

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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| STEVEN J. KADONSKY, |) | |
| |) | |
| Plaintiff, |) | Civil No. 2:98-CV-852J |
| |) | |
| vs. |) | |
| |) | MEMORANDUM OPINION |
| UNITED STATES OF AMERICA, |) | & ORDER |
| DEPARTMENT OF JUSTICE, JOHN |) | |
| DOES 1-10, AGENTS OF THE |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendants. |) | |

This matter came on for trial before the Court on the 19th day of August 2004, at the hour of 9:30 a.m. Plaintiff Steven J. Kadonsky appeared *pro se*. Assistant United States Attorney Carlie Christensen appeared on behalf of the Defendants. Evidence was received on the 19th and 20th, and the matter was continued to the 24th day of August for final argument, at which time the Court took the matter under advisement. After careful consideration of the evidence and argument, the Court enters the following memorandum opinion and order, which shall constitute Findings of Fact and Conclusions of Law pursuant to Fed. R. Civ. P.52(a).

Steven J. Kadonsky seeks \$300,000 from the United States, claiming that the United States unlawfully seized a check in that amount, issued on June 1, 1994 and made payable to him by a title company closing officer and escrow agent, and representing part

100

of the proceeds from the sale of real property purportedly owned by Kadonsky in Park City, Utah.

FACTUAL CONTEXT

Beginning in the early months of 1990, Kadonsky, a CPA and currently an inmate in New Jersey serving a 25-year-to-life term, performed financial advisory, money laundering, site location and courier services for Howard Weinthal, a drug dealer, and an organization run by Weinthal engaged in the nationwide sale of large quantities of marijuana. Gross revenues during one sixty-day period in 1990 totaled \$4.5 million on the sale of 3,000 pounds. (Transcript of Proceedings of Grand Jury Testimony, dated February 22, 1994, Defs' Exh. S ("GJ Tr."), at 31:3-32:9, 35:10-20 (Mr. Kadonsky).) Weinthal bragged to Kadonsky that he shipped 18,000 pounds in 1990, and "significantly more" in 1991. (*Id.* at 35:17-20.) Kadonsky advised Weinthal concerning how to launder the proceeds from marijuana sales and how to file tax returns that would conceal the true source of income received by Weinthal.

Weinthal also looked for money laundering opportunities. He had located and examined two parcels of real property in Park City, Utah (the "Park City property"). He talked with Kadonsky about the property. According to Kadonsky, Weinthal thought that the property was undervalued and had possibilities for development. Kadonsky saw pictures of the property, but he did not examine the property on-site and has not done so to this day. Kadonsky thought it might serve as a site for a small commercial strip mall, anchored by a bank tenant. According to Kadonsky, he and Weinthal agreed to form a

limited partnership to own and develop the Park City property.

A deed conveying the property from RESOLUTION TRUST CORPORATION, as Conservator for COLUMBIA SAVINGS AND LOAN ASSOCIATION to PARK CITY DEVELOPMENT LIMITED PARTNERSHIP was executed on the 26th day of March, 1991, and placed of record on April 1, 1991. The deed, once recorded, was mailed by the recorder to Kadonsky.

Kadonsky testified that the PARK CITY DEVELOPMENT LIMITED PARTNERSHIP was never formalized, but record ownership of the Park City property remained in the name of that entity for nearly a year.

On March 10, 1992, Howard B. Weinthal, as "General Partner, Park City Development Limited Partnership," signed a warranty deed conveying the subject property to Comanche Nation Ltd. Partnership. Weinthal, Plaintiff's erstwhile "limited partner," did not consult with Kadonsky about that conveyance. The deed of conveyance was placed of record on March 17, 1992. Comanche Nation Ltd. was purportedly controlled by Weinthal, although a Park City Attorney named Richard Higgins acted as "General Partner."

Mr. Kadonsky somehow learned of the conveyance, consulted an attorney in Park City by phone, and ultimately executed and filed a Notice of Interest as to the Park City property. That document was signed July 23, 1992, and placed on record August 3, 1992. The Notice of Interest, in part, states as follows:

The undersigned claims his interest in the above described property by

virtue of being the sole owner and general partner of Park City Development Limited Partnership, an unregistered limited partnership, grantee of that special warrantee deed executed by Resolution Trust Corporation as conservator for Columbia Savings and Loan Association, F.A. on March 26, 1991. The undersigned hereby gives notice that except for the undersigned, no individuals have been authorized to convey title to the subject property.

Like Weinthal, Kadonsky did not talk to his erstwhile partner before placing his Notice of Interest on the public records. Instead, he thought the notice would encumber record title so that the property could not be sold without him being notified in some way.

On February 22, 1994, some 19 months after filing such notice, Kadonsky testified before a federal Grand Jury in Phoenix, Arizona. The official record recites that "Steven Kadonsky called as a witness herein, having been first duly sworn, was examined and testified as follows:"

Q Would you look at Exhibit No. 13, please.
Have you reviewed Exhibit No. 13?

A Yes.

Q Do you recognize those documents?

A The first document is a letter to me from a title company in Park City, Utah, and indicating the final settlement on the purchase of some property.

Q Could you before you get into those documents tell us generally what does this document involve or revolve around?

A Sid [Weinthal] found some property in Park City, Utah, that he deemed as being significantly undervalued. And he needed a check for \$220,000 to buy the property. And this relates to laundering the money and buying the property there.

Q Okay. And go ahead and you were describing the documents here.

A The first document is a letter that was sent to me from the title company indicating the last roughly \$170,000 that had to be sent to them in order to close the property.

Then there's some notes that I haven't seen before on title company note pad which would have been their notes relating to the property. I've never seen them before, but I know the numbers and they relate to the property.

Q And you've initialed and dated those items?

A Yes.

There's confirmations of wire transfers that I wired out of my personal account and out of High Tech; one for \$75,539.44 wired out of my personal account, *which was laundered money*, and one for 93,999 - - or \$93,995. I wired out an even 94,000. They must have taken \$5 out for a wire fee or something. But it indicates it came from High Tech, and I wired them that money on that date.

Q And again, the 94,000 or the figure you described minus the \$5, that was drug money of Sid's [Weinthal's]?

A *Yes. And so was the money that I wired out of my personal account, the \$75,539.*

Q Was a limited partnership set up to develop or to possess this property?

A There was a limited partnership name registered, but we never filed anything else, any limited partnership documents.

(GJ Tr. at 1:17-20, 25:11-27:9 (emphasis added).)

Earlier in their relationship, Kadonsky and Weinthal had organized a company called High Tech Product Sales. It was formed in 1990 specifically to launder money. Its purported product was a chemical commodity used to mask odors.

According to Kadonsky, Weinthal's traceable financial transactions needed to be legitimized.

Sid [Weinthal] had a need to have money on the books, and he had spent some money that he had to cover from a taxable standpoint, you know, that was traceable that he had to show was taxable income.

(*Id.* at 5:19-22.) To meet Weinthal's need for a tax cover, Kadonsky had come up with the idea of High Tech. (*Id.* at 5:23-6:2-6.)

On the whole, about 10-20% of High Tech's total revenue were attributable to sales of the chemical to Weinthal or his friends, according to Kadonsky. "The balance was Sid's [Weinthal's] drug profits that were laundered through the company." (*Id.* at 4:16-4:17.)

The cash flow reflected in High Tech's fictitious journals that he created for 1990 "was all laundered money." (*Id.* at 6:7-8:6; *see* Defs' Exh. M.) The various journals for 1991 showed sales of the "anti-smell stuff," but according to Kadonsky, "it was sold to Sid's [Weinthal's] friends for illegal purposes." (GJ Tr. at 9:16-17; *see* Defs' Exh. N.) The remaining 70 to 80% ". . . was strictly cash that Sid [Weinthal] gave me." (GJ Tr. at 9:20-21.)

Deposits into the High Tech account were designed to be of a small enough size not to arouse suspicion of the bank or trigger federal cash transaction reporting requirements, and to be explainable as legitimate cash sales of the chemical anti-odorant product. Kadonsky detailed the scheme for the Grand Jury:

A I came up with a dollar amount per unit of this stink stuff. I

arbitrarily said we were going to sell it in five-gallon pails and sell it for \$110 a gallon plus sales tax, which would mean each pail had a selling price of 588.50.

So every deposit we made was a multiple of \$588.50, and each of those deposits were less than \$10,000.

Q Now, when you say you arbitrarily decide on that, did it in fact in any way relate to the product . . . in terms of the price or the way the product was packaged?

A No. We bought the product in 30-gallon drums, and on the sales to [Weinthal]'s friends, we sold it in 30-gallon containers also.

Q And could you tell us why – and it may seem obvious, but why is it that you picked such an odd figure of 588.50?

A The intent was to set up a money-laundering situation that was totally bulletproof that if the government found out or assumed that it was money laundering, that we could – every step of the way, we could bulletproof it so it couldn't be proven that it was money laundering.

Q If the government, however, went and tried to identify the customers that you had sold the product to, what would they find?

A We didn't have any sales journals at all. And that was the only weak link in the chain. *We thought we could probably handle that by saying it was all cash transactions* and we didn't need to keep a list.

(*Id.* at 11:15-12:23 (emphasis added).)¹

So much money was being drawn into satisfying Weinthal's appetite for large purchases that even this "bulletproof" scheme could not handle the total volume of illicit cash that needed laundering.

¹Remarkably, in his effort at trial in 2004 to legitimize the money transferred from the High Tech account to purchase the Park City property in 1991, Kadonsky relied on this same explanation of the source of the cash deposited into the High Tech account—cash sales of five-gallon containers of anti-odorant chemical to restaurants, car washes, etc. from New Jersey to Wisconsin, for which no receipts were given or sales records kept.

Q Were there occasions when Sid [Weinthal] was giving you so much money that you could not put it all through the High Tech account?

A That would happen when Sid [Weinthal] had a specific need for a laundered check in a certain time frame. And we just physically couldn't run through enough money in the account to keep it under 10,000 and still get him his check in the proper time frame.

So I used another company that I had that had legitimate close-out sales and I ran the money through there, through the other company, into my personal checking account and then went from my personal checking account to Sid [Weinthal] or to the operation or whatever Sid [Weinthal] needed the money for.

Q And could you give the Grand Jurors an example of what you're talking about when you're talking about such a large amount that couldn't be covered?

A There was a piece of property that he needed \$220,000 to buy the property. We had given them \$50,000^[2] and he needed 170,000 for the remainder of the property right away. The most I could run through in the account was \$94,000. So the balance had to be run through my account through the other company.

(GJ Tr. at 14:10 - 15:10.)³

²On paper, \$10,000 of the \$50,000 came from High Tech and \$40,000 through Kadonsky's personal account. (See Defs' Exhs. K, O at 13.)

³See also GJ Tr. at 18:5-15, 20:23-21:5:

Q Now can you give us some examples of the type of ways that the money would eventually get back to [Weinthal]; in other words, the laundering was completed?

A Right. Early in the year in '91 we bought or he bought a 27,000-dollar Toyota - I believe it was a Land Cruiser - and various pieces of property that [Weinthal] would own that he wanted to buy. We laundered the money through High Tech - and also his rent. The mansion that he rented in Malibu was \$6,000 a month for the rent.

* * * *

Q Were there other attempts to purchase property through the High Tech account, real property?

(continued...)

According to the High Tech account records, Defs' Exh. O, the \$94,000 wire transfer on April 1, 1991 was immediately preceded by deposits after March 21, 1991 totaling \$70,031.50 (or \$588.50 x 119), plus a deposit on March 27, 1991 of 27,500. This transaction history thus proves to be consistent with Kadonsky's 1994 explanation of his "bulletproof" money laundering scheme involving High Tech⁴ and his sworn attribution of the \$94,000 to the laundering of Weinthal's drug proceeds. (*Id.* at 26:17-27:4.)

Kadonsky now asserts that sometime after he testified before the Grand Jury in February 1994, Weinthal told him that all of the monies used to purchase the Park City property were actually Kadonsky's "earnings from various activities." He explains that he thereafter arranged through his Utah attorney to sell the Park City property.

A buyer had expressed great interest in the property. The purchase price was \$395,000. Record title was still in Comanche Nation Ltd Partnership. After some wrangling with Richard Higgins concerning the proposed sale,⁵ Park City Limited Partnership, under Kadonsky's signature, quit-claimed any interest in the property to Comanche Nation Ltd. Partnership, the record title holder. Kadonsky, an individual, quit-

³(...continued)

A There were three groups of properties or three property transactions. One was in Vermont, which had a few minor transactions, but it was all the same partnership and all the same land area. There was one in Utah and one in California.

⁴Indeed, Kadonsky identified for the grand jury a series of deposits made in April and May 1991 as examples of the High Tech laundering scheme at work. (GJ Tr. at 13:18-14:9.) Those deposit amounts are similar or identical in amount (*e.g.*, \$9,416.00, \$8,827.50, \$8,239.00, \$7,062.00) to the High Tech deposits made in the ten days preceding the \$94,000 April 1 wire transfer. (*See* Defs' Exh. O at 25, 33.)

⁵At trial, Kadonsky's attorney at that time, Robert K. Rothfeder, testified as to the sequence of events surrounding the sale of the Park City property and his own conversations with Higgins and Kadonsky concerning the sale.

claimed his "interest" in the property to Comanche Nation Ltd. Partnership, the record title holder. Comanche Nation, by and through the signature of Richard Higgins, General Partner, then acted to convey the Park City property to the new purchaser.

Closing was set for June 1, 1994. The sale of the Park City property was consummated, and the title company undertook to distribute the proceeds of sale.

On June 1, 1994, U.S. Customs Agent Steven Cooper served a federal seizure warrant, signed by U.S. Magistrate Judge Sam Alba, on Associated Title Company, the closing agent. The warrant was for \$300,000 in proceeds from the sale of the Park City property by Comanche Nation Ltd. Partnership to Saddleview LLC., evidenced by a check in that sum made payable to Steven J. Kadonsky. Thereafter, the Fines and Penalties Office of the U.S. Customs Service, in Nogales, Arizona, proceeded to commence an administrative forfeiture of the \$300,000. Howard Weinthal was notified of the seizure and intent to forfeit. The U.S. Customs Service published notice of seizure and intent to forfeit in the *Arizona Daily Star* on August 3, 10 and 17, 1994. On September 22, 1994, the U.S. Customs Service declared the \$300,000 forfeited.

As the court of appeals points out,

The government is required to give notice to all persons who have or claim an interest in property that is subject to administrative forfeiture. *United States v. Clark*, 84 F.3d 378, 380 (10th Cir. 1996); *see also* 19 U.S.C. § 1607 (providing that "[w]ritten notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article"). Notwithstanding the confusion in record title and the conflict in Kadonsky's statements, it is clear that Kadonsky, at a minimum, "appear[ed] to have an interest" in the check made out in his name. Therefore, under § 1607, he was entitled to

receive notice of seizure.

Kadonsky v. United States, 3 Fed. Appx. 898, 2001 WL 113825, slip. op. at 8 (10th Cir. decided February 9, 2001) (Case No. 00-4062) (unpublished disposition).

Unfortunately, “It is uncontested that the government did not provide Kadonsky with notice” of the administrative forfeiture. *Id.* Had the United States given formal notice to Kadonsky, life would have been much simpler for all of us.

“The question before us, however, is not whether the government failed to follow the statute. In order to make out a valid claim for return of property *a claimant must show the deprivation of an actual property interest*, not just the appearance of a property interest.” *Id.* at 8-9 (emphasis added).⁶

PLAINTIFF’S CLAIM FOR RETURN OF PROPERTY

Plaintiff claims entitlement to the \$300,000, and seeks its return in this civil proceeding. The court of appeals observed that “[t]he payee of a seized check necessarily suffers an injury that can be redressed by reimbursement for the amount of the check,” and that “Kadonsky has standing to contest the forfeiture.” *Id.* at 7-8 (footnote omitted).

“Proceedings surrounding the motion for return of property seized in a criminal case are civil in nature,” *United States v. Maez*, 915 F.2d 1466, 1468 (10th Cir. 1990), and based upon equitable principles. *See United States v. Madden*, 95 F3d 38, 40 (10th Cir. 1996). *See also United States v. Giovanelli*, 998 F.2d 116, 119 (2d Cir. 1993)

⁶Contrary to Kadonsky’s assertions, the court of appeals did *not* determine the validity of his claimed property interest in \$300,000 of the proceeds of the sale of the Park City property: “We have dealt with the government’s attack on the validity of Kadonsky’s ownership rights in the currency strictly in the context in which they were raised—standing.” *Id.* at 8 n.4.

(forfeited property ordered to be returned to claimant based upon “the government’s utter failure to make the slightest effort to notify defendant of the forfeiture action”); *Onwubiko v. United States*, 969 F.2d 1392, 1397 (2d Cir. 1992) (district court jurisdiction properly invoked over property taken through administrative forfeiture without proper notice).

In an equitable civil proceeding contesting an administrative forfeiture and seeking return of seized property, “the government must demonstrate that it has a legitimate reason to retain the property. The government may meet this burden by demonstrating a cognizable claim of ownership or right to possession adverse to that of the movant.” *United States v. Clymore*, 245 F.3d 1195, 1201 (10th Cir. 2001) (“*Clymore II*”) (quoting *United States v. Chambers*, 192 F.3d 374, 377 (3d Cir. 1999)). If the government shows this, the burden of proof shifts to the claimant to “prove only a right to lawful possession of the property and an equitable right to its return.” *Id.* “The claimant may do so by showing that the property is not the proceeds of illegal drug activities or that the claimant is an ‘innocent owner.’ 21 U.S.C. § 881(a)(6) (1999) (current version at 18 U.S.C. § 983(d) (2001)).” *Alli-Balogun v. United States*, 281 F.3d 362, 366-67 (2d Cir. 2002). If the claimant fails to bear that burden, the government is entitled to a judgment. *Id.*

The court must always bear in mind, however, that . . . an equitable civil motion for return of property used in drug offenses is confined by property rights defined in § 881. If the government . . . can prove that the property is § 881(a) property . . . notwithstanding any other constitutional challenges, . . . only an innocent owner may qualify as one entitled to lawful possession of the property.

Clymore II, 245 F.3d at 1201 (citation omitted). In an equitable civil proceeding, “if the administrative forfeiture is declared void and without *res judicata* effect,” the Court’s inquiry “must then focus on the claimant has met his burden to establish that he is both lawfully and equitably entitled to return of the property.” *Id.* at 1202. Absent such a showing, the Court may “quiet title to the property in favor of the government” *Id.*⁷

Drug Proceeds & the Purchase of the Park City Property

Kadonsky’s legal and equitable entitlement to the \$300,000, if any, is a creature of history.

From what source did the funds come for the initial purchase of the Park City property? According to Mr. Kadonsky, as sworn to before the Grand Jury, all of the funds came from Weinthal’s sales of marijuana, and were laundered by Plaintiff through the High Tech account, his personal account, and the account of another entity he controlled.

⁷As the court of appeals elaborates:

The government, however, does not have to quiet title to § 881(a) property only through civil forfeiture proceedings. It can also obtain quiet title to contraband, derivative contraband, and proceeds of criminal activity in a criminal proceeding. *See id.* § 853. Or, as in the case at hand, the government may be awarded quiet title to confiscated property in a civil equitable proceeding based upon a Rule 41(e) or equitable civil motion brought by one who alleges a lawful right to possession. In other words, just because the statute of limitations has run on the government bringing an action to quiet title in the property by using forfeiture proceedings, that does not mean that the district court cannot rule in favor of the government on [claimant]’s attempt to equitably recover the property seized during his arrest. To hold otherwise would give criminal defendants a conclusively presumptive property right in the fruit of their criminal conduct even if it was properly seized, a result clearly prohibited by § 881. It would also foreclose judicial consideration of whether [claimant] met his separate burden of proof required in his civil equitable action based upon Rule 41(e).

Clymore II, 245 F.3d at 1200.

The real property was placed in the name of Park City Development Limited Partnership. It was never held in Kadonsky's name. Weinthal, acknowledged drug dealer and client of Kadonsky (his adviser, partner, courier, document creator, and tax preparer), and Kadonsky's erstwhile limited partner in Park City Development Limited Partnership, subsequently conveyed the property to another limited partnership called Comanche Nation Ltd.

Weinthal and one Richard Higgins appear to have had an interest in that entity. Kadonsky was not part of that entity. Kadonsky was not consulted about the conveyance.

After that had been done, Kadonsky—without contact with Weinthal, and feeling put-upon by Weinthal's unilateral actions—filed his notice of interest. Of course, his interest, if any, was in Park City Development Limited Partnership which, as an entity, had been record owner of the Park City property—property which Kadonsky had sworn under oath to the Grand Jury was purchased with Weinthal's laundered drug funds.

Kadonsky still asserts no interest in Comanche Nation Ltd. It was Comanche Nation Ltd, through Richard Higgins, which conveyed the Park City property to the new purchaser, and received payment of the purchase price.

The fact that Richard Higgins, on behalf of Weinthal, or on behalf of Comanche Nation Ltd., agreed that from the sales proceeds the sum of \$300,000 be distributed to Kadonsky in no way sanitizes the original acquisition of the property as a device for laundering illicit funds derived from the illegal sale of drugs.

It was out of Kadonsky's own mouth in 1994 that the United States learned the

source of the funds, and here has demonstrated by a preponderance of the evidence that the properties are the fruits of illegal drug activity.

Kadonsky's Theory at Trial

Since 1994, Mr. Kadonsky has had second thoughts. He now testifies that the money used to purchase the Park City property came from him as proceeds of High Tech's legitimate chemical sales to various unidentified retail businesses in early 1991; that the funds used were clean as to source; that the agreement was that he was to put up \$220,000 from his own funds to purchase the land, and that Weinthal was to furnish \$225,000 in the future to start a building project – perhaps a bank; and that a bank would be approached to provide the construction funding for a strip mall. Kadonsky testifies that rather than do that, Weinthal tried to steal the Park City property by conveying it to a new entity that he controlled. To preclude that result, according to Kadonsky, he filed his “Notice of Interest.”

During his recent trial testimony, Kadonsky called upon his CPA training and made an effort to trace and to allocate funds, after the fact, in an effort to show how “clean” the funds were which effected the purchase. He urges that account records showing substantial payments of \$10,000, \$20,000 and \$25,000 to “Windsor Supply” in early 1991 reflect purchases of anti-odorant chemical, supporting an inference that the significant cash deposits made in the High Tech account in March 1991 represented the proceeds of legitimate retail sales of the chemicals thus purchased. He now asserts that the only funds deposited in the High Tech account in early 1991 that are properly

attributable to Weinthal's drug proceeds are those amounts represented by checks issued to pay Weinthal's other creditors, such as his Malibu landlord, *excluding* the purchase of the Park City property.

In doing so, he ignores the nature of the entities which he helped create, and the facts corroborating his prior testimony. And Kadonsky has offered no contemporaneous business records to substantiate the legitimacy of the source of the funds channeled through High Tech, his personal account or his Wholesale Close-Outs business, *viz*, his bona fide retail sales.

High Tech was organized at Kadonsky's suggestion for the specific purpose of laundering Weinthal's drug proceeds. He has acknowledged that his personal bank account and the account of another entity which he controlled were used when a check from High Tech alone would have required cash deposits too large to pass muster to successfully mask or launder Weinthal's drug proceeds. According to Kadonsky's testimony in 1994, that process was used in the purchase of the Park City property. The necessary checks or wire transfers came through various accounts.

Kadonsky now re-labels the source of those funds as "clean," unabashedly trying to re-characterize in retrospect the source of the funds.

The financial records now in the record before this court lend at least as much support to Kadonsky's 1994 explanation to the grand jury as they do to his 2004 revision of that explanation proffered in support of his claim. This documentary evidence does not preponderate in favor of a conclusion that Kadonsky testified falsely about a maze of

financial transactions then much closer in time, or that in the earliest months of its existence in 1990 and 1991, High Tech actually operated as a successful chemical retailer rather than the money-laundering artifice that it was deliberately created to be.

Did \$70,031.50 in deposits between March 21 and April 1, 1991 reflect the sale off the back of a truck to businesses along the highway from New Jersey to Wisconsin of 119 five-gallon containers of anti-odorant chemicals at \$588.50 apiece, or did this simply reflect Kadonsky's "bullet-proof" High Tech drug money laundering scheme at work? This court adopts the latter inference as the more persuasive one, and concludes that Kadonsky testified truthfully in 1994 when he explained to the grand jury that these funds were Weinthal's drug proceeds being funneled into the purchase of the Park City property initially located by Weinthal and acquired at Weinthal's instance.⁸

Towards the end of Kadonsky's February 22, 1994 Grand Jury testimony, a juror spoke up:

A JUROR: Why is he testifying? You sound like you were very close.

THE WITNESS: Yes. I got arrested, and part of my cooperation is
[Kadonsky] that I'm expecting to get lenient treatment on my other cases.

(GJ Tr. at 35:23-36:2.)

⁸The court remains unpersuaded by Kadonsky's current explanation that his grand jury testimony reflected a "bookkeeping entry in [his] head" to the effect that Weinthal had extinguished Kadonsky's \$220,000 purchase money interest in the Park City property in 1994 by paying more than \$200,000 in legal fees and expenses for the benefit of Kadonsky and others with respect to his New Jersey state criminal proceedings, or that Kadonsky's interest in the property was subsequently revived (in Kadonsky's mind) when Weinthal purportedly told Kadonsky that the fee "contribution" had nothing to do with the Park City investment, and that Weinthal did not know where the Park City purchase money had come from.

If, as Kadonsky now insists, he had purchased the Park City property wholly with his own funds derived from legitimate sources, he would have had no reason to mention the Park City property to the grand jury at all.

Kadonsky's present effort to transmute "drug money" into clean money by re-characterizing and re-labeling transactions long after the fact, and through retrospective accounting devices, *e.g.*, suggesting that existence of checks traceable to Weinthal or his designees through various accounts means that all other monies deposited in those accounts came from untainted sources, is interesting, but unpersuasive.

The very purpose of operating High Tech was to launder money and facilitate drug trafficking. Money from whatever source deposited in High Tech's account was co-mingled with all other money in that account. It is absolutely without contest that at least \$104,000 was passed through that account for partial payment on the Park City property. No part of that bore Kadonsky's ownership label, nor, according to Kadonsky's Grand Jury testimony, did *any* of the \$220,000 purchase price.

A cooperative witness before the Grand Jury is expected to tell the truth and is sworn to tell the truth. Kadonsky has a choice – a dilemma. He either told the truth to the Grand Jury as to the source of the money, or, in retrospect, he is telling the truth now, which necessarily means he was not telling the truth to the Grand Jury.

He testified before the Grand Jury less than two years after he filed his notice of interest, and nothing was said of his claimed interest.

His explanation now was that Weinthal had provided him and co-defendants in a state case in New Jersey with payments of \$225,000 to their defense attorneys and, as a result, he thought that such payment extinguished Kadonsky's interest in, and Weinthal's obligation to pay into Park City Development that sum. In Kadonsky's "mental

bookkeeping,” such payment vested the Park City property in Weinthal and divested Kadonsky of any interest.

He subsequently solicited a written statement from Weinthal that the property belonged to Kadonsky, and was not purchased with Weinthal’s money. But, Kadonsky is still dogged by history and by the words which came out of his own mouth in 1994, all under oath.

Is Kadonsky’s 1994 sworn testimony before the Grand Jury worthy of belief, or is Kadonsky’s 2004 testimony before this Court worthy of belief?

The whole factual history belies Kadonsky’s newly found revisionist history as to money source.

Whatever the motivation of the record title holder of the Park City property may have been in agreeing that \$300,000 from sales proceeds should be paid to Plaintiff (with an additional amount to be paid to his attorney and a sum paid to Comanche Nation Ltd., whose “General Partner” Higgins was, according to Kadonsky, owed fees by Weinthal), remains shrouded in mystery. The sale was pending. The buyer and broker eager.

The essential question here looks back to the original acquisition from Resolution Trust when the title was placed in the name of Park City Development. The answer to that question came in 1994, and came from Plaintiff himself before the Grand Jury. Weinthal’s drug money was the source – an answer closest in time to the events, and purest in motivation.

As to source, the 1994 Kadonsky is more worthy of belief; the 2004 Kadonsky is

not worthy of belief.

The Court, having found that the Park City property was acquired with tainted funds, what remains? Congress provides the answer. There is no ownership in anyone except the government. 21 U.S.C. §881(a)(7) provides:

(a) Subject property

The following shall be subject to forfeiture to the United States and *no property right shall exist in them*:

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment [Emphasis added.]

As the court of appeals explains:

“[N]o property right shall exist” in illegal drugs, proceeds from selling illegal drugs, or property used to enable the illegal smuggling of drugs into this country. 21 U.S.C. § 881(a) (1999). Such property is not subject to a state statutory or common-law right of replevin. *Id.* § 881(c). The government has the right to confiscate and maintain custody over that property “subject only to the orders and decrees of the court or the official having jurisdiction thereof.” *Id.*

At the time the government takes possession of property used to commit drug offenses, it holds an unperfected right to title to it, and ownership will retroactively vest in the government from the time the illegal act was committed upon a judicial quieting of title to the property in favor of the government. . . .

Clymore II, 245 F.3d at 1200 (citations omitted).

In order to show “that he is both lawfully and equitably entitled to return of the property,” *Clymore II*, 245 F.3d at 1202, Kadonsky bears the burden to show that he has a

lawful right to possession and that the property does not represent the proceeds of illegal drug activities.⁹ Kadonsky has failed to carry his burden in attempting to discredit his own prior sworn testimony concerning the purchase of the Park City property. Like the illicit cash proceeds used to purchase it, the Park City property represented “proceeds from selling illegal drugs” and was § 881(a) property. In turn, the proceeds of the 1994 sale of that property must also represent those same proceeds, again liquidated to cash as originally intended by Kadonsky’s money laundering scheme, devised by him for Howard Weinthal’s benefit.

Kadonsky’s proffer of possible innocent sources of income from his various business enterprises does not vitiate the government's showing of a strong probability that the source of the money invested in the Park City property is in fact illegal drug activity—a showing grounded squarely upon Kadonsky’s prior sworn testimony and contemporaneous financial records. *See United States v. \$41,305 in U.S. Currency and Traveler's Checks seized from house of Hoback*, 802 F.2d 1339, 1345 (11th Cir. 1986). (“[w]here the government has presented evidence of an illegal source, the claimant must do more than show the existence of possible legitimate sources of cash.”)

The government has made a strong showing of a probable illegal source while

⁹As *Clymore II* observes:

There are only two categories of owner that may have a superior interest to the government in § 881(a) property when the nexus between the property and the crime has been conclusively established . . . one whose constitutional right against an illegal search and seizure has been offended, . . . or an innocent owner

Clymore II, 245 F.3d at 1200 (citations omitted). Here, Kadonsky does not assert the applicability of either category.

Kadonsky has failed to rebut the government's showing with credible evidence to support his assertions of alternate legitimate source. Moreover, the only evidence offered by Kadonsky as to potential alternate sources of income remains either unsubstantiated or wholly lacking in credibility. He offered no exhibits in the nature of a contemporaneous business or financial records corroborating his assertion that the purchase money was derived from his own legitimate business revenues. No other witness offered testimony corroborating Kadonsky's vague assertions as to source.

Kadonsky has "failed to demonstrate legitimate alternate sources of income large enough to account for the[] cash expenditures" made in purchasing the Park City property. *United States v. One Hundred Forty-Nine Thousand Four Hundred Forty-Two and 43/100 Dollars (\$149,442.43) in U.S. Currency*, 965 F.2d 868, 878 (10th Cir. 1992). The Court concludes that the \$220,000 used to purchase the Park City property in 1991 represented the proceeds of the sale of illegal drugs—as Kadonsky testified under oath in 1994.

Kadonsky's claimed interest in the June 1, 1994 check representing \$300,000 of the Park City property sale proceeds cannot be divorced from the character of the property thus liquidated to cash; nor can it be isolated from the source of the funds used in the original 1991 purchase of the property. The \$300,000 represents the laundered but traceable proceeds of illegal drug trafficking in which Kadonsky can have no constitutionally protected property interest. Therefore, as to Kadonsky, the seizure and forfeiture of those proceeds has not "offended due process rights." *See United States v.*

Deninno, 103 F.3d 82, 84 (10th Cir. 1996); *United States v. One Parcel of Real Property Described as Lot 41, Berryhill Farm Estates*, 128 F.3d 1386, 1391-92 (10th Cir. 1997).¹⁰

The government is entitled to judgment quieting title in those proceeds in the United States. *See Clymore II*, 245 F.3d at 1200-1203; *Alli-Balogun v. United States*, 281 F.3d at 366-67.

Kadonsky's Claimed Interest in Partnership Property & the \$300,000 Check

Even assuming *arguendo* that the Park City property was purchased using revenues from legitimate business activities, the nature of Kadonsky's "right to lawful possession" of the seized property—the \$300,000 check—cannot be determined solely by the fact that he prevailed upon the maker of the \$300,000 check to name him as sole payee.¹¹ Rather, as the court of appeals points out, "to make out a valid claim for return of property a claimant must show the deprivation of an actual property interest, not just the appearance of a property interest."

The \$300,000 arose from the sale of the Park City Property.

The Park City property was never held in Steven Kadonsky's name.

Kadonsky testified at trial that the Park City property was purchased in 1991 as a limited partnership investment, but he argued that it became his sole property by virtue of

¹⁰This finding and conclusion renders moot the questions whether the government may rely on laches or equitable estoppel as a defense to Kadonsky's claims. *Kadonsky v. United States*, 3 Fed. Appx. 898, 2001 WL 113825, slip. op. at 10-13.

¹¹A contrary conclusion could only serve to vindicate Kadonsky's original drug money laundering scheme. Plaintiff cannot acquire a constitutionally protected property interest in illegal drug proceeds by laundering them through a real estate purchase and subsequent sale to a third party.

Weinthal's failure to fund construction on the site as promised, and his conveyance of the property to the Comanche Ltd. partnership entity controlled by Weinthal and Higgins.

What Kadonsky does not understand is that Park City Development Limited Partnership remained a partnership in fact even though the paperwork for the contemplated limited partnership was not completed.

A partnership is "an association of two or more persons to carry on as coowners a business for profit," Utah Code Ann. § 48-1-3(1)(a) (2002), a legal entity which has a life separate and apart from the partners. *See, e.g., Cottonwood Mall Co. v. Sine*, 767 P.2d 499, 501 (Utah 1988); *Wall Inv. Co. v. Garden Gate Distrib., Inc.*, 593 P.2d 542, 544 (Utah 1979). There may be "a partnership merely for the consummation of a single transaction, adventure or undertaking." *Nupetco Associates v. Jenkins*, 669 P.2d 877, 882 (Utah 1983) (citing 1 S. Rowley, *Rowley on Partnership* § 6.5, at 77 (2d ed. 1960)).

In this case, Park City Development Limited Partnership, not Kadonsky or Weinthal, was record title owner. According to Kadonsky's uncontroverted testimony at trial, the property was purchased as a partnership investment, and was therefore partnership property. According to Utah Code Ann. § 48-1-5 (2002),

All property originally brought into the partnership stock, or subsequently acquired by purchase or otherwise on account of the partnership, is partnership property.

Unless the contrary intention appears, property acquired with partnership funds is partnership property.

Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

The partners therefore had interests in the Park City property defined in accordance with

their agreement and the applicable partnership act.¹²

Utah Code Ann. § 48-1-22 (2002) provides that “[a] partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.” Utah Code Ann. § 48-1-23 (2002) provides: “A partner’s interest in the partnership is his share of the profits and surplus, and the same is personal property,” and this includes the partner’s interest in partnership real property. *See In re Ostler’s Estate*, 4 Utah 2d 47, 286 P.2d 796 (1955). *Accord* Utah Code Ann. § 48-2a-701 (2002) (“A partnership interest is personal property.”)

As a partner, Weinthal had the power to convey title to the Park City property:

Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property, unless the partner's act binds the partnership under the provisions of Section 48-1-6(1), or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner in making the conveyance has exceeded his authority.

Utah Code Ann. § 48-1-7 (2002). He did so convey, to another entity over which he exercised at least nominal control. That entity in turn conveyed the Park City property to a third party purchaser in June of 1994.

And what of Kadonsky’s interest in the partnership property?

Absent recovery of title to the Park City property from Weinthal’s Comanche Ltd. entity by Park City Development Limited Partnership—a remedy that Kadonsky did not

¹²The Utah Uniform Partnership Act, Utah Code Ann. § 48-1-3(3) (2002), provides that “[t]his chapter shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.” *See also* Utah Revised Uniform Limited Partnership Act, Utah Code Ann. §§ 48-2a-101 through 48-2a-1107 (2002).

seek—Kadonsky’s claim would appear to lie against his erstwhile partner Weinthal for an accounting, or for breach of fiduciary duty. *See* Utah Code Ann. § 48-1-18 (2002) (“Every partner must account to the partnership for any benefit, and hold as trustee for it any profits, derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property.”)¹³ But Kadonsky held no personal ownership interest in or other “right to lawful possession” of the *res* of the Park City property at the time it was sold by Comanche Nation Ltd. in June 1994

Forfeiture of Kadonsky’s Partnership Interest

In light of the foregoing determinations, this Court need not now decide whether Kadonsky’s potential accounting and fiduciary claims against Weinthal arising from Kadonsky’s interest in the Park City Development Limited Partnership were forfeited in connection with a judicial proceeding in the District of Arizona of which Kadonsky had been given actual albeit tardy notice. *See Kadonsky v. United States*, 3 Fed. Appx. 898, 2001 WL 113825, slip. op. at 5. Nor need the Court address a related proceeding commenced by Plaintiff in 1996 in the Northern District of Texas. *Id.* slip op. at 6; *see Kadonsky v. United States*, Civil No. CA-3:96-CV-2969-BC, 1998 WL 119531 (N.D. Tex. decided March 6, 1998), *affirmed*, 216 F.3d 499 (5th Cir. 2000).

In its February 9, 2001 Order and Judgment, the court of appeals recited that this

¹³Kadonsky’s August 1992 Notice of Interest asserted “his interest in the above described property by virtue of being the sole owner and general partner of Park City Development Limited Partnership,” acknowledging that the Park City property was partnership property in which he claimed a partnership interest.

Court had “determined that Kadonsky had no property rights because the Texas forfeiture action had stripped him of his interests in the real property and the partnership.” *Id.* at 9.

In fact, this Court had made no such determination.

Rather, this Court had concluded that “[w]hatever apparent interest the partnership entity may have had in the property as of June 1, 1994, that interest was forfeited to the United States in subsequent judicial proceedings in the District of Arizona. Mr. Kadonsky’s interests—whatever they may have been—in partnership assets terminated at that point.” (Order, filed January 13, 2000 (dkt. no. 35), at 3.) The Arizona judicial forfeiture proceeding had been brought against several Weinthal-Kadonsky entities, including the Park City Development Limited Partnership and its assets, Comanche Nation Limited Partnership and its assets, as well as the interests of Weinthal and Kadonsky in any of those entities. (*See Verified Complaint for Forfeiture in rem, United States of America v. Battenkill Limited Partnership, et al.*, Civil No. CIV-94-2448-PHX-CAM (D. Ariz. entered June 30, 1995), annexed as Exh. F to Defendants’ Memorandum in Support of Motion for Summary Judgment and in Opposition to Plaintiff’s Motion for Summary Judgment, filed May 11, 1999 (dkt. no. 23) (“Defs’ Summ. Judg. Mem.”).)¹⁴ The District of Arizona had forfeited the named entities, assets and interests, and had denied Kadonsky’s subsequent Motion to File Answer and Property Claims Out of Time. (*See Order*, filed December 13, 1996, *United States of America v. Battenkill Limited*

¹⁴The Verified Complaint made specific reference to the Park City property and the seizure and administrative forfeiture of its proceeds. (*Id.* at 18-21 ¶¶ 68-74.)

Partnership, et al., Civil No. CIV-94-2448-PHX-CAM (D. Ariz. entered June 30, 1995), annexed as Exh. H to Defs' Summ. Judg. Mem.)

If, as Kadonsky has persistently argued, the administrative forfeiture of the \$300,000 in sale proceeds was void for lack of requisite notice to him (ostensibly as the Park City Development Limited Partnership's real party in interest),¹⁵ any property interest of Kadonsky or Park City Development Limited Partnership in those proceeds or claims would have survived the September 1994 administrative forfeiture only to be lost upon the entry of judgment in the Arizona proceeding in June 1995, forfeiting Kadonsky's interest in that partnership, and in January 1996, forfeiting the partnership and its assets to the United States. (See Partial Default Judgment as to Steven J. Kadonsky Regarding Defendants 3-6, *United States of America v. Battenkill Limited Partnership, et al.*, Civil No. CIV-94-2448-PHX-CAM (D. Ariz. entered June 30, 1995), annexed as Exh. I to Defs' Summ. Judg. Mem.)

In 1994 and again at trial in 2004, Kadonsky had indicated that his interest in the New England real property, which he had purchased for Weinthal, was to be 15%, and the interest of Weinthal 85%, and Weinthal was to put up all of the money. He indicated as well to the government that there was to be a similar division of interest in the Park City investment, namely 15% and 85%, hardly consistent with the idea of "clean" purchase money and sole ownership of the Park City property in the Plaintiff.

¹⁵As Plaintiff has established elsewhere, "when those with an interest in forfeited funds failed to receive constitutionally adequate notice, the administrative forfeiture is void . . ." *Kadonsky*, 216 F.3d at 503.

Taking Kadonsky at his word that the Park City property was acquired as a partnership investment in which he had a 15% interest in any return, his claim against his partner Weinthal for an accounting as to the value of that interest does not translate into an interest in the Park City property itself, or in the immediate proceeds of its sale in June 1994. The court has no basis on this record to disregard the legal entities and relationships that existed at that time.¹⁶

Kadonsky may have prevailed upon the title company to issue the \$300,000 check in his name in June 1994, but he has failed to establish "an actual property interest, not just the appearance of a property interest" in the check or the sales proceeds it represents.

CONCLUSION

Plaintiff in this equitable proceeding seeks \$300,000 seized by the government in 1994.

In this equitable proceeding, the burden of proof and persuasion is his as to his own right to lawful possession and an equitable right to its return.

The evidence offered by him at trial is insufficient to justify such an award.

¹⁶Even if Park City Development Limited Partnership was merely a "straw" owner of the property for the benefit of someone else, the evidence preponderates in favor of the conclusion that it was Weinthal, not Kadonsky, who stood to benefit.

It was Weinthal who located the Park City property. It was not Kadonsky.

The funds for payment were processed through a number of accounts. The explanation for why that occurred came from Kadonsky when testifying under oath to the Grand Jury in 1994: it was to launder illegal drug money for Weinthal. Whatever their source, Kadonsky testified the funds were received from Weinthal.

The fact that Weinthal "as General Partner" of Park City Development Limited Partnership conveyed the property to another entity controlled by Weinthal is consistent with Kadonsky's testimony concerning for whose benefit the property was acquired, namely Weinthal. The fact that Kadonsky was not notified that such conveyance was taking place is consistent with an understanding that the property was held for Weinthal's benefit.

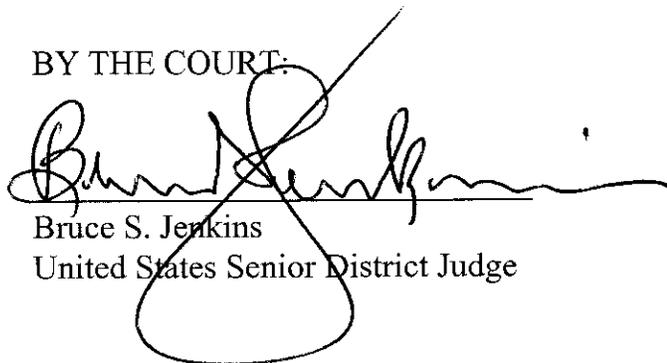
Kadonsky was bereft of any legitimate property interest in the realty, not only because the government has shown that the real property acquisition by Park City Development Limited Partnership was paid for using Weinthal's laundered drug funds, as testified to by Kadonsky before the Grand Jury, but also because the property was partnership property, not his property, conveyed to and by another entity in which he played no part. He is thus bereft of any direct entitlement to \$300,000 of the June 1994 sales proceeds, regardless of his possible claims against Weinthal, Richard Higgins, or Comanche Nation Ltd. at that time.

The Court finds for the Defendants and against Plaintiff, and **IT IS ORDERED** that the Plaintiff's complaint be **DISMISSED** on the merits. **IT IS FURTHER ORDERED** that to the extent that Plaintiff's Motion for Findings of Fact (dkt. no. 48) seeks findings inconsistent with the foregoing opinion, that motion is hereby **DENIED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED this 27 day of September, 2004.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Bruce S. Jenkins", is written over a horizontal line. The signature is stylized and somewhat cursive.

Bruce S. Jenkins
United States Senior District Judge

United States District Court
for the
District of Utah
September 28, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:98-cv-00852

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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,
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