

August 25, 2015

Jay Macklin
General Counsel
Executive Office of United States Attorneys
United States Department of Justice
Washington, DC 20530

Re: United States v. Michael Segal, Case No. 02-CR-112
Appeal Nos. 13-3847, 14-2214, 14-2215, 14-3533

Dear Mr. Macklin:

On behalf of our client, Michael Segal, we respectfully request that you administratively remove the United States Attorney's Office for the Northern District of Illinois from any further involvement in the resolution of the issues surrounding the Settlement entered between Mr. Segal and this District and transfer the Department's representation to another District.

The inability of the District to supervise this matter has led to questionable tactics and abuses in the forfeiture process leading to the unjust enrichment of the government. As such, transfer to another District, or the reassignment of supervision of the matters involving Mr. Segal to the Asset Forfeiture and Money Laundering Section in the Criminal Division at Main Justice, is necessary. We believe the basis for this request is evident by history and facts provided below. We also note that we have notified the District that we are submitting this request to you and understand that its perspective is part of the review in your decision.

As you may be aware, the United States Attorney for this District is conflicted out of this matter. Moreover, the recently appointed First Assistant's prior employment creates, at a minimum, an appearance of a conflict of interest that prohibits him from engaging in this matter. Lacking appropriate supervision from the District leadership, the assigned Assistant United States Attorney, William R. Hogan, Jr., has been permitted to engage in a hyper-zealous and exceptionally unusual campaign that strains the boundaries of ethical conduct.

The Department's traditional reluctance in reassigning matters from one District to another is understandable. It is, however, not an uncommon practice by the Department, on its own accord. It is often invoked in matters like this where conflicts exist and when necessary to advance the interests of justice.

In this matter, transfer is warranted both to avoid conflicts and to advance the interests of justice. For well over a decade, the prosecution of Mr. Segal has been handled almost exclusively by Mr. Hogan. This Assistant United States Attorney has appeared at every stage (trial, post-trial, forfeiture, appellate litigation, and administratively with the court-appointed trustee) and throughout each and every proceeding, whether criminal or civil, including injecting himself into a 2013 civil Tax court matter where he interfered, multiple times, with the discovery process with the IRS' General Counsel's Office in Chicago. It is understanding that the insertion into the Tax court matter led to complaints within the IRS regarding Mr. Hogan's behavior. Notably, despite being convicted of conspiring to defraud the IRS, the United States Tax Court recently found in the IRS' civil tax fraud proceeding against Segal, which was based on the same facts as his criminal conviction, that "there are no deficiencies in income tax due" from Segal and further ruled that there was no civil fraud penalty.

The District's inability to provide the appropriate oversight, management and supervision of this matter has devolved to such an extent that it has resulted in filings and tactics by Mr. Hogan widely outside the norm of practice for an Assistant United States Attorney. This history includes repeated instances where the District failed to respond to legitimate requests from Mr. Segal in connection with satisfying his forfeiture obligation and even on occasion misled him to his financial detriment.

Despite a lengthy complex history involving the Department and Mr. Segal, what needs to be resolved at this stage is not complex nor will it be necessarily taxing to a new District to review. This matter is now limited to financial issues necessitating a good faith resolution of the forensic accounting and asset valuation as to the forfeiture settlement. There is no special expertise that the Northern District of Illinois possesses that requires it to retain this matter. Indeed, this has come down to an understanding of the assets in the Stipulated Settlement, what exactly they are, how they have grown and how they should be properly characterized.

Through this request, Mr. Segal is not seeking any vindication, discipline, admissions, or concessions. He is only requesting enhanced supervision of the remaining matters that can only be accomplished by transferring these matters to another District.

An independent review of this matter by a separate District would help bring closure to this matter and remove any question that the Department's interests in justice were superseded by the motives of one Assistant United States Attorney, operating with no structured oversight and who amassed unwarranted authority in light of the lack of supervision otherwise required throughout the Department.

Background

Michael Segal is the founder and CEO of Near North Insurance, once the fifth largest independent insurance brokerage in the United States employing 1,000 people. On June 21,

2004, Segal was convicted of operating an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c) and conspiring to defraud the Internal Revenue Service.

The jury also returned a forfeiture verdict that Segal must forfeit \$30 million in proceeds and interests acquired by virtue of the racketeering activity described in one of the underlying counts. The jury further found that Segal's interest in Near North was subject to forfeiture pursuant to the provisions of 18 U.S.C. § 1963(a)(2). Segal was also ordered to forfeit his 100 percent ownership interest in Near North Insurance Brokerage, the Chicago operations of which was valued at \$250 million shortly before his indictment.

In order to insure collection of that forfeiture, the Government moved for a preliminary order of forfeiture, asking that Segal forfeit his interest in the enterprise and any of its operating affiliates and subsidiaries named in the indictment, which the District court granted, and the Government seized Segal's assets. What they failed to do, and what is unclear to this day, is identify whether those assets were owned by Segal personally, his ex-wife, Joy, or Segal's company Near North Insurance Brokerage, the family trust and ERISA-protected assets.

On December 31, 2005, the District court sentenced Segal to over 10 years in prison, despite finding that: (a) no one was a victim of Segal's misuse of the Premium Fund Trust Account (PFTA), an Illinois-regulated account providing no felony penalty; (b) no insurance company or brokerage client suffered an economic loss; (c) Segal had no intent to defraud any insurer or insured; and (d) there was no evidence to support the Government's claim that Segal filed a false financial statement to influence his regulatory compliance. Segal's sentence was later reduced in 2012, after servicing more than eight years in prison, after the *Skilling* decision was rendered.

Segal appealed the personal forfeiture judgment to the Seventh Circuit where the court questioned whether the Department's forfeiture assessment against Mr. Segal constituted double counting. The Court explained that it was neither clear from the record that \$30 million was left in or put back into the enterprise, nor how much went to benefit Mr. Segal personally. The court remanded the case for a determination of what portion, if any, of the \$30 million was reinvested in the enterprise. The Department filed a petition for rehearing as to the double counting and was denied. On remand, the lower court reduced the forfeiture against Mr. Segal to \$15 million. The lower court's determination did not resolve the issue of how much Mr. Segal reinvested in Near North Insurance. For example, Segal presented evidence demonstrating that he loaned or put in more than \$17 million to Near North, but the court did not address that fact.

There is now pending a series of appeals before the Seventh Circuit and litigation in this matter is continuing.

Reflective of former Attorney General Holder's admonition of how forfeiture policies can be abusively driven by the financial gain for the Government, an analysis of the forfeiture to date reveals that the Department has received approximately three times the amount it was entitled to under the personal forfeiture of Mr. Segal. The Department has seized close to \$60 million in

actual assets to satisfy a \$15 million forfeiture judgment. In addition, there remain disputes between the Department and Mr. Segal's ex-wife as to ownership of the specific assets, trust ownership of insurance policies and ERISA-protected assets.

Before any argument on the settlement agreement, by tying up Segal's assets for seven years in forfeiture proceedings that are normally handled expeditiously, Hogan used the depletion of Segal's resources and his ability to carry on a protracted legal battle to achieve a forced settlement of forfeiture issues. Similarly, in 2015, Hogan petitioned the Solicitor General's office to obtain permission to appeal a District court ruling that had no global legal significance.

Separately, the Department, through AUSA Hogan, insisted that Segal pay nearly \$400,000 in restitution to clients who have acknowledged in affidavits that they were never shortchanged by Near North Insurance. Bizarrely, Segal must pay \$400,000 to wealthy former Near North Insurance Brokerage clients, such as international conglomerates Waste Management and Ticketmaster, who have made it clear they are not owed any money from Near North Insurance Brokerage.

The Settlement

As noted above, Segal was ordered to personally forfeit \$15 million and his 100 percent ownership interest in Near North Insurance Brokerage. After Segal was resentenced in May 2012, the District court set a two-phase hearing to determine which of Segal's restrained assets would be used to satisfy his \$15 million forfeiture judgment. The first hearing was to determine ownership of the restrained assets. The second hearing was to determine the value of all assets owned by Segal. Segal would then use \$15 million of his assets to satisfy his forfeiture obligation.

Three days before the ownership hearing in early 2013 after questionable and misleading communications by Hogan, Segal and the Department agreed, subject to the District court approval, to settle the forfeiture judgment against Segal. The Settlement Stipulation provided that Segal's \$15 million personal forfeiture judgment shall be satisfied and the United States shall have no further claim against Segal relating to his personal forfeiture judgment. The Settlement Stipulation identified which restrained assets held by the U.S. Marshal Service were to be retained by the Government as full satisfaction of Segal's \$15 million forfeiture judgment.

Pursuant to the Settlement Stipulation, the restraints over any assets not used to satisfy Segal's forfeiture obligation were to be lifted. For example, pursuant to the Settlement Stipulation, Segal was to receive partial settlement in cash accounts. Segal also had the right to exercise an option to purchase certain insurance policies and an interest in the Chicago Bulls partnerships that the United States retained as part of the Settlement Stipulation.

Starting the day the forced Stipulation was approved, Segal made repeated efforts to obtain information from the Department regarding the insurance policies (*e.g.*, who owned the policies,

what liens existed against the policies), all without success until the deadline for purchasing the policies had lapsed. The District' conduct concerning the insurance policies is the subject of one appeal pending before the Seventh Circuit. Most concerning was the denial of access to records precluding Mr. Segal from discovery for the several policies that were not taken or released but owned by family trusts.

Segal also made repeated requests to the Department to lift the restraint over the funds to which Segal was entitled. Hogan refused to do so. Segal was forced to file several motions with the District court, which eventually resulted in the release of funds to Segal -- a year after he was entitled to receive those funds.

Segal also exercised his option to purchase the Bulls partnership interests from the United States, but Hogan took steps to trump Segal's right to do so at the last minute. Hogan's conduct concerning the Bulls partnership interests is the subject of one appeal pending before the Seventh Circuit.

There are now pending numerous appeals concerning the various representations and misrepresentations of the District exclusively related to asset valuations and contract settlement breaches.

Conflicts Prevent the USAO of the Northern District of Illinois from Adequately Supervising the Matter

Shortly after being sworn-in as United States Attorney for the Northern District of Illinois, Zachary Fardon recused himself from the Segal matters. The First Assistant United States Attorney at the time, Gary Shapiro, assumed the responsibilities as the United States Attorney in these matters and continued responsibility of handling the Government's prosecution of these matters until he retired in late 2014. At that point, Joel Levin, who became the First Assistant in that office, assumed responsibilities for supervising the Segal matters.

The law firm where Mr. Levin previously practiced, Perkins Coie, has been involved with Segal's criminal matter since its inception. In fact, Erik Brandfonbrener at Perkins Coie, is still identified as an attorney of record in this matter. Perkins Coie represents clients who were previously employees of Michael Segal and the Near North Enterprise. They participated in a course of cyber misconduct and illegally and improperly obtained highly confidential and sensitive information and materials from Defendants during or by way of their employments with Segal and Near North Enterprise, including materials and information protected by Segal's attorney/client privilege. The collection of this information and these materials resulted in Segal's indictment. Perkins Coie' clients (*i.e.*, Segal's ex-employees) became key witnesses in the Government's prosecution of Segal and Near North.

Near North filed a civil suit against Perkins Coie' clients based on their improper and illegal conduct. Perkins Coie was not only involved in representing those clients as witnesses in the

United States' case against Segal, but Perkins Coie also defended those parties in the civil litigation while the investigation against Segal was ongoing and throughout the underlying trial against Segal, and while simultaneously assisting the United States in its prosecution with the illegally obtained information. After Segal was convicted, the prior United States Attorney for the Northern District of Illinois caused the civil matter to be dismissed. In any event, Mr. Levin's predecessor firm, which is still an attorney of record in this matter, has knowledge of highly sensitive information that was illegally obtained.

ASUA Hogan's Hyper Zealous Conduct Necessitates Recusal

The United States, acting through the Justice Department, is not just another litigant. That principal is emphasized throughout the United States Attorney's Manual and repeatedly in guidance to its litigators by the Department. The Department rightfully imposes a higher standard for performance, conduct and tactics.

This heightened standard has not been met in this matter. A review of the District's activities in the Segal matters uncovers a number of filings and tactics counter to the Department's standards. For example, misleading the litigant about the value of contested assets and later, by apparently responding favorably in response to a litigant's request for information when in fact a letter was never sent, shows both that the Northern District of Illinois misled Segal about the value of contested assets, and after obtaining a Settlement Stipulation based on those misrepresentations, refused to provide Segal with post-settlement information to which he was entitled. Such gamesmanship detrimentally impacted Segal both pre- and post-settlement.

Segal, through counsel, made previous complaints to the Department of Justice about Hogan's misconduct and requested that he be disciplined. Although Segal still believes that Hogan acted improperly and should have been disciplined, he is now only requesting the reassignment of this matter so that it may be appropriately supervised, allowing for a fresh set of unbiased eyes to examine the matter.

Notably, while there is pending litigation in this matter, this request does not deal specifically with the pending litigation.

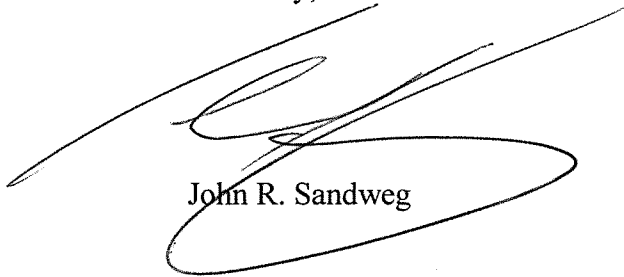
Conclusion

Over the last two years, from the highest levels of the Department, including the former and current Attorneys General, forfeiture law as practiced by the Department has been subject to a comprehensive review to eliminate the potential for abuse and the inconsistent administration of law. Allowing this matter to remain assigned within the unsupervised control of the Northern District of Illinois would be counter to the underlying purpose and direction of this review, as this matter raises serious questions regarding the proper use of forfeiture law.

The Department's overarching mandate is to ensure the fair and impartial administration of justice. Where, as in this matter, the administration of justice is threatened by the overly zealous actions of a single prosecutor acting without proper supervision, the removal of a case to another District is necessary and proper.

We appreciate your review of this request. We also respectfully request the opportunity to meet with you in person to respond to any questions regarding the matter at hand.

Sincerely,



John R. Sandweg



Dennis K. Burke