UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

HANS BODMER,

Defendant.

ORDER

03 CR 947 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

By Opinion & Order dated July 9, 2004, I dismissed Count One of the Indictment, and denied Bodmer's motion to dismiss Count Two. Bodmer now moves for partial reconsideration, again seeking dismissal of Count Two. For the following reasons, Bodmer's motion is denied, and the Government need not submit opposition papers.

"The standard to be applied in deciding reconsideration motions in criminal cases has not been clearly established. Neither the Federal Rules of Criminal Procedure nor the Local Criminal Rules expressly provide for reconsideration motions." *United States v. Mottley*, No. 03 Cr. 303, 2003 WL 22083420, at *1 (S.D.N.Y. Sept. 9, 2003). However, other judges in this district have applied the Local Rule 6.3 standard. *See id.*; *United States v. Greenfield*, No. 01 Cr. 401, 2001 WL 1230538, at *1 (S.D.N.Y. Oct. 16, 2001) (applying Local Rule 6.3 standard "[g]iven the parties' positions, and the interests of justice");

United States v. Kurtz, No. 98 Cr. 733, 1999 WL 349374, at *6 (S.D.N.Y. May 28, 1999) ("A motion to reconsider will not be granted unless the movant demonstrates that the court has overlooked controlling law or material facts."). Accordingly, the Court will apply the Local Rule 6.3 standard.

Pursuant to Local Rule 6.3, reconsideration is appropriate where a court overlooks "controlling decisions or factual matters that were put before it on the underlying motion . . . and which, had they been considered, might have reasonably altered the result before the court." *Range Road Music, Inc. v. Music Sales Corp.*, 90 F. Supp. 2d 390, 392 (S.D.N.Y. 2000) (internal quotation marks and citation omitted); *see also Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995) ("The standard for granting . . . a motion [for reconsideration] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked -- matters, in other words, that might reasonably be expected to alter the conclusion reached by the court."); *Kurtz*, 1999 WL 349374, at *6 (denying motion to reconsider because the defendant failed to show that the court overlooked controlling facts or law); Local Rule 6.3 is "narrowly construed and strictly applied so as to avoid repetitive arguments on issues that have been considered fully by the Court." *Dellefave v. Access Temps., Inc.*, No. 99 Civ. 6098, 2001 WL 286771, at *1 (S.D.N.Y. Mar. 22,

2001); *see also Mottley*, 2003 WL 22083420, at *1 (denying motion for reconsideration because "[d]efendant's argument for reconsideration is nothing more than a restatement of the arguments laid out in his Reply memorandum."); *Carolco Pictures, Inc. v. Sirota*, 700 F. Supp. 169, 170 (S.D.N.Y. 1988) (purpose of Local Rule 6.3 is to "ensure the finality of decisions and to prevent the practice of a losing party examining a decision and then plugging the gaps of a lost motion with additional matters").

With this standard of review in mind, Bodmer's motion for reconsideration is denied. Bodmer points to no facts or law that the Court overlooked in reaching its conclusion, and instead simply reiterates the arguments that the Court already considered and rejected in the July 9, 2004 Opinion & Order. To the extent Bodmer now seeks dismissal of Count Two pursuant to the rule of lenity, which is not permitted under Rule 6.3, his argument is unavailing.

The rule of lenity applies only where a court finds that a criminal statute is ambiguous, or that a defendant lacked notice that his conduct was subject to criminal sanction. *See Liparota v. United States*, 471 U.S. 419, 427 (1985) (The rule of lenity "ensures that criminal statutes will provide fair warning concerning conduct rendered illegal and strikes the appropriate balance between the legislature, the prosecutor, and the court in defining criminal liability."); *United*

States v. Plaza Health Labs., Inc., 3 F.3d 643, 649 (2d Cir. 1993). It is well-settled that the money laundering statute criminalizes the transportation of monetary instruments in *promotion* of unlawful activity, not the underlying unlawful activity itself. *See* 18 U.S.C. § 1956(a)(2)(A). The language of the statute makes clear that one need not be guilty of the underlying unlawful activity, or even subject to criminal penalty for that conduct, in order to be guilty of laundering money in furtherance of the underlying activity. Thus, Count Two does not implicate the rule of lenity because there is no ambiguity in the money laundering statute, and Bodmer had sufficient notice that his purported conduct could give rise to criminal sanctions.

The motion for reconsideration is denied, and the Clerk of the Court is directed to close this motion.

SO ORDERED:

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
July 20, 2004

-Appearances-

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