United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Virginia M. Kendall	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	06 C 7157	**DATE**	5/11/2007
CASE TITLE	United States of America vs. Neal A. Reddy, et al.		

DOCKET ENTRY TEXT

For the reason stated below, Defendants' oral motion to stay enforcement of the preliminary injunction pending appeal is denied.

■[For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

On May 10, 2007, this Court held a status hearing to advise the parties that it had granted the government's Motion for Preliminary Injunction. At the conclusion of that status hearing, Defendants advised the Court that they intended to appeal this Court's Order granting the government's Motion for Preliminary Injunction and orally moved to stay enforcement of the preliminary injunction pending the results of their interlocutory appeal. The Court allowed Defendants until the end of the day on May 10, 2007 to present to the Court any authority standing for the proposition that the oral Motion to Stay should be granted. Defendants have not provided the Court with any such authority. Accordingly, and for the reasons stated herein, Defendants oral Motion to Stay Enforcement of the Preliminary Injunction Pending Appeal is DENIED.

"[A] district court may not grant a stay pending appeal without first considering whether the movant has shown the following: 'that it has a significant probability of success on the merits; that it will face irreparable harm absent a stay; and that a stay will not injure the opposing party and will be in the public interest." *Certain Underwriters at Lloyd's, London v. Argonaut Ins. Co.*, No. 04 C 5852, 2006 U.S. Dist. LEXIS 87257, *7 (N.D. Ill. Nov. 29, 2006) (citing *Hinrichs v. Bosma*, 440 F.3d 393, 396 (7th Cir. 2006).

<u>Probability of Success on the Merits</u>

In this case, Defendants orally advised the Court that they intend to argue on appeal that this Court did not apply the correct standard when deciding the government's Motion for Preliminary Injunction. Defendants have argued in this Court that the government's Motion for Preliminary Injunction should have been decided under the traditional preliminary injunction standard. In the Seventh Circuit, a party seeking a preliminary injunction must ordinarily make a clear showing that "(1) [it has] a reasonable likelihood of success on the merits; (2) no adequate remedy at law exists; (3) [it] will suffer irreparable harm which, absent injunctive relief, outweighs the irreparable harm the respondent will suffer if the injunction is granted; and (4) the injunction will not harm the public interest." *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 870 (7th Cir. 2006) (quoting *Goodman v. Illinois Dep't of Fin. & Prof'l Regulation*, 430 F.3d 432, 437 (7th Cir. 2005). However, in cases such as this one, involving an injunction that is expressly authorized by statute, the Seventh Circuit has held that the traditional test does not apply. *See United States v. Kaun*,827 F.2d 1144, 1148 (7th Cir. 1987) (reviewing issuance of injunction under 26 U.S.C. § 7408 and noting that "[i]n an action for a statutory injunction, once a violation has been demonstrated, the moving party need only show that there is a reasonable likelihood of future

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violations in order to obtain relief."). In deciding the government's Motion for Preliminary Injunction, this Court applied the standard articulated in *Kaun*. Accordingly, this Court does not find that Defendants have demonstrated a significant probability of success on the merits of their appeal.

Likelihood of Irreparable Harm to Defendants Absent a Stay

Defendants and their business may suffer irreparable harm should Defendants' clients receive the notification required by the injunction, which notification will advise Defendants' clients that this Court has, after holding an evidentiary hearing, found that Defendants have prepared numerous fraudulent tax returns. As tax return preparation represents approximately 70 - 80% of the Reddys' income, immediate enforcement of the preliminary injunction may have a significant impact upon their household income. However, while the notification required by the Preliminary Injunction may drive off some of the Reddys' clients, this Court is mindful of the fact that Defendants do not have a right to continue to operate a tax return preparation service whose business model appears to be to profit by defrauding the Internal Revenue Service.

The Potential that a Stay will Injure the Government

A stay would probably not cause the government any substantial harm. The evidence indicates that Royanne Reddy does approximately 90% of her return preparation during the traditional tax season and prior to the mid-April filing deadline. As such, Defendants will not be in a position to begin preparing large volumes of new returns until January of 2008, by which time an appeal of this Court's decision to enter the Preliminary Injunction may already have been resolved. Further, the government has known about Defendant's activities for years; the IRS's undercover investigation was conducted in 2003 and the 72 audits comprising the government's additional evidence of violations of the Internal Revenue Code committed by Defendants were completed two years ago. Accordingly, the government is not in a position to argue that it will suffer substantial injury absent *immediate* enforcement of the preliminary injunction.

The Public Interest

The public has a strong interest in immediate enforcement of the injunction. To the extent the Reddys have, by filing fraudulent returns, deprived the IRS of more than $10 million in tax revenues, immediate enforcement of the injunction may set in motion events – such as the filing of amended returns – that should lead to the recovery of at least some of those revenues. All taxpayers, indeed, all citizens, benefit when the IRS is able to collect revenues that have been fraudulently withheld. And that portion of the public that is comprised of clients of the Reddys has an even stronger interest in immediate enforcement – some of the Reddys clients may not be aware that they have filed fraudulent returns. By acting sooner rather than later to file amended returns, they might be able to avoid paying some portion of any interest and/or penalties the IRS may assess.

On balance, this Court finds that a stay is not appropriate in this case. The Defendants have not demonstrated any significant probability of success on the merits of their appeal. Nor have they demonstrated that a stay is in the public interest; to the contrary, the public has a strong interest in preventing the Defendants from continuing to prepare fraudulent federal income tax returns. Defendants may argue that they will suffer irreparable harm to their business absent a stay, but defendants have no right to continue to profit by defrauding the IRS. Accordingly, the Defendants Motion to Stay Enforcement of the Preliminary Injunction Pending Appeal is DENIED.