

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

STIPULATION AND ORDER

- v. -

09 Cr. 764 (RJS)

FRANK DIPASCALI JR., :

Defendant. :

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JOANNE T. DIPASCALI, :

Interested Party. :

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USDS SDNY
DOCUMENT
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Background

The Information

I. Information 09 Cr. 764 (RJS) (the "Information") was filed August 11, 2009, and charged FRANK DIPASCALI JR., the defendant with ten felony counts in connection with a scheme to defraud clients of Bernard L. Madoff Investment Securities ("BLMIS"), from at least as early as in or about the 1980s through on or about December 11, 2008, by soliciting billions of dollars of funds under false pretenses, failing to invest investors' funds as promised, and misappropriating and converting investors' funds to Madoff's and DIPASCALI's own benefit and the benefit of others without the knowledge or authorization of the investors.

II. The Information also seeks criminal forfeiture to the United States of all property constituting or derived from proceeds traceable to the conspiracy, securities fraud, mail fraud

and wire fraud offenses charged in the Information, and all property involved in the money laundering offense charged in the Information.

III. On August 11, 2009, the defendant pleaded guilty to the Information, admitted the forfeiture allegations, agreed to forfeit to the United States a sum of money representing the amount of proceeds traceable to the conspiracy, securities fraud, mail fraud and wire fraud offenses charged in the Information and the property involved in the money laundering offense charged in the Information, and consented to the imposition of a total forfeiture money judgment in the amount of \$170.25 billion.

The Interlocutory Orders of Sale

IV. On or about January 29, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Bridgewater Property), in which the defendant and his wife, JOANNE T. DIPASCALI, agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture in the above-captioned case, of their residence located at 1400 Mountain Top Road, Bridgewater, New Jersey, 08807, and all the valuable, insured or readily salable personal property located at such property (collectively, the "Bridgewater property").

V. On or about February 1, 2010, the Bridgewater property was surrendered to the United States Marshals Service ("USMS"), which has custody of the property and is preparing for its marketing and sale.

VI. On or about February 2, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Conveyances, Monmouth County, NJ), in which the defendant and his wife agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture in the above-captioned case, of a 2005 17' Boston Whaler Montauk center console runabout, a Kawasaki jetski, and a boat trailer.

VII. On or about February 3, 2010, the USMS seized the Boston Whaler, the jetski, the boat trailer and a jetski trailer. The property is in the secure custody and control of the USMS pending an interlocutory sale.

VIII. In or about February and March, 2010, JOANNE T. DIPASCALI surrendered to the USMS a 2004 Nissan Pathfinder LE Platinum Edition, a 2007 Dodge Ram 1500 pickup truck, a 2008 Honda CRF250R8 motocross off-road motorcycle, watches, and jewelry.

IX. On or about April 7, 2010, the Court endorsed a Stipulation and Order of Interlocutory Sale (Additional Vehicles), in which the defendant and JOANNE T. DIPASCALI agreed to the surrender and sale, pending entry of Preliminary and Final Orders of Forfeiture, of two cars, the trailer for the jet ski, two ATV's, two off-road motorcycles, two mini-bikes, a scooter and a snow blower.

The Preliminary Order of Forfeiture as to Frank DiPascali Jr.

X. On or about _____, 2010, the Court entered a Preliminary Order of Forfeiture (Final as to the Defendant) as to the defendant, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference as if set out in full.

XI. In the Preliminary Order, the Government represented, and the defendant conceded, that if the Government were to apply for a preliminary order of forfeiture as to the defendant, the Government could prove the following by a preponderance of the evidence:

- (A) A total money judgment in the amount of \$170.25 billion should be imposed upon the defendant, a sum of money representing the amount of proceeds traceable to the commission of the conspiracy, securities fraud, mail fraud and wire fraud offenses charged in the Information, and the property involved in the money laundering offense charged in the Information;
- (B) Any and all property and other interests belonging to, owed to or controlled in whole or in part by the defendant, whether held in his own name, in the name of his wife or other individual, either jointly or solely

by such other person; any future, contingent or unperfected interest; and any claim to property based on an alleged contractual, marital, or other legal or equitable right; and all property traceable to such property (the "Forfeited Property"), has the requisite nexus to the conspiracy, securities fraud, mail fraud and wire fraud offenses charged in the Information and/or the money laundering offense charged in the Information;

- (C) Based upon the foregoing, the Forfeited Property is forfeitable to the United States of America as property constituting or derived from proceeds traceable to the commission of the conspiracy, securities fraud, mail fraud and wire fraud offenses charged in the Information, and/or as property involved in the money laundering offense charged in the Information, and property traceable to such property;
- (D) The Forfeited Property includes, but is not limited to, all right, title and interest of the defendant in the property listed in Exhibit A to the Preliminary Order (Exhibit 1(A) hereto) (the "Specific Property");
- (E) Because all the Forfeited Property could not be identified at the time of entry of the Preliminary Order, and may not be identified prior to the defendant's sentencing, the Preliminary Order may be amended when additional specific property is identified; and
- (F) As a result of acts and omissions of the defendant, property subject to forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value; and has been commingled with other property which cannot be divided without difficulty. The Court may therefore order the forfeiture of any other property of the defendant to the extent necessary to satisfy the money judgment to be imposed upon the defendant.

XII. In the Preliminary Order, the defendant consented to the entry of orders of interlocutory sale of the Forfeited Property pursuant to Rule 32.2(b)(7) of the Federal Rules of Criminal Procedure and Rule G(7) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

XIII. The statutes and rules governing criminal forfeitures require publication and notice of the Preliminary Order and the Government's intent to forfeit property, and set forth the

exclusive means by which a third party may petition the court for a hearing to adjudicate the validity of his or her interest in the forfeited property, in accordance with 21 U.S.C. § 853(n).

XIV. JOANNE T. DIPASCALI, the wife of the defendant, would file a petition pursuant to 21 U.S.C. § 853(n) asserting an interest in the Specific Property, including, but not limited to, an ownership interest in the real property and appurtenances located at 1400 Mountain Top Road, Bridgewater, New Jersey, title to which is held in the name of JOANNE T. DIPASCALI.

XV. In consideration of the facts and circumstances of this case, including, among other factors, the readily provable facts available at the present time; in accordance with the Government's authority under 21 U.S.C. § 853(i)(2) to compromise claims arising under 21 U.S.C. § 853; and in furtherance of the intent of the Department of Justice to authorize the distribution of the net sale proceeds from the forfeited property to the victims of the fraud charged in the instant case and in *United States v. Bernard L. Madoff*, 09 Cr. 213 (DC), and *United States v. David G. Friebling*, 09 Cr. 700 (AKH), consistent with applicable Department of Justice regulations, pursuant to 21 U.S.C. § 853(i)(1) and 28 C.F.R. Part 9, the parties to this Stipulation and Order, the Office of the United States Attorney for the Southern District of New York ("the Office"), and JOANNE T. DIPASCALI, have determined to resolve without litigation JOANNE T. DIPASCALI's potential claims to the property subject to forfeiture under the Preliminary Order of Forfeiture entered against the defendant.

THEREFORE, THE OFFICE AND JOANNE T. DIPASCALI HEREBY STIPULATE AND AGREE as follows:

1. Subject to the provisions of paragraphs 4 and 5 below, JOANNE T. DIPASCALI withdraws and relinquishes any claim under the U.S. asset forfeiture laws that she has or may have, on any legal, factual or other basis, in any manner or forum, to the Forfeited Property as defined in the Preliminary Order of Forfeiture entered against the defendant—that is, any and all property and other interests belonging to, owed to or controlled in whole or in part by the defendant, whether held in his own name, in the name of JOANNE T. DIPASCALI or other individual, either jointly or solely by such other person; any future, contingent or unperfected interest; and any claim to property based on an alleged contractual, marital, or other legal or equitable right; and all property traceable to such property—including, but not limited to, the Specific Property.

2. Subject to the provisions of paragraph 4 below, JOANNE T. DIPASCALI agrees that she will not object to the entry of the Preliminary Order of Forfeiture or file a petition in an ancillary proceeding as to the Forfeited Property; file a claim, statement of interest or petition (including but not limited to a petition for remission or mitigation); or otherwise contest the administrative or judicial forfeiture of the Forfeited Property in any proceeding under the U.S. asset forfeiture laws, nor will she assist a third party in doing so, including any relatives (by blood or marriage and of any degree) of the defendant and/or JOANNE T. DIPASCALI.

3. Subject to the provisions of paragraph 4 below, JOANNE T. DIPASCALI consents to the entry of orders of interlocutory sale of the Forfeited Property pursuant to Rule 32.2(b)(7) of the Federal Rules of Criminal Procedure and Rule G(7) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

4. In compromise of claims JOANNE T. DIPASCALI would have pursued, the Office will not contest JOANNE T. DIPASCALI's claim to a sum of money equal to \$285,000 (the "Funds"), in accordance with and subject to paragraph 5 below and the following terms:

- (a) On or before the third business day following the Court's endorsement of this Stipulation and Order, the Office shall take appropriate steps to cause Somerset Savings Bank and Peapack-Gladstone Bank to release to the USMS all funds, financial instruments and other property in any and all accounts held in the name(s) or for the benefit of Frank DiPascali Jr. and/or Joanne T. DiPascali in excess of \$100,000, and to release the remaining \$100,000 to JOANNE T. DIPASCALI.
- (b) Within ten (10) business days after all occupants vacate Condominium Unit 302, 264 Montgomery Avenue, Haverford, Pennsylvania, 19041, in compliance with the terms and conditions of a stipulation and order of interlocutory sale to be entered into as to such property, the Office shall take appropriate steps to direct the USMS to release the balance of the Funds (the "Balance") to JOANNE T. DIPASCALI, less \$56,175 on deposit in other bank accounts in the name of JOANNE T. DIPASCALI, FRANK M. DIPASCALI and DOROTHY R. DIPASCALI; \$39,535 to obtain rental housing and health insurance; and any and all expenditures made in the period beginning August 12, 2009 and ending the day of the release of \$100,000 to JOANNE T. DIPASCALI pursuant to paragraph 4(a) above other than those made for legitimate, necessary and reasonable living expenses (at least \$11,308). Accordingly, the net amount to be released to JOANNE DIPASCALI pursuant to paragraph 4 of this Stipulation and Order is approximately \$177,982.
- (c) JOANNE T. DIPASCALI understands and agrees that the Office does not have custody of the monies to be released to JOANNE T. DIPASCALI pursuant to paragraphs 4(a) and (b) above and that the Office cannot dictate or control when its requests for the release of funds will be acted upon by third party custodians.

5. JOANNE T. DIPASCALI understands and agrees that this Stipulation and Order binds only the Office and does not in any way preclude any other department or agency of the United States or any other person or entity, including, but not limited to, the United States Securities and Exchange Commission, Irving H. Picard, Esq. as trustee for the liquidation of the

business of defendant Bernard L. Madoff Investment Securities LLC, the Securities Investor Protection Corporation, or Alan Nisselson, Esq. as trustee for the personal assets of Bernard L. Madoff and Ruth Madoff from seeking to recover the Funds, any portion thereof from JOANNE T. DIPASCALI.

6. JOANNE T. DIPASCALI understands and agrees that the Preliminary Order authorizes the USMS to take possession of the Specific Property and to hold such property in its secure custody and control, except to the extent that any Order of the Court may explicitly provide otherwise.

7. Pursuant to 21 U.S.C. § 853(g) and Rule 32.2(b)(3), Frank DiPascali, JOANNE T. DIPASCALI, their attorneys, agents, and other family members, and anyone acting on his or her behalf, and all persons or entities acting in concert or participation with any of the above, and all persons and entities having actual knowledge of this Order:

- (a) shall not directly or indirectly, transfer, sell, assign, pledge, distribute, hypothecate, encumber, or dispose of in any manner; cause to be transferred, sold, assigned, pledged, distributed, hypothecated, encumbered, or disposed of in any manner; or take, or cause to be taken, any action that would have the effect of depreciating, damaging, or in any way diminishing the value of the Specific Property;
- (b) shall not use or permit the Specific Property to be used for any illegal activity; and
- (c) shall not take any action that would depreciate, damage, or in any way diminish the value of the Specific Property without the prior written consent of the United States Attorney's Office.

8. It is understood that the Office reserves the right to void this agreement and to recover money or property from JOANNE T. DIPASCALI, including the Funds or property traceable to the Funds, together with interest and such further relief as the Court may deem just

and proper, in the event the Office determines that JOANNE T. DIPASCALI or any of her minor or adult children have failed to fully disclose all financial information requested by the Office or the Federal Bureau of Investigation (“FBI”); have failed to disclose any material information about their finances or financial condition; have failed to fully comply with the terms and conditions of the Preliminary Order, this Stipulation and Order, or any orders of interlocutory sale that have or may be entered concerning the Specific Property; or have aided or assisted another in thwarting, delaying or otherwise interfering with the ability of the Office, the USMS or the FBI, their agents and employees, from effecting the terms of the Preliminary Order, this Stipulation and Order, or any orders of interlocutory sale that have or may be entered concerning the Specific Property.

9. JOANNE T. DIPASCALI will take all necessary steps to pass clear title to the Specific Property to the United States, its agent or designee, including, but not limited to, the execution of all documentation necessary to effect the forfeiture or transfer of the Specific Property as may be directed by the United States, its agent or designee.

10. JOANNE T. DIPASCALI represents that she is aware of no one, other than the defendant, herself, or Frank M. DiPascali, who might have or might assert a property interest in the Specific Property.

11. The Office shall have the sole discretion to appoint or seek judicial or other approval of manager(s) for the Specific Property.

12. JOANNE T. DIPASCALI further understands and agrees that, notwithstanding the foregoing, if any of the Specific Property, as a result of any act or omission of the defendant or JOANNE T. DIPASCALI, (a) cannot be located upon the exercise of due diligence; (b) has

been transferred or sold to, or deposited with, a third party; (c) has been placed beyond the jurisdiction of the court; (d) has been substantially diminished in value; or (e) has been commingled with other property which cannot be divided without difficulty, the Office will seek an order of forfeiture or will pursue collection by any other remedy available at law of a corresponding portion of the Funds or property traceable to such property as substitute property. JOANNE T. DIPASCALI specifically consents to the Office's right, upon demand and refusal, to pursue the remedy described in this paragraph, and will not argue, in any such proceeding, that such a remedy is available to the Government only against criminal defendants and may not be used to enforce the terms of this Stipulation and Order.

13. JOANNE T. DIPASCALI understands, as set forth in paragraphs 2, 16 and 17 of the Preliminary Order of Forfeiture, that the Court, as to FRANK DIPASCALI JR., has ordered the forfeiture, as property constituting or derived from proceeds traceable to the commission of the conspiracy, securities fraud, mail fraud and wire fraud offenses charged in the Information, and/or as property involved in the money laundering offense charged in the Information, and property traceable to such property, of any and all property and other interests belonging to, owed to or controlled in whole or in part by FRANK DIPASCALI JR., and all property traceable to such property (excluding the Substitute Assets), including not only the Specific Property but also any and all property or other interests in which FRANK DIPASCALI JR. has or will acquire an interest (excluding the Substitute Assets), regardless of whether such property or interests are extant or known to the Government or the defendant at the time of the entry of the Preliminary Order of Forfeiture or the final order of forfeiture to be entered against the defendant. Subject to the provisions of paragraph 4 of this Stipulation and Order, above, JOANNE T. DIPASCALI

understands and agrees to be bound, for all purposes under the U.S. asset forfeiture laws, by the terms of paragraphs 2, 16, 17 and 18 of the Preliminary Order of Forfeiture as to FRANK DIPASCALI JR. not only with respect to the Specific Property but also with respect to any and all property and other interests belonging to, owed to or controlled in whole or in part by FRANK DIPASCALI JR. and/or JOANNE T. DIPASCALI, and any and all property or other interests in which FRANK DIPASCALI JR. and/or JOANNE T. DIPASCALI may have or have, individually or jointly, an interest, regardless of whether such property or interests are extant or known to the Government, the defendant or JOANNE T. DIPASCALI at the time of the entry of the Preliminary Order of Forfeiture or this Stipulation and Order, and that the intent of this Stipulation and Order is to divest JOANNE T. DIPASCALI of, and to forfeit to the United States of America, any and all property and other interests belonging to, owed to or controlled in whole or in part by JOANNE T. DIPASCALI, and all property traceable to such property (subject to the terms of paragraphs 4 and 5 above). JOANNE T. DIPASCALI understands and agrees that she is hereby barred from challenging, or assisting a third party in challenging, the forfeiture of any such property pursuant to U.S. asset forfeiture laws, at any time, in any manner or forum. JOANNE T. DIPASCALI further understands and agrees that, subject to the terms of paragraph 4 above, she is giving up on a final basis any and all claims under the U.S. asset forfeiture laws to any and all property and other interests belonging to, owed to or controlled in whole or in part by FRANK DIPASCALI JR., and all property traceable to such property, including not only the Specific Property but also any and all property or other interests in which FRANK DIPASCALI JR. has or may acquire an interest, it being understood that in compromise of claims she would have pursued, she will receive a sum of money in compromise of her

potential claims as set forth in paragraph 4 of this Stipulation and Order; and that she is precluded from retaining or seeking to retain or recover any other such property, including, but not limited to, any award of attorneys fees or interest in connection with the above-captioned case and any related proceedings that may be brought under the U.S. asset forfeiture laws to effectuate the terms of this Stipulation and Order.

14. JOANNE T. DIPASCALI is hereby barred from asserting any claim against the United States or any of its agents and employees, including, but not limited to, the FBI, the USMS, and the Office, in connection with, or arising out of, the United States' seizure or forfeiture of the Specific Property or the transfer of the Specific Property to the United States, its agents and designees.

15. JOANNE T. DIPASCALI further agrees to hold harmless the United States and any and all of the United States' agents and employees, including, but not limited to, the FBI, the USMS, and the Office, from all claims cognizable under the standards set forth in 21 U.S.C. § 853(n), i.e., claims asserting ownership in a particular, specific asset subject to forfeiture under the Preliminary Order of Forfeiture, including, but not limited to, any claim arising out of the United States' release of the Funds to JOANNE T. DIPASCALI, her agent or designee.

16. JOANNE T. DIPASCALI represents that she has been represented in connection with the matters contained in this Stipulation and Order by counsel of her choice, that she is satisfied with the representation she has received, and that she is entering into this Stipulation and Order of her own free will.

17. JOANNE T. DIPASCALI and her undersigned counsel acknowledge that they have fully discussed and understand every paragraph and clause in this Stipulation and Order and the consequences thereof.

18. The undersigned United States signatory represents that she is signing this Stipulation and Order in her official capacity and that she is authorized to execute this Stipulation and Order.

19. This Stipulation and Order may be executed in counterparts, each of which will be deemed an original, and all of which, when taken together, will be deemed the complete Agreement.

20. The Court will have exclusive jurisdiction over the interpretation and enforcement of this Stipulation and Order.

21. This Stipulation and Order constitutes the complete agreement between the Parties and may not be amended except by written consent of the Parties.

JOANNE T. DIPASCALI, Individually and
on Behalf of Michael Dipascali, a Minor:

JOANNE T. DIPASCALI

Dated: April , 2010

FRANK DIPASCALI, JR., DEFENDANT,
On Behalf of Michael Dipascali, a Minor:

FRANK DIPASCALI JR.

Dated: April , 2010

BRACEWELL & GIULIANI LLP
COUNSEL TO JOANNE T. DIPASCALI
AND FRANK DIPASCALI, JR.

By: _____
MARC L. MUKASEY, ESQ.
CRAIG S. WARKOL, ESQ.

Dated: April , 2010

FOR THE OFFICE OF THE UNITED
STATES ATTORNEY FOR THE
SOUTHERN DISTRICT OF NEW YORK:

PREET BHARARA
United States Attorney

By: _____
BARBARA A. WARD
Acting Chief, Asset Forfeiture Unit
MATTHEW L. SCHWARTZ
Assistant United States Attorney

Dated: April , 2010

CONSENTED AND AGREED TO:

FRANK M. DIPASCALI
Dated: April , 2010

DOROTHY R. DIPASCALI
Dated: April , 2010

GREGORY DIPASCALI
Dated: April , 2010

Having reviewed the foregoing Stipulation and Order, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:
The Stipulation is So Ordered.

New York, New York

June 16, 2010


RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE