

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil Action No. 01-702-SLR
)
 TWENTY TWO THOUSAND SEVEN)
 HUNDRED DOLLARS AND NO CENTS)
 (\$22,700) IN UNITED STATES)
 CURRENCY,)
)
 Defendant,)
)
 SUNYA GARVIN,)
)
 Claimant.)

Colm F. Connolly, Esquire, U.S. Attorney and Paulette K. Nash,
Esquire, Assistant U.S. Attorney. Counsel for Plaintiff

Sunya Garvin, Claimant. Pro se.

MEMORANDUM OPINION

Dated: November 26, 2002
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Defendant, Twenty Two Thousand Seven Hundred Dollars and No Cents (\$22,700) in United States Currency ("money"), was seized during a search subsequent to the arrest of claimant Surya Garvin ("claimant") on drug charges. (D.I. 1, Affidavit) Claimant, by and through his attorney, filed a claim for the money with the Drug Enforcement Administration ("DEA") on July 24, 2001. (Id., ¶ 6) Plaintiff, United States of America, filed this action in rem on October 22, 2001 for forfeiture of the money under the provisions of 21 U.S.C. § 881(a)(6), which provides for forfeiture of all moneys used or intended to be used to facilitate drug transactions and/or which constitute proceeds traceable to a drug transaction. (Id., ¶ 1)

A warrant of arrest in rem of the money was issued October 22, 2001. (D.I. 2) Claimant, through his attorney, filed an answer to complaint for forfeiture in rem on November 7, 2001. (D.I. 5) Seizure notice was published in the Delaware State News on January 18, January 25, and February 1, 2002. (D.I. 8) On April 4, 2002, claimant's attorney filed notice of withdrawal which was granted. (D.I. 11) Currently before the court is plaintiff's motion to strike claimant's answer and for default judgment. (D.I. 9) This court has jurisdiction pursuant to 28 U.S.C. §§ 1345 and 1355. For the reasons discussed below, the court shall grant plaintiff's motion.

II. STANDARD OF REVIEW

The Third Circuit Court of Appeals has identified six factors that must be evaluated before default may be entered in an action. Poulis v. State Farm Fire and Casualty Co. 747 F.2d 863, 868 (1984). The six Poulis factors are: 1) the extent of the party's personal responsibility; 2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; 3) a history of dilatoriness; 4) whether the conduct of the party or attorney was willful or in bad faith; 5) the effectiveness of sanction other than dismissal; and 6) the meritoriousness of the claim or defense. Id.

III. DISCUSSION

Civil forfeiture actions pursuant to 18 U.S.C. § 983 must follow certain defined steps. Once a putative claimant has filed a claim with the applicable government agency for the property, the government has 90 days to file a complaint for forfeiture. See 18 U.S.C. § 983(a)(3)(A). In the case at bar, claimant filed a claim with the DEA on July 24, 2001 and plaintiff filed this action October 22, 2001 - exactly 90 days later. (D.I. 1, ¶ 6)

The statute also states that any person claiming an interest in the seized property must file a claim asserting their "interest in the property in the manner set forth in the Supplemental Rules for Certain Admiralty and Maritime Claims" not later than 30 days after service of the government's complaint or

30 days after the date of final publication of notice of filing, whichever is applicable. 18 U.S.C. § 983(a)(4)(A). Supplemental Federal Rules of Civil Procedure C(6)(b) ("Rule C(6)") provides that a person stating a claim must file a "verified statement of right or interest" within the time period specified. See Supp. Fed. R. Civ. P. C(6)(b)(2001). The claim must be verified on oath or affirmation. Id. This claim is in addition to an answer filed in response to plaintiff's complaint. A putative claimant lacks standing to contest the forfeiture if he has not complied with Rule C(6) by failing to file a verified statement. See RR Caribbean, Inc. v. Dredge "Jumby Bay", 147 F. Supp. 2d 378, 381 (D.V.I. 2001).

In the case at bar, the government's warrant of arrest in rem clearly stated that any persons claiming an interest in the property must file pursuant to Rule C(6). (D.I. 2) As noted above, this rule sets forth the requirement that in addition to an answer to the complaint, a potential claimant must also file a verified statement of right or interest. Here, claimant filed an answer within the allowed time, but failed to include a verified statement of interest. (D.I. 5) The claim that claimant filed with the DEA is not a substitute for the claim required under Rule C(6). See U.S. v. \$88,260.00 in U.S. Currency, 925 F. Supp. 838, 842 (D.D.C. 1996); see also U.S. v. Beechcraft Queen Airplane, 789 F.2d 627, 630 (8th Cir. 1986). Where a putative

claimant has failed to file a verified statement of interest according to the rules, the court may strike the answer and enter default. See U.S. v. Fifty Thousand Six Hundred Seventy Two Dollars and No Cents (\$50,672.00), 35 F. Supp. 2d 373, 375 (D. Del. 1999).

In addition, when the government filed its motion to strike putative claimant's answer and enter default in favor of plaintiff, it clearly noted in its accompanying memorandum that the deficiency was that claimant had failed to file the required statement of right or interest. (D.I. 10 at 3) Even though claimant was now on specific notice of the deficiency of his answer, he has not moved to correct the defect. The only further action has been a withdrawal by claimant's attorney at claimant's request. (D.I. 11)

Of the six Poulis factors which should be weighed in considering whether to grant default judgment, the sixth factor (the meritoriousness of the claim) is the only one applicable to the present case. Based on the above analysis, plaintiff has shown a meritorious claim. Therefore, default judgment is appropriate.

IV. CONCLUSION

For the reasons stated, the court shall grant plaintiff's motion to strike the answer and for default judgment against defendant. An appropriate order shall issue.

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O R D E R

At Wilmington this 26th day of November, 2002,
consistent with the memorandum opinion issued this date;

IT IS ORDERED that:

1. Plaintiff's motion to strike the answer and for
default judgment (D.I. 9) is granted.

2. The Clerk of Court is directed to enter judgment
in favor of plaintiff and against claimant.

Sue L. Robinson
United States District Judge