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Forfeiture Target Calls it 'a Violation of Civil Rights'

By Daniel Finney

Carole Hinders was having breakfast with her grandchildren in May 2013 when two Internal Revenue Service agents knocked on the door of her Spirit Lake home.

The agents told Hinders they had seized her checking account and the \$32,820.56 in it. They accused her of structuring her deposits to be less than \$10,000 to avoid filing required government reports — a scheme used by drug dealers, terrorists and other criminals to move money without detection.

Hinders explained she owned a Mexican restaurant in Arnolds Park called Mrs. Lady's. The business was cash or check only, no credit or debit cards.

But the IRS seized her money anyway. And now, she's become the everyday face of what some argue is a gross abuse of power by federal agencies.

Federal law makes deliberate structuring illegal. But Hinders was not being charged with structuring or any other crime. In fact, the agents emphasized she wasn't being accused of a crime. The IRS came to her home simply to tell her it had seized her money.

She told the agents she made deposits almost daily because she didn't want to have thousands of dollars in cash on hand. The agents handed Hinders paperwork. She was stunned. As they left her home, she vowed to fight.

"I'm going to get my money back," Hinders told the agents.

"You can try," she remembers one of them saying.

"This happens far more than people realize"

More than a year and a half later, Hinders, now 67, is still fighting. And her voice is getting louder.

The **Institute for Justice**, a nonprofit Arlington, Va., law firm that fights for individual rights, has taken Hinders' case without charge to her.

Hinders' predicament gained national notoriety after the *New York Times* published a story that featured her last weekend. Since then, her story has been trending on social media, driven largely by people outraged that the government has the power to seize money and property without what they see as due process.

The issue of civil forfeiture has become a growing concern nationwide. *The Washington Post*, *New Yorker* magazine and other news media have reported on seizures similar to Hinders' case. Since Sept. 11, 2001, the federal government has used civil forfeiture to seize some \$2.5 billion in cash and property from people never charged with a crime, according to a *New York Times* investigation.

"This happens far more than people realize, and most people give up their money because they can't afford the representation they need to fight," said Larry Salzman, the Institute for Justice attorney representing Hinders. "The civil forfeiture laws are harsh and allow the government to treat ordinary citizens like serious criminals without ever charging them with a crime or giving them a day in court."

An official for the IRS declined to speak to the Register about Hinders' case, citing federal disclosure laws. The agency responded with a general statement noting that intentional structuring of deposits to avoid reporting requirements is a felony, regardless of whether the money comes from a legal source.

However, the statement also indicated a change in approach. The agency has conducted a review of structuring cases, the statement said, and now "will focus its limited resources on cases where evidence indicates that the structured funds are derived from illegal sources."

Family faced struggles before fateful IRS visit

Hinders started Mrs. Lady's with her late mother 38 years ago — or, as they measure things in the Okoboji area, "38 summers ago," she said.

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Hinders liked to cook, and her mother handled the finances. The Iowa lake community didn't have many Mexican restaurants in the late 1970s.

"We had kind of our own niche back then," Hinders recalls.

The restaurant operated on small margins, but it made enough for Hinders to raise her two children, a son and daughter, both of whom worked at Mrs. Lady's through the years. More Mexican restaurants came, and competition stiffened in recent years, shrinking profits. Still, Mrs. Lady's remained an institution.

"People in this area know Mrs. Lady's," said Sue Richter, who fended off Hinders' bruising power strokes when they played tennis together years ago.

The summer of 2013 was already shaping up to be a struggle for Hinders. Her eldest son, Josh, lives with a progressive form of multiple sclerosis and was beginning to lose the use of his legs. Josh Hinders handled the restaurant's financial side, ordered supplies and took care of paying vendors and the restaurant's 15 employees.

After the family learned of Josh Hinders' health struggles, Carole Hinders started to think about closing the restaurant and retiring. Her son would need her help. She had some savings. Maybe it was time.

Then the IRS came knocking.

Evidence: 37 deposits from \$5,000 to \$9,500

The federal case that involves Carole Hinders' money is titled "*United States of America vs. Thirty-Two Thousand Eight Hundred Fifty-Six Cents From Mrs. Lady's Inc. Bank Account.*"

In practical terms, because Hinders has not been charged with a crime, the crime is charged against the money. The court case calls the money "defendant property" and alleges it came from illegal structuring by Hinders, making it subject to civil forfeiture.

"But they still haven't charged me with anything," Hinders said. "If I'm guilty of something, lock me up. They're just taking my money."

The case is summed up by a sworn affidavit written by Christopher Adkins, an Iowa Division of Criminal Investigation agent assigned to an IRS task force. The document states the IRS monitored Hinders' bank account between April 2012 and February 2013. During that time, investigators observed 55 transactions, 37 of which were deposits between \$5,000 and \$9,500.

"The pattern of cash transaction activity above, currency transactions in consistently large amounts

below the reporting requirements, support a reasonable belief that the person doing the transactions, herself or someone on her behalf, structured the cash transactions into Mrs. Lady's, Inc. (bank account) to avoid the preparation and submission of CTRs (currency transaction reports)," Adkins wrote.

In short, Hinders deposited money less than \$10,000 too often for investigators' liking.

To win the case, the government must prove Hinders intentionally broke deposits into smaller amounts to avoid reporting rules. Hinders maintains she did not, but won't be able to plead her case to a jury until the middle of 2015.

Even if she wins the case, Salzman, Hinders' attorney, said she won't be compensated for lost interest or the costs of other money she borrowed to keep Mrs. Lady's open.

"It's a violation of civil rights," said Angela Campbell, who teaches federal criminal law at the Drake University Law School. "You can fight, but the problem is it is such a pain and so expensive to go after your own money that most people just reach a settlement to give up a portion of their own money to get some of it back. It's lose-lose."

Seizure left restaurateur scrambling to pay bills

The cash seizure caused immediate troubles for Hinders and her restaurant. Fortunately, the money was taken shortly before Memorial Day weekend in 2013 — the unofficial beginning of summer. It was a good weekend for business. It had to be.

"I was able to take the money we made that weekend to pay my people and my vendors," Hinders said. "We just broke even."

After that, she had to scramble. She used credit cards. She took out a second mortgage on her home. She borrowed money from her son.

"I was almost ashamed to even ask," she said.

Hinders kept Mrs. Lady's afloat for another summer. But soon, the restaurant will close. She has sold it and the building. She'll be out of business for good by the middle of November.

Part of the reason she closed was her son's health. Still, losing nearly \$33,000 of operating money didn't help. Hinders is adamant about having her day in court.

Sue Richter, Hinders' tennis partner, believes her power-serving friend will prevail.

"What's right is right," Richter said. "It's a David and Goliath story, but as we all know, David won."