

Connecticut district court grants summary judgment to government only for percentage of life insurance proceeds attributable to the five months of insurance premiums paid with funds traceable to fraud violations. Lee was an investment advisor who stole much of client money rather than investing it as he had promised. He pleaded guilty to wire fraud and the court ordered criminal forfeiture and restitution. Lee died from cancer during the pendency of the appeal. By operation of law, his death required the vacatur of his conviction, and the abatement of his orders of criminal forfeiture and criminal restitution without prejudice to the right of the government to pursue this civil forfeiture case. The court concluded the undisputed facts showed that some years before he began defrauding his clients, Lee bought a \$1 million life insurance policy. Lee's spouse was designated as the sole beneficiary under the policy and Lee paid monthly policy premiums of \$379.22 for seven years when he died. Most of these premiums were paid from the same personal bank account at Citibank that Lee later used for his investor fraud. Lee recycled more than \$1 million in payments from this account to his victims while drawing down more than \$500,000 over this same time period for personal expenditures. The Citibank account also held approximately \$2,250,000 in legitimate compensation from his employment. The government identified only five months where Lee paid the monthly premium from funds that had been fraudulently acquired. Shortly after Lee died and the life insurance proceeds were realized, the government seized and filed a civil forfeiture action against \$465,789.31 in remaining proceeds. It then moved for summary judgment. Except for five premium payments, the court found no evidence that other such payments were monetary transactions that violated 18 U.S.C. §§1956 or 1957. As to more than \$1 million Lee paid out from the Citibank account, these transactions were done to promote the underlying fraud – that is, to “prime” Lee’s Ponzi-scheme investors so they would entrust him with yet more of their money. But these transactions were pay-outs, not pay-ins, so the insurance premiums paid from the same Citibank account were not necessarily “traceable” to such paid-out property that had left the Citibank account. Therefore, the court granted summary judgment only as to five months of policy premiums. Although the claimant Mrs. Lee argued the contractual and contingent nature of an insurance policy somehow prevented application of the federal forfeiture laws, the right to the life insurance benefit was paid for in part with property subject to forfeiture. Also, if a criminal uses tainted money to buy an asset that appreciates in value, forfeiture properly attaches to the appreciated value of the asset, not simply to the outlay spent to buy the asset. The court held the government was entitled only to the proportion of the life insurance proceeds that corresponded to the ratio of the value of policy premiums paid that were traceable to money laundering or wire fraud transactions to the total value of all policy premiums paid. For example, if 25% of the total value of premium payments were traceable to wire fraud or money laundering transactions, then the government would be entitled to 25% of the life insurance proceeds. *United States v. \$465,789.31 Seized From Term Life Ins. Policy No. PJ 108 002 588 in Name of Lee at AXA Equitable Life Ins. Co., New York, New York*, No. 3:15-CV-1353 (JAM), 2018 WL 4568408 (D. Conn. Sept. 24, 2018).

D.C. district court denies criminal forfeiture money judgment in amount of estimated value of drugs seized from defendant, since he already forfeited the monetary value of that asset (i.e., the money he allegedly used to purchase the drugs). ATF agents executed a search warrant at Young's residence in Southeast Washington, D.C., after investigating his trash. During the search of the home, law enforcement agents recovered heroin, a firearm, ammunition,

\$14,707 cash, and other drug-related goods. Young was charged with and convicted of intent to distribute heroin. In the lead-up to the trial and during the post-conviction proceedings, the government vigorously maintained, in addition to the forfeiture of the \$14,707 in cash, it was entitled to a money judgment in the amount of \$180,000, equal to the estimated value of the two kilograms of heroin seized from Young's residence. At the forfeiture hearing, the government asked the Court to consider, in the alternative, a money judgment in the amount of \$40,000, representing the amount that the record evidence suggested Young was owed from various people to whom he had sold drugs. The court instructed the government to file a supplemental brief regarding the alleged justification. Defense counsel did not file any written response to this forfeiture argument. In a preliminary order of forfeiture, the court found that Young was owed \$40,000 as proceeds obtained from drug sales, and that money was presently unavailable, such that a money judgment in that amount was warranted. The court declined to order a \$180,000 money judgment because there was no statutory or common-sense justification for both to seize contraband drugs and also to obtain a money judgment for the amount that the defendant allegedly used to purchase those very same drugs. The government's request bore no relationship to the usual purpose – to prevent the dissipation of illegal proceeds by an offender who might otherwise profit from his ill-gotten gains. If the \$180,000 money judgment was meant to be a substitute for the heroin the government seized, it could not possibly qualify as substitute property within the meaning of 21 U.S.C. §853(p)(1), when the drugs were actually recovered and thus were not dissipated or otherwise unavailable. Alternatively, to read section 853(a)(2) to authorize a money judgment for the monetary value of seized drugs on the grounds that the money the defendant used to purchase those drugs is inherently tainted “facilitating” property, even though it was spent on something that the government has already seized, would constitute impermissible double counting. Money judgments ordinarily are appropriate when the government has not been able to recover some known, forfeitable asset because the defendant has made it unavailable. But the \$180,000 was not willfully dispersed by Young in an attempt to avoid forfeiture, nor was it missing; rather, Young allegedly used that money to buy the drugs as part of the underlying offense, which means that it was recovered by the government in the form of the asset that Young purchased. The government already seized his heroin, and along with that seizure, he has forfeited the monetary value of that asset (i.e., the \$180,000 that he allegedly used to purchase those drugs). *United States v. Young*, No. 17-CR-083 (KBJ), 2018 WL 4387566 (D.D.C. Sept. 13, 2018).

New York district court denies stay of forfeiture order allowing collection by federal and state taxing authorities, since appeal of criminal case would not affect amount of defendant's tax liabilities. The United States submitted a Stipulation of Settlement and Proposed Final Order of Forfeiture resolving third-party petitions filed by the New York State Commissioner of Taxation & Finance and by the U.S. Internal Revenue Service in the ancillary proceeding as to Martin Shkreli. Shkreli opposed and sought a stay pending appeal, contending that if he were to succeed on appeal, execution of the forfeiture order would prevent his ability to recover his asset, namely, an E*Trade Account, “as if no conviction or forfeiture ever took place.” The Settlement proposed that the court lift the restraints on the E*Trade account imposed by the Preliminary Order of Forfeiture to allow the IRS and Commissioner of Taxation and Finance to collect and satisfy Mr. Shkreli's federal and state tax debts. As the government explained, the Proposed Final Order of Forfeiture would not transfer any property interest in the

E*Trade Account or any of the other substitute assets, but merely provide for the restraints on the E*Trade Account to be partially lifted to allow the NYS-AG and IRS to pursue their own independent collection efforts. The Advisory Committee Notes for FRCP 32.2(d) state, “[t]he purpose of the provision is to ensure that the property remains intact and unencumbered so that it may be returned to the defendant in the event the appeal is successful.” However, the Proposed Final Order made clear that the substitute assets would not be seized or transferred by the United States while Shkreli’s appeal is pending. To the extent Shkreli disputed any interest and penalties associated with his tax obligations, the relevant tax authority, and not the court, would determine the amount of taxes he owed. The appeal of his criminal case would not affect the amount of Mr. Shkreli’s tax liabilities. The court found that entering the Proposed Final Order of Forfeiture and thereby lifting the restraints on the E*Trade account to allow New York State and the IRS to proceed with their separate collection efforts would not prevent the defendant from being restored to the status quo ante if he succeeded on appeal, as New York State’s and the IRS’s rights to collect taxes would not be affected by the outcome of the appeal. Further the E*Trade account was a readily quantifiable asset. Even if Shkreli’s appeal were successful, the federal and state tax authorities may enforce his undisputed tax liabilities. Therefore, the court will entered the Stipulation of Settlement and the Final Order of Forfeiture submitted by the government. *United States v. Shkreli*, No. 15-CR-637 (KAM), 2018 WL 4344948 (E.D.N.Y. Sept. 11, 2018).

D.C. district court grants claimants’ previous lawyers leave to intervene to protect their charging lien against any recovery, after four years defending civil forfeiture case. For approximately four years, the law firm of Neel, Hooper & Banerjee P.C. (“NHB”) represented the claimants and four companies they controlled in a long-running in rem action, seeking assets seized as proceeds of an alleged scheme to defraud the United States. Claimants retained additional counsel and the NHB attorneys filed a motion seeking leave to withdraw; the Court granted their motion that same day. Several days later, NHB moved to intervene in order to assert “an attorney’s charging lien” against any future award in favor of the claimants. The government argued principally that NHB lacked standing to intervene and that, to the extent it had a fee dispute with the claimants, its remedy lay in a different forum. It said the law firm failed to file a timely claim to the seized assets pursuant to Supplemental Rule G(5). It was not clear, however, that NHB needed to have statutory standing under 18 U.S.C. §§981(k)(4)(B) and 983(d)(6). NHB did not contend that it had standing to pursue a claim against the res as an “owner” of the seized funds but, rather that it was entitled to intervene to protect its interest in any recovery or settlement that its former clients might obtain. The D.C. Circuit has explained that an attorney of record under a contingent fee contract has an interest in the cause of action, and may intervene to protect this interest. The courts have not asked whether the attorney would have had statutory or constitutional standing to bring the action in the first instance, Even if some version of that approach applied here, the 18 U.S.C. §983(d)(6)(A) definition of “owner” includes anyone holding a “lien” or “valid assignment of an ownership interest.” Also, the law firm filed its motion to intervene shortly after the court granted the NHB lawyers leave to withdraw, and thus the motion was timely. Moreover, NHB established that it had a “legally protected interest” in the litigation, since it provided legal services with respect to an action pending in the Court, and D.C. law governs whether it has a right to assert a lien against any recovery or settlement. The District of Columbia does not have a statute that governs attorney’s liens but, rather, relies on the common law, which recognizes a charging lien. If NHB can

establish it had an enforceable, contractual right to be paid out of any judgment recovered, NHB would be entitled to assert and to enforce a common law charging lien. Finally, unless permitted to intervene, the law firm's interests could be impaired, since the claimants did not reside in the United States. Moreover, NHB's potential right to share directly in the proceeds of the litigation would be lost if the proceeds were dispersed, and NHB would be left to bring a collection action. The court concluded that NHB was entitled to intervene for the limited purpose of protecting any claim it may have to share in a portion of any award or settlement that the claimants may obtain. To the extent the parties differed over the relevant facts and whether NHB was entitled to share in any portion of whatever award or settlement the claimants might someday obtain, that issue was not yet before the court. *United States v. Sum of \$70,990,605*, No. CV 12-1905 (RDM), 2018 WL 4623568 (D.D.C. Sept. 25, 2018).

Washington district court holds that stay of interlocutory sale would be granted only on condition that claimant posts \$975,000 supersedeas bond. Claimant moved to stay the interlocutory private sale of her property pending appeal. She argued first that she had a likelihood of success on appeal, but she provided no factual basis supporting this contention, and had defaulted on her obligations under the note and deed of trust before the property was even seized. Meanwhile, the liabilities secured by it – a promissory note and County property taxes – were both increasing. All concerned would benefit if the property were sold and these underlying obligations were retired. Also, the claimant never lived there, but bought the 53-acre parcel to develop and had preliminary plat approval for subdivision into numerous lots. Since the property never was or would be the claimant's home, there was nothing of personal or intrinsic value in this property to her. Finally, the property had not been maintained, taxes were not being paid, the underlying debt was not being paid, and squatters and vandals were a continuing problem. The court concluded that if a stay were ordered, it had to be bonded, since the asset was clearly deteriorating through neglect. Thus, it held that it would stay the sale only if the claimant filed a supersedeas bond in the amount of \$975,000.00 within 10 days. If not, the sale will go forward. *United States v. Real Property Located at 16549 Vail Road SE, Yelm, Washington*, No. C14-5231RBL, 2018 WL 4510064 (W.D. Wash. Sept. 20, 2018).