

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

UNITED STATES OF AMERICA :  
 :  
 v. : CRIMINAL NO. 01-242-01  
 :  
 JOSLYN A. MORGAN :

MEMORANDUM ORDER

Presently before the court is the petition of Lana Morgan for Return of Property and Amendment of the Court's Order of Forfeiture. Accepting petitioner's allegations as true, the pertinent facts are as follow.

Petitioner was married to defendant Joslyn A. Morgan sometime in 1990 and separated from him in August 2000. In April 2000, defendant wanted to borrow \$81,000 from American Business Credit ("ABC") for his use in setting up a Western Union payment center, selling Western Union money orders and obtaining a Pennsylvania lottery machine for his business, Morgan Auto Tags. He asked petitioner to co-sign loan documents granting a security interest to ABC in their accounts and property as protection in the event of default and promising to repay the loan with interest in monthly installments of \$1,203.80 over fifteen years. On April 21, 2000, defendant and petitioner executed these documents.

On May 3, 2001, defendant was indicted for possessing cocaine with intent to distribute and conspiring with others to distribute cocaine. Petitioner "had no knowledge that

[defendant] was involved in selling drugs and never knew or believed that any of the monies borrowed for him would be utilized in any way for the sale of drugs." Defendant ultimately pled guilty to the charges against him and agreed to forfeit funds from his business and three bank accounts in his name totaling \$70,113.07. Petitioner continues to make monthly payments to ABC and owes \$5,427.95 to Western Union which represents \$28,948.84 in fiduciary trust funds received by defendant from Western Union customers with credit for \$23,445.89 recovered by Western Union under a settlement agreement with the government.

The court entered a preliminary order of forfeiture directing the government to give notice to any third parties who may have an interest in the forfeited currency. The United States Attorney sent notice of forfeiture to the petitioner who then asserted a claim of legal interest in the currency pursuant to 21 U.S.C. § 853(n)(2). The burden is on a petitioner to demonstrate by a preponderance of the evidence that he or she is entitled to the forfeited property. See 21 U.S.C. § 853(n)(6).

Congress provided standing to maintain such a claim "to only two narrow classes of third parties." U.S. v. Lavin, 942 F.2d 177, 185 (3d Cir. 1991). The first class consists of petitioners who had a legal right, title or interest in the property which, at the time of the acts giving rise to the

forfeiture, was vested in the petitioner rather than the defendant-forfeitor or was superior to his right, title or interest. See 21 U.S.C. § 853(n)(6)(A). The other class consists of petitioners who acquired a legal right, title or interest in the property in a bona fide purchase for value at a time when they were reasonably without cause to believe the property was subject to forfeiture. See 21 U.S.C. § 853(n)(6)(B). "Those third parties who fall outside of both exceptions, regardless of how sympathetic they are, must petition the Attorney General for relief" pursuant to 21 U.S.C. § 853(i). Lavin, 942 F.2d at 187.

When it is clear from a third-party claimant's petition that she lacks standing under § 853(n)(6)(A) or (B), the court should dismiss the petition. See U.S. v. Strube, 58 F. Supp. 2d 576, 579 (M.D. Pa. 1999). Petitioner's allegations do not demonstrate that she has standing to maintain a claim for the funds.

Petitioner was not a bona fide purchaser for value. To establish such status, a petitioner must show that she purchased the defendant's interest in the subject property in an arm's-length transaction. See U.S. v. Kennedy, 201 F.3d 1324, 1330 (11th Cir. 2000); Lavin, 942 F.2d at 188. It appears from her petition that Mrs. Morgan merely co-signed for a loan with the understanding that the proceeds would go into accounts in her

husband's name for use by him in his business without any promise of a return to her.

It also appears from petitioner's allegations that the right, title or interest in the forfeited accounts were not vested in her rather than the defendant and that she had no right, title or interest superior to his at the time of the commission of the acts giving rise to the forfeiture. The business and bank accounts in question were all in defendant's name alone.

**ACCORDINGLY**, this                      day of May, 2002, upon consideration of petitioner's Petition for Return of Property and Amendment of Court's Order of Forfeiture (Doc. #36), and the government's response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**, without prejudice to petitioner to present any appropriate petition for relief to the Attorney General pursuant to 21 U.S.C. § 853(i).

**BY THE COURT:**

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**JAY C. WALDMAN, J.**