

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK A. ELLISON,

Defendant.

Case No. 1:13-cr-00091-BLW

**MEMORANDUM DECISION AND
ORDER**

INTRODUCTION

Before the Court is a claim from James Henshaw for decedent Marion Henshaw's remaining restitution from *USA v. Ellison, et. al.* For the reasons that follow, the Court will grant James Henshaw's request.

BACKGROUND

On April 14, 2014, the Jury returned a guilty verdict against Defendant Mark A. Ellison on 44 counts of securities fraud. (Dkt. 502, 816.) A judgment of conviction was entered on August 25, 2014, finding Ellison guilty on counts 4 – 13, 36- 45, 49-52, 56, 62, 67, 72 – 80, and 82 – 89 of the Superseding Indictment. (Dkt. 21, 724.) In addition to a term of imprisonment and supervised release, the Court ordered Ellison to pay \$32,158,501.00 in restitution. Nov. 17, 2024, Restitution Order. (Dkt. 816.) As of February 15, 2024, Ellison still owed \$28,197,133.65 in restitution. (Dkt. 1054.)

The Court is tasked with distributing restitution payments deposited with the Court to the victims. Unfortunately, since the 2014 judgment, many of the victims entitled to restitution passed away and left unclaimed funds in possession of the Court. As a result, the Clerk of the Court sent notice to individuals with a potential interest in the unclaimed funds. In response, claimant James Henshaw submitted a request to have the unclaimed restitution payments related to decedent Marion Henshaw released to him. In support of his request, James Henshaw submitted the following documents: (1) a victim affidavit; (2) Summit County, Ohio Probate Letters of Authority appointing James Henshaw as the fiduciary with authority to administer Marion Henshaw's estate; (3) a copy of Marion Henshaw's certificate of death; and, (4) copies of the certificates of death for Marion Henshaw's spouse, Patricia Henshaw, and daughter, Ann Henshaw Ferreri.

LEGAL STANDARD

Although money paid to federal courts generally must be deposited with the Treasury, courts are also allowed to deliver funds to their rightful owners. *See* 28 U.S.C. § 2041. Indeed, “[a]ny claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.” 28 U.S.C. § 2042. However, this means the claimant “bears the burden of affirmatively establishing his entitlement to the funds[.]” *In re Pena*, 974 F.3d 934, 940 (9th Cir. 2020); *see also Hansen v. United States*, 340 F.2d 142, 144 (8th Cir. 1965) (“the burden is upon the claimant to show his right to the fund.”).

ANALYSIS

James Henshaw has provided sufficient evidence to show he is entitled to receive Marion Henshaw's remaining restitution. Marion Henshaw's certificate of death shows that he passed away on July 4, 2015, as a resident of Ohio. According to the Probate Court of Summit County, Ohio, Marion Henshaw was survived by his spouse, Patricia Henshaw, and his children, James Henshaw and Ann Henshaw Ferrari. Death certificates show that Patricia Henshaw passed away on January 11, 2022, and Anne Henshaw Ferrari passed away on April 4, 2018. According to the documents submitted, Marion Henshaw has no other surviving next of kin or other devisees. The Probate Court of Summit County, Ohio appointed James Henshaw as Executor of Marion Henshaw's estate on September 11, 2015.

Under Ohio law, an executor is tasked with administering the decedent's estate which naturally includes taking possession of the estate's property in anticipation for administration. *In re Nagle's Est.*, 40 Ohio App. 2d 40, 41, 317 N.E.2d 242, 243 (Ohio Ct. App. 1974); Ohio Rev. Code Ann. § 2113.05. The Will therefore entitles James Henshaw, as executor, to receive Marion Henshaw's restitution and distribute it in accordance with Marion Henshaw's estate plan.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED:

- 1) James Henshaw's request for Marion Henshaw's unclaimed restitution payments from *USA v. Ellison, et. al.*, is **GRANTED**.
- 2) The Clerk of the Court shall release the funds to James Henshaw to be disposed of in accordance with Marion Henshaw's will.



DATED: October 22, 2024

A handwritten signature in black ink, reading "B. Lynn Winmill". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

B. Lynn Winmill
U.S. District Court Judge