competing interests. *Kuriansky v Bed-Stuy Health Care Corp.*, 135 AD2d 160, 173-174 (2d Dept), *affd* 73 NY2d 875 (1988) (court was unable to determine whether defendants were deprived of their right to counsel because they failed to provide evidence of their financial condition).

Here, Brinkmeyer and Petryszyn both submitted financial disclosure affidavits to plaintiff. The DA has not raised any objections to the sufficiency of such disclosure and they appear to the court to be complete. Both defendants' financial disclosure statements indicate that their liabilities exceed their assets. Defendants thus establish, and the DA does not dispute, that no unrestrained assets are available to them to pay for their legal representation.

Notwithstanding the foregoing, this court must conclude that any hardship to defendants from being unable to retain their counsel of choice is outweighed by the possibility that assets may become unavailable for forfeiture if attachment is not granted. As elaborated in *Kuriansky v Bed-Stuy Health Care Corp.*, 135 AD2d at 174:

> The Sixth Amendment right to counsel includes a right to retain counsel of choice by one who is financially able to do so. However, the right to counsel of choice is qualified and can be outweighed by countervailing government interests, or "when required by the fair and proper administration of justice". (Internal citations omitted).

In *People v Jackson*, 138 Misc2d 1015, 1017 (County Ct, Nassau 1988), the court acknowledged that the attached assets were the defendants' only means of paying their

retained attorneys. Nonetheless, the court found that the claiming authority's establishment of a substantial probability of success on the merits and that assets were readily movable from the jurisdiction "far outweigh[ed]" defendants' right to counsel of their choice and specifically rejected defendants' claim that the attachment violated their Sixth Amendment rights. *Id.* Citing *Kuriansky v Bed-Stuy Health Care Corp.*, *supra*, that court reasoned that "[n]either the United States Constitution nor the New York Constitution establishes a constitutional right to retain a particular attorney of the defendant's chosing [sic]." *Id.*

In light of the foregoing authority, and given the disparity between the amount sought to be forfeited and the amounts presently restrained, this court must conclude that the balance of hardships favors the plaintiff. Defendants' rights to obtain restrained funds for the payment of legal fees are statutorily safeguarded, as evidenced by their cross-motions for such relief pursuant to CPLR §1312(4), discussed *infra*.

For all of the foregoing reasons, this court grants plaintiff's OSC seeking an order of attachment (CPLR §1316). As to defendant Caputo, the OSC is granted without opposition. As to non-criminal defendant Yetur, in light of the criminal court's December 17, 2014 order releasing accounts seized pursuant to search warrants, issuance of an order of attachment against her is no longer premature, as this court's interim order previously found. Plaintiff is directed to submit an appropriate proposed order for this court's signature.

## DEFENDANTS' CROSS-MOTIONS

In the event this court grants the DA's OSC defendants cross-move pursuant to CPLR §1312(4) to modify the TRO to release restrained funds for the payment of bona fide attorney's fees. CPLR § 1312(4) provides as follows:

> Upon motion of any party against whom a provisional remedy granted pursuant to this article is in effect, the court may issue an order modifying or vacating such provisional remedy if necessary to permit the moving party to obtain funds for the payment of reasonable living expenses, other costs or expenses related to the maintenance, operation, or preservation of property which is the subject of any such provisional remedy or **reasonable and bona fide attorneys' fees and expenses for the representation of the defendant in the forfeiture proceeding or in a related criminal matter relating thereto, payment for which is not otherwise available from assets of the defendant which are not subject to such provisional remedy**. Any such motion shall be supported by an affidavit establishing the unavailability of other assets of the moving party which are not the subject of such provisional remedy for payment of such expenses or fees. (Emphasis added).

In support of their cross-motions, defendants rely upon their previously addressed argument that restraint of their assets impinges upon their Sixth Amendment right to counsel of their choice. As determined above, defendants have established via their unchallenged financial disclosure statements that they have no unrestrained assets from which to pay legal fees. To prevail on their cross-motions, defendants must further establish that their legal fees and expenses are reasonable and bona fide.

Defendants also preemptively address this court's long standing requirement[9] that a legitimate source be established prior to releasing restrained funds. Though they

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[9] See, e.g., *District Attorney, New York County v Efargan*, 12 Misc3d 1186(A), 2006 WL 2066685, at *2; *Vance v Haggerty*, 2011 WL 3020868; and *Vance v Flouras*, 2013 WL 1934375, at *3.

respectfully disagree with this court's position and cite case law expressly rejecting it,[10] they nonetheless attempt to establish that funds deposited into certain of their restrained accounts are derived from legitimate sources.

**Brinkmeyer**

Brinkmeyer alleges his family loaned him $25,000 to initially retain counsel to represent him in the criminal matter, however, his counsel avers that this amount will not cover the extensive discovery review this case requires.[11] Counsel further summarizes her firm's fee arrangement with Brinkmeyer as including a fixed pretrial fee and a cap on weekly trial fees, plus additional costs and expenses associated with retaining experts and/or consultants. See Richman Aff. in Opp. to OSC and in Support of Cross Motion at ¶ 60. Brinkmeyer states in his affidavit (*id.* at Ex. D) that his pretrial legal fees are estimated to be $75,000.

Brinkmeyer's cross-motion specifically requests that his TD Bank account number ending in 6806 and containing approximately $17,288 be released. With respect to this bank account, counsel for the parties subsequently stipulated that: the account would be used for the deposit of Brinkmeyer's current and future employment income; Brinkmeyer would be permitted to withdraw up to $2,864 per month to cover

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[10] See the unpublished decision and order dated March 14, 2014 in *Schneiderman, et al v Costa, et al*, Suffolk County Index No. 00682-12 (Collins, J.S.C.), at Ex. F to Lefcourt Aff. in Opp. to OSC and in Supp. of Cross Motion.

[11] Both defendants' cross-motions indicate that the prosecution has requested a three terabyte hard drive on which to provide discovery, consisting of thousands of emails and computer chats, bank and financial records, photographs and social media records. The DA has further obtained a protective order with respect to these materials prohibiting defendants from reviewing same independent of counsel.

reasonable living expenses listed therein; and the account was to remain restrained up to $2,500 per month. See NYSCEF Doc. No. 32. Under the stipulation, legal fees were to be "determined separately." Finally, Brinkmeyer notes that Vecchio's affidavit itself indicates at paragraph 8(b) that monies unrelated to the charged crimes totaling more than $46,000, and presumably from legitimate sources (i.e., other ticket sale websites), were deposited into Brinkmeyer's restrained accounts.

**Petryszyn**

Petryszyn's counsel attests that, after obtaining a $50,000 retainer for the criminal matter, his firm significantly reduced their customary hourly fees by agreeing to a fixed pretrial fee and a cap on the weekly trial fee, in addition to costs attendant to experts and consultants. To date, defense counsel has been paid $225,000 and Petryszyn's cross-motion requests the release of $100,000.[12] His counsel submits that this is reasonable "in light of the amount of information the prosecution intends to produce in discovery, the current limitations on the manner in which those materials can be reviewed, the seriousness of the charges, and significant fee reduction" given to Petryszyn. Finally, Petryszyn's own affidavit details that more than $400,000 in legitimate funds were deposited into his now restrained accounts. See Ex. D to Lefcourt Aff. in Opp. to OSC and in Supp. of Cross-Motion, at ¶¶ 19-21.

In opposition to both defendants' cross-motions, the DA argues that funds should not be released because:

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[12] See Lefcourt February 23, 2015 affirmation at ¶23, and Ex. A thereto. In subsequently submitted affirmations containing Petryszyn's counsel's billing records, only $50,000 is requested to be released forthwith, representing the balance owed towards Petryszyn's counsel's $275,000 pretrial retainer fee.

- the amount of allegedly illicit funds deposited into defendants' previously seized accounts, as detailed in Vecchio's supporting affidavit (Ex. D to OSC), exceeds the balance of each account at the time of seizure;

- the total amount of funds restrained thus far is significantly less than Stub Hub's $1,859,000 loss;

- defendants presently have the ability to earn income to pay attorney's fees and the DA has agreed to permit them to use reasonable amounts of future income;

- both defendants are married and their spouses are employed; and

- defendants have not provided sufficient supporting information (to wit, counsels' billable hourly rates, outstanding bills, etc.) and as such no determination can be made as to what fees are reasonable and bona fide.[13]

Petryszyn's counsel responds as follows (see Lefcourt Aff. in Reply dated February 10, 2015):

- the DA improperly attempts not to disgorge defendants' profits, which is the purpose of forfeiture, but rather seeks to compensate Stub Hub for its losses, which is the purpose of restitution pursuant to Penal Law § 60.27 (in other words, Petryszyn did not obtain profits totaling $1,859,000);

- Petryszyn has no other sources of income - his fledgling business does not yet generate any income, he is no longer able to obtain rental income through AirBNB (as divulged in his financial disclosure statement [Ex. C to Lefcourt Aff. in Opp. to OSC & in Supp. of Cross-Motion]) and his wife's income, which should not be considered because she is not responsible for payment of her husband's legal fees, is being used for living expenses; and

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[13] This court permitted further written submissions from defendants on this point and allowed the DA to respond. Petryszyn's counsel subsequently submitted five affidavits with unredacted billing records for this court's *in camera* review dated February 23, 2015, April 17, 2015, May 18, 2015, June 18, 2015 and August 18, 2015. Redacted versions of these affidavits and billing records were served on plaintiff's counsel. Brinkmeyer's counsel submitted no further papers on this round of motion practice.

- the fees sought are reasonable based upon counsels' experience and are comparable to what other attorneys having similar credentials and experience charge.

Plaintiff responds to the foregoing reply, as well as defense counsel's February 23, 2015 affirmation detailing the legal services rendered to Petryszyn as of that date, by arguing defense counsel's billable hourly rates are excessive[14] and the bills reflect charges for duplicative work and non-attorney tasks. It is the DA's position that the issues thus far have not been particularly complex and do not justify the amounts billed.

**Reasonableness of Fees**

At the outset, Brinkmeyer fails to meet his burden of establishing that the legal fees he seeks to pay with restrained funds are reasonable and bona fide. Despite the relatively modest sum of money requested (approximately $17,000), such amount represents the entirety of Brinkmeyer's funds which plaintiff has restrained.[15] Further, no supporting documentation was ever submitted to establish whether the amount sought is reasonable and bona fide. For instance, there is no information regarding Brinkmeyer's counsel's hourly rate nor have any billing records been supplied. The absence of sufficient supporting documentation mandates the denial of Brinkmeyer's application, without prejudice to a further application.

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[14] Defense counsel is billing Petryszyn at the hourly rates of $750 for partners, $550 for associates and $125 for paralegals. Plaintiff contends the maximum rate per hour should be $350 for partners and $300 for associates. See Goodman Aff. in Response to Lefcourt Aff. at ¶ 5.

[15] According to the DA, $16,399.88 in Brinkmeyer's assets have been restrained. See Goodman Reply Aff. at ¶2.

As to Petryszyn, as of August 18, 2015 (the date of his counsel's last affirmation and billing statements), a total of $308,692.17 has been billed through July 31, 2015 in the defense of both the criminal and civil actions, $104,945.52 of which was billed in the defense of this civil forfeiture action, leaving $203,746.65 billed for Petryszyn's criminal defense. Lefcourt Aff. dated August 18, 2015 at ¶¶ 11-12. Having been paid $225,000, defense counsel tallies Petryszyn's outstanding balance due as $83,692.17, an amount less than the $100,000 initially requested to be released but in excess of the $50,000 needed to satisfy the $275,000 pretrial retainer fee. *Id.*

This court is cognizant that the criminal action poses a serious threat to both defendants' liberty interests and that substantial legal fees will be incurred due to the discovery intensive nature of the criminal proceedings. As to Petryszyn, this court neither disputes that the hourly rates charged are commensurate with his counsels' experience and comparable to the fees charged by attorneys with similar qualifications, nor does it question that the work detailed in counsel's invoices was performed. However, this is not dispositive of whether the fees charged to Petryszyn in the civil and criminal actions are reasonable.

This court is in a better position to assess the reasonableness of the legal fees Petryszyn has incurred to date in defense of this civil forfeiture action. Thus far, defense of this action has entailed opposing the DA's OSC, preparing Petryszyn's cross-motion for the release of funds to pay attorney's fees and several court appearances. Having reviewed the billing records this court is compelled to conclude that the issues in this action thus far have not been complex enough to warrant the expenditure of almost 200 hours in legal work to date and totaling $104,945.52.

Not having presided over the criminal proceedings, it is more difficult for this court to assess the reasonableness of the fees incurred therein. While cognizant that the criminal matter has and will continue to require extensive document review, as the DA points out, Petryszyn's counsel's invoices reflect charges for duplicative work (i.e., multiple attorneys attending meetings and appearing in court, reviewing each other's work, etc.) and non-attorney tasks. Petryszyn's counsel has billed $203,746.65 in just over a year (since his July 2014 arrest) in defense of the criminal matter. Having been paid $225,000 of the agreed upon $275,000 pretrial retainer fee, it is inappropriate at this time to release restrained funds to pay further legal fees.

The $50,000 Petryszyn requests represents approximately one third of the $171,609.46 of his assets which have been located and restrained. As plaintiff notes, only a small fraction of the $1,859,000 sought to be forfeited has been restrained and is potentially available for forfeiture. The need to preserve assets outweighs Petryszyn's need for payment of further legal fees, particularly where his counsel has been substantially compensated for work performed to date.

For the reasons set forth above, defendants' cross-motions for the release of funds to pay legal costs associated with the civil and criminal actions are denied, without prejudice to any further applications.

**Legitimate Source**

Having determined that defendants failed to sufficiently establish the reasonableness of their legal expenses to warrant a modification of the provisional relief granted to the DA, it is unnecessary for this court to address their argument that CPLR §1312(4) does not expressly require a showing that the funds to be released are

derived from a legitimate income source. Similarly, it is unnecessary to analyze their claims that their restrained accounts include income from legitimate sources.

Nonetheless, the provisional remedies available under CPLR Article 13-A against a criminal defendant can apply to assets having no relation to the underlying crimes. "[A] provisional remedy in an action against a 'criminal defendant' is not limited to assets that can be traced to the alleged crimes but can reach any assets of the defendants that could be used to satisfy a potential judgment in the forfeiture action." *Morgenthau v Citisource, Inc.*, 68 NY2d at 220; *see also, Kuriansky v Natural Mold Shoe Corp.*, 136 Misc2d at 685. Thus, the purported lawful provenance of certain of defendants' funds does not diminish the availability of these funds to satisfy a potential money judgment. *Morgenthau v Figliolia*, 4 Misc3d 1025(A), 2004 WL 2113355, at *5-6 (Sup Ct, NY County).

The court has considered the parties' remaining arguments and finds them unavailing. For all of the foregoing reasons, it is hereby

ORDERED that plaintiff's OSC is granted in its entirety, and plaintiff's counsel shall submit a proposed order of attachment for this court's signature forthwith; and it is further

ORDERED that defendants' cross-motions are denied in their entirety; and it is further

ORDERED that defendant Petryszyn's counsel shall electronically file the redacted versions of his affirmations dated February 23, 2015, April 17, 2015, May 18, 2015, June 18, 2015 and August 18, 2015, together with redacted versions of the supporting invoices attached thereto, and shall retrieve his unredacted billing records

submitted for this court's *in camera* review from the Part 1 Clerk (60 Centre Street, Room 325) on or before September 30, 2015 and, in the event they are not retrieved on or before that date, they shall be destroyed; and it is further

ORDERED that plaintiff shall electronically file the Affirmation of Lynn Goodman in Response to the Affirmation of Gerald Lefcourt dated March 2, 2015, or a redacted version thereof if appropriate.

The foregoing is this court's decision and order. Courtesy copies of this decision and order have been sent to counsel for the parties.

Dated: New York, New York
September 16, 2015

Hon. Martin Shulman, J.S.C.

Hon. Martin Shulman
J.S.C.