916 F.3d 967
United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Frank AMODEO, Defendant-Appellant.

Nos. 15-12643 & 16-15867
|
(February 21, 2019)

Synopsis

Background: After defendant pled guilty to involvement in criminal scheme to divert his clients' payroll taxes and final forfeiture order divesting him of assets was entered, government moved to vacate final forfeiture order as to two shell corporations. The United States District Court for the Middle District of Florida, No. 6:08-cr-00176-JA-GJK-1, granted motion, and defendant appealed.

The Court of Appeals, William Pryor, Circuit Judge, held that defendant lacked standing to appeal partial vacatur.

Appeal dismissed.

Rosenbaum, Circuit Judge, concurred in judgment and filed opinion.

Procedural Posture(s): Appellate Review; Forfeiture Proceeding.

Attorneys and Law Firms

***968** Linda Julin McNamara, U.S. Attorney's Office, Anita M. Cream, Assistant U.S. Attorney, I. Randall Gold, Patricia A. Willing, Tampa, FL, Nicole M. Andrejko, U.S. Attorney's Office, Orlando, FL, for Plaintiff-Appellee.

Elaine Joan Mittleman, Law Office of Elaine J. Mittleman, Falls Church, VA, for Defendant-Appellant.

Appeals from the United States District Court for the Middle District of Florida, D.C. Docket No. 6:08-cr-00176-JA-GJK-1

Before WILLIAM PRYOR and ROSENBAUM, Circuit Judges, and MOORE,[*] District Judge.

Opinion

WILLIAM PRYOR, Circuit Judge:

***969** This appeal presents the question whether a criminal defendant has standing to appeal the partial vacatur of the final forfeiture order entered in his case. Frank Amodeo pleaded guilty to involvement in a criminal scheme to divert his clients' payroll taxes. He agreed to forfeit many assets, including the ownership of two shell corporations. The district court entered a preliminary forfeiture order that divested Amodeo of those assets. After no third parties asserted an interest in the corporations, the court entered a final forfeiture order that transferred ownership of them to the government. Years later, the corporations were named as defendants in a lawsuit brought by victims of Amodeo's scheme. The government then moved to vacate the final forfeiture order as to the corporations, and the district court granted that motion. Amodeo appeals the partial vacatur on the ground that the district court lacked the authority to enter it. But because the partial vacatur caused him no injury, Amodeo lacks standing to complain about it. We dismiss his appeal for lack of jurisdiction.

I. BACKGROUND

Frank Amodeo instigated a criminal scheme to divert his clients' payroll taxes to his companies' bank accounts instead of remitting that money to the Internal Revenue Service. After a grand jury returned a 27-count indictment, Amodeo reached a plea agreement with the government. He pleaded guilty to conspiracy to defraud the United States, failure to collect and remit payroll taxes, and obstruction of an agency investigation. He agreed to forfeit many assets, including approximately $180 million, multiple properties, luxury cars, a Lear jet, and the ownership of several corporations. This appeal concerns two of those corporations: AQMI Strategy Corporation and Nexia Strategy Corporation.

The district court entered a preliminary forfeiture order for the assets listed in Amodeo's plea agreement, including AQMI and Nexia. The preliminary forfeiture order stated that it "shall be a final order of forfeiture as to the defendant, Frank L. Amodeo." The district court sentenced Amodeo to 270 months of imprisonment followed by three years of supervised release.

The government then moved for a final forfeiture order. No third parties claimed an interest in the corporations. The district court granted the motion and entered the final forfeiture order. It ordered that Amodeo's assets, including the corporations, were "condemned and forfeited to the United States," so "clear title to the property is now vested in the United States."

Amodeo appealed the final forfeiture order, but we dismissed his appeal for lack of ***970** jurisdiction. *United States v. Amodeo*, No. 09-16170 (11th Cir. Mar. 26, 2010). We explained that Amodeo lacked standing to appeal the final forfeiture order because the preliminary forfeiture order "fully and finally resolved all of Frank Amodeo's interests in the properties referenced in the ... final forfeiture order." *Id.* at 1. Amodeo's lack of standing meant this Court lacked jurisdiction over his appeal. *Id.* Amodeo also appealed his conviction, which we affirmed. *United States v. Amodeo*, 387 F. App'x 953 (11th Cir. 2010).

A few years later, victims of Amodeo's scheme filed a complaint against several corporations, including the forfeited AQMI and Nexia. *See* Complaint at 3, *Palaxar Grp. v. Williams*, No. 6:14-cv-00758-ORL-28GJK (M.D. Fla. Sept. 18, 2013), ECF No. 1. After AQMI and Nexia were served as defendants in the suit, the government moved to vacate the final forfeiture order only as to those corporations. The government explained that both corporations were shell corporations without any assets and that it had sought their forfeiture "to prevent their continued illegal use by [Amodeo] and to deprive [him] of any economic value that the corporations may have." The government informed the district court that it would not defend either corporation in the *Palaxar* suit and "believe[d] it ... in the best interest of the [g]overnment to divest ownership of Nexia and AQMI." The district court granted the motion and vacated the final forfeiture order as to AQMI and Nexia. The final forfeiture order "otherwise remain[ed] in effect."

Amodeo moved to reconsider the partial vacatur on the ground that the district court lacked jurisdiction to alter the final forfeiture order, but the district court denied his motion. The court confirmed that it had vacated only the final forfeiture order in part, not the preliminary forfeiture order. It explained that, "[j]ust as Amodeo lacked standing to challenge the final order of forfeiture on appeal, Amodeo also lack[ed] standing to challenge the partial vacatur of that order." Amodeo appealed the denial of his motion to reconsider the partial vacatur—the appeal before us now.

Meanwhile, Amodeo moved to intervene in the pending *Palaxar* suit. He contended that the partial vacatur of the final forfeiture order restored his ownership of AQMI and Nexia. The district court denied the motion, and we affirmed that denial. *See Palaxar Grp. v. Williams*, 714 F. App'x 926, 928–29 (11th Cir. 2017). We concluded that the partial vacatur did not return the ownership of the corporations to Amodeo because "the preliminary forfeiture order, which divested Mr. Amodeo of his ownership interest, was never disturbed." *Id.* at 929 & n.4. We explained that "[t]he government did not return its interest in AQMI to Mr. Amodeo; instead, the government relinquished its ownership interest after AQMI was sued." *Id.* at 928. And we noted that "[a] previous panel of this court recognized as much, and we have no basis or reason to reach a different conclusion." *Id.* at 928–29.

II. STANDARD OF REVIEW

We review *de novo* questions of our jurisdiction. *United States v. Cartwright*, 413 F.3d 1295, 1299 (11th Cir. 2005).

III. DISCUSSION

Amodeo argues that the district court lacked jurisdiction to partially vacate the final forfeiture order, but we lack jurisdiction to consider that question in this appeal. "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, *first*, of this court, and *then* of the court from which the record comes." ***971** *Mansfield, C. & L.M. Ry. Co. v. Swan*, 111 U.S. 379, 382, 4 S.Ct. 510, 28 L.Ed. 462 (1884) (emphases added); *accord Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998); *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 547, 106 S.Ct. 1326, 89 L.Ed.2d 501 (1986); *Great S. Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 453, 20 S.Ct. 690, 44 L.Ed. 842 (1900); *Castleberry v. Goldome Credit Corp.*, 408 F.3d 773, 779 (11th Cir. 2005). So this Court must satisfy itself of its jurisdiction *before* we can address whether the district court had jurisdiction. *See Peppers v. Cobb County*, 835 F.3d 1289, 1296 (11th Cir. 2016) ("[W]e are obliged first to consider our power to entertain the claim.").

That this Court must first satisfy itself of our own jurisdiction is a rule without exception: "Without jurisdiction[,] the court cannot proceed at all in any cause." *Steel Co.*, 523 U.S. at 94, 118 S.Ct. 1003 (quoting *Ex parte McCardle*, 74 U.S. 506, 514, 7 Wall. 506, 19 L.Ed. 264 (1868)). "[J]urisdiction is power to declare the law," so when it does not exist, "the only function remaining to the court is that of announcing the fact and dismissing the cause." *Id.* To do otherwise would "violate[ ] the fundamental constitutional precept of limited federal power" and so "offend[ ] fundamental principles of separation of powers." *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 409–10 (11th Cir. 1999) (citations and internal quotation marks omitted).

Amodeo argues that the doctrine of standing does not apply to his criminal case, but Article III of the Constitution, from which standing derives, governs our jurisdiction in every type of case. Article III vests the judiciary with jurisdiction only over "Cases" and "Controversies." U.S. Const. Art. III, § 2. To have a case or controversy, a litigant must establish that he has standing, which must exist "throughout all stages of litigation." *Hollingsworth v. Perry*, 570 U.S. 693, 705, 133 S.Ct. 2652, 186 L.Ed.2d 768 (2013). "That means that standing must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance." *Id.* (quoting *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997)); *see also Wolff v. Cash 4 Titles*, 351 F.3d 1348, 1353 (11th Cir. 2003) ("Litigants must establish their standing not only to bring claims, but also to appeal judgments."). To establish appellate standing, a litigant must "prove that he has suffered a concrete and particularized injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a favorable judicial decision." *Hollingsworth*, 570 U.S. at 704, 133 S.Ct. 2652.

In the context of appellate standing, the primary meaning of the injury requirement is adverseness: "Only a litigant who is aggrieved by the judgment or order may appeal." *Wolff*, 351 F.3d at 1354 (citation and internal quotation marks omitted). "For there to be ... a case or controversy, it is not enough that the party invoking the power of the court have a keen interest in the issue," *Hollingsworth*, 570 U.S. at 700, 133 S.Ct. 2652; he "must seek relief for an injury that affects him in a personal and individual way," *id.* at 705, 133 S.Ct. 2652 (citation and internal quotation marks omitted). So an appellant "must possess a direct stake in the outcome of the case." *Id.* To establish standing in a forfeiture proceeding, we have looked to whether the litigant has an interest in the property subject to the forfeiture because, absent an interest in that property, there is no case or controversy. *United States v. $38,000.00 in U.S. Currency*, 816 F.2d 1538, 1543 (11th Cir. 1987).

Amodeo argues that he has standing because the ownership of the corporations ***972** *might* have reverted to him when the district court partially vacated the final forfeiture order, but we disagree. Forfeiture divests a criminal defendant of property that can be described generally as the fruits of his crime. Under Federal Rule of Criminal Procedure 32.2, criminal forfeiture is split into two phases: the first phase concerns the defendant's ownership of the property to be forfeited, and the second phase concerns any third party's ownership of that property.

When, as Amodeo did, a criminal defendant pleads guilty and agrees to the forfeiture, the district court must promptly enter a preliminary forfeiture order. Fed. R. Crim. P. 32.2(b)(1)–(2). "At sentencing—or at any time before sentencing if the defendant consents—the preliminary forfeiture order becomes final *as to the defendant*." Fed. R. Crim. P. 32.2(b)(4)(A) (emphasis added). Although the preliminary forfeiture order is final as to the defendant, it "remains preliminary as to third parties until the ancillary proceeding is concluded." *Id.* The defendant may appeal the preliminary forfeiture order. Fed. R. Crim. P. 32.2(b)(4)(C).

The district court conducts an ancillary proceeding so that third parties can assert their interest in the property. Fed. R. Crim. P. 32.2(c). Although it occurs in the context of criminal forfeiture, the ancillary proceeding is civil in nature. *United States v. Davenport*, 668 F.3d 1316, 1323 (11th Cir. 2012). The ancillary proceeding exists to determine whether a third party has an interest in the property that the defendant has already forfeited—not to relitigate the preliminary order's finding of forfeitability. *Id.* at 1321. So the ancillary proceeding determines whether a third party or the government will obtain the forfeited property.

After the district court accounts for the interest of any third parties, it must enter a final forfeiture order. Fed. R. Crim. P. 32.2(c)(2). A defendant "generally has no standing to

participate in the ancillary proceeding." *United States v. Pelullo*, 178 F.3d 196, 202 (3d Cir. 1999). And he cannot appeal the final forfeiture order because it "has no bearing on the defendant's rights." *United States v. Flanders*, 752 F.3d 1317, 1343 (11th Cir. 2014).

Amodeo's argument that he potentially owns the corporations due to the partial vacatur is mistaken. The preliminary forfeiture order extinguished all of Amodeo's interest in the corporations. *United States v. Gross*, 213 F.3d 599, 600 (11th Cir. 2000). In fact, Amodeo expressly agreed that "the preliminary order of forfeiture shall be final as to the defendant at the time it is entered." So when the district court completed the first phase of the forfeiture by entering the preliminary forfeiture order, Amodeo had given up his interest in the corporations. Because no third parties asserted an interest during the ancillary proceeding, the government took ownership of the corporations when the district court entered the final forfeiture order.

The partial vacatur of the final forfeiture order did not revive Amodeo's ownership of the corporations. When an order is vacated, "the rights of the parties are left as though no such judgment had ever been entered." *United States v. De La Mata*, 535 F.3d 1267, 1276–77 (11th Cir. 2008) (quoting 49 C.J.S. *Judgments* § 357 (2008)). When the district court vacated the final forfeiture order, it vacated only the "Final Forfeiture Order (Doc. 177) ... to the extent it pertains to Nexia Strategy Corporation and AQMI Strategy Corporation." Considering where the parties would stand had the district court never entered a final forfeiture order, Amodeo would still lack any interest in the ***973** corporations because he forfeited it under the preliminary forfeiture order—which remains intact.

We have twice ruled that Amodeo had no interest left in the corporations after the entry of the preliminary forfeiture order. We first concluded that Amodeo lacked standing to appeal the final forfeiture order because the "preliminary order of forfeiture fully and finally resolved all of Frank Amodeo's interests in the properties referenced in the ... final forfeiture order." *Amodeo*, No. 09-16170, at 1. Then, several years later, we ruled that the district court correctly denied Amodeo's motion to intervene in *Palaxar* because he lacked an interest in the defendant-corporations. 714 F. App'x at 928. We concluded that "[t]he government did not return its interest in AQMI to Mr. Amodeo [after the partial vacatur]; instead, the government relinquished its ownership interest after AQMI was sued." *Id.* We again explained that "the preliminary forfeiture order, which divested Mr. Amodeo of his ownership interest, was never disturbed." *Id.* at 929 n.4. Today, we reach the same conclusion for a third time: Amodeo has no interest in either AQMI or Nexia.

That conclusion means that Amodeo lacks standing to appeal the partial vacatur. We have "consistently adhered to one major proposition without exception: One who has no interest of his own at stake always lacks standing." *United States v. Weiss*, 467 F.3d 1300, 1311 (11th Cir. 2006) (emphasis omitted) (citation and internal quotation marks omitted). Because the partial vacatur did not restore Amodeo's ownership of the corporations, or impose their potential liabilities on him, he has no interest at stake. That is, the partial vacatur did not aggrieve—or even affect—Amodeo, so he has suffered no injury from it. To put standing in the "more pedestrian terms" used by Justice Scalia, "it is an answer to the very first question that is sometimes rudely asked when one person complains of another's actions: 'What's it to you?' " Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 882 (1983). Amodeo lacks standing because the "it"—the partial vacatur—is nothing to him.

Because Amodeo lacks standing, we must "dismiss this appeal regardless of whether or not the district court possessed authority to vacate the [final] order[ ] of forfeiture." *United States v. Cone*, 627 F.3d 1356, 1359 (11th Cir. 2010). Amodeo protests that it would be perverse if the district court could enter an order without jurisdiction and with no possibility of review, but the authority of the district court can be litigated in a case or controversy between parties who —unlike Amodeo—have a real interest in the effects of the partial vacatur, if any such parties exist. Even if they do not, the argument that if Amodeo "ha[s] no standing to sue, no one would have standing, is not a reason to find standing." *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 227, 94 S.Ct. 2925, 41 L.Ed.2d 706 (1974). The assumption that "the business of the federal courts is correcting ... errors, and that 'cases and controversies' are at best merely convenient vehicles for doing so and at worst nuisances that may be dispensed with when they become obstacles to that transcendent endeavor," "has no place in our constitutional scheme." *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 489, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982). We are a court of limited jurisdiction, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128

L.Ed.2d 391 (1994), and Article III of the Constitution does not extend our jurisdiction to consider the question presented in this appeal.

*974 IV. CONCLUSION

We **DISMISS** Amodeo's appeal for lack of jurisdiction.

ROSENBAUM, Circuit Judge, concurring in the judgment:
I agree that Frank Amodeo has no standing here. But I write separately because I respectfully disagree with the panel opinion's conclusion that Article III standing must always be determined first when more than one non-merits issue could dispose of a case. Rather, no unyielding jurisdictional hierarchy exists, and courts retain discretion to dispose of a case on any non-merits, threshold basis when no ready answer to any such non-merits question is immediately obvious.

The Supreme Court has explained that "a federal court has leeway to choose among threshold grounds for denying audience to a case on the merits." (citations and quotation marks omitted). *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431, 127 S.Ct. 1184, 167 L.Ed.2d 15 (2007). "[T]here is no mandatory sequencing of jurisdictional issues." *Id.* (citation and quotation marks omitted). For example, a federal court need not establish subject-matter jurisdiction before dismissing for lack of personal jurisdiction. *Id.* "Nor must a federal court decide whether the parties present an Article III case or controversy before abstaining under [an abstention doctrine]." *Id.*

In determining which non-merits issue to address, a court may properly consider factors like "convenience, fairness, and judicial economy." *Id.* at 432, 127 S.Ct. 1184. So of course, if "a court can readily determine that it lacks jurisdiction over the cause or the defendant, the proper course would be to dismiss on that ground." *Id.* at 436, 127 S.Ct. 1184. But at bottom, "[j]urisdiction is vital only if the court proposes to issue a judgment on the merits." *Id.* at 431, 127 S.Ct. 1184 (citation and quotation marks omitted).

This case raises two non-merits, jurisdictional [1] questions: whether Amodeo has Article III standing and whether federal courts have subject-matter jurisdiction to partially vacate a final order of forfeiture in the circumstances of this case.

On the issue of standing, the panel opinion attempts to distinguish between appellate and district-court jurisdiction. But even assuming, *arguendo*, that *Sinochem*'s sequencing rules do not apply to jurisdictional issues unique to our appellate jurisdiction, the panel opinion forgets that Amodeo has the same basis for being heard by us as he had for being heard by the district court. No intervening change affected Amodeo's standing between the time the district court decided that he had no standing and the time Amodeo appealed that ruling to us. Our jurisdiction in terms of standing turns on whether Amodeo had standing below, and if he did not, we must dismiss the case for lack of jurisdiction. We therefore confront the same jurisdictional question in terms of Article III standing that the district court did.

Similarly, we also face the same jurisdictional question that the district court did as to whether federal courts have power to grant the government's requested partial vacatur of the final order of forfeiture in this case. Because federal courts are courts of limited subject-matter jurisdiction, we must always consider whether subject-matter jurisdiction exists to grant ***975** a party's requested relief. *Thermoset Corp. v. Bldg. Materials Corp of Am.*, 849 F.3d 1313, 1316-17 (11th Cir. 2017). If we find that the district court did not have jurisdiction to grant the government's request, all we can do is vacate the illegal order that the district court—and federal courts in general—had no authority to enter and dismiss the case. *Id.* at 1321.

In considering our jurisdiction, then, we face the same two threshold questions as did the district court. Under *Sinochem*, if no answer to either question is readily apparent, we may exercise our discretion to address either issue first.

Here, however, the answer to the standing question is immediately obvious. Amodeo cannot make a colorable claim that he has standing. In fact, we have previously reached exactly this same conclusion in Amodeo's case. In Amodeo's direct appeal from the final order of forfeiture, we unambiguously held that he lacked standing because the preliminary order of forfeiture already "fully and finally resolved all of" Amodeo's interests in the relevant properties —including the two companies at issue in this case. *See United States v. Amodeo*, No. 09-16170 (11th Cir. Mar. 26,

2010). And even after the district court partially vacated the final order of forfeiture, we held that the preliminary order of forfeiture continued to govern, so Amodeo still had no interest in the two companies at issue here. *Palaxar Grp. v. Williams*, 714 Fed. App'x 926, 928-29 & n.4 (11th Cir. 2017). In short, it is immediately obvious that Amodeo has no standing, and his appeal is properly dismissed on that basis.

Yet the panel opinion goes further and imposes mandatory sequencing of non-merits issues by placing Article III standing unyieldingly before all other jurisdictional questions. Majority Op. at 971 ("That this Court must first satisfy itself of our own jurisdiction is a rule without exception ...."). That contravenes *Sinochem*'s clear directive that "there is no mandatory sequencing of jurisdictional issues."[2] *Sinochem*, 549 U.S. at 431, 127 S.Ct. 1184 (citation and quotation marks omitted). And so I concur only in the panel opinion's judgment.

All Citations

916 F.3d 967, 123 A.F.T.R.2d 2019-882, 27 Fla. L. Weekly Fed. C 1721

Footnotes

* Honorable K. Michael Moore, United States District Chief Judge for the Southern District of Florida, sitting by designation.

1 The fact that these are both non-merits questions is enough to give us discretion to take either question first, as "[j]urisdiction is vital only if the court proposes to issue a judgment on the merits." *Sinochem*, 549 U.S. at 431, 127 S.Ct. 1184. It just so happens that both non-merits issues here are jurisdictional.

2 To be clear, under *Sinochem*, if no obvious answer existed to either of the jurisdictional questions we face today—if, say, Amodeo's standing turned on complicated questions of fact, or if the legal analysis for standing were mired in inter-Circuit splits—then we could first consider the question of the district court's jurisdiction to grant the government's requested relief. But as I have described, as a matter of fact, that is not the case here.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 15-12643 & 16-15687

D.C. Docket No. 6:08-cr-00176-JA-GJK-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

FRANK L. AMODEO,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: WILLIAM PRYOR and ROSENBAUM, Circuit Judges, and MOORE,* District Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE

*Honorable K. Michael Moore, United States District Chief Judge for the Southern District of Florida, sitting by designation.

ORD-42

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

-vs-

Case No. 6:08-cr-176-Orl-28GJK
(Forfeiture)

FRANK L. AMODEO

ORDER

This cause is before the Court on the Motion for Reconsideration (Doc. 209) filed by Frank L. Amodeo. The Government has responded to the motion, (Doc. 211), and Amodeo has submitted a Reply (Doc. 213) and Substituted Reply (Doc. 214-1).

Just as Amodeo lacked standing to challenge the final order of forfeiture on appeal, (see Appellate Op., Doc. 190), Amodeo also lacks standing to challenge the partial vacatur of that order. Accordingly, Amodeo's Motion for Reconsideration (Doc. 209) is **DENIED**. Amodeo's Motion for Extension of Time (Doc. 212) and Motion to Substitute (Doc. 214) are **DENIED as moot**.

DONE and **ORDERED** in Orlando, Florida on this 17th day of September, 2014.

JOHN ANTOON II
United States District Judge

Copies furnished to:
United States Marshal
United States Attorney
United States Probation Office
United States Pretrial Services Office
Counsel for Defendant
Defendant

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Nos. 15-12643-FF & 16-15867-FF

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANK L. AMODEO,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

Before: WILSON, MARTIN and ROSENBAUM, Circuit Judges.

BY THE COURT:

The government's motion to dismiss the appeal for lack of standing is CARRIED WITH THE CASE. Because there remain several unanswered questions that impact the resolution of this jurisdictional issue, the parties should address in their briefs the following questions:

(1) In light of the district court's finding in its original final forfeiture order of November 18, 2009, that no person other than Frank Amodeo had any known interest in the forfeited assets, what is the effect of the district court's March 11, 2014, vacatur order as to who owns the corporations Nexia Strategy Corporation and AQMI Strategy Corporation that are no longer forfeited?

(2) To that end, did the district court's March 11, 2014, order implicitly vacate in part the preliminary order of forfeiture so as to restore ownership of the two corporations to Mr. Amodeo?

(3) What is the basis of the district court's authority to partially vacate the final forfeiture order and, if it did so, the preliminary forfeiture order as well?

(4) If Mr. Amodeo does not have standing and if the district court lacked authority to partially vacate the final forfeiture order, do we have jurisdiction to consider the district court's lack of jurisdiction to enter the order?

As Mr. Amodeo has already filed his initial brief, he may address these questions in his reply brief, or in a supplemental letter brief, not to exceed 15 pages. The jurisdictional issues will be determined by the panel to which this appeal is submitted on the merits. The government's motion to stay the briefing schedule, construed from its motion to dismiss the appeal, is granted, and its brief shall be due within 30 days after entry of this order. This appeal may PROCEED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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January 16, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 15-12643-W ; 16-15867 -W
Case Style: USA v. Frank Amodeo
District Court Docket No: 6:08-cr-00176-JA-GJK-1

The following instruction is issued to the parties in this case:

Please be prepared to discuss at oral argument *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422 (2007), and its application, if any, to the fourth question we asked the parties to brief, namely, "If Mr. Amodeo does not have standing and if the district court lacked authority to partially vacate the final forfeiture order, do we have jurisdiction to consider the district court's lack of jurisdiction to enter the order?"

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Valerie L. Geddis
Phone #: (404) 335-6143

LetterHead Only

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 6:08-cr-231-Orl-28KRS

AQMI STRATEGY CORPORATION,
PRESIDION SOLUTIONS, INC., and
PROFESSIONAL BENEFIT SOLUTIONS,
d/b/a PRESIDION SOLUTIONS VII, INC.

ORDER

Pursuant to Fed. R. Crim. P. 48(a), the United States has requested leave to dismiss the Indictment against defendants AQMI Strategy Corporation; Presidion Solutions, Inc.; and Professional Benefit Solutions, Inc., d/b/a Presidion Solutions VII, Inc.; without prejudice. Leave of Court is granted and the Indictment is dismissed against defendants AQMI Strategy Corporation, d/b/a Mirabilis HR; Presidion Solutions, Inc.; and Professional Benefit Solutions, Inc., d/b/a Presidion Solutions VII, Inc.; in the above-captioned case, without prejudice. The Clerk of Court is directed to close the case as to defendants AQMI Strategy Corporation, d/b/a Mirabilis HR; Presidion Solutions, Inc.; and Professional Benefit Solutions, Inc., d/b/a Presidion Solutions VII, Inc.

Dated: 12/1/09

JOHN ANTOON II
United States District Judge

01/26/2009	29	ENDORSED ORDER granting 21 Motion to allow Frank L. Amodeo to appear on behalf of AQMI Strategy Corp., Professional Benefit Solutions, Inc. and Presidion Solutions, Inc. Entered by Judge John Antoon II on 1/23/2009. (DJD) (Entered: 01/26/2009)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 6:08-cr-231-Orl-28KRS

AEM, INC., d/b/a MIRABILIS HR,
AQMI STRATEGY CORPORATION,
HOTH HOLDINGS, LLC,
MIRABILIS VENTURES, INC.,
PRESIDION SOLUTIONS, INC.,
PROFESSIONAL BENEFIT SOLUTIONS,
d/b/a PRESIDION SOLUTIONS VII, INC.

UNITED STATES MEMORANDUM REGARDING THE VIABILITY OF A PROSECUTION AGAINST AN UNREPRESENTED CORPORATION

The United States of America, by A. Brian Albritton, United States Attorney for the Middle District of Florida, by and through undersigned counsel, hereby files its Memorandum Regarding the Viability of a Prosecution Against an Unrepresented Corporation.

A. **FACTS**

1. The Indictment in the instant case was returned on October 30, 2008.[1] The trial in this matter is presently set for the trial calendar beginning February 2009.[2]

2. Defendants AEM, INC., d/b/a MIRABILIS HR (AEM) and MIRABILIS VENTURES, INC. (MIRABILIS) are represented by counsel.[3]

[1] A Superseding Indictment was returned on January 21, 2009, which added defendant HOTH HOLDINGS, LLC (HOTH) and three wire fraud counts against HOTH.

[2] A Motion to Continue the trial is pending before this Court.

[3] It is expected that the same counsel will represent HOTH.

3. Defendants AQMI STRATEGY CORPORATION (AQMI), PRESIDION SOLUTIONS, INC. (PRESIDION), and PROFESSIONAL BENEFIT SOLUTIONS, d/b/a PRESIDION SOLUTIONS VII, INC. (PBS), are not presently represented by counsel. Frank L. Amodeo,[4] the individual who controlled[5] these three defendants, and has pled guilty in a related case, Case No. 6:08-cr-176-Orl-28GJK, has stated that he is presently the only corporate representative, is willing to represent the defendants, has not hired counsel to represent these defendants, and has no funds with which to hire counsel.[6]

4. At the status conference on January 13, 2009, this Court expressed concern as to the viability of the prosecution of these three defendants as they have no counsel; counsel cannot be appointed; and a corporation can not proceed without counsel. This memorandum addresses that issue.

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[4] Amodeo is a disbarred bankruptcy lawyer and a convicted felon.

[5] Amodeo was not listed as an officer or director of these corporations.

[6] Pursuant to his plea agreement, Amodeo agreed that as a result of the conspiracy violations charged in Count One of the Indictment in violation of 18 U.S.C. § 371, to the forfeiture of his interest in any property constituting or derived from proceeds obtained directly or indirectly as a result of such violations, pursuant to 18 U.S.C. § 981(a)(1)© and 28 U.S.C. § 2461©. Specifically, AMODEO consented to the forfeiture of all subject assets as listed in the plea agreement. AMODEO further admitted in the plea agreement that the subject assets-both real and personal properties-were purchased, or funded, with proceeds from his scheme to defraud his clients, in violation of 18 U.S.C. § 1343. As such, the defendant admitted that those assets were subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)© and 28 U.S.C. § 2461©. This Court has entered a Preliminary Order of Forfeiture in Amodeo's case. Case No. 6:08-cr-176-Orl-28GJK, Dkt No. 46.

B. **MEMORANDUM OF LAW**

1. General

It is a long-settled proposition that corporations have a Sixth Amendment right to counsel. United States v. Unimex, Inc., 991 F.2d 546, 549 (9th Cir 1993). Equally well established is the fact that corporations do not have the right to appointed counsel. Id. at 549-550. Likewise, a corporation cannot appear pro se. As such, a unique problem arises when a corporation faces criminal prosecution while claiming to be unable to afford counsel. Essentially, the question becomes whether compelling the corporation to submit to criminal prosecution without the aid of counsel violates the corporation's rights under the Constitution.

This case presents an issue with numerous consequences to the United States, that is: "Can a corporation make itself immune from prosecution by failing to 'appear', refusing to defend, and not retaining counsel?" Clearly the answer to this question is a resounding "no". Apparent conflicts and contradictions between the existing case-law and Rules of Criminal Procedure must be resolved in favor of the government's ability to charge and try corporate wrong-doers. A close reading of the Rules demonstrates, however, that those apparent conflicts and contradictions can in fact be reconciled.

Rule 43 of the Rules of Criminal Procedure, unlike Rule 11, does not use the term "appear", only the phrase "be present". The rules clearly contemplated that corporations, unlike individuals, which fail to "appear" can nonetheless be prosecuted. Rule 11(a)(I) specifically provides that if a corporation fails to "appear" the court shall enter a plea of not guilty. Rule 43 provides for an exception in the case of a corporation, specifically that a corporation "need not be present" when represented by

counsel. Rule 43 clearly contemplated that there was some means other than through an appearance by counsel whereby a corporation can be "present" at trial, or the appearance by counsel would not have been presented as an exception to the rule, but as the only manner by which the rule could be satisfied.

Although a corporation can only "appear" and defend, that is, actively participate in the criminal process, through an attorney, the government suggests it can be forced to "be present" through the presence of one of its officers or directors. That officer or director could not take part in the proceedings, or "appear" before the court, but their presence would satisfy the mandate of Rule 43. Corporate "presence" is hardly a new concept to federal courts. The voluminous case law developed related to corporate "presence" for the purpose of federal long-arm jurisdiction establishes that a corporation is "present" wherever its agents are acting on the corporation's behalf:

> Since the corporate personality is a fiction, although a fiction intended to be acted upon as though it were fact...it is clear that unlike an individual, its 'presence' ...can only be manifested by activities carried “in its behalf by those who are authorized to act for it...For the terms 'present' or 'presence' are used merely to symbolize those activities of the corporation's agent...

International Shoe Co. v. Washington, 326 U.S. 310 , 316-17 (1945).

Corporations, in other settings besides federal court, typically attend meetings, conferences and other important events through the presence of their officers. Corporations are held to be on notice of information imparted to their officers. Rule 43 clearly contemplated a means by which corporations could "be present" though not represented by counsel by the very structure of the rule itself. Under fundamental corporate principals, that could only be through the presence of corporate agents. The government suggests that, where the court validly has jurisdiction over a

corporation, and that corporation is legally subject to prosecution, and that corporation (which acts only through its officers and directors) refuses (or is unable) to retain counsel to represent it, the court should order the corporation to designate an officer or director to "be present", failing which the court will order an officer or director of the corporation to "be present". Under Rule 43 (b), if that officer or director then voluntarily absents himself, the corporation "will be considered to have waived the right to be present" for the duration of the proceedings. Accordingly, such an order to a corporate agent would involve a minimum of inconvenience to that individual, who could choose, on behalf of the corporation, whether the corporation wanted to "be present" for the remainder of the proceedings.

This solution not only comports with all federal rules, and all existing case law, it is the right and fair result. A corporation cannot avoid prosecution simply by refusing to participate in the criminal justice process. The indictment alleges that the defendants stole approximately $200,000,000. A corporation charged with committing serious crimes cannot be allowed to evade prosecution by apparent self-imposed indigency and a refusal to defend. There is a strong public interest in the prosecution of corporations which engage in criminal activity, even where those corporations have ceased doing business and have dissipated their assets.

As noted in United States v. Rivera, 912 F. Supp. 634, 639 (D. Puerto Rico, 1996):

> Inasmuch as a defendant's right to retain counsel of his choice may not interfere with the efficient administration of justice, when confronted with a recalcitrant defendant who refuses to retain counsel, to suggest alternatives, or submit to the jurisdiction of the Court, the Court in its discretion may appoint counsel. [citations omitted]. Courts, undoubtedly,

> are vested with an "inherent power" to control and "manage their own affairs so as to achieve the orderly and expeditious disposition of cases".

Id.

The Rivera court also discussed at p. 640, that under the court's inherent power to supervise the proper administration of justice, and to have its orders enforced, "courts have allowed and created exceptions regarding a corporate defendant's right to be represented by counsel." Id. at 640.

2. Compelling a Corporation that Refuses or is Unable to Secure Counsel to Submit to Criminal Prosecution by the United States Is Not Violative of the Corporation's Right to Effective Assistance of Counsel

At the onset, it should be noted that the liberty rights of corporations do not arise from any unique portion of the Constitution, but rather from the same source as that for individuals. First Nat. Bank of Boston v. Bellotti, 435 U.S. 765, 780 (1978). Rather than being co-extensive with individual rights, however, the Supreme Court has determined that "certain 'purely personal' guarantees, such as the privilege against compulsory self-incrimination, are unavailable to corporations and other organizations because the 'historic function' of the particular guarantee has been limited to the protection of individuals." Id. at 778, n14. Thus, in simple terms, it seems clear that at their pinnacle, the rights of a corporation are co-extensive with those of the individual.

As such, in circumstances in which the courts have not addressed the appropriate treatment of corporations, it may be appropriate to identify how individuals would fair under similar circumstances. In that regard, the Court has clearly determined that an individual's Sixth Amendment right to appointed counsel is only triggered "where an accused is deprived of his liberty." Scott v. Illinois, 440 U.S. 367, 373 (1979) (quoting

Argersinger v. Hamlin, 407 U.S. 25, 32 (1972)). The mere fact that a defendant faces fines or other statutorily authorized penalties is insufficient - actual imprisonment is necessary before an individual is entitled to appointed counsel. Id. at 373-74. Thus, regardless of the defendant's desire for counsel, if he chooses not to or cannot secure counsel, the defendant's rights are not violated by compelling him to submit to a criminal trial without the benefit of counsel. See generally id.

Of course, a corporation is incorporeal. Unimex, 991 F.2d at 550. By its very definition, it can never be imprisoned. Id. As such, a corporation would never be entitled to appointed counsel. Id. Thus, just as an individual might constitutionally be compelled to face criminal prosecution without the benefit of counsel when deprivation of liberty is not at issue, Scott, 440 U.S. at 373, so too must a defendant corporation - its right to effective assistance of counsel is simply not violated by compelling a defendant corporation to proceed without counsel if it chooses not to secure such.

Additionally, it is clear that a defendant can waive the right to counsel. See Johnson v. Zerbst, 304 U.S. 458 (1938); Faretta v. California, 422 U.S. 806, 821 (1975). One way in which an individual defendant can waive its right to counsel is "by conduct", that is by failing to retain counsel, and refusing to make adequate financial disclosure which would earn him or her an appointment of counsel. United States v. Bauer, 956 F.2d 693, 695 (7th Cir. 1992); United States v. Sarsoun, 834 F.2d. 1358, 1360 (7th Cir. 1987). Certainly a corporation "by conduct" can also waive its right to counsel, by failing to retain an attorney.

The United States submits that a corporation should not have any more rights than an individual, that is, if an individual can waive its right to counsel, so too can a

corporation. A corporation who refuses to hire counsel should be deemed to have effectively waived its right to counsel.

3. An Exception to the General Principle that Corporations Can Only Appear Through Counsel Has Been Employed by Some District Courts in Cases in Which Defendant Corporation Could Not Otherwise Obtain Counsel

"It has been the law for the better part of two centuries that a corporation may appear in the federal courts only through licensed counsel." Rowland v. California Men's Colony, 506 U.S. 194, 201-02 (1993) (citations omitted).[7] Lower courts have nearly unanimously interpreted 28 U.S.C. § 1654, which provides that parties may plead and conduct their own cases personally or by counsel," to require corporations to appear only through licensed counsel. Id.

The United States, however, submits that blind adherence to this general principle might result in a severe miscarriage of justice if a corporation can render itself immune from prosecution merely by refusing to obtain or being unable to obtain counsel. As such, after first identifying the general rule, a limited number of courts have allowed corporations to be represented by a someone other than a licensed attorney officer. See, e.g, Sanchez v. Marder, 1995 WL 702377 (S.D.N.Y. 1995) (holding that the sole shareholders and owners of two corporations could continue to represent the defendant corporations provided that they show documented evidence of the corporations' inability to obtain a lawyer); Las Colinas Development Corp. v. Walter E. Heller & Co. of Puerto Rico, 585 F.2d 7, 11 (1st Cir.1978) (suggesting in dictum that a layman's extraordinary legal ability might be grounds for allowing that layman to

[7] The Rowland Court set forth a list of citations regarding the general rule at page 721.

represent a corporation); Fraass Survival Systems, Inc. v. Absentee Shawnee Economic Development Authority, 817 F.Supp. 7, 10-11 (S.D.N.Y.1993) (holding that an Indian tribal government could proceed pro se); United States v. Reeves, 431 F.2d 1187, 1188 (9th Cir.1970) (interpreting state statute and finding that partners have specific right in partnership property and thus may appear for a partnership in order to plead their own case).[8] Despite the fact that such cases "neither follow federal precedent, nor have themselves been followed," Rowland, 506 U.S. at 721 n. 5, they suggest that the rule requiring corporations to appear by counsel has exceptions. Sanchez, 1995 WL 702377 at *1.

In Holliday, the court found that a small, closely held corporation could go forward in a Chapter XI bankruptcy proceeding represented by its sole shareholder, who was not an attorney and who had also filed for bankruptcy. 417 F.Supp. at 185. Sanchez, in analyzing Holliday, stated:

> Noting that neither the corporation nor the owner could afford a lawyer, the court reasoned that requiring representation of the corporation by a lawyer effectively would have excluded it from the courts. Id. at 184-185. The court also suggested that corporations in any context unable "to find [a] lawyer to take the case" but believing their claims just and proper should be allowed to proceed pro se. Id. at 184.

Sanchez, 1995 WL 702377 at *2.

Balancing the interests at stake, the Holliday's court found that:

> [a] person's day in court is, however, more important than the convenience of the judges. We recognize this hierarchy of values when we guarantee by statute and Constitution the right of real persons to appear pro se. To require this

[8] Contra, Eagle Assoc. v. Bank of Montreal, 926 F.2d 1305, 1309 (2d Cir.1991); United States v. APX Mortgage Services, Inc., et al., Case No. 98-99-cr-Orl-19A (Judge Fawsett) (analyzed the interplay of forfeiture law and conflict of interest).

> corporation to appear by a lawyer is effectively to exclude it and its sole shareholder from the courts.

417 F. Supp. at 183. Such a hierarchy is further implicated when the corporation's very amenability to justice is at issue.

Of course, such an exception is not exercised or intended to be exercised in any situation other than absolute necessity. Prior to even considering such an action, courts should force corporations to obtain counsel if they have the financial means. Sanchez, 1995 WL 702377 at *2. Importantly, this notion has been considered by the Supreme Court in Rowland. While not explicitly endorsed, the principle was nevertheless neither overruled nor held to be in error. Rowland, 506 U.S. at 201-02.

Though rarely employed, the case law cited above does describe limited circumstances under which courts have determined that necessity dictated allowing corporations to appear without counsel in order to avoid manifest injustice. Allowing corporations to become immune from prosecution is such a situation; otherwise, manifest injustice will occur to the United States. It is paramount that corporations not be permitted to escape prosecution for their wrongful acts merely by refusing to obtain counsel. Additionally, as Amodeo is a former attorney, the United States submits that the dictum in Las Colinas Development Corp., 585 F.2d at 11, suggesting that a layman's extraordinary legal ability might be grounds for allowing that layman to represent a corporation, is also grounds for making this case an exception.

WHEREFORE, the United States requests that this Honorable Court enter an order allowing Amodeo to appear on behalf of the three corporations.

Respectfully submitted,

A. BRIAN ALBRITTON
United States Attorney

By: *s/ I. Randall Gold*

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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

AEM, INC.
d/b/a MIRABILIS HR
MIRABILIS VENTURES, INC.
HOTH HOLDINGS, LLC
c/o Richard Lee Barrett, Esquire
Barrett, Chapman, & Ruta
18 Wall Street
Orlando, FL 32801

I hereby certify that on January 22, 2009, a true and correct copy of the foregoing document and the notice of electronic filing was sent by U.S. Mail to the following non-CM/ECF participant(s):

PRESIDION SOLUTIONS, INC.
AQMI STRATEGY CORPORATION
PROFESSIONAL BENEFIT SOLUTIONS,
d/b/a PRESIDION SOLUTIONS VII, INC.
c/o Frank L. Amodeo
1159 Delaney Avenue, Unit 5
Orlando, FL 32806

s/ I. Randall Gold
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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA
PROBATE DIVISION

FILED IN OPEN COURT 6-9-15
By _____ Clerk, Cir. Ct., Orange Co., FL
D.C.

IN RE: GUARDIANSHIP OF FRANK AMODEO

2008-CP-001369

_____/

ORDER APPOINTING GUARDIAN

THIS CAUSE having come before this Court on the Petition for Appointment of Successor Guardian for the Ward, Frank Amodeo (the "Ward"), who is represented by counsel in these proceedings and it appearing to the court that the Ward is an incapacitated adult in need of a limited guardian of the person and property. The court having jurisdiction and being fully advised;

It is ORDERED AND ADJUDGED that:

1. Charles Rahn is qualified to serve and is hereby appointed as limited guardian of the person and property of Frank Amodeo.

2. The nature of the Ward's incapacity is that he suffers from Bipolar Disorder, Type 1, most recent episode manic, moderate.

3. The powers and duties of the Guardian are:

(_x_) to make and enter into contracts;
(_x_) to consent to or refuse medical or other professional care, counseling, treatment or service;
(_x_) to control, dispose or manage real or personal property, businesses, or income from any source;
(_x_) to initiate, defend or settle lawsuits; and
(_x_) to pay or collect debts.

4. The Guardian shall exercise only the rights that the Court has found the Ward incapable of exercising on his own behalf, as outlined herein above. Said rights are hereby removed from the Ward and specifically delegated to the Guardian.

5. Upon taking the prescribed oath, filing designation of resident agent and acceptance and entering into a bond in the amount of NONE payable to

the Governor of the State of Florida and to all successors in office conditioned on the faithful performance of all duties by the guardian, letters of guardianship shall be issued.

6. The Court is not aware whether the Ward, prior to incapacity, has executed any valid advance directive under Chapter 765, Florida Statutes. If any such advance directive exists, the guardian shall exercise no authority over a health care surrogate until further order of this Court.

DONE AND ORDERED in Chambers in Orlando, Orange County, Florida this _____ day of June, 2015.

~~HONORABLE JOSE R. RODRIGUEZ~~
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that conformed copies have been furnished on this 9th day of June, 2015, to the following:

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Coleman, Florida 33521

~~Judicial Assistant~~/Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FRANK LOUIS AMODEO,

Petitioner,

v.

Case No: 6:16-cv-565-Orl-28GJK
(6:08-cr-176-Orl-28GJK)

UNITED STATES OF AMERICA,

Respondent.
_____/

ORDER

This case is before the Court on Petitioner's Motion to Alter and Amend ("Motion to Alter", Doc. 4). The Motion involves the Court's Order dismissing the case without prejudice. (Doc. 2).

This case was initiated by the filing of a Motion to Vacate, Set Aside, or Correct Sentence ("Motion to Vacate," Doc. 1) pursuant to 28 U.S.C. § 2255. The Motion to Vacate was signed by Charles Rahn as "Guardian" of Frank Amodeo. (Doc. 1 at 12). The Court dismissed the case because Rahn was not admitted to practice in this Court and because the Motion to Vacate contained no proof that Rahn was Amodeo's guardian or that Amodeo authorized him to sign the Motion to Vacate on his behalf.

Rahn filed the Motion to Alter on Amodeo's behalf, and Rahn provided a copy of an Order Appointing Guardian entered by the Ninth Judicial Circuit in and for Orange County, Florida dated June 9, 2015, in which Rahn was appointed as limited guardian

of the person and property of Amodeo. (Doc. 4 at 9-10). Thus, it appears that Rahn was authorized to file the Motion to Vacate as Guardian of Frank Amodeo.

However, the Court previously denied Amodeo's request for relief under section 2255 with respect to the same sentence and conviction being challenged in the Motion to Vacate: Case No. 6:12-cv-641-Orl-28DAB, which was dismissed with prejudice on September 25, 2015 Thus, the Motion to Vacate is a second or successive application.

Pursuant to section 2244(b)(3)(A), the Court cannot consider a second or successive section 2255 motion until a panel of the Eleventh Circuit Court of Appeals has authorized its filing. There is no indication that Amodeo applied for and was granted leave to file a second or successive section 2255 motion by the Eleventh Circuit Court of Appeals. Before Amodeo will be permitted to file a second or successive section 2255 motion in this Court, he must move in the Eleventh Circuit Court of Appeals for an order authorizing this Court to consider the application.

As a result, under the requirements set forth in section 2244(b), the Motion to Vacate, which is successive, cannot be entertained by this Court, and it will be dismissed without prejudice to allow Petitioner the opportunity to seek authorization from the Eleventh Circuit Court of Appeals.[1]

Accordingly, it is **ORDERED** as follows:

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[1] Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts allows for summary dismissal of a habeas petition that plainly reveals that relief is not warranted.

1. Petitioner's Motion to Alter and Amend (Doc. 4) is **GRANTED** in part only. In particular, the Court finds that Rahn was appointed as limited guardian of the person and property of Amodeo. However, since the Motion to Vacate is a second or successive application, it is **DISMISSED without prejudice.**

2. Petitioner's Motion to Appoint Counsel (Doc. 5) is **DENIED.**

3. The Clerk shall close this case and file a copy of this Order in criminal case number 6:08-cr-176-Orl-28GJK. The Clerk of the Court is directed to terminate any related motions in criminal case number 6:08-cr-176-Orl-28GJK.

DONE and **ORDERED** in Orlando, Florida on April 20, 2016.

JOHN ANTOON II
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party
OrlP-2 4/20

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. **Case No. 6:08-cr-176-Orl-28GJK**
(Forfeiture)

FRANK L. AMODEO

PRELIMINARY ORDER OF FORFEITURE

THIS CAUSE comes before the Court upon the filing of the Motion of the United States of America for Issuance of a Preliminary Order of Forfeiture, which, upon entry, shall be a final order of forfeiture as to the defendant, Frank L. Amodeo. The Court, being fully advised in the premises, hereby finds as follows:

1. That defendant, Frank L. Amodeo, has agreed that as a result of the conspiracy to commit wire fraud in, in violations of 18 U.S.C. § 371, and as alleged in Count One of the Indictment to which he pled guilty, the assets described more fully below are subject to forfeiture to the United States.

2. That, pursuant to the provisions of 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(b)(2), the United States is entitled to the forfeiture of the following as a result of his actions:

a. The real property, including all improvements thereon and appurtenances thereto, located at:

(1) 1159 Delaney Avenue, Orlando, Florida;

(2) 3801 Carolina Avenue, Richmond, Virginia;

(3) 4905 Research Drive, Huntsville, Alabama;

(4) 102 West Whiting Street, Tampa, Florida; and

(5) The proceeds of the sale of 509 Riverfront Parkway, Chattanooga, Tennessee, currently held in the bankruptcy estate of Winpar Hospitality Chattanooga, LLC, Case No. 07-11908, U.S. Bank. Court, E.D. Tenn.

b. The following vehicles:

(1) 2006 Black Harley Davidson Motorcycle, VIN # 1HD1BWB156Y077592;

(2) 2006 Mercedes Benz CLS 500C Coupe, VIN # WDDDJ75X46A032858; and

(3) 2006 BMW 750Li, VIN # WBAHN83536DT30059

c. Gates Learjet Model 25D, Aircraft Number 4488W;

d. The following promissory notes:

(1) A promissory note in the amount of $3,500,000.00 dated on or about May 7, 2007 between Wellington Capital and Worker's Temporary Staffing, Inc., including payments of $63,000.00 per month; and

(2) A promissory note in the amount of $5,500,000.00 dated on or about May 27, 2007 between Mirabilis Ventures, Inc. and Conrad D. Eigenmann, Jr., including semi-annual payments of at least $100,000.00.

e. The following seized funds:

(1) $253,487.45 in proceeds seized from the trust account of the law firm of Balch Bingham LLP;

(2) $101,393.86 in proceeds seized from the trust account of the law firm of Shutts & Bowen;

(3) $42,419.72 in proceeds seized from the trust account of the law firm of Mateer and Harbert;

(4) $100,000.00 in proceeds seized from the trust account of the law firm of Maher, Guily, Maher PA;

(5) $105,922.96 in proceeds seized from the trust account of the law firm of Martin, Pringle, Oliver, Wallace, & Baur LLP;

(6) $50,000.00 in proceeds seized from the trust account of the law firm of Bieser, Greer & Landis LLP;

(7) $8,518.30 in proceeds seized from the trust account of the law firm of Allen, Dyer, Doppelt, Milbrath & Gilchrist PA;

(8) $25,000.00 in proceeds seized from the trust account of the law firm of Valenti, Hanley & Robinson PLLC;

(9) $10,000.00 in proceeds seized from the trust account of the law firm of Brown, Stone, & Nimeroff LLC;

(10) $21,900.00 in proceeds seized from the trust account of the law firm of Hunt Rudd PA;

(11) $41,029.54 in proceeds seized from the trust account of the law firm of Ford & Harrison PA;

(12) $12,528.51 in proceeds seized from the trust account of the law firm of Broad & Cassel;

(13) $20,754.19 in proceeds seized from the trust account of the law firm of Latham, Shuker, Barker, Eden, & Beaudine LLC; and

(14) $13,100.99 in proceeds seized from Fifth Third Bank Account No. 7440599020 in the name of Soone Business Development.

f. The assets of the following corporations, including but not limited to the below listed lawsuits and/or settlements:

Corporations:

AEM, Inc., d/b/a Mirabilis HR,
AQMI Strategy Corporation,
Hoth Holdings, LLC,
Mirabilis Ventures, Inc.,
Nexia Strategy Corporation,
Presidion Solutions, Inc.,
Professional Benefit Solutions, Inc.,
d/b/a Presidion Solutions VII, Inc.
Quantum Delta Enterprises, Inc.,
d/b/a Siren Resources, Inc.,

Titanium Technologies, Inc.,
f/k/a Titanium Consulting Services, Inc.,
Tenshi Leasing, Inc.
Wellington Capital Group, Inc.

Lawsuits:

Style of case	Location	Case No.
Mirabilis Ventures, Inc. v. Jeffrey Reichel	Broward County, Florida	CACE 07011827
Mirabilis Ventures, Inc, and Nexia Strategy Corp. v. Palaxar Group, LLC, et al.	Orange County, Florida	07-co-13191 (37)
Mirabilis Ventures, Inc. v. Forge Capital Partners, LLC, et al.	Orange County, Florida	07-CA-13828 (33)
Mirabilis Ventures, Inc. v. J.C. Services, Inc., et al.	U.S.D.C., M.D. Fl.	6:06-cv-1957-Orl-22KRS
AEM, Inc. d/b/a Mirabilis HR v. Sheryl Okken, Progressive Employer Services, LLC, et al.	Brevard County, Florida	05-2007-CA-006526
RKT Constructors, Inc. v. Del Kelley and Robi Roberts	Orange County, Florida	2007-CA-012599-0
Mirabilis Ventures, Inc. v. Stratis Authority, Inc., et al.	Orange County, Florida	07-ca-13826 (37)
Mirabilis Ventures, Inc. v. Premier Servicing, LLC and Robert Konicki	Orange County, Florida	07-ca-33197 (34)
Mirabilis Ventures, Inc. v. Robert Lowder, et al.	Orange County, Florida	2006-CA-005742-0
Kenneth Hendricks, et al. v. Mirabilis Ventures, Inc., et al. (Counterclaim)	U.S.D.C., M.D.Fl.	8:07-cv-661-T17EAJ

Style of case	Location	Case No.
Kenneth Hendricks, et al. v. Mirabilis Ventures, Inc., et al. (Counterclaim)	Hillsborough County, Florida	DC-07-014201J
Berman, Kean & Riguera, P.A. v. Mirabilis Ventures, Inc., et al. (Counterclaim)	Broward County, Florida	07-024968 (21)
Anthony T. Sullivan v. AQMI Strategy (Counterclaim)	Orange County, Florida	07-CA-0015981-0
Paysource, Inc. And Robert Sacco v. Mirabilis Ventures, Amodeo, et al. (Counterclaim)	U.S.D.C., S.D. Ohio	3:07cv0129
Prime Acquisition Group, LLC v. Ionic Services, Inc., et al. (Counterclaim)	Palm Beach County, Florida	502007CA02242
Michael Mapes, et al. v. Wellington Capital Group, Inc.	U.S.D.C., D. Neb.	8:07cv77
Briarcliff Village, LLC v. Mirabilis Ventures, Inc.	Clay County, Missouri	07CY-CV09414
William Gregory v. Floyd Road v. Mirabilis Ventures, Inc. (Counterclaim)	Hillsborough County, Florida	07-CA-010780
Coastal Equity Partners, LLC v. Pacific Atlantic Capital Corp., et al. (Counterclaim)	Henrico County, Virginia	CL07-1960
Liberty Property Limited Partnership v. Mirabilis Ventures, Inc., et al. (Counterclaim, settled)	Duval County, Florida	162007CA003642
Tranmere Rovers Football Club v. Mirabilis Ventures, Inc. (Counterclaim, settled)	Liverpool, England	7LV30022

Style of case	Location	Case No.
Mark Lang v. Mirabilis Ventures, Inc. (Counterclaim, settled)	Orange County, Florida	48-2007-CA-002929-0
David Chaviers, Norman Chaviers, Kellie Ledbetter and Tom Hancock v. Mirabilis Ventures, Inc. And Frank Amodeo, et al. (Counterclaim, settled)	U.S.D.C., N.D. Ala.	CV-07-0442-cls
Carlton Fields v. Mirabilis Ventures, Inc. (Counterclaim, settled)	Hillsborough County, Florida	07-CC-038145
Brevard County v. RKT Constructors, Inc. (Counterclaim, settled)	Brevard County, Florida	05-2007-CA-12251
Bellsouth v. RKT Constructors, Inc., et al. (Counterclaim, settled)	Orange County, Florida	05-2007-CA-9660-0
Dutko Global Advisors LLC v. AQMI Strategy Corporation (Counterclaim, settled)	Orange County, Florida	48-2007-CA-018164-0
Capital Office Products of Volusia County, Inc., v. Mirabilis Ventures, Inc. (Counterclaim, settled)	Volusia County, Florida	2007-34950 COCI
CDW Corporation, Inc. v. Information Systems, Inc. (Counterclaim, settled)	Cook County, Illinois	2007-L-002446
RKT Constructors, Inc. v. Florida Department of Transportation (Settled)	Broward County, Florida	05-2003-CA-047397
RKT Constructors, Inc. v. Florida Department of Transportation (Settled)	Broward County, Florida	05-2006-CA-060518

Style of case	Location	Case No.
Providence Property & Casualty Insurance Co, et al. v. Paradyme, Inc., d/b/a Presidion Solutions VI (settled)	U.S.D.C., E.D. Tx.	4:07-CV-202
Presidion Corporation v. Arrow Creek, Inc., et al.	Palm Beach County, Florida	502006CA001417xxxxMB

g. Any and all property of the following bankruptcy estates, including funds which now constitute or have constituted funds of the estate:

Style of case	Location	Case No.
In Re: Winpar Hospitality Chattanooga, LLC.	U. S. Bankruptcy Court, E.D. Tenn.	07-11908
Sam Hopkins, Trustee v. Todd Pattison and Mirabilis Ventures, Inc.	U. S. Bankruptcy Court, D. Idaho	08-08005-JDP
In Re: Mirabilis Ventures, Inc.	U. S. Bankruptcy Court, M.D. Fl.	6:08-bk-04327-KSJ
In Re: Hoth Holdings, LLC	U. S. Bankruptcy Court, M.D. Fl.	6:08-bk-04328-KSJ
In Re: AEM, Inc.	U. S. Bankruptcy Court, M.D. Fl.	6:08-bk-04681
In Re: North American Communications	U. S. Bankruptcy Court, D. Utah	2:07-bk-24900

Being fully advised in the premises, the Court finds:

WHEREAS, by virtue of the plea agreement, the United States is now entitled to possession of the above-listed assets pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Rule 32.2 of the Federal Rules of Criminal Procedure;

It is hereby ORDERED, ADJUDGED and DECREED:

1. That all right, title and interest of defendant, Frank L. Amodeo, in the above-listed assets is hereby forfeited to the United States for disposition in accordance with the law, subject to the provisions of 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

2. That, following the entry of an order of forfeiture, the United States is authorized to seize the specific property subject to forfeiture. The United States also shall publish notice of the order and of its intent to dispose of the forfeited asset in such a manner as the Secretary of the Treasury may direct. The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the above-described assets, that is the subject of this Preliminary Order of Forfeiture, as a substitute for published notice as to those persons so notified.

3. That any person, other than Frank L. Amodeo, who has or claims any right, title or interest in the above-described assets must file a petition with this Court for a hearing to adjudicate the validity of his alleged interest in the forfeited asset. The petition should be mailed to the Clerk of the United States District Court, Orlando Division, 401 W. Central Blvd., Suite 1200, Orlando, Florida 32801-0120, within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier.

4. The petition shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title or interest in the forfeited asset, the time and circumstances of the petitioner's acquisition of the right,

title or interest in the forfeited asset, and any additional facts surrounding the petitioner's claim and the relief sought.

5. After receipt of the petition by the Court, the Court will set a hearing to determine the validity of the petitioner's alleged interest in the forfeited asset.

6. That upon adjudication of all third-party interests in the above-described assets, this Court will enter a Final Judgment of Forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), in which all interests will be addressed.

DONE and ORDERED this 2nd day of October, 2008, in Orlando, Florida.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v. **Case No. 6:08-cr-176-Orl-28GJK**
(Forfeiture)

FRANK L. AMODEO

FINAL ORDER OF FORFEITURE

THIS CAUSE comes before the Court upon the filing of the Motion by the United States for a Final Order for the following property:

(1) AQMI Strategy Corporation,

(2) Nexia Strategy Corporation,

(3) Presidion Solutions, Inc.,

(4) Professional Benefit Solutions, Inc.,
d/b/a Presidion Solutions VII, Inc.

(5) Quantum Delta Enterprises, Inc.,
d/b/a Siren Resources, Inc.,

(6) Titanium Technologies, Inc.,
f/k/a Titanium Consulting Services, Inc., and

(7) Tenshi Leasing, Inc.

The forfeiture of the corporations includes the corporate stock and assets; the following lawsuits are included in the forfeiture of the subject corporations because they are assets, or potential assets, of the corporations:

Style of case	Location	Case No.
Anthony T. Sullivan v. AQMI Strategy (Counterclaim)	Orange County, Florida	07-CA-0015981-0

Michael Mapes, et al. v. Wellington Capital Group, Inc.	U.S.D.C., D. Neb.	8:07cv77
Dutko Global Advisors LLC v. AQMI Strategy Corporation (Counterclaim, settled)	Orange County, Florida	48-2007-CA-018164-0
Providence Property & Casualty Insurance Co, et al. v. Paradyme, Inc., d/b/a Presidion Solutions VI (settled)	U.S.D.C., E.D. Tx.	4:07-CV-202
Presidion Corporation v. Arrow Creek, Inc., et al.	Palm Beach County, Florida	502006CA001417xxxxMB

Being fully advised in the premises, the Court finds that on October 2, 2008, the Court entered a Preliminary Order of Forfeiture, (Doc. 46), forfeiting to the United States of America all right, title, and interest of defendant Frank L. Amodeo in the above-referenced assets.

The Court further finds that there are no persons or entities, other than Frank Amodeo, known to have any potential alleged interest in the above-referenced assets.

The Court further finds that, in an abundance of caution, the United States sent notice of these forfeiture proceedings to former officers or representative of the corporations, specifically Craig Vanderburg, Jay Stollenwerk, Jason Carlson, Jodi Jaiman, Shane Williams; however, they failed to file a petition asserting any ownership interest in the properties and the time in which they could file a petition has expired.

In accordance with the provisions of 21 U.S.C. § 853(n), the United States published notice of the forfeiture and of its intent to dispose of the subject properties, on the official government website, www.forfeiture.gov, from March 24, 2009 to April 22, 2009. (Doc. No. 79). The publication gave notice to all third parties with a legal interest in the subject property to file with the Clerk of the Court, 401 W. Central Blvd., Suite 1200, Orlando, FL 32801-0120. To date, no other persons or entities have filed a petition to adjudicate their interest in the subject property and the time for filing such petition has expired. Accordingly, it hereby

ORDERED, ADJUDGED, and DECREED that for good cause show, the United States' motion is GRANTED.

It is FURTHER ORDERED that all right, title, and interest in the referenced assets is CONDEMNED and FORFEITED to the United States of America for disposition according to law, pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2(c)(2).

It is FURTHER ORDERED that clear title to the property is now vested in the United States of America.

DONE and ORDERED this 16 day of November 2009, in Orlando, Florida.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

Case No. 6:08-cr-176-Orl-28GJK
(Forfeiture)

-vs-

FRANK L. AMODEO

ORDER

This cause comes before the Court on the Motion to Vacate (Doc. 207) filed by the United States. The motion asks this Court to vacate, in part, the Final Order of Forfeiture (Doc. 177) entered by this Court in November 2009. No response to the motion has been filed.

The Final Order of Forfeiture (Doc. 177) was entered as to seven corporations, and in its motion the United States seeks to vacate the order only as to two of the seven—Nexia Strategy Corporation and AQMI Strategy Corporation. The United States notes that the other five corporations are not affected by the motion.

Upon consideration, it is **ORDERED** and **ADJUDGED** as follows:

1. The Motion to Vacate (Doc. 207) filed by the United States is **GRANTED**.

2. The Final Order of Forfeiture (Doc. 177) is hereby **VACATED to the extent it pertains to Nexia Strategy Corporation and AQMI Strategy Corporation**. The Final

Order of Forfeiture (Doc. 177) otherwise remains in effect, and this Order does not vacate the forfeiture as to the other five corporations listed in the Final Order of Forfeiture.

DONE and **ORDERED** in Orlando, Florida on this 11th day of March, 2014.

JOHN ANTOON II
United States District Judge

Copies furnished to:
United States Marshal
United States Attorney
United States Probation Office
United States Pretrial Services Office
Counsel for Defendant
FRANK AMODEO