

SUPREME COURT OF NOVA SCOTIA

Citation: Nova Scotia (Civil Forfeiture) v. McNamara, 2013 NSSC 129

Date: 20130425

Docket: Hfx No. 407611

Registry: Halifax

Between:

Manager of Civil Forfeiture

Plaintiff

v.

Gerald McNamara

Defendant

Judge: The Honourable Justice Michael J. Wood

Heard: January 10, 2013 (in Chambers), in Halifax, Nova Scotia

**Final Written
Submissions:** February 25, 2013

Written Decision: April 25, 2013

Counsel: Terry D. Potter, for the Applicant
No one appeared for the Defendant

By the Court:

[1] This is one of four proceedings under the *Civil Forfeiture Act*, SNS 2007, c. 27, (“the Act”) which came before me in Chambers on January 10, 2013. In this matter, the Manager of Civil Forfeiture is seeking an order with respect to cash in the amount of \$2,494.41, which was seized by the Halifax Regional Police on April 30, 2010. The motion was made on an *ex parte* basis for default judgment and issuance of a forfeiture order since the defendant did not file a defence within the required time period.

[2] In a companion decision (*Manager of Civil Forfeiture v. Allen*, 2013 NSSC 109), I reviewed the general principles applicable to civil forfeiture in Nova Scotia. This decision will be limited to the application of those principles to the evidence filed on behalf of the Manager.

EVIDENCE ON THE MOTION

[3] In addition to an affidavit of Henry Sample confirming notice provided to the defendant, the Manager filed an affidavit of Lee Cooke, a police officer employed by the Halifax Regional Police.

[4] Officer Cooke’s affidavit contained the following information:

- He is a police officer with six years experience, most of which was spent in the Uniacke Square area of Halifax. He says he is familiar with persons who reside in and frequent that community, as well as the use and selling of drugs in that area.
- He describes the events of April 30, 2010, when he observed an exchange between the defendant, McNamara and another individual which lasted a few seconds. Mr. McNamara had appeared after the other individual made several short cell phone calls.
- Shortly after the exchange, the other individual was arrested and found to be in possession of crack cocaine and marihuana. Mr.

McNamara was also arrested and found to be in possession of \$2,494.41.

- Mr. McNamara has a criminal record, which includes possession for the purpose of trafficking and trafficking, contrary to the *Controlled Drugs and Substances Act*. These convictions were for events that occurred in December, 2007, October, 2008, July, 2011 and June, 2012.
- In December, 2008, Mr. McNamara was sentenced to eighteen months custody for the December, 2007 incident. At the same time, he received a consecutive sentence of twelve months incarceration for the October, 2008 incident.

CONCLUSION AND DISPOSITION

[5] In order to succeed on this motion, the Manager must establish on the balance of probabilities that the money seized from Mr. McNamara was the proceeds of unlawful activity. In this case, it is alleged that the money was generated by the sale of drugs.

[6] I am satisfied that the Manager has met the necessary burden of proof and that a forfeiture order should be granted pursuant to s. 7(1) of the *Act*. I do not believe that there are any circumstances which would justify exercising the discretionary powers to provide relief from forfeiture found in s. 8 of the *Act*.

[7] There are two primary reasons for my decision to grant the forfeiture order. The first is Mr. McNamara's criminal record for drug offences, both before and after the events of April 30, 2010. Although I do not have any information concerning his release date from custody following the sentences imposed in December, 2008, I believe it is reasonable to assume that it would have been relatively close to the date of the incident.

[8] The other reason for my decision is the evidence of Officer Cooke that he observed an exchange involving Mr. McNamara and that the other participant had

possession of cocaine and marihuana upon his arrest shortly thereafter and Mr. McNamara had a large amount of cash.

Wood, J.