IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 4:04cv00427JCH
	)	
ANTHONY JOHN BORRELLI, individually and d/b/a STALLION ENTERPRISES	)	
	)	
Defendant.	)	

PERMANENT INJUNCTION

THIS CAUSE is before the Court on the request of the United States of America, for a permanent injunction. The Court, having considered the United States' motion for default judgment makes the following findings of fact and conclusions of law and issues the following order of permanent injunction:

FINDINGS OF FACT

A. Nature of the Complaint

1. This is a civil action pursuant to 28 U.S.C. §§ 1340 and 1345, and Internal Revenue Code (I.R.C.) §§ 7402, 7407, and 7408 to enjoin defendant Anthony J. Borrelli, d/b/a Stallion Enterprises, from:

a. Engaging in conduct subject to penalty under I.R.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position;

b. Engaging in conduct subject to penalty under I.R.C. § 6695, including failing to sign returns prepared by him, failing to furnish his tax-identification number as required by I.R.C. § 6109(a)(4), and failing to provide his customer list to the Internal Revenue Service (IRS) upon request pursuant to section 6107(b);

c. Misrepresenting his qualifications and eligibility to practice before the IRS and his experience or education as an income-tax-return preparer;

d. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation of false tax returns and/or representation of customers in front of the IRS;

e. Preparing or assisting in the preparation of any federal-income-tax return for any other person or entity;

f. Providing any tax advice or services for compensation, including providing consultative services or purported representation of customers;

g. Engaging in conduct subject to penalty under I.R.C. § 6701, including preparing and/or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that he knows will result in an understatement of tax liability; and

h. Instructing or advising taxpayers to understate their federal-income-tax liabilities.

B. Jurisdiction

2. This action has been requested by the Acting Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of the Attorney General of the United States, pursuant to the provisions of I.R.C. §§ 7402, 7407, and 7408.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and I.R.C. §§ 7402(a), 7407, and 7408.

4. Venue is proper in the United States District Court for the Eastern District of Missouri pursuant to 28 U.S.C. § 1391.

C. Defendants

5. Anthony J. Borrelli resides at 85 Lost Dutchman Drive, St. Peters, MO 63376. Borrelli operates Stallion Enterprises, an unincorporated business, from his residence.

D. Borrelli's Fraudulent Tax Preparation Scheme

6. Borrelli, doing business as Stallion Enterprises, has prepared fraudulent federal-income-tax returns, Forms 1040 and 1040X, for customers since at least 1995.

7. Borrelli guarantees his customers large tax refunds if they agree to have him prepare their federal-income-tax returns.

8. Borrelli achieves the promised refunds by fraudulently offsetting his customers' taxable income with fictitious or inflated deductions. Examples of fraudulent deductions taken by Borrelli's customers include but are not limited to:

a. Fictitious or inflated charitable contributions;

b. Fictitious or inflated business deductions (for customers who have a sole proprietorship reported on a Schedule C);

c. Fictitious or inflated unreimbursed employee business expenses;

d. Fictitious or inflated education credits;

e. Fictitious or inflated rental deductions (for customers who have rental income reportable on a Schedule E);

f. Fictitious or inflated medical expenses;

g. Fictitious or inflated "miscellaneous" deductions;

h. Fictitious or inflated casualty loss deductions; and

i. Fictitious or inflated Forms 4797 deductions (for losses from sale of business property).

9. On November 14, 2002 Borrelli was indicted in the Eastern District of Missouri on

twenty-five counts of filing false tax returns, under I.R.C. § 7206(b).

10. On February 2, 2004 Borrelli pled guilty to two counts of willfully aiding and assisting in, or procuring, counseling, and advising in, the preparation and presentation to the Internal Revenue Service of original and amended individual income tax returns, Form 1040 and 1040X, which were false and fraudulent as to material matters.

11. Borrelli continued to prepare false and fraudulent federal-income-tax returns after he was indicted under I.R.C. § 7206(b).

E. Borrelli's other Fraudulent or Deceptive Conduct

12. Borrelli has illegally failed to keep, and turn over to the IRS upon request, his customer lists or copies of prepared returns.

13. Borrelli has failed to sign tax returns he prepares for customers.

14. Borrelli has failed to place his tax-identification number on tax returns he prepares for customers.

15. Borrelli has misrepresented to his customers his education and his qualifications to represent them before the IRS. Borrelli has falsely told customers that he has extensive training in the preparation of tax returns, that the IRS calls him to "do" amended tax returns, and that if customers were to be audited, he might be the auditor because he works with the IRS.

16. Borrelli has illegally attempted to impede the proper administration of the tax laws. Borrelli files fraudulent tax returns with the IRS, refuses to turn over his client lists or client returns as he is required to do pursuant to I.R.C. § 6107(b), and continued to prepare returns while falsely stating to the IRS that he has not prepared tax returns since 1997.

F. Borrelli's Knowledge of the Illegality of his Conduct

17. Borrelli knows or should know that his conduct is illegal.

18. Borrelli fails to provide his customers with Form 1040 Schedules he files on their behalf. Borrelli does this because he fears his customers will realize that their returns are fraudulent.

19. Borrelli claims to be an expert in tax law and to have extensive training in the preparation of tax returns; therefore he knows or should know that return preparers cannot create deductions with no legal or factual basis.

20. Borrelli owns reference materials stating what deductions can and cannot be taken, therefore he knows or should know that a return preparer cannot create deductions with no legal basis.

21. Borrelli has been preparing federal-income-tax returns for individuals since at least 1995, therefore he should be knowledgeable concerning tax law.

G. Harm to the United States

22. Borrelli prepared 188 federal income tax returns for customers for the 2000 through 2002 tax years, and an unknown number of returns for the 2003 tax year.

23. While the IRS has only begun to audit the 2000 through 2002 Borrelli-prepared returns, the IRS has determined the following:

a. 186 of 188 returns (99%) claimed a refund or zero balance;

b. The average refund claimed was $3,503. This is 70% of the average withholding and payments contained on the 188 returns;

c. 167 of the 188 returns (89%) contain questionable deductions or credits; and

d. All 167 questionable returns contain deductions or credits similar to the 1994 through 1996 Borrelli-prepared returns, many of which the IRS has determined to be fraudulent.

24. The IRS determined that the understated tax liability from 251 Borrelli-prepared federal-income-tax returns (Forms 1040 and 1040X), from the 1994 through 1996 tax years, to be approximately $965,346, or $3,846 per return. Based on the similarity of the 2000 through 20002 Borrelli-prepared returns to the 1994-1996 Borrelli-prepared returns, the understated tax liability for Borrelli-prepared 2000 through 2002 federal-income-tax returns will likely be at least $642,282 (167 x $3,846). Some of these liabilities will never be recovered.

CONCLUSIONS OF LAW

A. An Injunction is Warranted under I.R.C. § 7408

25. Section 7408 of the Internal Revenue Code (26 U.S.C.) (I.R.C.) authorizes a court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. § 6701 from engaging in further such conduct if the injunctive relief is appropriate to prevent recurrence.

26. I.R.C. § 6701 requires the United States to show:

a. defendants aided or assisted in, procured, or advised with respect to the preparation or presentation of any portion of a return, affidavit, claim, or other document; and

b. knew (or had reason to believe) that such portion would be used in connection with any material matter arising under the internal revenue laws; and

c. knew that such portion (if so used) would result in an understatement of the liability for tax of another person.

27. Borrelli engaged in conduct subject to penalty under section 6701. Borrelli has prepared federal-income-tax returns that he knows will result in the understatement of another person's federal-income-tax liabilities.

28. Borrelli placed fraudulent deductions on his customers' tax returns. Examples of

fraudulent deductions taken by Borrelli include: fictitious or inflated charitable contributions; fictitious or inflated business deductions; fictitious or inflated unreimbursed employee business expenses; fictitious or inflated education credits; fictitious or inflated rental deductions; fictitious or inflated medical expenses; fictitious or inflated "miscellaneous" deductions; fictitious or inflated casualty loss deductions; and fictitious or inflated Forms 4797 deductions (for losses from sale of business property).

29. Borrelli knows or should know that the fraudulent deductions he takes will be used in connection with a material matter, the determination of his customers' tax liability.

30. Borrelli knows that placing fraudulent deductions on his customers' federal-income-tax returns is illegal. As a self proclaimed tax expert and tax return preparer Borrelli knows that he cannot simply create deductions out of thin air.

31. Borrelli will not cease preparing fraudulent federal-income-tax returns unless enjoined. Borrelli stated to the IRS that he had not prepared a federal-income-tax return since 1997, but he continued to prepare returns even after he was indicted in 2002 for violating I.R.C. § 7206; filing false federal-income-tax returns.

B. An Injunction is Warranted under I.R.C. § 7407

32. Section 7407 authorizes a court to enjoin a person from acting as an income-tax-return preparer if that person has:

> (1) engaged in conduct subject to penalty under I.R.C. § 6694, which penalizes a return preparer who knowingly prepares or submits a return that contains an unrealistic position;
>
> (2) engaged in conduct subject to penalty under 26 U.S.C. § 6695, which penalizes a return preparer who willfully fails to sign a return when required, who fails to furnish an identifying number as required, or who fails to turn over to the IRS, upon request, a customer list or customer returns;

(3) engaged in conduct subject to criminal penalty under the Internal Revenue Code;

(4) misrepresented his experience or education as an income-tax-return preparer; or

(5) guaranteed the payment of any tax refund or the allowance of any tax credit;

if the Court finds that injunctive relief is appropriate to prevent recurrence of such conduct and the Court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of the federal tax laws.

33. An injunction enjoining Borrelli from acting as a tax return preparer is appropriate.

34. Borrelli has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing returns and claims for refund based on frivolous and fraudulent deductions. Borrelli knew the positions he asserted on income tax returns were frivolous and unrealistic.

35. Borrelli has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6695 by failing to keep, and turn over to the IRS upon request, a customer list or copies of customer returns as is required by I.R.C. § 6107(b).

36. Borrelli has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6695 by failing to sign returns he prepares for others as is required by section 6109(a)(4).

37. Borrelli has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6695 by failing to place his tax-identification number on tax returns he prepares for others.

38. Borrelli has continually and repeatedly guaranteed the payment of tax refunds.

39. Borrelli, by filing false tax returns in violation of section 7206, has engaged in conduct subject to criminal penalty under the Internal Revenue Code;

40. Borrelli has misrepresented his education and experience as an income-tax-return preparer by claiming to be an expert in tax law and by claiming to work with the IRS.

41. Borrelli has engaged in fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

42. A narrower injunction, prohibiting only specific enumerated conducted would not prevent Borrelli's interference with the administration of the tax laws. Section 7407 lists various enjoinable areas of conduct. Borrelli conduct fits within all areas listed. Due to Borrelli's egregious conduct, a narrower injunction would not be appropriate.

C. An Injunction under I.R.C. § 7402 is Warranted

43. Borrelli had engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

44. Borrelli has prepared federal-income-tax returns for others that contain fraudulent deductions. These returns have caused the United States Treasury to issue erroneous refunds. Further, the IRS has been forced to expend some of its limited resources to detect and audit fraudulent Borrelli-prepared returns. These resources are now not available to service honest tax paying Americans.

45. Borrelli has failed to sign fraudulent tax returns he prepares. Borrelli has done this in an effort to evade detection by the IRS.

46. Borrelli has refused to turn over to the IRS a customer list or copies of customer returns in violation of section 6107(b). Borrelli's failure to comply with section 6107 has

shielded his customers from IRS detection.

47. Borrelli has guaranteed his customers refunds. Borrelli has also misrepresented his education and experience as a tax return preparer. By guaranteeing refunds and misrepresenting his experience and education Borrelli has misled his customers as to the legality of his conduct.

48. The conduct described above is sufficient to determine that Borrelli has engaged in conduct that substantially interferes with the enforcement and administration of the internal revenue laws and that an injunction under section 7402 is appropriate.

D. Appropriateness of Injunctive Relief

49. Unless enjoined by the Court, Borrelli is likely to continue to engage in the conduct described above. Borrelli stated to the IRS that he had not prepared a tax return since 1997, yet it has been determined that Borrelli continued preparing returns even after his indictment for filing false tax returns in 2002. Borrelli's own conduct has shown that he will not cease his conduct unless ordered to by the Court.

50. Borrelli's conduct, as described above, has caused irreparable harm to the United States for which the United States has no adequate remedy at law. Specifically, Borrelli's conduct is causing and will continue to cause substantial revenue losses to the United States Treasury, some of which may never be recovered, thus resulting in a permanent loss. Unless Borrelli is enjoined, the IRS will have to devote some limited resources to detecting and auditing future fraudulent Borelli-prepared returns, thereby reducing the level of service that the IRS can give honest taxpayers.

51. Borrelli's conduct, as described above, has caused harm to his customers. His customers are at risk for fines, penalties, and interest, in addition to their tax liabilities. Some

customers may be at risk for criminal prosecution.

IT IS ACCORDINGLY ORDERED THAT:

ORDER OF PERMANENT INJUNCTION

Defendant Anthony John Borrelli is enjoined and prohibited, individually and through any entity, from directly or indirectly:

A. Further engaging in any conduct subject to penalty under I.R.C. § 6694, *i.e.*, preparing any part of a return or claim for refund that includes an unrealistic position;

B. Engaging in activity subject to penalty under I.R.C. § 6701, including advising with respect to, preparing, or assisting in the preparation of a document related to a material matter under the internal revenue laws that includes a position he knows will result in an understatement of tax liability;

C. Engaging in conduct subject to penalty under I.R.C. § 6695, including failing to keep a customer list and/or customer returns and to provide them to the IRS upon request;

D. Engaging in conduct subject to penalty under I.R.C. § 6695, including failing to sign and place his tax-identification number on all tax returns he prepares;

E. Misrepresenting his qualifications and eligibility to practice before the IRS and his experience or education as an income-tax-return preparer;

F. Guaranteeing refunds to customers;

G. Engaging in any other activity subject to penalty under I.R.C. §§ 6701, 6694, and 6695;

H. Engaging in any conduct that substantially interferes with the administration and enforcement of the internal revenue laws;

I. Preparing or assisting in the preparation of any federal-income-tax returns for any other person for compensation;

J. Providing any tax advice or services for compensation, including providing consultative services or purported representation of customers.

Further, pursuant to I.R.C. §§ 7402 and 7407, the Court ORDERS that Borrelli provide a complete list of persons for whom he has prepared federal-income-tax returns, from January 1, 2000 through the present, including names, addresses, phone numbers, e-mail addresses, and social security numbers or employer identification numbers, to counsel for the United States within eleven days of the date of this Order. Borrelli must file a sworn certificate of compliance stating that he has complied with this portion of the Order within eleven days of the date of this Order.

Futher, pursuant to I.R.C. § 7402, the Court ORDERS that Borrelli must contact, in writing, all persons for whom he has prepared federal-income-tax returns or any other federal tax forms from January 1, 2000 through the present and inform those persons of the entry of the Court's findings concerning the falsity of his representations, the falsity of the tax returns prepared on their behalf, the possibility of the imposition of penalties against them, the possibility that the United States may seek to collect any additional federal income taxes, penalties, and interest which they may owe, and the entry of the permanent injunction against him. Borrelli must attach a copy of the permanent injunction to the writing. Borrelli will certify to the Court that this has been done within 30 days of the entry of this order. Borrelli will serve the Court and the United States of America with copies of the writing described in this paragraph 15 days before the writing is scheduled to be mailed. The United States may challenge the

contents of the writing within 7 days of receipt of the writing.

Further, to monitor Defendants' compliance with this Order, the Government may engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure.

This Court shall retain jurisdiction of this action for the purpose of implementing and enforcing this Final Judgment and all additional decrees and orders necessary and appropriate to the public interest.

Dated: June 17, 2004

JEAN C. HAMILTON
United States District Judge

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