

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

UNITED STATES OF AMERICA : CIVIL ACTION
 :
 v. :
 :
 THIRTY-TWO THOUSAND SEVEN HUNDRED :
 FIFTY-FOUR DOLLARS (\$32,754) UNITED :
 STATES CURRENCY : No. 98-CV-634

O R D E R - M E M O R A N D U M

AND NOW, this 27th day of October, Sefik Cinar's motion to vacate his consent judgment in favor of the United States and for permission to file an answer nunc pro tunc is denied. Fed. R. Civ. P. 60(b)(1),(6).¹

On November 29, 1993 Cinar pleaded guilty to one count of failure to report transportation of monetary instruments, 31 U.S.C. §§ 5316(a)(1)(A), 5322. United States v. Cinar, No. 93-CR-453-1 (E.D. Pa. 1993). On February 9, 1998 the government filed the present civil forfeiture action against \$32,754 in currency, which had been in Cinar's possession at the time of his arrest. On March 16, 1998, the government and Cinar entered into a stipulation of settlement, in which Cinar agreed to forfeit the currency less \$5,000. There was no response to notices sent to all known interested individuals - including Senel and Ismayil Kurun - and to

¹Rule 60(b) allows a party to be relieved "from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . or (6) any other reason justifying relief from the operation of the judgment." Rolo v. City Investing Co. Liquidating Trust, 155 F.3d 644, ___ (3d Cir. 1998) (stating that "relief under Rule 60(b) is extraordinary and requires a 'showing of exceptional circumstances'" (quoting Marshall v. Board of Educ., 575 F.2d 417, 425-26 (3d Cir. 1978))).

legal advertisements in the Philadelphia Daily News. On May 27, 1998 a consent judgment and order of forfeiture were entered.

In his motion, Cinar claims that (1) he was prejudiced by his previous attorney's failure to answer the forfeiture action; (2) the government may not seize property from a bailee, such as Cinar; and (3) Cinar should have been given credit for his criminal fine of \$2,500.

For the following reasons, the motion must be denied:

1. Failure to file an answer - The settlement obviated the need to file an answer. No prejudice has been shown by reason of the failure to file an answer. Unless the consent judgment is set aside or opened, an answer would be procedurally inappropriate.

2. Cinar's rights as bailee - According to Cinar, "the government cannot forfeit money he held as a bailee for violations of 31 U.S.C. § 3517." His position is that Senel and Ismayil Kurun, acquaintances of his, were the owners of \$29,000 of the forfeited funds. Pl. ex. E, F. That contention may have merit as to criminal forfeitures; however, this action involves a civil forfeiture. As explained by our Court of Appeals:

Civil forfeiture is an in rem proceeding. The property is the defendant in the case, and the burden of proof rests on the party alleging ownership. The innocence of the owner is irrelevant—it is enough that the property was involved in a violation to which forfeiture attaches.

* * * *

In contrast, criminal or in personam forfeiture differs because its prime objective is punishment of the owner. The owner or possessor of the property is the defendant, and the burden of proof falls on the government.

United States v. Sandini, 816 F.2d 869, 872-73 (3d Cir. 1987) (citations omitted).

An individual must file a claim to have standing to contest a civil forfeiture action. See United States v. Contents of Accounts Nos. 3034504504 & 144-07143 at Merrill, Lynch, Pierce, Fenner & Smith, Inc., 971 F.2d 974, 983 & n.7 (3d Cir. 1992); Supp. R. For Certain Admiralty And Maritime Claims C(6) (1998) ("The claimant of property that is the subject of an action in rem shall file a claim within 10 days after process has been executed . . .").² Neither Senel nor Ismayil Kurun filed a claim, despite their knowledge of the forfeiture. Pl. ex. E, F.

3. Credit for criminal fine - In the stipulation of settlement and the consent judgment, Cinar accepted \$5,000 of the \$32,754 "in satisfaction of any and all claims regarding the forfeiture." Pl. ex. J, L. Cinar points to no authority that the consent judgment should be offset by the criminal fine. Moreover, he has offered no justification for vacating pro tanto his unequivocal relinquishment of all related claims. See United States v. Bank of New York, 14 F.3d 756 (2d Cir. 1994) (holding that an incorrect assessment of the consequences of a consent decree does not justify relief under Rule 60(b)(1) or 60(b)(6)).

²"Even though this is not an admiralty or maritime claim, the Supplemental Rules apply to this action because the forfeiture statutes provide an action analogous to a maritime action in rem." Merrill Lynch, 971 F.2d at 984 n.8; see also Supp. R. For Certain Admiralty And Maritime Claims A ("These rules also apply to the procedure in statutory condemnation proceedings analogous to maritime actions in rem, whether within the admiralty and maritime jurisdiction or not.").

Edmund V. Ludwig, J.