

97CV05219-ILG-MO

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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OLANIKE ADUKE OLABISI

Plaintiff,

MEMORANDUM & ORDER

-against-

97-CV-5219 (ILG)

UNITED STATES OF AMERICA,

Defendant.
-----X

GLASSER, United States District Judge:

BACKGROUND

On April 2, 1988, petitioner Olabisi was stopped by a United States Customs agent as she was about to board a flight at John F. Kennedy International Airport. She was given Customs Publication 503, which explains that all individuals leaving the United States who are carrying more than \$10,000 in currency must file a report at the time of departure. When asked how much money she was carrying, plaintiff replied that she had \$5,000 with her. Plaintiff was subsequently searched, and the Customs agent found that she was carrying \$57,000 in United States currency. At that time, the Customs agent seized \$52,280.00 of undeclared U.S. currency that had been secreted on Olabisi's person and in her handbag.

On June 7, 1988, Olabisi appeared before this Court, waived her right to a grand jury indictment, and pled guilty to transporting more than \$10,000 outside of the United States. On September 7, 1988, plaintiff was sentenced to 12 months probation.

Plaintiff now moves pursuant to Rule 41(e) for the return of the funds that were seized.¹

¹Plaintiff claims that \$57,000 was seized. Customs' records, however, show that only the undeclared amount of \$52,280.00 was seized. See Matthews Decl., Ex. A; Ex. G. According to

Rule 41(e), however, provides a method for return of seized property in a criminal case and thus is not applicable after the criminal case is concluded. Therefore, Olabisi's 41(e) motion is instead treated as a civil complaint against the United States Government. See Onwobiko v. United States, 969 F.2d 1392, 1397 (2d Cir. 1992) ("Where criminal proceedings against the movant have already been completed, a district court should treat a rule 41(e) motion as a civil complaint.")

DISCUSSION

Generally, once the government initiates an administrative forfeiture proceeding and the property is not the subject of an ongoing criminal proceeding, the district court lacks jurisdiction over the property. See Onwubiko v. United States, 969 F.2d 3192, 1398 (2d Cir. 1992). However, where an administrative forfeiture is procedurally deficient, the court retains jurisdiction to correct the deficiency. Id. "Accordingly, federal courts have jurisdiction to determine whether the government provided legally adequate notice of forfeiture." Weng v. United States, 137 F.2d 709, 713 (2d Cir. 1998) (citations omitted).

Olabisi claims that the administrative forfeiture of the funds that she was carrying was procedurally deficient as she did not receive adequate notice of the forfeiture. Olabisi states that she

contacted the U.S. Customs, and was advised to show how those money [sic] were obtained. Thereafter, the Defendant furnished the Customs with Affidavit [sic] from part owners of the money, showing the legality of the money. However, after [a] few months, the Customs replied that, of the persons interviewed regarding the money, one person who contributed \$2,000, was said to

their records, customs seized 492 one hundred dollar bills; 10 fifty dollar bills; and 129 twenty dollar bills. See Matthews Decl., Ex. G.

have rejected that she contributed the said amount. And since that time, the Customs [sic] has neither wrote nor furnished any sort of notice to the effect of the status of the money.

Olabisi's Mem. of Law 6.

Customs' records, however, show that Olabisi was provided with formal notice of the seizure and the impending forfeiture by July 15, 1988. See Matthews Decl., Ex. G. Indeed, in response to this notice, plaintiff requested an extension of time to file a petition of remission for the return of the funds. This petition was filed on August 8, 1988. On May 11, 1989, Customs then sent notice to plaintiff that her petition was denied. On July 18, 1989, plaintiff filed a supplemental petition, and on November 21, 1989, her supplemental petition was denied. Finally, on January 29, 1990, plaintiff was again granted permission to file another supplemental petition. It appears, however, that no such petition was ever filed. Accordingly, on February 28, 1990, the \$52,280.00 in seized currency was forfeited effective March 3, 1990.

“[D]ue process is satisfied by ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” Weigner v. City of New York, 852 F.2d 646, 649 (2d Cir. 1988) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1950)). Applying that due process standard to the present case, it is clear from the face of movant's motion papers that she had notice of the forfeiture proceedings. Ms. Olabisi admits that she knew that her property was with U.S. Customs and that she contacted Customs and furnished the agency with an affidavit regarding the ownership of some of the seized funds. Furthermore, although the Customs' records are sparse, they clearly show that Ms. Olabisi was aware of the administrative forfeiture proceeding and that she participated in it. As noted above, Ms. Olabisi

filed several requests for extensions of time and filed petitions objecting to the forfeiture. See Matthews Decl. ¶ 14, Ex. G at pp. 1, 14-19. Thus, even had the United States government failed to provide Ms. Olabisi with a Notice of Seizure, she did indeed have actual knowledge that her property was seized and was given an opportunity, of which she took full advantage, to make a claim for the property before it was forfeited. See United States v. In re One 1987 Jeep Wrangler Automobile VIN # 2BCCL8132HBS12835, 972 F.2d 472 (2d Cir. 1992) (holding that actual knowledge of forfeiture proceeding satisfies demands of due process). This is all process “due” under the United States Constitution.

In any event, failure to file a civil complaint for the return of property within the limitations period requires dismissal for lack of subject matter jurisdiction. The courts in the second circuit have held that the statute of limitations for a claim that property was forfeited improperly is governed by 28 U.S.C. § 2401, which provides for a six-year statute of limitations for suits brought against the United States. See Boero v. Drug Enforcement Administration, 111 F.3d 301, 305 n.5 (2d Cir. 1997) (citing Concepcion v. United States, 938 F. Supp. 134, 139 (E.D.N.Y. 1996) (due process challenge to administrative forfeiture subject to six-year statute of limitations set forth in 28 U.S.C. § 2401(a)). The statute of limitations set forth in this section is jurisdictional in nature, requiring dismissal for lack of subject matter jurisdiction if its requirements are not met. See In re Agent Orange Prod. Liability Litig., 818 F.2d 210, 214 (2d Cir. 1987); Brewster v. Secretary of U.S. Army, 489 F. Supp. 85, 88 (E.D.N.Y. 1980) (citing Boruski v. United States, 493 F.2d 301 (2d Cir.) (1974)).

Under federal law, a claim accrues when a claimant knows or has reason to know of the injury forming the basis of his claim. See Egelston v. Guido, 41 F.3d 865, 871 (2d Cir. 1994).

“A claim for return of property unlawfully seized therefore generally accrues on the date of the seizure.” Vasquez v. United States, No. 94 Civ. 7580, 1996 WL 692001 (S.D.N.Y. Dec. 3, 1996).

Here, the cause of action accrued on April 2, 1988, the day when Ms. Olabisi was arrested and the currency was seized. However, the instant action was not filed until August 4, 1997, well more than six years later. Petitioner offers no reason for her delay in bringing this action and this court knows of no reason why the statute of limitations should be equitably tolled. Therefore, this complaint must be dismissed for lack of subject matter jurisdiction.

Finally, it is noted that in a recent case, United States v. Bajakajian, – U.S. –, 118 S. Ct. 2028 (1998), the Supreme Court found that the forfeiture of \$357,144 of a defendant who pleaded guilty to failure to report exported currency would violate the Excessive Fines clause of the United States Constitution. However, it does not follow from that opinion that Olabisi’s forfeiture of \$52,280 is so “grossly disproportionate” to the gravity of her offense that it violates the Excessive Fines clause, and this court finds that it does not.

CONCLUSION

For the reasons set forth above, petitioner’s claim is dismissed.

SO ORDERED.

Dated: August 7, 1998
Brooklyn, New York


I. Leo Glasser, U.S.D.J.

A copy of the foregoing Order was this day sent to:

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Gail A. Matthew
Assistant United States Attorney