

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

UNITED STATES OF AMERICA : CRIMINAL NO. 93-394
 :
 v. :
 :
 CRAIG B. SOKOLOW :

MEMORANDUM & ORDER

J.M. KELLY, J.

JANUARY , 1999

The Government has filed a Motion for Supplemental Order of Forfeiture to which Defendant, Craig B. Sokolow ("Sokolow"), has objected. Sokolow was ordered to forfeit \$2,141,108.67 in assets in a 1994 conviction, which has not yet been fully satisfied. The Government seeks to forfeit the Note underlying the Mortgage on 837 Upper Pine Creek Road in West Pikeland Township and Sokolow's limited partnership interest in the General Warren Inne Limited Partnership. Sokolow objects to the forfeiture of the Note because he believes its' production is impossible. Sokolow objects to forfeiture of the interest in the General Warren Inne as time barred, because the Government failed to give adequate notice to third parties and because the potential relief is unclear. Finally, Sokolow contends that improper double counting was used to determine the amount of forfeiture.

NOTE ON 837 UPPER PINE CREEK RD.

The Government requires the Note underlying a mortgage Sokolow granted to Thomas DiStefano in order to foreclose upon the mortgage. Sokolow argues that because he is in prison, he does not know where to locate the Note and cannot review his

documents. The Court shall order Sokolow to instruct his attorneys where records that contain the Note may be located. The potential records shall be brought to Sokolow in prison so that he may search for the Note among his records. If he is unable to find the Note, Sokolow shall provide to the United States Marshal Service an affidavit stating that he does not have possession of the Note. The Court shall give Sokolow and his attorneys until February 1, 1999, to complete this search

GENERAL WARREN INNE LIMITED PARTNERSHIP INTEREST

The Government has identified a four percent limited partnership interest in the General Warren Inne Limited Partnership, shared by Sokolow and his ex-wife. This interest would be a substitute asset. The Court ordered that substitute assets were forfeitable in this matter on March 14, 1995, pursuant to 21 U.S.C. § 853(p). Sokolow relies upon United States v. \$8,850, 461 U.S. 555 (1983), in arguing that the delay in forfeiting his interest in the General Warren Inne is unreasonable. United States v. \$8,850 adopted the balancing test of Barker v. Wingo, 407 U.S. 514 (1972), in determining if eighteen months from seizure until a forfeiture action was filed was reasonable. The circumstances in this case are markedly different. Here, Sokolow has been convicted of one count of criminal forfeiture under 18 U.S.C. §982. The Government is a judgment creditor seeking to enforce the judgment. There is no question of the Government depriving Sokolow of an asset while it decides whether or not to file a forfeiture action. Rather, the

forfeiture is complete except for collection of a judgment and there is no problem with notice of a potential forfeiture. The Court need not decide which of the Government's proffered time schemes for collecting this judgment applies, as forfeiture of Sokolow's interest in the General Warren Inne is well within the time limits of each scheme.

Sokolow argues that the nature of the relief sought from the forfeiture of his interest in the General Warren Inne Limited Partnership is unclear in that it is not clear what rights the Government will obtain. This argument is related to the argument that the Government should have notified all of the partners of the General Warren Inne Limited Partnership of the forfeiture. Forfeiture is a two step procedure. First, the Government executes upon the defendant's interest in forfeited property. 21 U.S.C. § 853(g). Then, a third party with an interest in forfeited property may request a hearing to determine the validity of the third party interest. Id. § 853(n)(2). Such third parties need not receive notice of the forfeiture until forfeiture is ordered. Id. § 853(n)(1). The third parties may then show that their interest in the property makes the forfeiture invalid, and if so, the court will alter its order of forfeiture. Id. § 853(n)(6). Therefore, the Government has proceeded properly and the rights of third parties are adequately protected.

DOUBLE COUNTING

The amount that Sokolow is required to forfeit is a part of

his sentence, consequently his response to the Government's Motion for a Supplemental Order of Forfeiture is an inappropriate forum for this argument. It appears that Sokolow has raised this issue in a § 2255 motion. It shall properly be addressed there.

CONCLUSION

The Government has moved for a supplemental order of forfeiture of Sokolow's assets and Sokolow's objections are unavailing. Accordingly, Sokolow shall be ordered to produce the Note and his interest in the General Warren Inne Limited Partnership shall be forfeited.

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O R D E R

AND NOW, this day of January, 1999, upon consideration of the Motion for Supplemental Order of Forfeiture of the Government, the Response of Defendant Craig B. Sokolow ("Sokolow"), and the Government's Reply thereto, it is ORDERED:

1. All right, title, and interest of Sokolow in the Note underlying a Mortgage on premises known as 837 Upper Pine Creek Road, West Pikeland Township, Chester County, Pennsylvania, held by Sokolow and Lois E. Sokolow against Thomas DiStefano, as recorded at the Office of Recorder of Deeds in Chester County, Pennsylvania in Mortgage Book 2307, Page 423 ("Note"), is forfeited to and vested in the United States of America.

2. All right, title, and interest of Sokolow in his limited partnership interest in the General Warren Inne Limited

Partnership, 9 Village Way, Malvern, Pennsylvania 19355, Partnership's Identifying No. 23-2391780, Partner's Identifying No. 001-38-6706, including, but not limited to any and all unpaid distributions, is forfeited to and vested in the United States of America.

3. The United States Marshal is empowered to seize and dispose of the forfeited properties in accordance with the law and rules of this Court.

4. Sokolow shall instruct his attorneys where to locate his records that may contain the Note. His attorneys shall gather such records and bring them to Sokolow in prison to be reviewed. Sokolow shall file the Note, a copy of the Note or a sworn affidavit stating that he does not have possession, custody or control of the Note or a copy of the Note with the United States Marshal Service. The Note, copy of the Note or affidavit shall be filed with the United States Marshal Service, Attn: Dan Orr, Room 2110, 601 Market Street, Philadelphia, Pennsylvania 19106, on or before February 1, 1999.

5. Lois Sokolow and Thomas DiStefano shall file the Note, a copy of the Note or a sworn affidavit stating that she or he does not have possession, custody or control of the Note or a copy of the Note with the United States Marshal Service. The Note, copy of the Note or affidavit shall be filed with the United States Marshal Service, Attn: Dan Orr, Room 2110, 601 Market Street,

Philadelphia, Pennsylvania 19106, on or before January 19, 1999.

6. The United States shall give notice of the entry of this Supplemental Order to third parties known by the government to have an interest in the forfeited properties.

7. The United States shall publish notice of this Supplemental Order and its intent to dispose of the properties as set forth in 21 U.S.C. § 853(n), incorporated by 18 U.S.C. §982(b)(1).

8. This Supplemental Order shall be the final Supplemental Order of Forfeiture should no petitions be filed within thirty (30) days from the final date of publication of notice hereof or from the date of service of a copy of this Supplemental Order, whichever is earlier, in accordance with 21 U.S.C. § 853(n)(7), incorporated by 18 U.S.C. § 982(b)(1).

9. If any net proceeds from the disposition of the assets forfeited in the Order of Forfeiture and this Supplemental Order of Forfeiture, after deducting the costs of maintaining and selling the assets and disposing of third party claims, exceed Sokolow's \$2,141,108,67 forfeiture obligation, the United States shall return the excess net proceeds to Sokolow.

BY THE COURT:

JAMES MCGIRR KELLY, J.