

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

UNITED STATES COMMODITY)
FUTURES TRADING)
COMMISSION,)

Plaintiff,)

v.)

Case No. 1:15-cv-538-ALB

DINAR CORP., INC.,)
MY MONEX, INC., a Nevada)
corporation, and)
HUSAM TAYEH,)

Defendants.)

ORDER

This order presumes familiarity with this case’s underlying facts, which were established during a bench trial held on August 12, 2019 and outlined in detail in the Court’s Memorandum Opinion with Findings of Fact and Conclusions of Law. (Doc. 227). This matter comes before the court on two issues.

First, immediately before the bench trial, Plaintiff Commodity Futures Trading Commission filed its First Motion in Limine for Court to Draw an Adverse Inference from Defendants’ Failure to Produce Business Records and to Exclude Speculative or Irrelevant Testimony, Evidence, or Arguments Related to Purported Deductions from Disgorgement for Defendants’ Costs or Expenses. (Doc. 203).

Because the Memorandum Opinion grants the CFTC's requested disgorgement for the reasons stated therein, the motion is denied as MOOT.

Second, the Court is in receipt of the CFTC's post-trial status report and Tayeh's response. After the bench trial, the CFTC notified the Court that the asset freeze will need to be lifted and the approximately \$2,500,000 in foreign currency held in Mobile by the FBI released. (Doc. 220). Tayeh argues that, per the Stipulation for Compromise Settlement and Amended Order and Decree of Forfeiture, the money has already been released and that the CFTC waived any claim to stopping release of the money. (Doc. 221). The CFTC responds that the underlying criminal case resolved only that the money would not be subject to forfeiture as part of the criminal case. (Doc. 222).

Specific to this dispute is the Stipulation for Compromise Settlement in a related criminal case. Paragraph five states, "The United States agrees not to initiate or pursue judicial forfeiture proceedings against the Dinar and Dong foreign currency currently held by the Federal Bureau of Investigation as evidence in connection with case 1:16cr213-WKW." *United States v. One Parcel of Property*, Case No. 1:16-cv-831-SRW, at Doc. 29-1 ¶5 (M.D. Ala. May 18, 2017); *One Parcel of Property*, Case No. 1:16-cv-831, at Doc. 40 (M.D. Ala. Nov. 7, 2017) (approving stipulation).

Tayeh claims that the money has already been released, but the fact that he does not have it indicates otherwise. There is no allegation that the United States has not complied with its settlement agreement in not pursuing forfeiture of the foreign currency. And Tayeh's attempts to equate forfeiture and offsetting is unavailing. Forfeiture is a remedy, and offsetting is a common law right which "permits a person 'to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due him.'" *Ind. Bank, N.A. v. United States*, 583 F. Supp. 2d 44, 50 (D.D.C. 2008) (quoting *United States v. Munsey Trust Co.*, 332 U.S. 234, 239 (1947)). In this regard, the federal government enjoys the same right of set-off as any other creditor. *Id.* (permitting United States to offset company's tax debt against funds held by Treasury Department to which separate plaintiff claimed greater interest). It is ORDERED that the pallet of currency held in Mobile by the FBI in connection with Tayeh shall be released to the CFTC as an offset against the final judgment entered in this case.

DONE and **ORDERED** this 14th day of February 2020.

/s/ Andrew L. Brasher
ANDREW L. BRASHER
UNITED STATES DISTRICT JUDGE