

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -X
:
UNITED STATES OF AMERICA
:
-v.-
:
ERWIN MAYER,
Defendant.
:
- - - - -X

CONSENT PRELIMINARY
ORDER OF FORFEITURE
S3 09 Cr. 581 (WHP)

WHEREAS, on or about March 4, 2010, ERWIN MAYER, (the "defendant"), among others, was charged in a thirty-one count Superseding Indictment S3 09 Cr. 581 (WHP) (the "Indictment") with violations of Title 18, United States Code, Section 371 (Count One); tax evasion as to various tax shelter clients, in violation of Title 26, United States Code, Section 7201 (Counts Two through Seven, Nine, Eleven, Thirteen, and Seventeen); engaging in a corrupt endeavor to obstruct and impede the Internal Revenue Laws, in violation of Title 26, United States Code, Section 7212(a) (Count Twenty-Four); personal income tax evasion, in violation of Title 26, United States Code, Section 7201 (Counts Twenty-Nine and Thirty); and with mail fraud, in violation of Title 18, United States Code, Sections 1341 and 2 (Count Thirty-One);

WHEREAS, the Indictment included a forfeiture allegation seeking, pursuant to 18 U.S.C. §§ 981(a) (1) (C) and 982(a) (2) (A) and 28 U.S.C. § 2461, all property real and personal, that constitutes or is derived from proceeds traceable to the commission of the

offenses alleged in Counts One and Thirty-One, including but not limited to the following:

a. At least \$180,000,000 in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained as a result of the conspiracy to commit the mail and wire fraud offenses contained in Count One and the mail fraud offense contained in Count Thirty-One, for which the defendants are jointly and severally liable;

b. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 340 White Oak Lane, Winnetka, Illinois 60093, more particularly described as a single-family home owned by ERWIN MAYER and/or family members, either directly or indirectly;

c. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 570 Illinois Avenue, Green Lake, Wisconsin 54941, more particularly described as a single-family home owned by ERWIN MAYER and/or family members, either directly or indirectly;

d. A sum of at least \$10,000,000 in securities, notes, United States currency, funds, or other monetary instruments, on deposit at Goldman Sachs & Co., in account numbers 020-68232-4, 020-27889-1, 020-27888-3, 020-27-887-5, 020-49539-6, 020-68233-2, and 020-30032-3, all held in the name of Maxoscar

Investments LLC, and all accounts containing funds that are traceable thereto;

e. A sum of at least \$10,000,000 in securities, notes, United States currency, funds, or other monetary instruments, on deposit at Goldman Sachs & Co., in account numbers 020-161469 and 020-163689, held in the name of CMT Investors LLC, and all accounts containing funds that are traceable thereto; and

f. All United States currency, funds, or other monetary instruments on deposit in account number 4352882 in the name of ERWIN MAYER and Jennifer Mayer at Northern Trust, and all accounts containing funds that are traceable thereto;

WHEREAS, on or about October 19, 2010, the defendant pled guilty to Counts One and Twenty-Nine of the Indictment pursuant to a plea agreement (the "plea agreement");

WHEREAS, under the terms of the plea agreement, the defendant agreed to forfeit to the United States the following:

- a. All funds on deposit in account numbers 020-68232-4, 020-27889-1, 020-27888-3, 020-27-887-5, 020-49539-6, 020-68233-2, and 020-30032-3 at Goldman Sachs & Co. in the name "Maxoscar Investments LLC";
- b. All funds on deposit in account numbers 241-27211, 241-23775, 241-27212, 241-23777, 241-27214, and 241-23774 at Morgan Stanley/Smith Barney, and Illinois Bright Start account numbers 50001-48864, 50001-48827, and 50001-48830, in the name of Jennifer Mayer, either personally or as custodian;

- c. All funds on deposit in account numbers 020-16146-9 and 020-163-689 at Goldman Sachs & Co. in the name "CMT Investors LLC ";
- d. All funds on deposit in account number 223-17764 at Deutsche Bank in the name "CMT Investors";
- e. All funds on deposit in account number 4804003339 at Harris Bank;
- f. All funds on deposit in account numbers 6150039781, 6110253077, 6110345553, and 4352882 at Northern Trust in the name of Erwin Mayer and/or Jennifer Mayer;
- g. All funds on deposit at Fidelity in Individual Retirement Accounts numbers 130776777 and 143310271 held in the name of Erwin Mayer;
- h. All right, title and interest in the real property and residence located at 340 White Oak Lane, Winnetka, Illinois; and
- i. All right, title and interest in the real property and residence located at 579 Illinois Avenue, Green Lake, Wisconsin ((a) through (i), collectively the "Subject Property");

WHEREAS, the defendant consents to the forfeiture of all of his right, title, and interest in the Subject Property, representing all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offense alleged in Count One of the Indictment;

WHEREAS, pursuant to 21 U.S.C. § 853(g), and Rules 32.2(b)(3), 32.2(b)(6), and 32.2(c) of the Federal Rules of Criminal Procedure, the Government is now entitled, pending any assertion of third-party claims, to reduce the Subject Property to

its possession and to notify any person who reasonably appears to be a potential claimant of its interest therein;

IT IS HEREBY STIPULATED AND AGREED, by and between the plaintiff, United States of America, by its attorney Preet Bharara, United States Attorney, Assistant United States Attorneys Stanley J. Okula, Jr., Nanette L. Davis, Jason P. Hernandez, of counsel, and ERWIN MAYER, the defendant, and his counsel, Daniel E. Reidy, Esq., and Thomas P. McNulty, Esq., that:

1. Pursuant to Rule 32.2(b)(4)(A) of the Federal Rules of Criminal Procedure, this Consent Preliminary Order of Forfeiture is final as to the defendant, ERWIN MAYER, upon entry of this order, and shall be deemed part of the sentence of the defendant, and shall be included in the judgment of conviction therewith.

2. All of the defendant's right, title and interest in the Subject Property are hereby forfeited to the United States for disposition in accordance with the law, subject to the provisions of 21 U.S.C. § 853(n).

3. Upon entry of this Consent Preliminary Order of Forfeiture, the United States Department of Treasury (or its designee) is authorized to seize the Subject Property and hold the Subject Property in its custody and control.

4. Pursuant to 21 U.S.C. § 853(n)(1), Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, and Rules G(4)(a)(iv)(C) and G(5)(a)(ii) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, the United States shall publish for at least thirty (30) consecutive days on the official government internet forfeiture site, www.forfeiture.gov, notice of this Consent Preliminary Order of Forfeiture. Any person, other than the defendant in this case, claiming an interest in the Subject Property must file a petition within sixty (60) days from the first day of publication of the notice on this official government internet site, or no later than thirty-five (35) days from the mailing of actual notice, whichever is earlier.

5. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the Subject Property, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title and interest in the Subject Property and any additional facts supporting the petitioner's claim and the relief sought, pursuant to 21 U.S.C. § 853(n).

6. Pursuant to Rule 32.2(b)(6) of the Federal Rules of Criminal Procedure, the Government shall send notice to any person who reasonably appears to be a potential claimant with standing to contest the forfeiture in the ancillary proceeding.

7. Upon adjudication of all third-party interests, this Court will enter a Final Order of Forfeiture with respect to the Subject Property pursuant to 21 U.S.C. § 853(n) and Rule 32.2(c)(2) of the Federal Rules of Criminal Procedure, in which all third-party interests will be addressed.

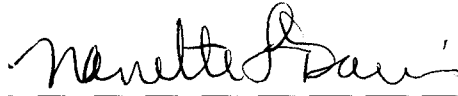
8. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure.

9. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Consent Preliminary Order of Forfeiture, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

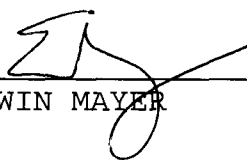
10. The signature pages of this order may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

AGREED AND CONSENTED TO:

PREET BHARARA
United States Attorney for the
Southern District of New York

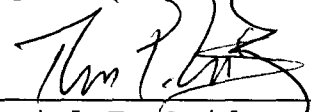
By: 
Stanley J. Okula, Jr.
Nanette L. Davis
Jason P. Hernandez
Assistant United States Attorneys
One St. Andrew's Plaza
New York, NY 10007
(212) 637-1585/1117/1024

10/19/10
DATE

By: 
ERWIN MAYER

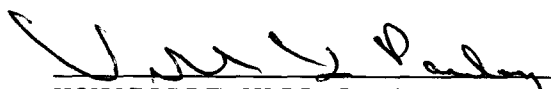
10/19/10
DATE

Attorney for Defendant

By: 
Daniel E. Reidy, Esq.
Thomas P. McNulty, Esq.
Jones Day
77 West Wacker, Suite 3500
Chicago, IL 60601
(312) 269-4140

10/19/2010
DATE

SO ORDERED:


HONORABLE WILLIAM H. PAULEY, III
UNITED STATES DISTRICT JUDGE

10/20/10
DATE