

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

2007 AUG 30 P 1:08
U.S. DISTRICT COURT
RICHMOND, VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
v.)	Civil Action No.: 3:07CV397
)	
APPROXIMATELY 53 PIT BULLDOGS,)	
)	
Defendant.)	

MOTION FOR ENTRY OF DEFAULT JUDGMENT AND BRIEF IN SUPPORT

COMES NOW the United States of America, pursuant to F. R. Civ. P. 55(b), and herewith moves this Court to enter a default judgment of forfeiture in favor of the United States.

In support of this motion, the government states the following:

1. This is an in rem forfeiture action pursuant to 7 U.S.C. § 2156(f) seeking the forfeiture of approximately 53 pit bulldogs involved in an animal fighting venture.

2. As stated in the undersigned's affidavit in support of the Government's Request for Entry of Default filed on August 23, 2007, the verified complaint for forfeiture in rem was filed on July 2, 2007; all known parties in interest were mailed notice of this action and a copy of the complaint; and the government published notice of the action once a week for three successive weeks in the Richmond Times-Dispatch with the last publication occurring on July 24, 2007. No

claim or statement of interest in the defendant property has been filed, and the deadline for filing a claim or statement of interest expired on August 23, 2007.¹

3. On August 28, 2007, the clerk entered the default of all persons as provided for by F. R. Civ. P. 55(a). Rule 55(b)(2), provides that in cases other than those seeking a judgment for a sum certain, the party seeking a judgment shall apply to the court for the default judgment. In this case, the government seeks a judgment forfeiting the defendant property to the United States as prescribed by 7 U.S.C. § 2156(f). As all of the requirements for notice have been satisfied, and no claim or statement of interest has been filed with the Court, the government respectfully prays the Court will enter an order: 1) forfeiting the approximately 53 pit bull dogs named in the complaint to the United States pursuant to 7 U.S.C. § 2156(f); 2) directing the clerk to enter judgment in favor of the United States on a separate document as prescribed by F. R. Civ. P. 58(a)(1); 3) providing that the United States may submit a recommendation as to the disposition

¹ On August 24, 2007, Bernadette Allen submitted a document entitled "Notice And Petition." That document does not purport to be a claim or statement of interest as required by 18 U.S.C. § 983(a)(4)(A) and Supplemental Rule G(5)(A)(i), Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. Although the document contains a signature by someone who purports to be a notary public, the document contains no language that it was sworn to under oath or affirmation. Thus it fails to meet the provision of Rule G(5)(a)(i)(C) that the claim or statement of interest be signed under penalty of perjury. Ms. Allen's pleading is also insufficient to qualify as a claim or statement of interest because it does not identify the claimant's interest in the property, Rule G(5)(a)(i)(B), and taken as a whole, it is clear that Ms. Allen has no legal interest in the defendant property; she merely has an opinion which she chose to express in a pleading. Accordingly, she lacks standing. E.g., United States v. \$364,960.00 in United States Currency, 661 F.2d 319, 326 (5th Cir. 1981) ("[A] party seeking to challenge the government's forfeiture of money or property used in violation of federal law *must first* demonstrate an interest in the seized item sufficient to satisfy the court of its standing to contest the forfeiture.") (emphasis added). Ms. Allen is apparently a concerned citizen, but her pleading, which was received by the Court outside the time prescribed by 18 U.S.C. § 983(a)(4), does not qualify as a document which would prevent the entry of default of all persons so as to preclude the entry of a default judgment.

of the dogs to assist the Court in determining the ultimate disposition;² and 4) that until the Court issues an order of disposition, the dogs shall remain in the legal custody of the United States Department of Agriculture and shall receive the care and attention prescribed by statute.

WHEREFORE, the United States prays the Court will enter an order as prayed for herein.

Respectfully submitted,

CHUCK ROSENBERG
UNITED STATES ATTORNEY

By: 

G. Wingate Grant
Assistant United States Attorney
Virginia State Bar No. 18643
600 E. Main Street, Suite 1800
Richmond, Virginia 23219-2447
804-819-5400

² Section 2156(f), unlike most forfeiture statutes which prescribe that forfeited property be disposed of “according to law” or “as the Attorney General may direct,” reserves to the court hearing the forfeiture action the disposition of the forfeited property: “Any animal involved in any violation of this section shall be liable to be proceeded against and forfeited to the United States . . . and **upon a judgment of forfeiture shall be disposed of by sale for lawful purposes or by other humane means, as the court may direct.**” (Emphasis added). The United States Department of Agriculture has contracted with the American Society for the Prevention of Cruelty to Animals to conduct a behavioral assessment of the seized dogs and to evaluate the options for their disposition. That assessment will inform the government’s recommendation to the Court.

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ORDER

It appearing to the Court that:

- On July 2, 2007, a verified complaint was filed in this action seeking forfeiture of approximately 53 pit bulldogs;
- On July 3, 2007, the government mailed notice and a copy of the complaint to the four individuals it believed might have had an interest in the defendant property;
- On July 10, 2007, July 17, 2007, and July 24, 2007, notice of this action was published in the Richmond Times-Dispatch, a newspaper of general circulation in this judicial district and in the division in which the defendant property was located;
- Pursuant to 18 U.S.C. § 983(a)(4), the time for filing a claim to the defendant property expired on August 23, 2007, which date was 30 days after the last publication;
- The only pleading submitted to the Court in response to the complaint was a document submitted by Bernadette Allen on August 24, 2007, which document does not purport to assert a legal interest in the defendant property and does not constitute a claim under the requirements of

18 U.S.C. § 983(a)(4)(A) and Supplemental Rule G(5)(A)(i), Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions;

- No claim or motion for extension of time to file a claim has been filed;
- On August 22, 2007, a warrant of arrest in rem was duly executed on the defendant property by the United States Marshal for the Eastern District of Virginia;
- On August 23, 2007, the United States filed a Request for Entry of Default supported by an appropriate affidavit;
- On August 28, 2007, the Clerk entered the default of all persons; and,
- On August 30, 2007, the United States filed a Motion for Entry of Default Judgment and Brief in Support,

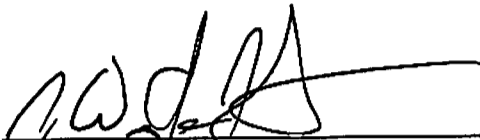
Now deeming it proper so to do, it is hereby ORDERED that:

1. The motion of the United States for a default judgment is GRANTED;
2. The defendant property, consisting of approximately 53 pit bulldogs, is hereby forfeited to the United States pursuant to 7 U.S.C. §2156(f), and all right, title, and interest of the former owners is now vested in the United States of America;
3. Pursuant to F. R. Civ. P. 58(a)(1), the Clerk shall enter judgment in favor of the United States on a separate document;
4. The defendant pit bulldogs shall remain in the custody of the United States Department of Agriculture or its agents, assigns, or contractors pending a final order of disposition which the Court will enter after considering the recommendation of the United States to be filed after an evaluation of the dogs and the available options for disposition.

Let the Clerk send five certified copies of this order to counsel for the United States and a copy to Bernadette Allen.

UNITED STATES DISTRICT JUDGE

I ask for this:



G. Wingate Grant
Assistant United States Attorney