

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 08-302 (PAM/FLN)

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 v.)
)
 MICHAEL CATAIN,)
)
 Defendant.)

**GOVERNMENT'S MOTION FOR
REVOCATION OF ORDER OF RELEASE**

The United States of America, by and through its attorneys, Frank J. Magill, Jr., United States Attorney for the District of Minnesota, and Timothy C. Rank, Assistant United States Attorney, hereby moves the district court pursuant to Title 18, United States Code, Sections 3143 and 3148 for revocation of the October 8, 2008, Order Setting Conditions of Release of the defendant, Michael Catain.

The government makes this motion based on the following:

The Order Setting Conditions of Catain's Pretrial release requires that Catain "not commit any offense in violation of federal, state or local law while on release in this case."

On October 14, 2008, the United States District Court, the Honorable Ann D. Montgomery, issued an Order of Preliminary Injunction, Appointment of Receiver, and Other Equitable Relief, in United States v. Thomas Joseph Petters, et al., 08-CV-5348 (ADM/JSM). In that order the Court ordered that all assets of the defendants, including those of Michael Catain, be deemed property of the Receivership established in that case. Among other things,

the Order froze Catain's assets, required Catain to disclose all assets to the Receiver, and precluded Catain from transferring, disbursing or otherwise disposing of funds and assets.

One of Catain's assets covered by the October 14 order was a car wash previously owned and operated by Catain, the Bay Car Wash. The Receiver authorized Catain to continue managing the car wash while the Receiver attempted to sell it, but he was specifically advised that all profits of the car wash were an asset of the Receivership.

On January 2, 2009, an investigator for the Receiver obtained the cash register receipts from the car wash and compared them to the bank deposits. He discovered that from at least November 18, 2008 through January 2, 2009, Catain had been skimming cash from the car wash which he withheld from the Receiver. A comparison of the cash register receipts with the bank deposits indicates that from November 18, 2008 through January 2, 2009, Catain skimmed approximately \$14,000 in cash from the car wash. This cash was the property of the Receivership. (See January 22, 2009 Special Report of the Receiver, attached hereto as Exhibit A.) Catain's actions directly violated Judge Montgomery's October 14, 2008, Order, and were therefore in violation of federal law. Catain, through counsel, has admitted the violation.

Under Title 18, Section 3148, a defendant's release on bond may be revoked and the defendant detained where the defendant

violates a condition of release. 18 U.S.C. § 3148 (b) (1). Although the Court must find that there are no conditions of release which will assure the defendant will not flee or pose a danger to the community, 18 U.S.C. § 3148(b) (2), the burden should be on the defendant in the post-conviction context. 18 U.S.C. § 3143; see United States v. Welsand, 993 F.3d 1366, 1367 (8th Cir. 1993).

The defendant clearly violated Judge Magnuson's release order by his intentional misapplication of funds belonging to the Receivership. The United States respectfully requests that the Court revoke the defendant's presentence release.

January 23, 2009

FRANK J. MAGILL, JR.
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