

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	Criminal No. 10-320 (RMC)
	:	
	:	
v.	:	
	:	
	:	
THOMAS ANDERSON BOWDOIN JR.,	:	
also known as “ANDY BOWDOIN,”	:	
	:	
Defendant.	:	

**GOVERNMENT’S MOTION PURSUANT TO
TITLE 18, UNITED STATES CODE, § 3771**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this motion, pursuant to Title 18, United States Code, § 3771, seeking entry of the attached proposed order which describes the procedures to be followed in notifying potential victims of public proceedings to be held in this case.

Applicable Law

The Justice for All Act of 2004 (the “Act”) expanded the rights of victims in federal criminal proceedings and established certain requirements concerning the Government’s notification of victims. *See* 18 U.S.C. § 3771(a). The Act provides that crime victims have the following rights: (1) the right to be reasonably protected from the accused; (2) the right to reasonable, accurate, and timely notice of any public court proceeding, or parole proceeding, involving the crime, or release of the defendant; (3) the right not to be excluded from any such public court proceeding, unless the Court, after receiving clear and convincing evidence,

determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding; (4) the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; (5) the reasonable right to confer with the attorney for the Government in the case; (6) the right to full and timely restitution as provided in law; (7) the right to proceedings free from unreasonable delay; and (8) the right to be treated with fairness and with respect for the victim's dignity and privacy. *Id.* The Act defines a victim of a crime as “a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.” 18 U.S.C. § 3771(e).

Section 3771(b) requires the Court to ensure that crime victims are afforded the rights enumerated in the statute, and section 3771(c) obligates the Government to use “best efforts to see that crime victims are notified of, and accorded, the rights” provided. The Act does not set forth any specific notification procedures. In addition, the Act recognizes that in cases involving a large number of crime victims, it may be impracticable to accord all of the victims the rights identified in Section 3771(a). *See* 18 U.S.C. § 3771(d)(2).

Specifically, it provides that in such cases, “the court shall fashion a reasonable procedure to give effect to [the Act] that does not unduly complicate or prolong proceedings.” *Id.* A number of courts have addressed the effect of the Act in cases involving large numbers of victims, particularly securities fraud prosecutions, and have approved procedures similar to those proposed and outlined below. *See, e.g., United States v. Mills et. al* 06-228 (ESH); *United States v. Madoff*, 09 Cr. 213 (S.D. N.Y.); *United States v. Rigas*, S1 02 Cr. 1236 (S.D.N.Y).

Discussion

On December 17, 2010, defendant Thomas Anderson Bowdoin Jr. also known as Andy Bowdoin (“Bowdoin”) was arraigned on a seven count indictment charging him with wire fraud (18 U.S.C. § 1343), securities fraud (15 U.S.C. §§ 78j(b) and 78ff) and Unlawful Sale of Unregistered Securities (15 U.S.C. §§ 77e(a)(2) and 77(x)). This case involves charges arising from a scheme to defraud thousands of investors over more than two years. The criminal indictment alleges that the defendant, Thomas Anderson Bowdoin, Jr., (“Bowdoin”), perpetrated a scheme to defraud the members of AdSurfDaily Inc., (“ASD”). Specifically, the indictment alleges that Bowdoin solicited prospective customers to ASD based upon, among other things, his promise to use their funds to operate what was represented to be a profitable Internet advertising company capable of providing high returns on the funds they paid to ASD. Over the course of the two-year scheme Bowdoin made numerous misrepresentations and omissions in order to raise funds, including: (1) claiming to be operating a legitimate Internet advertising company; (2) asserting that ASD had independent revenue to pay member’s the returns promised; (3) that Bowdoin’s only run in with law enforcement authorities consisted of a traffic ticket, when in reality he had been convicted of criminal securities violations; (4) that the revenue methodology and numbers ASD published in support of its payouts were true and accurate, when in reality ASD was managing its revenue in order to ensure that it only paid out about 1% of a members investment each weekday and .5% on the weekends; (5) that ASD was not required to register its offering with the United States Securities and Exchange Commission, and (6) that Bowdoin was operating ASD far different than was described, essentially as his own piggy-bank.

As this Court is aware, in late July 2008, pursuant to seizure warrants, the government seized the proceeds of Bowdoin's fraudulent activity. Thereafter, the government filed two separate civil forfeiture cases against the seized property. Those cases were assigned to this Court (08-CV-1345 and 08-CV-2205). In January and March 2010, in both cases, this Court entered default judgments and final orders of forfeiture in favor of the government.

Subsequently, the government established a remission program for victims to make claims of the seized property. The government has contracted with a claims administration firm to process claims from victims. The U.S. Secret Service and the Justice Department's Asset Forfeiture and Money Laundering Section are overseeing this program. Victims can make a claim by visiting a website on the Internet, <http://www.adsurfdailyremission.com>; calling the phone number 1-888-398-8214; or by mail at address Ad Surf Daily Remission Administrator, P.O. Box 2353, Faribault, MN 55021-9053.

The potential victims in this case include individuals and entities who provided funds directly to ASD. The Government currently is aware of thousands of such individuals and entities; however, the Government does not know whether its information is complete. Moreover, potential victims reside outside the United States.

The government through its investigation obtained the ASD member database. That database has approximately 97,000 names in it. Those names include members who paid to join ASD, and who may have joined ASD for free. The government is not certain that this list is a complete list of all people who provided money to ASD and who potentially lost their money. It appears from the investigation that there may be members who provided funds to ASD but whose information ASD did not enter into its database.

To this juncture, the government has sent emails notifying approximately 40,000 known potential victims about the pending litigation and directing them to the Internet website of the Office of the United States Attorney for the District of Columbia:

www.justice.gov/usao/dc/Victim_Witness_Assistance/.¹ The government is in the process of sending out an additional email informing the names contained in the ASD database (who have not received an email already) about the website.

Given that there are thousands of potential victims in this case, and that as far as the Government is aware, there is no available accurate compilation of all such individuals and entities, the Government respectfully submits that it is impracticable to give individualized notice to each potential victim. Therefore, the Government requests a finding that, under these circumstances, the number of victims makes it impracticable to accord all of the victims the rights described in Section 3771(a). In order to give effect to the rights of the victims, however, the Government respectfully submits that the procedure outlined below is “reasonable” under Section 3771(d)(2).

Going forward, the Government will inform all potential victims of all public court proceeding by posting notice of those proceedings on the Internet website of the Office of the United States Attorney for the District of Columbia:
www.justice.gov/usao/dc/Victim_Witness_Assistance/. In light of the fact that Bowdoin operated an Internet based scheme, it is reasonable to assume that victims will have access to the internet and will be able to easily access information on the government’s website. Moreover,

¹Those emails were sent to individuals who contacted the U.S. Attorney’s Office directly and identified themselves as losing money in their ASD investment, members who agent’s identified as potentially losing money with ASD and Golden Panda Ad Builder members.

the government will include on the remission website a link to the U.S. Attorney's Office's website for victims seeking information about public proceedings in the criminal case.

The Government respectfully submits that the proposed notice procedure is reasonable to give effect to the rights of the potential victims in this case, and requests that the Court enter the proposed order.

Conclusion

For the foregoing reasons, the Government respectfully requests that the Court enter the proposed order.

Respectfully submitted,

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