

IRS, DOJ slapdown: one small step for the fourth amendment

David, meet Goliath. Incredibly enough, a small-town Maryland dairy farmer and his wife just won their legal claim against the Internal Revenue Service and Department of Justice and will now be able to recoup tens of thousands of dollars seized in what turned out to be an unconstitutional application of civil asset forfeiture.

What's more, the win could prove a chip in the whole block of forfeiture laws, also known in constitutional circles as the Devil of the Fourth Amendment and by property and business owners as government-sanctioned theft.

That's because civil asset forfeiture laws, as overseen and implemented by the Department of Justice and the U.S. Marshals Service, with some help from the IRS, allow government entities to seize properties – including cash, cars, computers and a host of other items beginning with the letter A and running through the letter Z – from those who have not been convicted of any crime. In some cases, like in that of the Maryland dairy farmers, Randy and Karen Sowers, the targets of seizures don't even have to be formally accused of any crime.

It's a profitable business, this government taking, In 2015 alone, the Department of Justice oversaw the collection of more than \$1.6 billion from the 50 states participating in the civil asset forfeiture "equitable sharing" program that then disburses funds back to localities.

The Sowers were just another statistic caught in the government's civil asset forfeiture ring.

For years, the couple operated South Mountain Creamery in Middletown, selling eggs, milk and other dairy products at local farmers' markets, in mostly cash transactions that poked the interest of the IRS. In 2012, the agency seized tens of thousands of dollars from the couple's bank account, saying

they had purposely deposited money in amounts less than \$10,000 to avoid tripping the banking reporting requirements – a practice known as “restructuring” and one that feds say is commonly used by criminals to dodge taxes and prosecutions for illegal business ventures.

But as Forbes pointed out in a recent article: “Randy and Karen were never charged with structuring (or any other crime).”

With civil asset forfeiture, the absence of criminal behavior is not a defense. Cash seized, the Sowers faced the dismal prospect of fighting in court to prove their innocence, or forfeiting \$29,500 to the feds – so they chose the payoff, Option B. Then in 2014, the IRS changed its policy and said restructuring laws, the frequent precursor to civil asset forfeitures, could only be applied to actual criminals – ostensibly, no longer to those who simply deposited the wrong amounts of cash in the bank from milk and ice cream sales. Good news for the Sowers; they sued, and the Institute for Justice that handled their case won.

In a letter, the Department of Justice wrote “the forfeiture in this matter is being mitigated in the full amount forfeited of \$29,500,” and advised the Sowers to contact the IRS Asset Forfeiture Coordinator for payment. What a win – and now, the Institute for Justice is predicting the victory could “set a precedent that should make it possible for hundreds of other property owners in similar cases to get their money back as well.”

Great. But before cheering, consider this: The U.S. Marshals Service says it’s currently managing \$3.1 billion worth of assets seized under the forfeiture program. That translates into 17,564 individual pieces of property or sums of seized cash, according to the agency’s own website. In 2015, roughly \$365 million of seized assets were shared with state and local law enforcement. And since 1985, a total of \$7.4 billion of seized properties have been shared with participating agencies. The point?

The Sowers' win is tremendous. The chance for the Sowers' case to set a precedent that will lead to the return of wrongfully seized properties for hundreds of other families is terrific. But that's just a dent. Anything less than what the Fourth Amendment promises – that the “right of the people to be secure in ththeir persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probably cause” is an unconstitutional taking. A handful of wins does not an intact Fourth Amendment make.

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