

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

UNITED STATES OF AMERICA

Case No. 1:03-mj-666

-v-

Grand Rapids, Michigan

August 4, 2004

JANET MAVIS MARCUSSE,

1:31 p.m.

Defendant.
_____ /

CONTINUED DETENTION HEARING and PRELIMINARY HEARING
BEFORE THE HONORABLE ELLEN S. CARMODY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: Mr. Thomas J. Gezon
Assistant U.S. Attorney
The Law Building - Fifth Floor
330 Ionia Avenue, NW
Grand Rapids, MI 49503
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In Pro Per: Ms. Janet Mavis Marcusse

As Stand-by Counsel: Mr. Raymond S. Kent
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I N D E X

WITNESSES - PLAINTIFF:

PAGE

None

WITNESSES - DEFENDANT:

None

EXHIBITS

RECEIVED

None

1 Grand Rapids, Michigan

2 Wednesday, August 4, 2004 - 1:31 p.m.

3 THE CLERK: The Court calls the case of United States
4 of America versus Janet Mavis Marcusse, case number 1:03-mj-666.

5 THE COURT: Good afternoon. Would counsel please put
6 your appearance on the record.

7 MR. GEZON: Good afternoon, your Honor. Thomas Gezon
8 for the United States. Together with me is Agent James Flink
9 with the Internal Revenue Service, and Agent Sam Moore with the
10 FBI.

11 THE COURT: Good afternoon.

12 MR. KENT: Good afternoon, your Honor. Ray Kent as
13 stand-by counsel for Ms. Marcusse.

14 THE COURT: And, Ms. Marcusse is here as well,
15 correct?

16 MR. KENT: Yes, your Honor.

17 THE COURT: Ms. Marcusse, I believe you had a couple
18 of witnesses that you wanted to call at this continued
19 preliminary hearing and detention hearing.

20 I'll note for the record that the hearing was
21 continued at Ms. Marcusse's request because the witnesses were
22 not available or were not present when we concluded the
23 proceedings the last time we had a hearing.

24 Are you prepared to call your witnesses, Ms.
25 Marcusse?

1 THE DEFENDANT: I demand at this time to read my writ
2 into the record.

3 THE COURT: Ms. Marcusse --

4 THE DEFENDANT: I demand Ellen S. Carmody to produce
5 or surety bonded constitutionally prescribed oath of office --

6 THE COURT: Would the marshals take her out and we'll
7 reconvene in a half an hour.

8 THE DEFENDANT: -- or affirmation to the United
9 States of America.

10 (At 1:33-2:00 p.m., proceedings recessed.)

11 THE COURT: Ms. Marcusse, I told you I would address
12 your writ today and I will, I always do what I say I'm going to
13 do, but I will do it after your continued hearing.

14 I will not shout over you; I will not be interrupted
15 by you. If you have to go up and down the elevator all day today
16 that's my job and that's what we'll do. But you need to
17 understand that you do not run this courtroom.

18 So are you prepared to present your witnesses?

19 THE DEFENDANT: I object. Is it not true you're not
20 a constitutionally prescribed judge of the United States of
21 America and is that not a political question?

22 THE COURT: I take it that that is an answer "no,"
23 you are not prepared to call any witnesses right now.

24 THE DEFENDANT: For the record I demand an answer to
25 these objections before this matter can proceed.

1 THE COURT: Okay. I'm going to rule on this
2 preliminary hearing and the detention issue because it appears
3 that Ms. Marcusse does not want to put on any evidence. The
4 record should reflect that this hearing was continued for the
5 purpose of allowing her to call witnesses.

6 And let me hear from you, Mr. Gezon, in terms of your
7 argument on the preliminary hearing and the detention hearing.

8 MR. GEZON: Thank you, your Honor. The defendant is
9 charged in a complaint warrant with two crimes, mail fraud and
10 money laundering. The elements of mail fraud are a person who
11 participated in or devised a scheme to defraud by use --

12 THE DEFENDANT: I object.

13 THE COURT: You don't get to object to his argument.
14 He can argue as he pleases as you may when it's your turn so your
15 objection is overruled

16 THE DEFENDANT: Is it not true that Government
17 Exhibit No. 7 date stamped August 26, 2002 --

18 THE COURT: You know what, I would like the marshals
19 to remove her and to continue the hearing without her.

20 THE DEFENDANT: -- prove Samuel Moore committed
21 perjury in his affidavit of 12/5/03 on Claim 18 by stating,
22 "Since July 1, 2002, Marcusse has not maintained contact with
23 investors."

24 THE COURT: We're going to continue the hearing
25 without you, Ms. Marcusse. If you ever want to rejoin us you can

1 let the marshals know that you're prepared to follow the rules.

2 All right, Mr. Gezon, let me hear from you.

3 MR. GEZON: Thank you, your Honor. The elements of
4 mail fraud are the devising of a scheme to defraud and in
5 furtherance thereof mailing or using United States mails to
6 deliver something in connection with furthering that crime.

7 The elements of money laundering are using a
8 financial transaction, in this case the writing of a check, the
9 checks being the checks to the victims purported to be the
10 profits which is a financial instrument, using the interstate
11 banking facilities to accomplish that, and as we've heard
12 testimony these checks were drawn on a United States bank.

13 And that the financial transaction was a transaction
14 which used the proceeds of an illegal activity, in this case,
15 it's the fraud, the underlying fraud, so the checks represent the
16 proceeds of an unlawful activity.

17 And, lastly, the financial transaction was done with
18 intent to promote or carry on the particular specified unlawful
19 activity; that is, the mail fraud scheme in this case.

20 It is the position of the government that we've
21 established that Ms. Marcusse ran was typically referred to as a
22 Ponzi investment scheme representing that she had access to
23 financial vehicles which could produce high yield profits. And,
24 most importantly I think, representing to the victims that while
25 this was going on their underlying principal would be secure,

1 kept safely in a CD type instrument.

2 We were able to determine, of course, that this was
3 not so; that, in fact, she simply used the investors' own money
4 to make it look like they were earning huge profits, monthly
5 profits, which perpetuated this and led to a word of mouth
6 activity which ever increased the number of victims, so the
7 monthly checks were getting to be to hundreds and hundreds of
8 victims until the money ran out.

9 The evidence also shows that the other portion of the
10 money was spent for basically anything that the associates of Ms.
11 Marcusse wanted to use it for, living expenses, to purchase
12 expensive items, certainly nothing to protect the investors.

13 And that the last portion of it was spent in places
14 that are untraceable but certainly not placed in any kind of
15 international monetary investment organization of any legitimacy.

16 Therefore, a scheme to defraud has been made out
17 together with mailings in furtherance of it.

18 Also, the United States international banking system
19 was used, financial transactions were used in the specified
20 unlawful activity proceeds to promote and carry on this thing.
21 So both the crime of money laundering and mail fraud have been
22 made out.

23 The evidence shows that Ms. Marcusse was not just a
24 member of this organization but the leader of this organization.
25 It was her conception. She was in charge of it we've heard from

1 the employees, from the investors to whom it was represented she
2 was the head person.

3 We take a look at the newsletters which she's
4 produced which made representations of security and financial
5 activities which gave a sense of lulling to the victims that
6 everything was going fine and she was keeping her promises when,
7 in fact, the purse was getting smaller and smaller until some
8 time in 2001 the whole scheme had to collapse.

9 But even after that, even to this day we see that Ms.
10 Marcusse wants to represent or pretend that, in fact, she was
11 doing something legitimate with the investors' money.

12 So I think the government has made out probable cause
13 to believe that Ms. Marcusse has done the crime she's charged
14 with here and the Court has sufficient evidence to hold her for
15 further proceedings in this case according to the Rules of
16 Evidence or of procedure.

17 THE COURT: All right. Thank you.

18 Mr. Kent, I would certainly like to hear from you but
19 I don't think I have the authority to do that. Let me ask you
20 one question. Has Ms. Marcusse given you any indication that
21 she's changed her mind about accepting you as court-appointed
22 counsel?

23 MR. KENT: No, your Honor.

24 THE COURT: All right. Thank you, sir.

25 Did you want to address the detention issue as well?

1 MR. GEZON: Certainly, your Honor.

2 The factors to be considered for detention are listed
3 in Title 18 Section 3142, the factors being pretty typical things
4 such as the nature and circumstances of the offense and the
5 weight of the evidence.

6 I would suggest the evidence in this case even at
7 this stage is overwhelming that the defendant cheated a large
8 number of people out of millions of dollars of their funds. The
9 evidence is overwhelming and, furthermore, what's more alarming
10 is the defendant apparently still has no remorse whatsoever, no
11 recognition of her culpability in this matter which makes her a
12 bad bond risk.

13 We notice that she was arrested living with a friend.
14 By way of a proffer, your Honor, I had FBI Agent Sam Moore make
15 contact with the FBI agent who arrested her to check to see with
16 the post office down there to see if she was registered at this
17 address; that is, if she was receiving mail, and she was not, of
18 course.

19 This was a home of a friend. She was living down
20 there temporarily. She was not registered at the post office.
21 She has no residence or real estate now that we know of. She has
22 no family ties, no permanent residence of any kind.

23 She, over the course of this last two years, lost
24 contact and left her ex-employees, her own attorney, the
25 investors, and her ex-associates without letting them know where

1 she could be found.

2 Certainly that contradicts any suggestion that she
3 was the operator of some successful large international
4 organization.

5 We have also the fact that in the previous court
6 hearings, the Weavers' lawsuit, the pleadings that I've given the
7 Court indicate that they had to get an order to show cause for
8 her to appear for failing to show up at a debtor's examination.
9 And she had a bench warrant issued by Kent County court. The
10 Exhibits 33, 34 and 35 show that.

11 In the Ottawa County case which she started against
12 the Bosses claiming that they had embezzled some million or two
13 million dollars out of the organization, she eventually lost
14 contact with her own lawyer. Mr. Sullivan filed a pleading with
15 the Court in that case saying he no longer had contact with his
16 client, couldn't get hold of her and that case had to be
17 abandoned. That's Exhibits 36 and 37.

18 And we have the history of the federal show cause
19 hearing in which she refused to appear. She even sent a letter
20 later to Judge Scoville saying that she wasn't going to and,
21 quite frankly, filing many, many pleadings which are basically
22 silliness, nothing which anyone would give any confidence in her
23 understanding of what the importance of the court appearance are.

24 It just seems that she was living a lie over the last
25 few years in this investment scheme and she's still living the

1 deception in her own mind.

2 There's a lot of money unaccounted for and she does
3 travel internationally which raises great concerns that she would
4 have the wherewithal to flee and even leave the country.

5 THE COURT: All right. Thank you.

6 I do find that there's probable cause to support the
7 allegations in the complaint. Specifically I refer to the
8 testimony of Mr. Weaver -- I believe his first name is Bruce --
9 that it was represented to him that there was a very safe and
10 profitable program he could invest in and that he did, in fact,
11 invest in that, and that he was sent -- I think it was he -- one
12 of the witnesses, I think it was Mr. Weaver; maybe it was Mr.
13 Beemer -- testified to having received newsletters which were, in
14 fact, contained false information.

15 Ms. Marcusse, as the head person or leader or
16 executive of this organization, had either actual or constructive
17 notice of those false statements. I find that they were false
18 because the money was not invested in safe investments.

19 I believe it was Mr. Flink who talked about that
20 there were 19 separate bank accounts used. Other of the
21 investors have testified that they did receive some dividend
22 checks or returns. I find that the use of those bank accounts
23 and the use of those checks to further what I believe there's
24 probable cause to believe was a fraudulent scheme would satisfy
25 the money laundering aspect of it.

1 And the scheme to defraud, it was -- we listened to
2 evidence by various witnesses that there were seminars held that
3 there were representations made that the investors would receive
4 checks. They never did receive the checks. It's clear that more
5 than one person was involved in this scheme, and certainly Ms.
6 Marcusse was involved in it.

7 There are also statements returned to various of the
8 investors which were false in the sense that they made it appear
9 that the investors would receive their money back or an amount
10 requested back which, as I recall, never occurred.

11 And just by way of example, this proposal in
12 Missouri, I think it was for a theme park with casinos, was
13 clearly not the type of investment that the investors had -- that
14 was represented by Ms. Marcusse and others that their money would
15 be invested in.

16 And the fact that the Bosses may have embezzled from
17 the company, as I see it, has nothing to do with whether Ms.
18 Marcusse engaged in a scheme to defraud and in money laundering.
19 I can see those two as distinct. And so I do find probable cause
20 and bind her over for further proceedings.

21 Now, in terms of the detention issue, I do find that
22 she should be detained pursuant to 3142. She has -- the weight
23 of the evidence against her, I believe, is strong. In terms of
24 her character she obviously has no respect for the Court and no
25 respect for the investors, and as far as I can tell no respect

1 for anyone but herself.

2 She has no residence. She has no family ties here.
3 She has been elusive at best. And she has failed to show up for
4 a hearing. She failed to show up for a federal show cause
5 hearing, and she has engaged in international travel in the past,
6 and I have no reason in the world to believe that she would
7 appear at any further proceedings if she is set free.

8 So for those reasons I am going to detain her.

9 I've been advised that the United States Marshals
10 have set up a TV so that Ms. Marcusse can watch these
11 proceedings. She has requested to return. I'm not going to
12 allow her to. She's disrupted this court enough today, and fails
13 to understand that it is not her podium.

14 So I am going to address the writ of mandamus, as I
15 told her I would. The writ of mandamus is ill-conceived. A writ
16 of mandamus is an extraordinary writ to be issued from one court
17 to another court when there is a claim that you have an absolute
18 right to relief and that the other court has disregarded that
19 right.

20 And I'm quoting from First Federal Savings -v- James
21 A. Baker, that's a Fourth Circuit case, 1988.

22 There have to be three elements that exist. The
23 petitioner has to show a clear right to the relief sought. Ms.
24 Marcusse provides no authority for any of the requests that she's
25 made so I don't find that she's shown a clear right.

1 The respondent, which I assume would be me, would
2 have a duty to do a particular act required by the petitioner. I
3 find that there's been no showing that I have the duty to do any
4 of the things that Ms. Marcusse has requested.

5 And, finally, there has to be no other adequate
6 remedy available. In this case I notice that she demands me that
7 I produce my oath of office. That is a public record and she can
8 get that from the clerk of the court.

9 She demands that I produce all my financial records.
10 I do that once a year on the Committee on Financial Disclosures
11 and I believe that is published by Aston Publishing. So she can
12 get that herself.

13 She wants me to fire Mr. Kent but as I believe she
14 requested on the record that Mr. Kent remain on as her stand-by
15 attorney. He is no longer her attorney of record so that is
16 moot.

17 "Is not the hearing on pretrial detention a political
18 question?" No, it is not. Ms. Marcusse misunderstands the
19 nature of the political question doctrine which is an issue of
20 justice ability which has no applicability to this case.

21 So, I find that for those things to which she has any
22 entitlement there is an adequate remedy available, and the writ
23 of mandamus I would basically be ordering myself to do something
24 that I wrongful didn't do. So it's simply not an appropriate
25 procedural vehicle and so the writ is denied or the request for

1 the writ is denied.

2 Anything further, Mr. Gezon?

3 MR. GEZON: May we withdraw the exhibits, your Honor?

4 THE COURT: Yes.

5 MR. GEZON: Thank you.

6 THE COURT: Mr. Kent, anything you'd like to say?

7 MR. KENT: Your Honor, would the marshals return Ms.
8 Marcusse's legal documents to her?

9 THE COURT: Yes. And, Mr. Kent, I thank you for your
10 involvement and I hope you will continue to talk to Ms. Marcusse
11 about the peril of the circumstances and the wisdom of accepting
12 somebody as court-appointed counsel.

13 MR. KENT: I will, your Honor.

14 THE COURT: All right. Anything further?

15 MR. GEZON: No, thank you.

16 MR. KENT: No, your Honor.

17 THE COURT: All right. This matter is adjourned.

18 (At 2:20 p.m., proceedings adjourned.)

19 - - - - -

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

January 4, 2005

Patricia R. Pritchard /S/
Patricia R. Pritchard, CER 3752