

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

NANCY R. MALEK and
FARROKH MALEK,

Defendant.

ORDER

06-cr-118-jcs

This case is before the court on defendant Farrokh Malek's motion to view the presentence report and financial affidavit filed by his co-defendant Nancy Malek. In Judge Shabaz's absence for medical leave, I am handling the motion.

Defendant wishes to review the portions of Nancy Malek's presentence report in which the probation office listed Nancy Malek's financial assets and evaluated her economic circumstances and Nancy Malek's own affidavit, containing a complete listing of all assets owned or controlled by her as of the date on which she was arrested. As the basis for the motion, defendant says that both he and Nancy Malek are the subjects of a contention by the government that they engaged in fraudulent transfers to conceal assets and to avoid the

restitution order imposed on them by the court.

Both the government and defendant Nancy Malek oppose the motion. Nancy Malek argues that Farrokh Malek has not shown that disclosure is “absolutely essential to effective presentation of a defense and therefore required in the interests of justice.” United States v. Cyphers, 553 F.2d 1064, 1069 (7th Cir. 1977). She adds, however, that she would not object if the court undertook an *in camera* review of the report to determine whether a disclosure limited to financial information would be appropriate.

The government opposes the motion on the ground that defendant Farrokh Malek has not told the court what particular financial information he believes may be contained in the presentence report or financial affidavit or why the information might assist him in preparing a defense to any fraudulent transfer action. It adds that defendant has access to Nancy Malek’s financial information through other sources. He has access to the financial records they created while they were married; the financial disclosure article she provided at the time of their divorce in 2005; and any real estate transfers, because those would be public records.

ORDER

In the absence of any compelling reason why the normal confidentiality of the presentence reports should not be preserved in this case, defendant Farrokh Malek’s motion

for disclosure is DENIED.

Entered this 5th day of September, 2008.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge