

**IN THE WESTERN DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TROY R. SOLOMON

Defendant.

No. 08-00026-03/04-CR-W-FJG

**DEFENDANT SOLOMON'S REPLY TO THE GOVERNMENT'S MOTION
FOR AN ORDER OF FORFEITURE WITH SUGGESTION IN
SUPPORT AND REQUEST FOR HEARING ON THE MERITS**

The Defendant, Troy R. Solomon, in response to the Government's Motion For An Order Of Forfeiture With Suggestion In Support ("Motion"), pursuant to 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. § 2461(c), and Fed. R. Crim. P. 32.2 represents to the Court the following:

I.

Mr. Solomon enters a general denial to the Government's allegations contained in its Motion and attached affidavit.

II.

The record is wholly devoid of any credible evidence that Mr. Solomon profited from the scheme as alleged in the Government's indictment. Therefore, the Government cannot meet its burden.

More specifically, Mr. Solomon would show: With respect to paragraph three of the Government's Motion, Mr. Solomon points out to the Court that: (a) the Government presented absolutely no medical evidence whatsoever that the substances prescribed by Dr. Elder and

distributed by Ascencia Nutritional Pharmacy (hereafter ANP) were for anything other than legitimate medical purposes in the course of professional practice; and, (b) the Government presented no evidence whatsoever, in connection with its money laundering allegation, that (i) Mr. Solomon profited from the sales of drugs prescribed by Dr. Elder, or (ii) Mr. Solomon removed funds *as profits* from the criminal enterprise rather than funnel monies back into it. United States v. Santos, 128 S.Ct. 2020 (2008).

With respect to the Government's proposition that Mr. Solomon ought to have a money judgment entered against him (for \$991,114.00 no less), Mr. Solomon vehemently disagrees and lodges opposition. Mr. Solomon requests an evidentiary hearing at which he wishes to put the Government to its burden of proof and require the Government to explain its mathematical calculation supporting to this amount. It would seem at this time that the amount is nothing more than that which Co-Defendant Rostie claimed as gross sales. (Government's Motion at page 5; Government's Declaration at Paragraphs 11-12.) The Eighth Circuit opined on this issue in United States v. Huber, 462 F.3d 945, 952 (8th Cir. 2006). The Court held the forfeiture amount must be determined using the dollar amounts received and used by the defendant, not the gross proceeds figure of the larger scheme, especially when the defendant's business is only partly illegal.

At hearing, the Government must prove each of the following five factors, beyond a reasonable doubt: (a) how much of the \$991,114.00 was *not* spent on actual medicine; (b) how much of that actual medicine was *not* consumed by the patient for whom it was prescribed; (c) how much of the actual medicine - in doses and dollars - was *not* medically and legitimately appropriate for each of Dr. Elder's patient (over whom the Government contends there is a dispute as to appropriate care); (d) how much of that resulting quantified money ended up in

ANP's coffers; and, (e) how much of that money resting in ANP's coffers was taken out by Mr. Solomon as profit, pursuant to the dictates, confinements and restrictions of Santos, supra.

III.

WHEREFORE, pursuant to Fed. R. Crim. P. 32.2, Mr. Solomon objects to the Government's Motion for Forfeiture, moves the Court to deny the Government's request for a preliminary order of forfeiture and requests a hearing on the merits or any other relief to which he may be entitled Mr. Solomon.

Respectfully submitted,

/s/ Chip Lewis

Chip B. Lewis
Federal I.D. #24313
2120 Welch Street
Houston, Texas 77019
Tel: (713) 523-7373
Fax: (713) 523-7887

CERTIFICATE OF SERVICE

I hereby certify that the foregoing reply was delivered to AUSA Curt Bohling on the 8th day of November, 2010.

/s/ Chip Lewis

CHIP LEWIS