IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No.5:04-CV-209-H(2)

FILED
DEC 21 2004

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER AND JUDGMENT**
	)	
FRANK D. PERKINSON,	)	
	)	
Defendant.	)	

This action comes before the court upon the entry of default judgment on September 21, 2004, and the plaintiff's motion for entry of judgment against the defendant under Federal Rule of Civil Procedure 55(b)(2), supported by a memorandum of law and a declaration demonstrating that the defendant is neither an infant, an incompetent person, nor in the military. In addition, defendant Frank D. Perkinson has moved to set aside the default judgment and for leave to file an answer.

In regard to defendant Perkinson's motion, this court is unpersuaded. Defendant had a sufficient opportunity to file an answer and was accorded full and fair notice of the action. His original pleading, being "rambling" and "non-responsive" (Order of September 15, 2004), was stricken by Magistrate Judge David W. Daniel. Magistrate Judge Daniel entered default, noting that Rule 55 does not grant discretion to the court regarding a default judgment.

If the defendant fails to file a timely response, default judgment "shall" be the result. Fed. R. Civ. P. 55.

Accordingly, defendant Perkinson's motion to set aside default judgment and for leave to file an answer is DENIED. Judgment is hereby entered in favor of the plaintiff, the United States of America, and against the defendant, Frank D. Perkinson.

The court finds that defendant engaged in conduct subject to penalty under 26 U.S.C. §§ 6700 & 6701, and that injunctive relief is appropriate under 26 U.S.C. § 7408 to prevent the defendant, and any business or entity through which he operates, and anyone acting in concert with him, from engaging in further such conduct. The court further finds that Perkinson engaged in conduct that interferes with the enforcement of the federal internal revenue laws, and that injunctive relief is appropriate pursuant to the court's inherent equity powers and 26 U.S.C. § 7402(a) to prevent the recurrence of that conduct.

Based on the foregoing and the record in this case, and for good cause shown, it is HEREBY ORDERED that defendant Frank D. Perkinson, individually and through his websites, including www.freedomcommittee.com/5755/5755, and as any other entity, and his representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with him, are ENJOINED from the following:

(1) Organizing, promoting, marketing, or selling any abusive tax shelter, plan, or arrangement that advises or encourages taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities, including the corporation sole and claim of right programs;

(2) Making false statements about the securing of any tax benefit by reason of participating in his programs, including the false statement that compensation for labor or personal services is nontaxable;

(3) Encouraging, instructing, advising, and assisting others to violate the tax laws, including to evade the payment of taxes;

(4) Engaging in conduct subject to penalty under 26 U.S.C. § 6700, i.e., by making or furnishing, in connection with the organization or sale of an abusive tax shelter, plan, or arrangement, a statement that the defendant knows or has reason to know to be false or fraudulent as to any material matter;

(5) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, i.e., preparing or assisting in the preparation of any tax forms or other documents to be used in connection with any material matter arising under the internal revenue laws and which the defendant knows will, if so used, result in the understatement of tax liability;

(6) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws by the Internal Revenue Service.

Further, it is HEREBY ORDERED that defendant Perkinson provide to the United States his complete customer list identifying the persons who have purchased, either directly from him or from his associates, distributors, or related entities, his unlawful tax plans, arrangements, or programs, including the corporation sole and claim of right programs, and shall file with the court within 20 days of this date a certification that he has done so.

Further, it is HEREBY ORDERED that Perkinson provide a copy of this permanent injunction order by first class mail, or by e-mail, if an address is unknown, to all individuals who have previously purchased his abusive tax shelters, plans, arrangements or programs, including the corporation sole and claim of right programs. Within 20 days of this date, he shall file with this court a certification that he has done so. Defendant Perkinson shall bear the costs of providing the copy of the permanent injunction order to his customers.

Further, it is HEREBY ORDERED that Perkinson shall remove from his websites, including www.freedomcommittee.com/5755/5777, all abusive tax scheme promotional materials, false commercial speech, and materials designed to incite others imminently to violate the law, including tax laws; to display prominently on the first page of

those websites a complete copy of this permanent injunction order, and shall file within 20 days of this date certification that he has done so. Perkinson is to maintain the purged websites, with the permanent injunction order prominently displayed, for a period of one year from the date of this order, and shall bear the costs associated with posting this order and maintaining the websites during this period.

Further, it is HEREBY ORDERED that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction order.

Finally, it is HEREBY ORDERED that this court shall retain jurisdiction over this action for purposes of implementing and enforcing the permanent injunction order and any additional orders necessary and appropriate to the public interest.

This 16th day of December, 2004.

MALCOLM J. HOWARD
United States District Judge

At Greenville, NC
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