

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION


20120222000062330 1/5 \$24.00
Shelby Cnty Judge of Probate, AL
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UNITED STATES OF AMERICA)

v.)

Case 2:08-cr-0196-KOB-TMP

EDWARD BROWNING McCLAIN,)
also known as "E.B. McCLAIN," and)
SAMUEL P. PETTAGRUE)

**REVISED FINAL ORDER OF FORFEITURE
AS TO CERTAIN SUBSTITUTE ASSETS**

This matter comes before the court on the "Motion for Final Order of Forfeiture as to Certain Substitute Assets" (doc. 153) filed by the United States on January 4, 2011. The court finds that the Motion should be GRANTED.

In January 2009, a jury convicted Defendants E.B. McCLAIN and SAMUEL P. PETTAGRUE of numerous fraud and money laundering offenses. As part of the sentence imposed upon each defendant, this court entered a Final Order of Forfeiture in the form of a money judgment for \$306,909.08, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c). This amount represented the proceeds of the offenses of conviction. (Doc. 113).

On September 1, 2009, the United States filed its first motion to amend that original forfeiture order by forfeiting certain substitute assets of defendant Pettagrue to satisfy, at least in part, the money judgment. (Doc. 130). Specifically, the United

States sought the forfeiture of certain real property located at 21 Squires Glen Lane, Leeds, Alabama and a 2008 Lexus ES350 vehicle.

On March 30, 2010, this court entered its *First Amended Order of Forfeiture as to Certain Substitute Assets* in favor of the United States (Doc. 149), thereby forfeiting all right, title, and interest of defendant Samuel P. Pettagrue in the following property to the United States, subject to claims of any third parties:

Certain real property located at 21 Squires Glen Lane, Leeds, Alabama, together with all improvements, appurtenances, and attachments thereto, and more particularly described as follows:

Lot 21, according to the Survey of The Shires, Phase II, a private subdivision, as recorded in May Book 13, Page 86, in the Probate Office of Shelby County, Alabama; and

One (1) 2008 Lexus ES350, VIN JTHBJ46G982184094.

The United States then caused to be published on an official internet government forfeiture site (www.forfeiture.gov) notice of this forfeiture and of the intent of the United States to dispose of the real property in accordance with the law and as specified in the *First Amended Order of Forfeiture as to Certain Substitute Assets*, and further notifying all third parties of their right to petition the court within thirty days for a hearing to adjudicate the validity of their alleged legal interest in said properties (Doc. 151). The government also provided direct written notice by certified mail to those parties it believed may possess an interest in the subject

properties, including the defendant's wife, Beverly S. Pettagruue, and Wells Fargo Home Mortgage. As directed by the court (Doc. 154), the Government also gave direct written notice by certified mail (Docs. 155, 156) to those named third parties of its "Motion for Final Order" (Doc. 153). The parties initially filed no objections with the court.¹

Subsequent to entry of Final Order, Wells Fargo Home Mortgage filed its "Motion for Relief from Final Order of Forfeiture as to Certain Substitute Assets" (doc. 158), which the court granted upon the Government's agreement to recognize the secured interests of Wells Fargo. (See doc. 165).

The failure to file a timely petition "extinguishes a third party's interests" under 21 U.S.C. § 853(n)(7) and Fed. R. Crim. P. 32.2(c)(2). United States v. Marion, 562 F.3d 1330, 1342 (11th Cir. 2009). The court, therefore, finds that any interest that Beverly S. Pettagruue may have had to the forfeited properties is extinguished.

Accordingly, pursuant to Fed. R. Crim. P. 32.2(c)(2), the court ORDERS the following:

1. That all right, title, and interest in the following property
 - (a) Certain real property located at 21 Squires Glen Lane, Leeds, Alabama, together with all

¹Mrs. Pettagruue never filed an objection.

improvements, appurtenances, and attachments thereto, and more particularly described as follows:

Lot 21, according to the Survey of The Shires, Phase II, a private subdivision, as recorded in May Book 13, Page 86, in the Probate Office of Shelby County, Alabama; and

(b) One (1) 2008 Lexus ES350, VIN JTHBJ46G982184094 is hereby FORFEITED to the United States of America pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

2. That all right, title and interest to the properties identified above is hereby condemned, forfeited and vested in the United States of America, and shall be disposed of according to law, subject to the secured interests of Wells Fargo in the aggregate amount of \$220, 983.44 (consisting of \$155,784.30 owing on the subject mortgage and \$65,199.14 owing in the subject home equity loan.)

3. That all other persons claiming any interest the subject properties are hereby held in default.

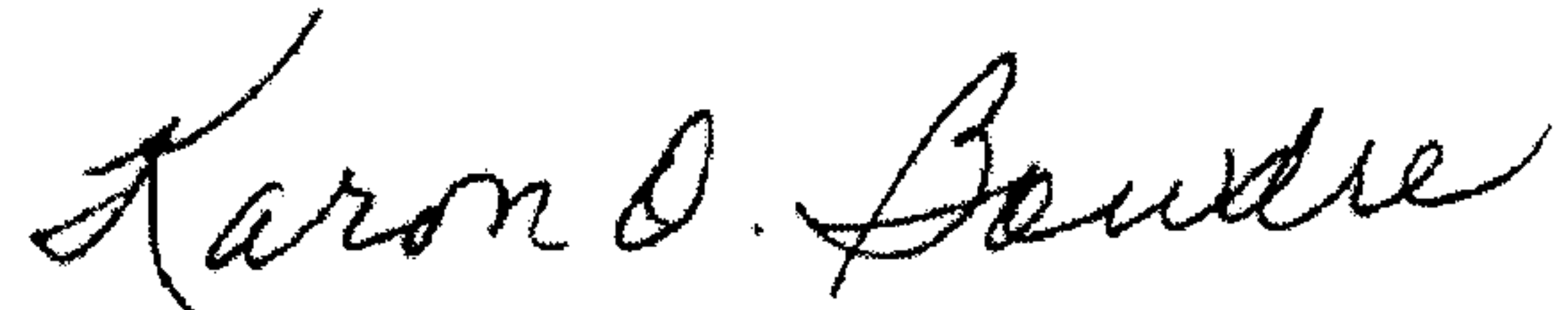
4. That this Court shall retain jurisdiction in the case for the purpose of enforcing this *Final Order of Forfeiture as to Certain Substitute Assets*.

5. That any net proceeds realized by the United States from the sale and disposition of the properties forfeited herein in excess of the forfeiture judgment

amount of \$306,909.08, after the satisfaction of the Wells Fargo secured interest, shall be returned to defendant Samuel P. Pettagruie or his designee.

6. That the Clerk of the Court shall forward four certified copies of this Order to the United States Attorney's Office, 1801 Fourth Avenue North, Birmingham, AL 35203; Attention: James D. Ingram, Assistant U.S. Attorney.

SO ORDERED this 14th day of March 2011.



KARON OWEN BOWDRE
UNITED STATES DISTRICT JUDGE



TRUE COPY:

By: 



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