

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 17-cv-2306-TMP
)	
SEVEN THOUSAND FOUR HUNDRED)	
EIGHTY DOLLARS (\$7,480.00) IN)	
UNITED STATES CURRENCY,)	
)	
Defendant.)	

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Before the court is plaintiff United States of America's ("the government") Motion for Summary Judgment, filed on December 19, 2017. (ECF No. 33.) Defendant *in rem*/claimant Dennis Tabor's response to that motion was due on or before January 16, 2018. See LR 12.1(b). Because no response was filed by that date, the court entered an order to show cause, directing Tabor to respond by February 6, 2018. (ECF No. 35.) Tabor requested two subsequent extensions of the show cause date, which the court granted. (ECF Nos. 37; 38; 39; 40.) Tabor then responded on February 14, 2018. (ECF No. 41.) For the reasons below, the government's motion is granted.

I. FINDINGS OF FACT

This case is an action *in rem* to forfeit to the government pursuant to 21 U.S.C. § 881(a)(6) assets traceable to the proceeds

of felony violations of the Controlled Substances Act, 21 U.S.C. §§ 801 et seq. The defendant *in rem* is \$7,480.00 in United States currency, and the claimant is Dennis Tabor. (ECF No. 10 at 1-2.) The government filed a verified complaint of forfeiture on May 2, 2017, and an amended verified complaint on July 17, 2017. (ECF Nos. 1; 10.) The property at issue was seized from Tabor on October 12, 2016, in Memphis, Tennessee. (ECF No. 10 at 1; ECF No. 31 at 1.) On October 3, 2017, the government propounded sets of interrogatories, requests for production of documents, and requests for admission upon Tabor. (ECF No. 33-1 at 1.) The requests for admission provided as follows:

REQUEST FOR ADMISSION NO. 1:

Admit that the defendant, \$7,480 in U.S. currency ("the defendant property"), came from the proceeds of illegal drug trafficking. If you admit that some, but not all, of the defendant property was so derived, please be specific about what is admitted and what is denied.

REQUEST FOR ADMISSION NO. 2:

Admit that at the time defendant property was seized, your sole or primary source of income, and/or that of your spouse, was illegal drug trafficking. If you admit that such was the case during some, but not all, of the relevant time period, please be specific about what is admitted and what is denied.

REQUEST FOR ADMISSION NO. 3:

Admit that the defendant property is traceable to the proceeds of illegal drug trafficking and/or was used or intended to be used to facilitate a violation of Title II of the Controlled Substances Act, 21 United States Code, Sections 801 et seq.

(ECF No. 33-3 at 1-2.) Tabor did not respond to the requests for

admission within the allotted time; the government therefore filed a motion to compel discovery, which the court granted. (ECF Nos. 32; 34.) There is no indication that Tabor complied with the motion to compel or otherwise responded to the requests for admission. (ECF No. 33 at 3.)

The government's present motion for summary judgment asserts that the matters covered by its requests for admission should be deemed admitted due to Tabor's failure to respond or otherwise provide any evidence to the contrary. (Id.) Tabor's final response to the court's order to show cause asserts that Tabor himself has not been forthcoming with the discovery information and that "[c]ounsel is unsure whether the claimant doesn't want to answer the discovery, can't answer the discovery, or if there is some other reason for the lack of performance as a litigant." (ECF No. 41 at 1.) The response further indicates that on the date of the response, "the claimant brought the discovery pack to the office, for about the fifth time, with his name, social security number, and one bank statement. Counsel doesn't know what else to say." (Id.) Tabor requests that "the court consider some other sanction other than dismissal of the case and claim." (Id. at 2.)

II. CONCLUSIONS OF LAW

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A

genuine dispute of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The moving party bears the burden to "demonstrate the absence of a genuine [dispute] of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "In making this assessment, [the court] must view all evidence in the light most favorable to the nonmoving party." Tennial v. United Parcel Serv., Inc., 840 F.3d 292, 301 (6th Cir. 2016). The movant must support its assertion that a fact cannot be genuinely disputed by citing to, *inter alia*, admissions or interrogatory answers. Fed. R. Civ. P. 56(c)(1)(A). A matter addressed by written request for admission will be deemed admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. Fed. R. Civ. P. 36(a)(3); see also United States v. Ninety Three (93) Firearms, 330 F.3d 414, 418 (6th Cir. 2003) (stating that claimant's failure to respond to discovery requests within thirty-day period served as a constructive admission).

Twenty-one U.S.C. § 881(a)(6) provides that:

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

. . .

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled

substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter.

Tabor failed to timely respond to the government's requests for admission. The matters within those requests are therefore deemed admitted. See Fed. R. Civ. P. 36(a)(3); Ninety Three Firearms, 330 F.3d at 418. The three requests for admission thus establish that the defendant property "came from the proceeds of illegal drug trafficking," that the illegal drug trafficking was the "sole or primary source of income" for Tabor and/or his spouse, and that the defendant property "is traceable to the proceeds of illegal drug trafficking and/or was used or intended to be used to facilitate a violation of Title II of the Controlled Substances Act" (ECF No. 33 at 4.) Tabor has thus admitted facts that establish the forfeitability of the defendant property. See 21 U.S.C. § 881(a)(6). Tabor has furthermore failed to produce any evidence which would support a reasonable jury's verdict in his favor. Thus, no genuine dispute of material fact exists, and summary judgment in favor of the government is appropriate. See Fed. R. Civ. P. 56(a); Anderson, 477 U.S. at 248. Tabor has requested that the court consider some other "sanction" other than dismissal of the case. To be clear, the court has not sanctioned Tabor, nor does the court's ruling implicate the sanctions under Federal Rule of Civil Procedure 37. Instead, the admissions upon which the

court's decision relies are derived from Rule 36, and it is by operation of law that the requests for admissions (which Tabor failed to respond to) have been deemed admitted.

III. CONCLUSION

Based on the foregoing, the government's motion for summary judgment is GRANTED.

IT IS SO ORDERED.

s/ Tu M. Pham

TU M. PHAM

United States Magistrate Judge

February 21, 2018

Date