

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:05-CV-767-FL(3)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	GOVERNMENT'S RESPONSE
	)	TO THE MOTION BY
v.	)	CARMEN BADRIAN FOR
	)	RELEASE OF SEIZED
\$19,985.90 in U. S. CURRENCY,	)	VEHICLE, AND REQUEST
et. al.,	)	<u>FOR APPROPRIATE RELIEF</u>
	)	
Defendants.)	)	

The United States of America ("Government"), by and through the United States Attorney for the Eastern District of North Carolina, files this response to the motion by Carmen Badrian ("Claimant") for release of a seized vehicle for substantial hardship. In the event Claimant's motion is granted, the Government respectfully requests the Court, pursuant to 18 U.S.C. 983(f)(7), enter an order to ensure the value of the vehicle is maintained while the forfeiture action is pending.

STATEMENT OF CASE AND FACTS

On December 2, 2005, the Government filed an amended verified complaint for forfeiture in rem pursuant to 18 U.S.C. §§ 981(a)(1)(A) and (C) against several bank accounts, vehicles, and two pieces of real property. The Government alleged the defendant properties had been involved, or were traceable to property involved in, money laundering transaction(s) or attempted transaction(s) in violation of 18 U.S.C. §§ 1956 and

1957, and/or proceeds traceable to violations of the Contraband Cigarette Trafficking Act, 18 U.S.C. § 2341, et. seq.

The facts and circumstances supporting seizure and forfeiture of the defendant properties are set forth in the Affidavit of Michael Fanelly ("Fanelly Affd."), a Senior Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). Special Agent Fanelly's affidavit was filed with this Court in support of the Government's Amended Complaint. Among other things, the affidavit describes in detail a conspiracy to traffic contraband cigarettes, which involved the purchase of large quantities of cigarettes in North Carolina that were shipped to, and sold in, California with counterfeit tax stamps affixed.

On December 8, 2005, this Court issued a warrant of arrest and notice in rem for seizure of the defendant properties. Included among the defendant properties was a 2004 BMW Sport Utility Vehicle - VIN: 5UXFA13594LU29466 ("BMW"). On December 19, 2005, the BMW was seized by ATF agents at the apparent home of Claimant and her husband, Avedis Djerejdian a/k/a Mike Capocci at 1356 Doverwood Drive in Glendale, California, also a defendant property.

The BMW is registered to Claimant, who is the wife of Avedis Djerejdian a/k/a Mike Capocci, who, on February 15, 2006, was charged in a thirteen count indictment for activities relating to

cigarette trafficking. Fanelly Affd., ¶ 178. According to California Department of Motor Vehicle records, the BMW was purchased new from Century West BMW for approximately \$48,500.00 on February 20, 2004. Id., ¶ 179. At the time of purchase, the Djerejians' only known source of income was generated through the operation of the illegal contraband cigarette trafficking business. Id., ¶ 180.

By letter dated February 16, 2006, forwarded via facsimile on February 17, 2006, Claimant, through her attorney, petitioned ATF to release the BMW pursuant to 18 U.S.C. § 983(f)(3)(A). The Government believed the BMW was of greater value than that represented by Claimant, and, consequently, agreed to release the vehicle in exchange for a letter of credit protecting the Government's potential interest.¹ Subsequently, Claimant filed the instant motion on April 11, 2006.

The Government has not objected to releasing the vehicle despite believing Claimant does, in fact, have access to other vehicles. Rather, the Government has only attempted to ensure

¹¹ In her motion, Claimant claims she never heard ATF's final decision, but admits ATF informed her that undersigned counsel would communicate the decision. Claimant's Motion, at 2. Claimant also quotes in her motion part of an e-mail from undersigned counsel regarding the value of the vehicle. Indeed, all of the e-mail correspondence between counsel for Claimant and undersigned counsel regarding the petition for release of the vehicle was submitted to the Court, albeit (likely mistakenly) as an exhibit to another filing in this case filed the same day. The e-mail correspondence indicates undersigned counsel did communicate ATF's decision.

the value of the BMW is maintained while the forfeiture action is pending. For the reasons to follow, if the Court determines release of the BMW is appropriate, the Government respectfully requests the Court, pursuant to 18 U.S.C. 983(f)(7), enter an order to ensure the value of the vehicle is maintained while the forfeiture action is pending.

ARGUMENT

18 U.S.C. § 983(f)(1) provides that, in certain circumstances, a claimant is entitled to immediate release of seized property if a substantial hardship resulting from the seizure can be shown. Claimant filed such a request with ATF approximately sixty (60) days after the BMW was seized pursuant to a warrant for arrest in rem issued by this court.

According to 18 U.S.C. § 983(f)(3)(A), if the Government does not release the seized property within 15 days of a claimant's request to the appropriate official, the claimant may file a petition in the district court in which the complaint has been filed. Claimant filed such a petition with this Court approximately fifty-three (53) days after she made her request for release from ATF.

There is no requirement that Claimant make her request for release of property with the appropriate official within a specified time after seizure, or, within a specified time, petition the Court for release after expiration of the fifteen

day period. However, the dilatory fashion in which Claimant filed her request for relief with ATF and subsequent petition to this Court, at the very least, suggests the hardship is not nearly as great as alleged.

In fact, Claimant has not been entirely forthcoming with respect to her allegation that the Government has left her and her husband with only one vehicle. According to a recent search of the California Department of Motor Vehicles records, Special Agent Fanelly determined, as of April 13, 2006, a 1992 Alfa Romero is still registered to Claimant, and a 1995 Jaguar to her husband. See Exhibits 1, hereto. Neither of these vehicles was seized or is part of the Government's Amended Complaint for Forfeiture in Rem. (Even if these vehicles are not still owned by Claimant and/or her husband, their disposition is suspiciously recent.)

Moreover, shortly after the Government executed search warrants in June 2005, the Claimant's husband sold at least two of his vehicles - a 1995 Toyota and a 1998 Ford minivan. According to California Department of Motor Vehicles records, the 1998 Ford minivan was registered to Mike Capocci, an alias of Claimant's husband. Given the propensity to use aliases, the Government cannot be certain whether there is not, in fact, other property, real or personal, accessible to Claimant and/or her husband. As a result, it is certainly questionable whether a

substantial hardship truly exists or has been caused by the Government's seizure of the BMW.

Claimant also contends there is no equity in the BMW inasmuch as its value is "far lower than \$30,000.00," or in the "\$26,200.00-\$28,000.00 range."² Claimant's Motion, at 3-4. Claimant further classifies the two-year old vehicle with only 21,000 miles as in "fair" or "average" condition and relies only on the "trade-in value" for the suggested range of value. *Id.* at 4.³

Claimant's representations to the Court regarding the potential value of the vehicle are misleading at best. First, a vehicle forfeited to the Federal Government is not traded, it is sold at auction. The trade-in value is how much one can expect to receive for the used vehicle from a dealer, which involves the purchase of another vehicle from the dealer. In contrast,

²³ Claimant cites to "attached" printouts from Edmunds and Kelley Blue Book. There are no exhibits to Claimant's Motion, but presumably Claimant is referring to exhibits attached to another filing in this case filed on the same day. Even so, only information from www.Edmunds.com is included.

³⁴ Claimant accuses the Government of acting in bad faith and states "AUSA Royster has claimed since March 7 that the government appraised the vehicle at \$33,600.00 - but has refused to provide a copy of this appraisal, despite numerous requests." Claimant's Motion, at 4. Undersigned counsel relied on the appraisal of EG&G Technical Services, Inc., which provides the U.S. Department of Treasury with seized property support, including storage and appraisals of seized property. Despite Claimant's allegations that undersigned counsel has refused to provide an appraisal, the other e-mails, alluded to, but not attached to Claimant's Motion, inform counsel for Claimant that there is no written appraisal.

according to Kelley Blue Book, the "private party value" assumes the vehicle is sold "As Is" and carries no warranty (other than the continuing factory warranty). This description is akin to Claimant's description of a "pig in the poke." Claimant's Motion, at 4.

According to www.edmunds.com, the website relied upon by Claimant, the private party true market value of the BMW is approximately \$31,273.00 in "clean" condition and \$28,375.00 in "average" condition. See Exhibits 2 and 3, hereto; see also Exhibit 4 (defining "average" and "clean"). According to Kelley Blue Book (www.kbb.com), another resource relied upon by Claimant, the BMW private party value is \$34,630.00 in "good" condition. See Exhibit 5 (providing description of "good" condition).

Adjusting for Claimant's alleged concerns with the vehicle (i.e. dents, dings, or chips, windshield cracked or broken, steering worn or altered, and brakes needing replacing, and tires worn), Kelley Blue Book still determines the condition to be "fair," and values the BMW at \$32,005.00. See Exhibit 6, hereto (adjusting for Claimant's concerns and defining "fair" condition). If the vehicle does indeed have the problems claimed by Claimant after she has driven it just eighteen months and 21,000 miles, the Government is concerned about other damage, intentional or unintentional, occurring to the BMW when driven by

Claimant, and consequently, the value of the BMW not being maintained.

Finally, if the BMW is released, Claimant plans to bring the payments current by making the last four months of payments. Claimant's Motion, at 8. Four payments at \$837.90 per month equals \$3,351.60. Thus, the payoff amount would be approximately \$25,856.87 after the payments are made current.⁴ If the value of the BMW were \$32,005.00, as Kelley Blue Book suggests, the equity would be over \$6,000.00.

In sum, the Government has not been preposterous, unreasonable, vindictive nor acted in bad faith as Claimant claims. There is potentially at least \$6,000.00 in equity in the BMW. The Government has merely attempted to ensure this equity is maintained while the forfeiture action is pending. The use of aliases by Claimant's husband, the damage already sustained by the vehicle, the disposition of two vehicles since search warrants were executed in June 2005, and possibly two other vehicles since then, merits such an effort.

As a result of the foregoing, it is unclear whether a substantial hardship truly exists and/or has been caused by the seizure of Claimant's BMW. Nevertheless, if the Court grants Claimant's motion to release the BMW, the Government respectfully

⁴ \$28,994.47 (payoff through March 18, 2006 according to Claimant), plus 214.00 (\$5.45 per diem interest), minus \$3,351.60 (four payments of 837.90).

requests the Court also, pursuant to 18 U.S.C. 983(f)(7), enter an order to ensure the value of the property is maintained while the forfeiture action is pending.

CONCLUSION

It is unclear whether a substantial hardship truly exists and/or has been caused by the seizure of Claimant's BMW. If the Court grants Claimant's motion to release the BMW, the Court should also, pursuant to 18 U.S.C. 983(f)(7), and for the reasons stated herein, enter an order to ensure the value of the property is maintained while the forfeiture action is pending.

Respectfully submitted this 27th day of April, 2006.

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United States Attorney

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 27th day of April, 2006, served a copy of the foregoing upon the below-listed party electronically and/or by placing a copy of the same in the U.S. Mails, addressed as follows:

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