

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

RICHARD A. CHICHAKLI,)
Plaintiff,)
v.)
ADAM SZUBIN, Director, Office of Foreign)
Assets Control of the United States Department) Civil Action No. 3:06-CV-1546-N
of the Treasury, in his official capacity; HENRY)
PAULSON, JR., Secretary, United States)
Department of the Treasury, in his official)
capacity; CONDOLEEZZA RICE, Secretary of)
State of the United States, in her official)
capacity; and OFFICE OF FOREIGN ASSETS)
CONTROL,)
Defendants.)

COMPLAINT

Plaintiff, Richard A. Chichakli, by and for his Complaint in the above-captioned matter, states as follows:

PRELIMINARY STATEMENT

1. This action challenges Defendants' actions under Executive Order 13348 ("Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia") (the "Order") and the International Emergency Economic Powers Act (the "IEEPA") because they violate Plaintiff's rights under the Constitution of the United States and the Administrative Procedures Act (the "APA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1336(a)(2).

3. Plaintiff's claims for declaratory relief, damages and other relief are authorized by 28 U.S.C. §§ 2201 and 2202 and by Rule 57 of the Federal Rules of Civil Procedure.

4. This Court authority to award costs and attorneys' fees under 28 U.S.C. § 2412 and 5 U.S.C. § 504.

5. Venue is proper in this district under 28 U.S.C. § 1391(e)(2) because it is the district in which a substantial part of the events or omissions giving rise to the claim occurred and in which a substantial part of property that is the subject of the action is situated.

PARTIES

6. Plaintiff Richard A. Chichakli ("Chichakli") is an individual United States citizen and licensed certified public accountant residing in Richardson, Texas.

7. Defendant Adam Szubin is the Director of the Office of Foreign Assets Control, United States Department of the Treasury ("OFAC"), and is the ultimate authority at OFAC with respect to actions taken under the Order and the IEEPA. Defendant Szubin is sued in his official capacity.

8. Defendant Henry Paulson, Jr. is the Secretary of the United States Department of the Treasury and, in that capacity, has ultimate authority over OFAC and its actions taken under the Order and the IEEPA. Defendant Paulson is sued in his official capacity.

9. Defendant Condoleezza Rice is the Secretary of State of the United States and, in that capacity, is the person ultimately responsible for consulting with OFAC in taking actions pursuant to the Order. Defendant Rice is sued in her official capacity.

10. Defendant OFAC is the agency which determined to designate Chichakli as a Specially Designated Name under the Order and to block all of his property pursuant to such designation.

FACTUAL ALLEGATIONS

11. Pursuant to the authority granted by the IEEPA and due to the ongoing strife in Liberia, on July 22, 2004, President Bush issued the Order, which declared a national emergency and blocked the assets of the persons listed in the Annex to the Order. One of the persons listed on the Annex was Viktor Bout. The Order blocked the assets of all persons determined by the Secretary of the Treasury, in consultation with the Secretary of State.

12. The Order blocked the assets of all persons determined by the Secretary of the Treasury, in consultation with the Secretary of State:

...

- (C) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the unlawful depletion of Liberian resources, the removal of Liberian resources from that country, and the secreting of Liberian funds and property by any person whose property and interests in property are blocked pursuant to this order; or
- (D) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property are blocked pursuant to this order.

13. The Order of July 22, 2004 was directed at the former Liberian president, Charles Taylor, and other persons for their unlawful depletion of Liberian resources and undermining Liberia's transition to democracy. It stated that the illicit trade in round logs and timber products was linked to the proliferation of and trafficking of illegal arms. In 2005, the Liberian people elected a new president that stopped the depletion of the round logs and timber products (the UN has lifted sanctions on such products, see attached "Exhibit A") and Charles Taylor is in prison in the Netherlands awaiting trial for his criminal acts.

14. On April 26, 2005, at 06:00 hours, agents of OFAC, the Federal Bureau of Investigation, Internal Revenue Service, US Customs, ICE, CID, U.S. Military Intelligence, and others together raided Chichakli's home and office and his employee's home. Upon conclusion of the raid at 13:00 hours, , agents of OFAC provided Chichakli a copy of a Blocking Notice, informing him of his identification as a Specially Designated National pursuant to the Order and his inclusion on the list of persons already subject to the sanctions imposed by the Presidential Order. A search warrant was presented for the home located at 225 Syracuse Place in Richardson, Texas and for Chichakli's office; while the second home located at 2625 Van Buren, Plano, Texas was entered and searched without a warrant and property was seized by the FBI from all three locations. Property was seized at Chichakli's second residence without a search warrant.

15. Upon conclusion of the raid, agents of OFAC provided to Chichakli a copy of a Special Designation and Blocking Memorandum which stated the basis for the designation of Chichakli and three (3) other individuals and thirty (30) companies that OPAC had determined, in consultation with the Secretary of State, that there was reason to believe that Chichakli and the other individuals and the companies and entities:

- (a) are owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, a person whose property and interests in property are blocked pursuant to [the Order], namely Viktor Bout; and/or (b) have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the unlawful depletion of Liberian resources, the removal of Liberian resources from that country, and the secreting of Liberian funds and property by any person whose property and interests in property are blocked pursuant to the Order, or

(c) are owned or controlled by, or act for or on behalf of, persons designated in or pursuant to the Order, and therefore are designated as Specially Designated Names (“SDNs”).

16. Among the companies designated were several companies controlled or affiliated with Chichakli. They are:

(a) Richard A. Chichakli, P.C., a Texas professional corporation. This is the entity through which Chichakli conducted his public accountancy practice.

(b) Chichakli & Associates, PLLC, a Texas professional limited liability company. This is the entity through which Chichakli, along with two partners, formerly conducted a public accounting practice prior to 2004.

(c) Daytona Pools, Inc., a Texas corporation. This was a company through which Chichakli, along with his former wife, was to conduct a swimming pool cleaning service. Although the company still has a legal existence, it conducts no operations and has no assets.

(d) DHH Enterprises, Inc., a Texas corporation. This is an entity through which Chichakli intended to conduct a diamond import and wholesale business. The company made one purchase of a quantity of diamonds, but was unable to re-sell them on a wholesale basis. The majority of the diamonds were in Chichakli's office safe at the time of the raid (discussed below).

(e) I B of America Holdings, Inc., a Texas corporation. Although the company still has a legal existence, it conducts no operations and has no assets.

(f) Orient Star Corporation, a Texas corporation, d/b/a Orient Star Aviation.

(g) SAN Air General Trading, LLC, a limited liability company organized under the laws of the United Arab Emirates. This company applied and obtained authority to transact business in the State of Texas, and withdrew from Texas in 2002. The company conducts no operations outside the United States.

(h) Trans Aviation Global Group, Inc., a Texas corporation.

17. Also on April 26, 2005, the Office of Public Affairs of OFAC issued a press release announcing that the Department of the Treasury had identified 30 companies and four individuals linked to Viktor Bout.

CAUSES OF ACTION

First Cause of Action – Violation of the Fifth Amendment to the Constitution of the United States – Deprivation of Property without Substantive Due Process

Defendants violated Plaintiff's due process rights by:

- (a) failing to provide Plaintiff any notice of any kind that he was under investigation or that his property or properties in his possession would be blocked;
- (b) failing to provide Plaintiff with any evidence that would support the blocking of his property or properties;
- (c) failing to provide Plaintiff with any consideration or opportunity to present, at least in written form, any evidence to rebut any proposition that Defendants may have had in any way to justify blocking his property;
- (d) failing to provide Plaintiff adequate notice and adequate opportunity to be heard or present evidence before a neutral decision maker; and
- (e) failing to provide Plaintiff an opportunity to present, at least in written form, such evidence as he may have been able to produce to rebut any administrative record or

otherwise negate the proposition that he was the financial officer of Viktor Bout or a business associate of Viktor Bout and his organizations.

Second Cause of Action – Violation of the Fifth Amendment of the Constitution of The United States – Taking Clause

Defendants blocking and seizure of Plaintiff's property and the attempted destruction of his property constitutes taking of Plaintiff's property without just compensation coming in violation of the Taking Clause of the Fifth Amendment of the United States Constitution.

Defendants violation of Plaintiff's rights under the Fifth Amendment Taking Clause has harmed and is continuing to seriously harm him.

The International Emergency Economic Powers Act (IEEPA) provides that the President may "block during the pendency of an investigation" Plaintiff was blocked in April of 2005, approximately 16 months ago. Blocking in the manner in which OFAC has proceeded in this case over such a period of time constitutes a taking and a violation of the Fifth Amendment to the Constitution.

Third Cause of Action – Violation of the Administrative Procedures Act

Defendants action in its arbitrary, capricious, and abusive discretion or otherwise not in accordance with law, is unsupported by substantial evidence, and unwarranted by the facts.

The Defendants:

- (a) destroyed the CPA (accounting) business of the Plaintiff by locking and sealing his office and cutting off the telephones;
 - (b) notified the Texas Accountancy Department to void Plaintiff's license to practice;
 - (c) seized and are secreting properties without an accounting; and
 - (d) are attempting to destroy Plaintiff's real property holdings and continue to do so;
- and

(e) have forced the sale of properties.

Fourth Cause of Action – There is No Unusual and Extraordinary Threat

The law provides the President with the power to block assets during the pendency of an investigation where there is an unusual and extraordinary threat. OFAC has discretionary authority to block assets when there is such a threat. After taking no action for sixteen months against Plaintiff, OFAC contends they are still investigating. Plaintiff says with the exiled president of Liberia, Charles Taylor, in prison, a newly elected president of Liberia and no illegal cutting of timber, there is no need for further investigation or blocking the assets of Plaintiff. There is no unusual and extraordinary threat to the country concerning Liberia.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare unlawful Defendants' naming of Chichakli as a specially designated national ("SDN").
2. Order Defendants to remove Chichakli's name as a specially designated national.
3. Unblock the seizure of Chichakli's assets that resulted from such designation.
4. Award Plaintiff fees and costs pursuant to 28 U.S.C. § 2412.
5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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