Civil Asset Forfeiture: A Look at the Pleading Standards.

Civil asset forfeiture authorizes the government to seize property that has a link to a variety of criminal activities, such as money laundering, wire fraud, mail fraud and a host of other bad acts. *See* 18 U.S.C. § 981. Until recently, the parallel provision of the Bank Secrecy Act was less well-known; civil forfeiture is authorized for situations where there is a violation of the cash reporting requirements of 31 U.S.C. § 5313, the export and import reporting requirements of 31 U.S.C. § 5316, or a violation of the ban on structuring transactions to avoid reporting under 31 U.S.C. § 5324. *See* 31 U.S.C. § 5317(c)(2). Bank Secrecy Act forfeitures follow the same procedural process of 18 U.S.C. § 981.

Press coverage of civil asset forfeitures in cases where there was no criminal activity and the owner of the seized property was unsophisticated have resulted in some limited reform. The Internal Revenue Manual now provides that the Criminal Investigation Division of the IRS "will not pursue the seizure and forfeiture of funds associated solely with 'legal source' structuring cases unless there are exceptional circumstances justifying the seizure and forfeiture." I.R.M. 9.7.1.3.1.6 (Mar. 03, 2015). There are also internal approval requirements. *Id.*

Structuring cases remain pending, and a recent opinion offers a look at the procedures for civil asset forfeiture and how claimants can challenge the seizure of their property. *United States v. $134,972.34 Seized from FNB Bank,* 2015 U.S. Dist. LEXIS 39888 (N.D. Ala. Mar. 30, 2015) (hereinafter *FNB Bank*).

FNB Bank involved structuring; the government filed a civil action *in rem* for the forfeiture of money in a bank account that has been the subject of multiple transactions falling just below the $10,000 reporting limit. Civil forfeiture cases are governed by the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. 18 U.S.C. § 983(a)(4)(A). These rules require anyone claiming an interest in the fund to file a claim demonstrating the nature of their interest. *See* Fed. R. Civ. P. Supp. R. G(5)(A). Once the claim is filed, the rules permit a claimant to move to dismiss under Federal Rule of Civil Procedure 12(b). *See* Fed. R. Civ. P. Supp. R. G(8)(b)(i).

The owners of the account in *FNB Bank* filed a claim in response to the complaint and then brought a motion to dismiss the forfeiture complaint. Faced with a motion to dismiss, the court in *FNB Bank* had to determine whether the familiar Rule 12(b)(6) standard requiring a plausible claim applied. In light of the requirements of the Supplemental Rules, the court held that a higher standard applied: the forfeiture complaint had to "state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial." *FNB Bank,* 2015 U.S. Dist. LEXIS 39888, slip op. at *10 (quoting Fed. R. Civ. P. Supp. R. G(2)(f)).

On the merits, the court had little difficulty sustaining the complaint's claim that the cash in the account was subject to forfeiture. The claimants had been on a cash transaction report exemption list but were then removed. One of the claimant asked a bank employee why he had to file out a CTR. There followed sixty-eight withdrawals of $9,000 each, with multiple transactions per week. *FNB Bank,* slip op. at *15. Given prior precedent from other circuits, the court had little difficulty holding that the pattern of withdrawals was sufficient to establish both knowledge of the reporting requirements and acting to avoid them. *Id.,* slip op. at *23-*30.

Next the court addressed a more interesting question: since the case involved withdrawals, not deposits, can the cash in the account be forfeited? I will cover that in another post.