

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

Case # 12-15103

HON. MARIANNE BATTANI

**CERTAIN REAL PROPERTY LOCATED
AT 2709 BUTLER BAY DRIVE N. WINDERMERE,
FLORIDA, TOGETHER WITH ALL OF ITS
FIXTURES, IMPROVEMENTS, AND APPURTENANCES,**

Defendant.

Julie Beck, AUSA
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Steven Fishman (P23049)
Attorney for Claimants Hathaway and Kingsley
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ANSWER TO COMPLAINT FOR FORFEITURE

Now come Diane Hathaway and Michael Kingsley, Claimants herein, and in answer to the complaint for forfeiture filed in the above-entitled cause state as follows:

1. Claimants admit paragraphs 1-5.
2. Claimants deny that the defendant property "constitutes proceeds, or property traceable thereto, of Financial Institution Fraud in violation of Title 18, United States Code, Section 1344, and/or was proceeds of, or property traceable thereto, or property involved in Money Laundering in violation of Title 18, United States Code, Section 1956," and further denies that said property is forfeitable to the government as claimed in paragraph 6.
3. With respect to paragraph 6(a), Claimants admit that on December 12, 2010, the lawyer representing them in the short sale transaction submitted a Request for Short Sale

Consideration. Claimants further admit that they filled out and signed a form on December 10, 2010 entitled “Customer Information Summary” in conjunction with the Request for Short Sale Consideration that was submitted by their lawyer. Claimants neither admit nor deny that the form they submitted to ING Direct (ING) is called a “hardship letter” and leave Plaintiff to its proof on that issue. Claimants also neither admit nor deny that their Request for Short Sale Consideration was a “request to be forgiven a debt of \$600,000 in a “short sale” submitted transaction” and leave Plaintiff to its proof on that issue. Finally, Claimants note that the “Customer Information Summary” granted ING Direct the authority to confirm the information that was disclosed in the “Customer Information Summary.”

4. Claimants deny the allegations in paragraph 6(b) that they intended to defraud ING at any time and further deny that they “systematically and fraudulently transferred property and hid assets.” Claimants neither admit nor deny the allegation that they made a “claim to ING that they did not have the financial resources to pay the mortgage on the Michigan property” and leave Plaintiff to its proofs on that issue.

5. Claimants deny the allegation in paragraph 6(c) that there was anything fraudulent about the transfer of the defendant Butler Bay property.

6. Claimants admit paragraph 6(d)

7. Claimants neither admit nor deny the allegation in paragraph 6(e) that “the short sale transaction forgave \$600,000 in debt owed by Kingsley and Hathaway.”

8. Claimants admit that the “Customer Information Summary” (referred to by Plaintiff as the “hardship letter” in paragraph 6(e)¹) neither disclosed the transfer of the defendant Butler Bay property nor disclosed it as an asset. Claimants, with the assistance of their lawyer, provided the information that was requested by ING in its “Customer Information Summary” which did not include any questions about property that had been recently transferred.

¹ This paragraph is numbered by Plaintiff as 6(e) which is the same number as the previous paragraph. Claimants assume that this is a typographical error and that the correct number for this paragraph should be 6(f)

9. Claimants repeat and re-allege the above responses in response to paragraph 7.

10. Claimants deny the allegation in paragraph 8 that the Butler Bay property constitutes “proceeds, or property traceable thereto, of bank fraud.....and/or proceeds of, or property traceable thereto, or property involved in money laundering...”

11. Claimants deny that the defendant property is forfeitable to the government as claimed in paragraph 9.

JURY DEMAND

Claimants demand a jury trial in the instant case.

AFFIRMATIVE DEFENSES

1. Claimants retained counsel to assist them in the “short sale” transaction and relied on counsel’s advice throughout the “short sale” process.

2. The defendant Butler Bay property was purchased in 1999 with funds contributed entirely by Claimant Kingsley. There was never a mortgage on said property. Therefore, it is impossible for said property to have been proceeds or property traceable to either bank fraud or money laundering alleged to have occurred more than ten years later.

3. There was no loss to ING as a result of the “short sale” process. In fact, ING received approximately \$150,000 more in proceeds as a result of the “short sale” than it would have received had the home been sold at a Sheriff’s sale.

4. Neither ING nor any other lending institutions publish and/or distribute the guidelines they use to determine whether to approve a short sale. It was ING who formulated the “Customer Information Summary” that was submitted with the Request for Short Sale Consideration by Claimants’ lawyer which included the stipulation that ING had the authority to confirm the information if it chose to do so.

5. ING approved the “short sale” for its own institutional reasons which had little or nothing to do with the information contained in the “Customer Information Summary.” In fact, ING knew about and inquired about the defendant property during the “short sale” process and

either did learn or could easily have learned about the property transfer. Whether ING did or did not learn about the property transfer, it is obvious that the transfer had no impact on ING's decision to approve the short sale.

RELIEF

WHEREFORE, Claimants request that a judgment be entered denying the government's request that the defendant property be forfeited to the United States.

s/ Steven Fishman
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Dated: November 30, 2012

CERTIFICATE OF SERVICE

I certify that on November 30, 2012, I served a copy of the attached answer upon Julie Beck, Assistant United States Attorney, by filing same electronically.

s/ Steven Fishman
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