

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

MAX JOSEPH CHILSON, ET AL

No. 3:15-CR-065-L

GOVERNMENT'S MOTION TO AUTHORIZE
ALTERNATIVE PROCEDURES PURSUANT TO 18 U.S.C. § 3771(d)(2)

TO THE HONORABLE UNITED STATES DISTRICT JUDGE SAM A. LINDSAY:

1. The United States of America, through the below signed Assistant United States Attorney for the Northern District of Texas (NDTX), seeks an order from the Court authorizing the Government to provide notice to the large number of potential victims in the instant case by publication.

A. 18 U.S.C. § 3771

2. The Crimes Victims' Rights Act ("the Act"), codified at 18 U.S.C. § 3771, was signed into law on October 30, 2004. The Act provides certain rights to victims in federal criminal proceedings. Among these rights is the right to "reasonable, accurate, and timely notice" of public court proceedings. 18 U.S.C. § 3771(a). The Act defines a crime victim as "a person directly and proximately harmed as a result of the commission of a Federal offense . . ." 18 U.S.C. § 3771(e). Importantly, the Act recognizes that for crimes

involving multiple victims, the Court has discretion to adopt procedures that will not unduly interfere with the criminal proceedings. Thus, 18 U.S.C. § 3771(d)(2) provides:

[i]n a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

3. The United States submits that this case falls within the “multiple crime victims” provision. The “direct and proximate” victims of the charged conspiracy to commit mail fraud, wire fraud, bank fraud, and telemarketing fraud were the owners of the timeshare properties (timeshare owners) who were induced to pay the defendants “closing costs” to purportedly sell their timeshare property after being fraudulently advised that a buyer existed.

B. Identifying Victims

4. During its investigation the United States Postal Inspection Service (USPIS) obtained evidence indicating that in excess of 80,000 timeshare owners were deceived by telemarketers working for and associated with the various companies owned and operated by the named defendants. The timeshare owners have not been fully identified yet, or located. The government attempted to identify some of the timeshare owners for purposes of establishing venue and identifying indictable overt acts, and found the process to be unwieldy. The timeshare owners executed contracts with some of the defendants’ companies, but only a small number of the contracts were recovered during the execution of the search warrants, since many of the companies were defunct at that time. The USPIS

mailed letters to the timeshare owners identified on the contracts seized during the searches. While a small portion of the timeshare owners were identified using this method, the identities and contact information of the majority of the timeshare owners are unknown.

5. The timeshare owners paid the defendants' companies by credit cards, electronic checks, or wire transfers. The defendants maintained in excess of 100 bank accounts. However, the incoming deposits representing victim payments often were grouped together after having been processed by financial institutions, and did not contain any readily available victim contact information.

6. Finally, after the victims were convinced to pay the "closing costs," the victims were contacted again by the defendants or unindicted coconspirators for a verification call. The defendants used a company called Contract Genie to record the telephone conversations with the victims to verify the victims' payment method. The government obtained approximately 88,000 recordings from Contract Genie constituting the telephone calls to the timeshare owner/victims in this case. The only way to attempt to identify the victim from each recording is to listen to each recording, which the USPIS attempted to do during its investigation. Each recording is approximately 5 to 8 minutes long. Many of the recordings were of poor quality or the victims failed to enunciate clearly when providing their identifying information. Thus, the Government lacks the resources and

ability to specifically identify and locate all victims and provide them with reasonable, accurate, and timely notice by mail.

D. Notice

7. Department of Justice employees are required to make their best efforts to "see that crime victims are notified of, and accorded their rights described" in, and prosecutors are also required to advise crime victims that they can seek the advice of an attorney with respect to the rights afforded by, section 3771(a). 18 U.S.C. § 3771(c)(1),(2). The Act defines a "crime victim" as "a person directly and proximately harmed as a result of the commission of a federal offense. . . ." 18 U.S.C. § 3771(e).

8. However, the Act recognizes that in cases involving "multiple crime victims," a court has the discretion to adopt procedures that will not unduly interfere with the criminal proceedings. Specifically, the Act provides:

Multiple Crime Victims.--In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

18 U.S.C. § 3771(d)(2).

9. The government submits that this pending criminal case fits within the "multiple crime victims" provision. The "direct and proximate" victims of the charged offense may include in excess of 80,000 victims. The government has already identified a number of victims, but the remaining victims still need to be identified and located. Under these circumstances, it will be impracticable for the government to identify and locate all of these

victims and provide them with reasonable, accurate, and timely notice in advance of all of the relevant proceedings required under The Act. To do so would unduly delay the proceedings.

10. The government generally relies on the Victim Notification System¹ (VNS) to comply with The Act, once the victims have been identified. Even if the government were capable of identifying the 80,000 or more victims, the Executive Office for United States Attorneys confirmed that the VNS would be unable to handle the volume of victims in this case.

E. Proposal

11. Thus, the number of victims makes compliance with the notifications requirements outlined in section 3771(a), (b), and (c) impracticable by standard notification practices, i.e. by United States Postal mail or e-mail. Neither the government nor the Court has the resources to identify all the victims in this case and accord them the notice required by subsection 3771(a). However, rather than seek a complete waiver of the notice provision of the Act, the government proposes that the court authorize it to provide notice of the proceedings required by section 3771(a)(2) by publicizing the information in various media outlets and by posting the notice online.

¹ The Victim Notification System project provides victims of federal crime with information regarding their case as it proceeds through the criminal justice process. The Federal Bureau of Investigation, USPIS, USAOs, and Federal Bureau of Prisons all participate in this project. The project is funded through the Crime Victims Fund managed by the Office for Victims of Crime. The Executive Office for United States Attorneys is the lead agency for this project.

12. The United States Attorney's Office (USAO) for the NDTX proposes the following actions to effectively provide notice to the victims:

- a) The NDTX USAO will provide information regarding the case and court proceeding at its website <http://www.justice.gov/usao/txn/> and through the Department of Justice's website <http://www.justice.gov/largecases> (jointly referred to as the two justice.gov websites).
- b) The USPIS will provide victims the opportunity to complete an online questionnaire at www.postalinspectorsurvey.com/haffar to provide information about how they were victimized. Law enforcement would then be in a better position to gather information for the case and to communicate directly with the victim. The <http://www.justice.gov/usao/txn/> website will provide a link to this questionnaire.
- c) The NDTX USAO will issue press releases which direct individuals who believe they may be victims to access the two justice.gov websites for more information, and to complete the online questionnaire referred above. The press releases will be sent to various local and national media outlets.
- d) The NDTX USAO will provide a monitored e-mail address USATXN.TimeShareFraud@usdoj.gov for victims to contact and communicate with representatives of the NDTX USAO. The e-mail address will be posted on the <http://www.justice.gov/usao/txn/> website.

13. The above efforts combined constitute a reasonable procedure that will give effect to the Act and will not unduly complicate or prolong the public court proceedings. The government seeks authorization to provide notice of the existence of the two justice.gov websites by issuing press releases to various local and national media outlets. The press releases will identify the defendants and the companies used by the defendants to facilitate the scheme, the time period of the scheme, and a summary of the charges in the indictment. On the two justice.gov websites, the government will provide the same information as contained in the press release, and a schedule of the proceedings or an update of the status of the case. The <http://www.justice.gov/usao/txn/> websites also will provide information and links to resources regarding victims' rights. The e-mail address *USATXN.TimeShareFraud@usdoj.gov* will be provided for the victims to contact and communicate with a USAO NDTX employee. The e-mails received through *USATXN.TimeShareFraud@usdoj.gov* will be monitored by employees of the USAO NDTX.

F. Conclusion

14. The government respectfully requests that this Honorable Court approve the government's proposal to comply with 18 U.S.C. § 3771 by means of public notice as described herein.

Respectfully submitted,

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No. 3:15-CR-065-L

ORDER

Before the court is the Government's Motion to Authorize Alternative Procedures Pursuant to 18 U.S.C. § 3771(d)(2), filed March 21, 2015. The government seeks an order from the court approving the use of alternate means to provide notice to the large number of crime victims in this case. Under 18 U.S.C. § 3771(a)(2), crime victims have a right to "reasonable, accurate, and timely notice" of public court proceedings. In this case, the alleged victims of the charged conspiracy to commit mail fraud, wire fraud, bank fraud, and telemarketing fraud were the owners of timeshare properties who transferred funds to the defendant companies believing that the funds constituted closing costs for the sale of their timeshare properties.

The government represents that during its investigation, the United States Postal Inspection Service mailed letters to a small percentage of timeshare owners it was able to identify; however, more than 80,000 victims have not yet been identified and/or located. The government estimates that there are over 88,000 recordings of telephone calls with owners of timeshare properties verifying their payment of closing costs for the promised sale of their timeshare property. The government represents that the duration of each call is between five and eight minutes, and many of the calls are inaudible due to the poor

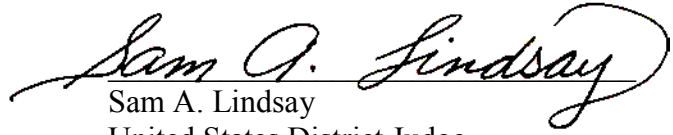
quality of the recording or the poor enunciation by the speaker. Thus, it will be impracticable for the Government to identify and locate all the owners of the timeshare properties and then to provide them with reasonable, accurate, and timely notice by mail or e-mail of the various court proceedings.

Under such circumstances, 18 U.S.C. § 3771(a)(2) of the Crimes Victims' Rights Act gives the court the authority to "fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings." The government seeks authorization to provide an alternate means to provide notice to the large number of crime victims in this case. In its motion, the government sets out its proposed actions to comply with 18 U.S.C. § 3771. The court finds the proposal meritorious and **grants** the government's motion.

Therefore, the court finds that: (1) the "multiple victim" provisions of 18 U.S.C. § 3771(d)(2) apply to the above entitled and numbered cause; (2) it is impractical, because of the number of victims, for the government and the court to identify all the direct and proximate victims of the charged offenses, on an individual basis, without unduly complicating or prolonging the proceedings; and (3) the proposal set forth in the government's motion (Document 10) is a "reasonable procedure" to give effect to the provisions of 18 U.S.C. § 3771.

Accordingly, it is **ordered** that the government is authorized to comply with the provisions of 18 U.S.C. § 3771(a)(2) in the above entitled and numbered cause by providing notice of the court proceedings as provided in the proposal set forth in its motion (Document 10).

It is so ordered this 24th day of March, 2015.


Sam A. Lindsay
United States District Judge