

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA	§	
	§	
V.	§	A-13-CR-346(01) SS
	§	
MICHAEL BAKER	§	

ORDER OF DETENTION PENDING SENTENCING

Before the Court is Defendant Michael Baker's Opposed Motion for Release Pending Sentencing, filed June 3, 2014 (Clerk's Dkt. #276) and the responsive pleadings thereto. By way of the motion, Michael Baker ("Baker") seeks release on conditions pending his sentencing. In accordance with the Bail Reform Act, Rule 46(c) of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3143(a)(1), a hearing was held on June 10, 2014. The Court has considered the evidence presented and the arguments of counsel in making the following determination.

On June 2, 2014, the defendant was found guilty by a jury. Having been found guilty, the judicial officer shall order the defendant who is awaiting sentence to be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released. 18 U.S.C. § 3143(a). The Court concludes detention pending further proceedings in this case is appropriate because the defendant has failed to establish by clear and convincing evidence that he is not likely to flee.

The jury trial in this case was held before United States District Judge Sam Sparks from May 5, 2014 to June 2, 2014. The jury concluded that the defendant was guilty of all fifteen counts of the Superseding Indictment, which included Conspiracy, Wire Fraud, Securities Fraud and charges related to False Statements in SEC depositions. The defendant testified during trial. The jury's

verdict serves as tacit evidence that the jury did not believe the defendant's sworn testimony. The fifty-five year old defendant is likely facing a significant term of imprisonment. Specifically, the defendant faces a maximum statutory punishment of 270 years imprisonment. More importantly, the defendant is also facing a lofty sentencing guideline range pursuant to the United States Sentencing Guidelines.

The defendant requests time to get his affairs in order pending future imprisonment. However, the defendant has been on notice of a criminal investigation since January of 2013. He was initially indicted on July 16, 2013. The jury trial itself took four weeks. The defendant was released on bond until the conclusion of the jury trial and the rendering of the verdict. The defendant has thus had sufficient time to get his affairs in order pending sentencing.

Of particular concern are the whereabouts of a significant portion of the proceeds generated by the elaborate fraud scheme for which the defendant was convicted. The government has produced evidence that between 2004 and 2010, the defendant received approximately \$26,700,000 in net proceeds related to the sales of restricted ArthroCare stock. The government's investigation has accounted for a total of \$11,700,000 of that sum, leaving over \$15,000,000 in net stock proceeds unaccounted for. Prior to trial, the burden of tracing those funds was on the government. After his conviction for fraud, the burden of producing clear and convincing evidence as to the whereabouts of these funds or an explanation of their use is on the defendant. However, no evidence as to the use or whereabouts of these funds was offered by the defendant.

Equally disturbing was the movement of over \$9,000,000 by the defendant to Switzerland in October of 2010 shortly after receiving notice of the SEC's investigation of him. According to the defendant, these funds represented at least seventy percent of his liquid assets. The sudden

transfer of these funds appears to have been an effort to avoid government scrutiny and possible claw-back.

The jury did not believe the defendant's explanations at trial. Similarly, this Court does not believe the defendant's representations that he will appear in court as required.

Given the totality and gravity of the above factors, the Court finds that the defendant should be detained. Accordingly, Defendant Michael Baker's Opposed Motion for Release Pending Sentencing (Clerk's Dkt. #276) is hereby **DENIED**.

Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility shall deliver the defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

SIGNED on June 10, 2014.



MARK LANE
UNITED STATES MAGISTRATE JUDGE