

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 7/6/05

UNITED STATES OF AMERICA,

-v-

ELY SAKHAI,  
a/k/a "Eliyahoo Sakhai"

Defendant.

: PRELIMINARY ORDER OF  
FORFEITURE/FINAL ORDER  
OF FORFEITURE AS TO  
DEFENDANT ELY SAKHAI'S  
INTEREST IN PROPERTY

: 04 Cr. 583 (LAP)

WHEREAS, pursuant to a Plea Agreement dated November 29, 2004, (the "Plea Agreement"), (attached hereto as Exhibit A) between the Government and the defendant, ELY SAKHAI ("the defendant"), the defendant pled guilty to Counts One, Nine, and the forfeiture allegations of Indictment 04 Cr. 583 (LAP); and

WHEREAS, Counts One and Nine charges ELY SAKHAI with conspiracy to commit mail and wire fraud, and substantive mail fraud, in violation of Title 18, United States Code, Sections 371 and 1341, respectively. Pursuant to the Plea Agreement, the defendant admitted the forfeiture allegations in the Indictment, and in full satisfaction of those obligations, agreed to the forfeiture, or restitution in lieu of forfeiture, of the sum of \$12,500,000, and to the forfeiture of all the defendant's right, title, and interest to eleven paintings, representing proceeds of the charged offenses, pursuant to Title 18, United States Code, Section 981 and 28 U.S.C. Section 2461; and

WHEREAS, pursuant to the Plea Agreement, the following

properties constitutes property derived, directly and indirectly, from the proceeds of the offenses charged, and is subject to forfeiture:

1. one painting by Marc Chagall titled, "L'Inspiration de la Artiste," produced on or about November 17, 2003, pursuant to grand jury subpoena served on Exclusive Art Inc;
2. one painting by Marc Chagall titled, "Descente de la Croix," seized pursuant to a search warrant executed on November 12, 2003, at Fortress, 49-25 Fifth Street, Long Island City, New York;
3. one painting by Moise Kisling titled "Nu," seized pursuant to a search warrant executed on or about November 26, 2003, at Cirker's Hayes, 305 E. 61<sup>st</sup> Street, New York, New York;
4. one painting by Marc Chagall titled "Bouquet de Lillium," seized pursuant to a search warrant executed on September 17, 2004, at Day & Meyer, 1166 Second Avenue, New York, New York;
5. one painting by Marc Chagall titled "Rabbi and Torah," seized pursuant to a search warrant executed on September 17, 2004, at Day & Meyer, 1166 Second Avenue, New York, New York;
6. one painting by Marie Laurencin titled "Portrait de Ruban Rose," seized pursuant to a search warrant executed on September 17, 2004, at Day & Meyer, 1166 Second Avenue, New York, New York;
7. one painting by Maurice Vlaminck titled "Vase de Fleurs," seized pursuant to a search warrant executed on September 17, 2004, at Day & Meyer, 1166 Second Avenue, New York, New York;
8. one painting by Bernard Buffet titled "Le Coq Rouge," seized pursuant to a search warrant executed on September 17, 2004, at Day & Meyer, 1166 Second Avenue, New York, New York;
9. one painting by Georges Rouault titled "Beau

Conferecier L'Union Sacree" seized pursuant to a search warrant executed on September 17, 2004, at Day & Meyer, 1166 Second Avenue, New York, New York;

10. one painting by Pierre-Auguste Renoir titled "Etude Jeune Femme" seized pursuant to a search warrant executed on September 17, 2004, at Day & Meyer, 1166 Second Avenue, New York, New York; and
11. one painting by Maurice Vlaminck titled "Paysage Au Toit Rouge" seized pursuant to a search warrant executed on September 17, 2004, at Day & Meyer, 1166 Second Avenue, New York, New York;

(hereinafter collectively referred to as the "Subject Paintings");

WHEREAS, pursuant to the Plea Agreement, the defendant has also agreed to the forfeiture of that portion, if any, of the above-referenced \$12,500,000 which is not disbursed to victims pursuant to the order of restitution; and

WHEREAS, pursuant to Title 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, the United States is, by virtue of said Plea Agreement, now entitled, pending any assertion of third-party claims, to reduce the subject property to its possession and to notify any and all potential purchasers and transferees thereof of its interest therein;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. As a result of the guilty plea against ELY SAKHAI, on Counts One and Nine for which the Government sought forfeiture pursuant to 18 U.S.C. § 981, the defendant's right, title and

interest in the Subject Paintings is hereby forfeited to the United States for disposition in accordance with the law, subject to the provisions of Title 18 U.S.C. § 981.

2. The Subject Paintings are to be seized pursuant to this Preliminary Order of Forfeiture and are to be held thereafter by the United States Marshal (or its designee) in its secure custody and control.

3. Pursuant to 18 U.S.C. § 981, the United States Marshal (or its designee) forthwith shall publish at least once for three successive weeks in a newspaper of general circulation, notice of this order, notice of the Attorney General's intent to dispose of the property in such manner as the Attorney General may direct and notice that any person, other than the defendant, having or claiming a legal interest in the above listed Subject Paintings must file a petition with the Court within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier.

4. This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in the property, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title or interest in the Subject Paintings and any additional facts supporting the petitioner's claim and the relief sought.


5. The United States may also, to the extent practicable, provide direct written notice to any person known to have an alleged interest in the property that is the subject of this Order of Forfeiture, as a substitute for published notice as to those persons so notified.

6. Upon adjudication of all third-party interests, this Court will enter a Final Order of Forfeiture pursuant to 18 U.S.C. § 981, in which all interests will be addressed.

The Clerk is hereby directed to send certified copies of this Preliminary Order of Forfeiture to all Counsel of Record.

Dated: New York, New York  
July 5, 2005

SO ORDERED:

  
HONORABLE LORETTA A. PRESKA  
UNITED STATES DISTRICT JUDGE