

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

WESTERN DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	Case No. CR 12 50027
)	Judge Philip G. Reinhard
RITA A. CRUNDWELL,)	
)	
Defendant.)	

UNITED STATES’ MOTION FOR FORFEITURE OF SUBSTITUTE ASSETS

The United States of America, by and through it undersigned attorney, respectfully moves this Court, pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure and 21 U.S.C. § 853(p), for entry of an Order of Forfeiture of Substitute Assets for the following assets of RITA A. CRUNDWELL (“Defendant”), in partial satisfaction of Defendant’s outstanding forfeiture money judgment:

1. Defendant’s interest in the American Quarter Horse Association (“AQHA”) Incentive Fund, with dividends accruing annually, as Nominator ID 0636954 for both foals and stallions for show years 2014 and forward.
2. Defendant’s interest in the American Paint Horse Association (“APHA”) Breeders’ Trust, with dividends accruing annually, as ID 8238201 for both foals and stallions for show years 2014 and forward.
3. Defendant’s interest in the National Snaffle Bit Association (“NSBA”) Stallion Incentive Fund and Breeders Championship Futurity, with dividends accruing annually, as Nominator ID 633 for both foals and stallions for show years 2012 and forward.

In support of its motion, the United States submits the following:

Background

On November 14, 2012, Defendant Rita A. Crundwell pleaded guilty to Count One of an Indictment charging her with wire fraud, in violation of 18 U.S.C. § 1343, for embezzling approximately \$53,740,394 from the city of Dixon, Illinois. The indictment contained a forfeiture allegation notifying Defendant that, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), the United States would seek forfeiture of all property, real or personal, which constitutes or is derived from proceeds traceable to her offense. Defendant agreed in her plea agreement with the United States to a forfeiture money judgment, including forfeiture of substitute assets, of \$53,740,394.

On February 14, 2013, this Court entered a Preliminary Order of Forfeiture, ordering Defendant to forfeit \$53,740,394 to the United States in the form of a money judgment and via substitute assets. After sentencing Defendant to 235 months' imprisonment, the Court entered a Final Order of Forfeiture on May 16, 2013, and an Amended Final Order of Forfeiture on June 3, 2013.

Where, as here, the forfeiture order takes the form of a money judgment, the order is a personal judgment against the defendant that remains in effect until satisfied. *United States v. Navarrete*, 667 F.3d 886, 887-88 (7th Cir. 2012). The money judgment “[i]n effect . . . places a judgment lien against [the defendant].” *United States v. Baker*, 227 F.3d 955, 970 (7th Cir. 2000).

Discussion

The Court has previously issued a Turnover Order for then-accrued monies owed by AQHA and APHA to Defendant from the respective incentive funds for show years 2012 and

2013. The accrued monies from NSBA have never been turned over as the United States was not aware of this interest until the U.S. Marshals Service recently discovered it.¹

These monies accrue annually, which had required the Court to issue a Turnover Order each year as the monies accrue. For example, the monies for show year 2014 have accrued, but have not yet been distributed because there is no court order authorizing turnover for that particular show year. To facilitate judicial efficiency and economy, the United States moves to forfeit Defendant's interest as nominator of stallions and foals in each of the incentive funds. This would allow AQHA, APHA, and NSBA to change the disbursement information for all presently and future accrued monies from listing the Defendant as the beneficiary to listing the United States and disburse all future monies without the need for judicial intervention.

A. AQHA

The AQHA Incentive Fund program was established to provide a way for members to invest in their horses. There are three different ways to participate in such program: (1) nominate stallions for a particular breeding year, (2) nominate foals for the foal's lifetime, and (3) show nominated foals you own on the AQHA show circuit.

Incentive Fund payouts are based on the number of points a nominated foal wins at AQHA-approved shows. Each point earned at an AQHA-approved show by such foals is worth a specific amount. At the end of every show year, the total number of points earned by such foals is divided into the total amount of money in the Incentive Fund for that year. This establishes a dollar value for each point. As more specifically described below, annual Incentive Fund payouts are divided as follows: (1) the individual who nominated the stallion (father) of a nominated foal earns 15% of the foal's Incentive Fund earnings, (2) the individual who first

¹ NSBA has retained the checks owed to Defendant in their files for show years 2012 to present and awaits orders from to court as to disposition of those checks.

nominated the foal (regardless of whether they currently own such foal) earns 15% of the foal's incentive fund earnings, and (3) the current owner of a nominated foal horse earns 70% of the foal's incentive fund earnings.

First, stallion owners pay a fee to nominate their stallions for a particular breeding season. The stallion owner then breeds the horse with a mare. The resulting spawn is a foal. If such foal is subsequently nominated into the Incentive Fund program, the stallion nominator will receive 15% of the foal's Incentive Fund earnings for the foal's lifetime regardless of whether the stallion nominator continues to own the stallion. Stallion nominators must re-nominate the stallions for each breeding season to earn a percentage of that breeding season's foals' lifetime Incentive Fund earnings. The percentage of the earnings is paid out annually. Because the earnings are based on the foal's performance, these earnings vary and can continue to accrue even after a stallion is deceased.

Second, a mare owner breeds his/her mare with a nominated stallion and subsequently nominates the resulting foal. Such foal nominator will receive 15% of the foal's Incentive Fund earnings for the foal's lifetime regardless of whether the foal nominator continues to own or show the foal. Earnings stop accruing to the foal's nominator upon the foal's death or discontinuance of earning AQHA points.

Third, owners of previously nominated foals may annually purchase an Incentive Fund competition license. Owners who purchase such a license earn 70% of the foal's incentive fund earnings for each year that two conditions are met: they purchase a competition license and the foal earns AQHA points. As such, these earnings only go to the foal's current owner.

Defendant has participated in all three aspects of the Incentive Fund program over the years. Because Defendant no longer owns any horses, however, she no longer has any interest in

the third aspect of the program (70% payouts). Defendant continues to have an interest in the first two aspects of the program, as stallion nominator and as an original foal nominator, because those earnings accrue for the lifetime of the foals so long as they are earning points at AQHA shows.

According to AQHA, Defendant nominated 12 stallions for a cumulative 87 breeding seasons, producing 1093 currently nominated foals and an additional 92 foals that are not currently nominated, but could be nominated and showed in future seasons. Defendant is also foal nominator for 643 foals. *See* Appendix A.

Although the value of this interest is somewhat unknowable, the United States expects the earnings to decline over time as foals surpass prime showing age, earn fewer incentive fund points, and eventually retire from the show circuit or pass away. Defendant's interest amounted to \$13,336.58 for show year 2012, \$15,806.81 for show year 2013 (both of which were previously turned over), and \$14,457.62 for show year 2014 (which has not yet been disbursed to the United States).

B. APHA

APHA's program is similar to AQHA's Incentive Fund, but is called the Breeders' Trust. The Trust pays cash dividends for points earned by nominated horses at APHA-sanctioned events. The Trust financially rewards those who contributed to the horse's success: the stallion subscriber receives 20% of the dividend, the foal nominator receives 10%, and the horse's owner receives 70%. Defendant has participated in all three capacities over the years, but as she no longer owns any foals, she currently only has an interest as the stallion subscriber and foal nominator. According to APHA, Defendant subscribed five different stallions for various breeding seasons, producing 60 currently nominated foals and an additional 30 foals that are not

currently nominated, but could be nominated and showed in future seasons. Defendant is foal nominator for 27 foals ranging in age from 2 to 12 years old. *See* Appendix B.

As above, although the value of this interest is somewhat unknowable, the United States expects the earnings to decline over time as foals surpass prime showing age, earn fewer points, and eventually retire from the show circuit or pass away. Defendant's interest amounted to \$3,215.40 for show year 2012, \$2,890.58 for show year 2013 (both of which were previously turned over), and \$3,912.23 for show year 2014 (which has not yet been disbursed to the United States).

C. NSBA

NSBA offers two different programs: the Stallion Incentive Fund and the Breeders Championship Futurity.

The Stallion Incentive Fund operates much like the AQHA and APHA programs. A stallion owner enrolls a stallion for a breeding season by donating one breeding to the NSBA, which NSBA later sells to fund the program. All foals born from that stallion in that breeding year are eligible to be licensed in the Stallion Incentive Fund. The foals are then shown in NSBA classes and earn NSBA points. When the points are paid out at the end of the show year, 10% goes to the stallion nominator, 10% goes to the foal nominator, and 80% goes to the foal owner.

The Breeders Championship Futurity operates similarly but the earnings are only available to nominated foals who participate in the Futurity's show, held once per year at the NSBA World Championship Show. To be eligible for nomination, a foal must be sired by a stallion who was nominated to the Breeders Championship Futurity during that breeding year. A stallion nominator receives 20% of the foal's earnings, the foal nominator receives 10%, and the

foal owners receives 70%. The Futurity is age-restricted: foals are only eligible to participate up to age 6.

Defendant has participated in both programs in all three capacities over the years, but as she no longer owns any foals, she currently only has an interest as the stallion subscriber and foal nominator. According to NSBA, Defendant is stallion subscriber for 237 foals in the Stallion Incentive Fund and 288 foals in the Breeders Championship Futurity (many of which are in both programs). Of those foals in the Breeders Championship Futurity, only 167 are 6 years of age or younger and thus eligible to continue to earn points. Defendant is also foal nominator for 188 foals in the Stallion Incentive Fund and 243 foals in the Breeders Championship Futurity (many of which are in both programs). Of those foals in the Breeders Championship Futurity, only 121 are 6 years of age or younger and thus eligible to continue to earn points. As the youngest horse for which Defendant is foal or stallion nominator is 3 years old, all proceeds and potential for proceeds from the Breeders Championship Futurity will terminate in 3 years. *See* Appendix C.

As above, the United States expects the earnings to decline over time as foals surpass prime showing age, earn fewer points, and eventually retire from the show circuit or pass away. Defendant's interest amounted to \$2,097.54 for show year 2012, \$7,558.41 for show year 2013, and \$5,014.65 for show year 2014. None of these earnings have been turned over to the United States.

Conclusion

Accordingly, the United States respectfully requests that the Court enter a Preliminary Order of Forfeiture of Substitute Assets ordering Defendant's interest in the above-listed incentive funds and programs forfeited as substitute assets to the United States in partial satisfaction of her outstanding forfeiture money judgment.

Certificate of Service

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record for the defendant.

/s/ Julia E. Jarrett

Julia E. Jarrett

Trial Attorney

Dated: September 23, 2015