



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

LDM:DL
F.# 2014V02371

*610 Federal Plaza
Central Islip, New York 11722*

January 20, 2015

VIA ECF

Honorable Denis R. Hurley
United States District Court
100 Federal Plaza
Central Islip, New York 11722

Re: In the Matter of the Seizure of \$446,651.11
Misc. No. 14-1288 (DRH)

Dear Judge Hurley:

Enclosed for the Court's approval is the Stipulation and Proposed Order of Settlement (the "Stipulation") for this action, executed by both petitioner Bi-County Distributors, Inc. ("Bi-County") and the United States. The Stipulation resolves and renders moot the motion filed by Bi-County, pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure, seeking the return of \$446,651 seized from Bi-County's account. As set forth more fully in the Stipulation, the United States has agreed to return the funds to Bi-County, and Bi-County has, among other things, waived any claims to attorney's fees, interest, or any damages that it claims were caused by the seizure. Pursuant to the Stipulation, the parties further agree that the action is dismissed upon the Court's execution of the Stipulation.

We appreciate the Court's consideration of the enclosed.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: s/ Diane Leonardo
Diane Leonardo
Assistant United States Attorney
(631) 715-7854

Encl.

cc: Lawrence Salzman (By ECF, with encl.)

LDM:DCL
F.# 2014V02371
F.# 2012V01126

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In the Matter of the Seizure of

STIPULATION AND
ORDER OF SETTLEMENT

FOUR HUNDRED FORTY SIX THOUSAND SIX
HUNDRED FIFTY ONE DOLLARS AND ELEVEN CENTS
(\$446,651.11) IN U.S. CURRENCY FROM NEW YORK
COMMERCIAL BANK, ACCOUNT # XXXXX9071,
LOCATED IN RONKONKOMA, NEW YORK, HELD IN
THE NAME OF BI-COUNTY DISTRIBUTORS, INC.

MISC. 14-1288 (DRH)

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WHEREAS, on or about May 21, 2012, the Honorable Arlene R. Lindsay, United States Magistrate Judge for the Eastern District of New York, issued a warrant (the "Warrant") authorizing the seizure of any and all funds on deposit at New York Commercial Bank Account number ending in 9071 (the "Account") held in the name of Bi-County Distributors, Inc. ("Bi-County"), up to and including the sum of One Million Four Hundred Seventy-Six Thousand Nine Hundred Ninety-Two dollars and no cents (\$1,476,992.00) and all proceeds traceable thereto, finding probable cause to believe that such funds were subject to forfeiture to the United States pursuant to 31 U.S.C. § 5317, as property involved in violations of 31 U.S.C. § 5324;

WHEREAS, pursuant to the Warrant, on or about May 21, 2012, agents of the United States Department of Treasury, Internal Revenue Service (the "IRS") seized the sum of \$446,651.11 in United States currency (the "Seized Funds") from the Account;

WHEREAS, the United States provided Bi-County with actual notice of the seizure on or about May 22, 2012;

In the Matter of \$446,651.11, CV-14-1288 (DRH), Stipulation and Order of Settlement

WHEREAS, between May 2012 and May 2014, the United States and Bi-County, through its attorney at the time, Joseph Potashnik, commenced and engaged in settlement negotiations, which included Bi-County's retention of a forensic accountant that analyzed the cash activity in the Account and the income that Bi-County had reported to the IRS in its corporate tax returns and preparation of a report that Bi-County submitted to the United States during the settlement negotiations in this case;

WHEREAS, on or about October 16, 2014, Bi-County, through its current undersigned counsel, filed the above-captioned action seeking return of the Seized Funds pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure; and

WHEREAS, the United States acknowledges that neither Bi-County nor its employees has been charged with any crime in connection with the Seized Funds.

IT IS HEREBY STIPULATED AND ORDERED as follows:

1. Bi-County represents that it possesses an exclusive ownership interest in the Seized Funds.
2. Upon the Court's approval of this Stipulation and Order, the United States shall promptly return the Seized Funds to Bi-County, subject to the provisions of paragraphs 9 and 10, below.
3. Bi-County, as well as Jeffrey Hirsch, Mitchell Hirsch, Richard Hirsch, and Cindy Hirsch (collectively, the "Hirsches"), expressly acknowledge that they have been advised of the requirements of the Bank Secrecy Act, codified at 31 U.S.C. §§ 5311-5330, and its implementing regulations, codified at 31 C.F.R. Chapter X, including, but not limited to, (i) the prohibition against structuring financial transactions to avoid the filing of Currency Transaction Reports, and

In the Matter of \$446,651.11, CV-14-1288 (DRH), Stipulation and Order of Settlement

(ii) the requirement to file IRS Forms 8300 for all cash receipts in excess of \$10,000 arising from a single transaction or two or more related transactions.

4. The United States and Bi-County agree, understand, and acknowledge that neither of the parties to this agreement admit to or acknowledge any liability or wrongdoing whatsoever. Neither this settlement nor any payment hereunder is to be construed as an admission of liability or wrongdoing by either party.

5. Bi-County and all of the Hirsches agree to release, remise and forever discharge, the United States and its agencies, agents, officers, and employees, past and present (the "Releasees"), from all claims or causes of action which Bi-County and all of the Hirsches, as well as any of their agents, assigns, representatives, and successors ever had, now have, or hereafter may have against the Releasees relating in any manner to the seizure, restraint, forfeiture, and return of the Seized Funds. Further, in the event a third party claims an interest in the Seized Funds, Bi-County agrees that it shall hold the United States and the Releasees harmless from such claims, and that Bi-County shall (a) indemnify the United States and its agencies, agents, officers, and employees, past and present; (b) if demanded by the United States, defend any such claim; and (c) provide evidence and testimony necessary to the defense of such claim.

6. The United States shall not take any further action to effect the forfeiture of the Seized Funds in any civil or criminal proceeding in connection with the alleged underlying structuring offenses.

7. Except as expressly contemplated in the agreement, the parties agree that the settlement cannot be used as a basis for any statutory or constitutional defense in any other civil, criminal, or administrative action.

In the Matter of \$446,651.11, CV-14-1288 (DRH), Stipulation and Order of Settlement

8. Except as otherwise indicated herein, the United States does not release Bi-County or any of the Hirsches from: (a) any potential criminal liability; (b) any criminal, civil or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code); and/or (c) any liability to the United States (or any agencies thereof) under any other statute, law or regulation.

9. Bi-County acknowledges that federal law requires the Department of the Treasury and other disbursing officials to offset Federal payments to collect delinquent tax and non-tax debts owed to the United States, and certain other debts owed to individual states, including delinquent child support. The IRS also levies disbursing officials to collect delinquent tax debts. Agencies submitting debts for collection by offset or levy send due process notification to the last known address prior to submission. If a payment made to a party is reduced to collect a debt, the Department of Treasury will send a notice to the party at the last address provided by the party to the governmental agency or entity to whom the offset payment is made. If a party believes that its payment may be subject to an offset, the party may contact the Treasury Department at 1-800-304-3107.

10. The parties, including all of the Hirsches, agree that they each shall bear their own costs and attorney's fees and, accordingly, waive any and all rights they may have to recover attorney's fees and/or interest under the Equal Access to Justice Act, the Civil Asset Forfeiture Reform Act, or any other legal or statutory bases.

11. Jeffrey Hirsch, President of Bi-County, and the undersigned counsel for Bi-County further represent that they are authorized to execute this and all other documents necessary to effectuate the settlement of the above-captioned action on behalf of Bi-County and the Hirsches. Bi-County shall send to the undersigned counsel for the United States two executed copies of this

In the Matter of \$446,651.11, CV-14-1288 (DRH), Stipulation and Order of Settlement

Stipulation and Order, as well as a completed and typed ACH form (sections 2 and 3). Upon receipt thereof, counsel for the United States shall execute this Stipulation and Order, and submit it to the Court for its approval. The Seized Funds returned to Bi-County will be in the form of an ACH payment made payable as indicated in the completed ACH form returned to the United States and routed to the bank as provided by Bi-County and as indicated on the ACH form.

12. Upon entry of this Stipulation and Order, this action is dismissed with prejudice.

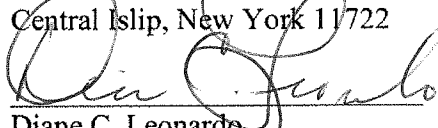
The Clerk of the Court is directed to close this action.

13. The District Court shall retain jurisdiction of this action to enforce this Stipulation.

Dated: Central Islip, New York
January 20, 2015

LORETTA E. LYNCH
United States Attorney
Eastern District of New York
Attorney for United States of America
610 Federal Plaza, 5th Floor
Central Islip, New York 11722

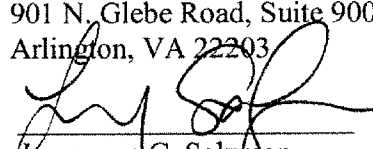
By:


Diane C. Leonardo
Assistant U.S. Attorney
(631)715-7854

Dated: Arlington, Virginia
January 19, 2015

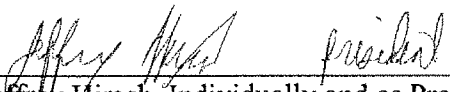
Institute for Justice
Attorneys for Bi-County Distributors, Inc.
901 N. Glebe Road, Suite 900
Arlington, VA 22203

BY:


Lawrence G. Salzman
(703) 682-9320

In the Matter of \$446,651.11, CV-14-1288 (DRH), Stipulation and Order of Settlement

I have read and understand the above.
AGREED AND CONSENTED TO BY:



Jeffrey Hirsch, Individually and as President
on behalf of Bi-County Distributors, Inc.

Acknowledgement

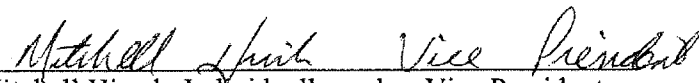
On the 15th day of January in the year 2015, Jeffrey Hirsch known to me, the undersigned, or proven to me on the basis of satisfactory evidence to be the individual whose name is subscribed to above, personally appeared before me and acknowledged to me that he executed the same in his personal capacity and as President on behalf of Bi-County Distributors, Inc. and that by his signature on the within instrument, he executed the instrument on behalf of Bi-County.



NOTARY PUBLIC

Nicole M. Gonzalez
Notary Public, State of New York
No. 01G0618188
Qualified in Suffolk County
Commission Expires 03/1/2018

I have read and understand the above.
AGREED AND CONSENTED TO BY:



Mitchell Hirsch, Individually and as Vice President
on behalf of Bi-County Distributors, Inc.

Acknowledgement

On the 16th day of January in the year 2015, Mitchell Hirsch known to me, the undersigned, or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to above, personally appeared before me and acknowledged to me that he executed the same in his personal capacity and as Vice President on behalf of Bi-County Distributors, Inc. and that by his signature on the within instrument, he executed the instrument on behalf of Bi-County.



NOTARY PUBLIC

Nicole M. Gonzalez
Notary Public, State of New York
No. 01G0618188
Qualified in Suffolk County
Commission Expires 03/1/2018

In the Matter of \$446,651.11, CV-14-1288 (DRH), Stipulation and Order of Settlement

I have read and understand the above.
AGREED AND CONSENTED TO BY:

Richard Hirsch Treasurer
Richard Hirsch, Individually and as Treasurer
on behalf of Bi-County Distributors, Inc.

Acknowledgement

On the 15th day of January in the year 2015, Richard Hirsch known to me, the undersigned, or proven to me on the basis of satisfactory evidence to be the individual whose name is subscribed to above, personally appeared before me and acknowledged to me that he executed the same in his personal capacity and as Treasurer on behalf of Bi-County Distributors, Inc. and that by his signature on the within instrument, he executed the instrument on behalf of Bi-County.

N. Gonzalez
NOTARY PUBLIC

Nicole M. Gonzalez
Notary Public, State of New York
No. 01G0618188
Qualified in Suffolk County
Commission Expires 03/1/2018

I have read and understand the above
AGREED AND CONSENTED TO BY:

Cindy Hirsch
Cindy Hirsch

Acknowledgement

On the 16 day of January in the year 2015, Cindy Hirsch known to me, the undersigned, or proven to me on the basis of satisfactory evidence to be the individual whose name is subscribed to above, personally appeared before me and acknowledged to me that she executed the same.

Edward Pesapane
NOTARY PUBLIC

EDWARD PESAPANE
Notary Public - State of New York
NO. 01PE4913582
Qualified in Suffolk County
My Commission Expires 11-2-17

SO ORDERED:

On this _____ day of January, 2015

HONORABLE DENIS R. HURLEY
UNITED STATES DISTRICT JUDGE