

FILED
DISTRICT COURT
DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

2005 MAY 13 A 11:04

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
JOHN BAPTIST KOTMAIR, JR., d/b/a)
SAVE-A-PATRIOT FELLOWSHIP and)
NATIONAL WORKERS RIGHTS)
COMMITTEE; and SAVE-A-PATRIOT)
FELLOWSHIP, an unincorporated association,)
)
Defendants.)

CLERK OF COURT
AT BALTIMORE
BY _____ DEPUTY

Civil No.

WMN 05 CV 1 297

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, the United States of America, complains as follows against defendants John Baptist Kotmair, Jr., doing business as Save-A-Patriot Fellowship (SAPF) and National Workers Rights Committee (NWRC), and SAPF, an unincorporated association:

1. This action has been requested by a delegate of the Secretary of the Treasury and commenced at the direction of a delegate of the Attorney General pursuant to Internal Revenue Code (I.R.C.) (26 U.S.C.) §§ 7402(a) and 7408.
2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a) and 7408.
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Kotmair resides within this judicial district at 2911 Groves Mill Road in Westminster, Maryland and because SAPF's office is within this judicial district at 12 Carroll Street, also in Westminster.

Defendants' Activities

4. Doing business as SAPF and NWRC, Kotmair organizes and sells tax-fraud schemes designed to assist customers in evading their federal tax liabilities and interfering with the administration of the internal revenue laws.

5. SAPF, an unincorporated association, also organizes and sells tax-fraud schemes designed to assist customers in evading their federal tax liabilities and interfering with the administration of the internal revenue laws.

6. Kotmair describes himself as the “fiduciary” and founder of SAPF.

7. Defendants employ a staff, whom they refer to as paralegals and caseworkers, that assist them in organizing and selling tax-fraud schemes.

8. Defendants market their tax-fraud schemes through the websites www.save-a-patriot.org, www.taxfreedom101.com, and www.taxtruth4u.com and through their newsletters *The Tax Freedom 101 Report* and *Reasonable Action*.

9. Defendants offer two categories of membership in SAPF: associate membership, for which they charge an initial fee of \$99 and an annual renewal fee of \$99, and full membership, for which they charge an initial fee of \$697 and an annual renewal fee of \$99.

10. Both associate and full members receive a subscription to the *Reasonable Action* newsletter and have access to the SAPF staff, who defendants advertise will answer the members' tax questions.

11. Both associate and full members are covered by the “Member Assistance Program,” also known as the “Victory Express,” which provides financial incentives for members to violate the internal revenue laws.

12. Defendants describe the Member Assistance Program/Victory Express as giving members “insurance-like protection” against IRS levies and seizures and against criminal convictions for tax crimes. Defendants promise that the Member Assistance Program/Victory Express will pay members “above and beyond” the value of property seized by the IRS and will pay the beneficiaries of members convicted for tax crimes \$25,000 per year while the member is incarcerated.

13. For an additional \$35 per year, SAPF members can join the “Patriot Defense Fund,” which also provides financial incentives for them to violate federal tax laws.

14. Defendants promise that the Patriot Defense Fund will pay participating members up to \$10,000 for the litigation costs of a criminal tax trial and \$5,000 per appeal if the member is convicted.

15. Through the Member Assistance Program/Victory Express and Patriot Defense Fund, defendants encourage others to violate the internal revenue laws.

16. Defendants sell SAPF members an “Affidavit of Revocation and Rescission,” which consists of letters to the Secretary of the United States Treasury purporting to revoke the member’s application for a Social Security number.

17. For members who give Kotmair power of attorney over their tax matters, Kotmair and SAPF staffers working at his direction respond to IRS notices of deficiency, liens, levies, and seizures, and other correspondence with letters making frivolous arguments about the internal revenue laws and indicating a refusal to cooperate with the IRS. Defendants charge an additional \$38 to \$48 per letter.

18. Kotmair and SAPF staffers working at his direction file frivolous Freedom of Information Act (FOIA) requests on behalf of members.

19. Kotmair (who is not an attorney) and SAPF staffers working at his direction (who also are not attorneys) offer to prepare bankruptcy petitions for members in order to help them stay IRS collection actions.

20. Kotmair and SAPF staffers working at his direction also offer to prepare other court filings for members to use to obstruct IRS collection efforts.

21. Through NWRC, advertised as a division of SAPF, defendants prepare documents for members that they claim will prevent the member's employer from withholding federal taxes from the member's wages.

22. For prices ranging from \$5 to \$210, defendants sell videotapes, audiotapes, and books that contain false commercial speech promoting their schemes and directing and inciting customers to violate the internal revenue laws.

23. For \$295, defendants sell a "Home-Study Program," consisting of their videotapes, audiotapes, and books. They falsely advertise that the Home-Study Program teaches how "thousands of Americans have stopped filing returns 100% lawfully with no fear of reprisal from the IRS."

24. For an additional \$100, customers of defendants' Home-Study Program become participants in the "Home-Business Opportunity," a multi-level marketing scheme in which the customer sells defendants' videotapes, audiotapes, and books to others for a commission.

25. In promoting their tax-fraud schemes, defendants make the following false and fraudulent statements about the federal income tax laws and the tax advantages of their schemes:

- “The tax on wages has absolutely nothing to do with the tax on income”
- “The ‘income tax’ . . . is an ‘indirect’ tax in the form of an ‘excise’ imposed on certain ‘activities’ or ‘occupations’”
- “Taxable income . . . is limited to certain income that has been ‘earned’ while living and working in certain ‘foreign’ countries or territories.”
- The “wage tax . . . may . . . be considered mandatory, but only for the payor of the wages (the employer) and even then, only if both the employer and the employee have voluntarily agreed (via application) to participate in the entitlement program. . . . [N]either can be compelled to participate.”
- SAPF members can “lawfully stop the withholding of income and employment taxes in the work place.”
- “tens of thousands of your fellow Americans already QUIT social security - 100% legally”
- “American Citizens and permanent resident aliens, living and working within the States of the Union ARE NOT SUBJECT to the filing of an IRS Form 1040 and ARE NOT LIABLE for the payment of a tax on ‘income.’”
- “the Internal Revenue Code is limited in application. It cannot (per constitutional restriction) . . . does not . . . and never has been . . . applied against the United States citizen who is living and working within the 50 states of the union. That individual is neither the subject nor the object of the tax – and neither is his income.”

26. Defendants know or have reason to know that their statements regarding the internal revenue laws are false. Courts have repeatedly rejected their arguments and other similar arguments as frivolous. Additionally, in 1981 Kotmair was convicted of willful failure to file 1975 and 1976 federal income tax returns. Kotmair is also aware that his son, Edward Kotmair, was convicted in 1999 on three counts of failure to file federal income tax returns under I.R.C. § 7203.

Count I
Injunction under I.R.C. § 7408
for Violation of I.R.C. §§ 6700 and 6701

27. The United States incorporates by reference the allegations in paragraphs 1-26.

28. I.R.C. § 7408 authorizes a district court to enjoin any person from, *inter alia*, engaging in conduct subject to penalty under I.R.C. §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

29. Section 6700 penalizes any person who organizes or participates in the sale of a plan or arrangement and, in connection with the organization or sale, makes or furnishes a statement regarding any tax benefit that the person knows or has reason to know is false or fraudulent as to any material matter.

30. Section 6701 penalizes any person who prepares a document that he has reason to believe will be used in connection with any material matter arising under the internal revenue laws and who knows that the document, if so used, would result in an understatement of another person's tax liability.

31. Defendants organize and sell plans that they falsely claim allow their customers legally to stop paying federal taxes and filing federal tax returns.

32. In organizing and selling their plans, defendants make false or fraudulent statements regarding the excludibility of income and the securing of other tax benefits.

33. Defendants know or have reason to know that their promotional materials contain false or fraudulent statements within the meaning of I.R.C. § 6700.

34. Defendants prepare or assist in the preparation of customers' correspondence to the IRS making frivolous arguments about the internal revenue laws and indicating a refusal to cooperate with the IRS.

35. Defendants prepare or assist in preparing bankruptcy and other court filings presenting frivolous arguments about the internal revenue laws.

36. Defendants have reason to believe that the correspondence they prepare will be sent to the IRS and that if the IRS relied on that correspondence it would result in understatements of customers' tax liabilities.

37. Defendants have reason to believe that the bankruptcy and other court filings they prepare will be used in connection with their customers' tax liabilities and that if a court, the IRS, or the United States relied on those filings the filings would result in understatements of the customers' tax liabilities.

38. If they are not enjoined, defendants are likely to continue to organize and sell tax-fraud plans and to assist in preparing documents understating their customers' tax liabilities.

Count II
Injunction under I.R.C. § 7402(a)
and the Appropriateness of Injunctive Relief

39. The United States incorporates by reference the allegations in paragraphs 1-38.

40. I.R.C. § 7402(a) authorizes a court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws.

41. Defendants substantially interfere with the enforcement of the internal revenue laws by promoting tax-fraud plans that they falsely advise customers will permit the customers legally to stop paying federal tax and filing federal tax returns.

42. Defendants substantially interfere with the administration of the internal revenue laws by sending frivolous letters and FOIA requests to the IRS on behalf of customers, by preparing frivolous and abusive court filings to obstruct IRS collection actions, and by actively encouraging others, through financial incentives, to violate the internal revenue laws.

43. The United States is irreparably harmed by defendants' tax-fraud plans because customers following their advice fail to pay federal taxes, fail to file federal tax returns, and obstruct IRS examination and collection efforts.

44. The United States is irreparably harmed by defendants' interference with IRS examinations and collection activities because it impedes the IRS's discovery and recovery of unreported and unpaid taxes.

45. Unless defendants are enjoined, the IRS will have to devote substantial time and resources to identify and recover lost revenue from their customers.

46. While the United States will suffer irreparable harm if defendants are not enjoined, defendants will not be harmed by being compelled to obey the law.

47. The public interest will be advanced by enjoining defendants because an injunction will stop their illegal conduct and the harm it is causing.

48. In the absence of an injunction backed by the Court's contempt powers, defendants are likely to continue to obstruct and interfere with the enforcement of the internal revenue laws.

WHEREFORE, plaintiff the United States of America respectfully prays for the following:

A. That the Court find that defendants have engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701 and that injunctive relief under I.R.C. § 7408 is necessary and appropriate to prevent defendants, and any business or entity through which they operate, and anyone acting in concert with them, from further engaging in such conduct or any other conduct subject to penalty under the Internal Revenue Code;

B. That the Court find that defendants have interfered with the enforcement of the internal revenue laws and that injunctive relief pursuant to I.R.C. § 7402(a) and the Court's inherent equity powers is appropriate to prevent them, and any business or entity through which they operate, and anyone acting in concert with them, from further engaging in such conduct;

C. That this Court, pursuant to I.R.C. § 7408, enter a permanent injunction prohibiting defendants, individually and doing business under the names listed in this complaint or under any other name or using any other entity, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

1. Engaging in activity subject to penalty under I.R.C. § 6700, including organizing or participating in the sale of a plan or arrangement and making a statement regarding the securing of any tax benefit that they know or have reason to know is false or fraudulent as to any material matter;

2. Engaging in activity subject to penalty under I.R.C. § 6701, including preparing or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know will, if used, result in an understatement of tax liability;
3. Promoting, marketing, organizing, selling, or receiving payment for any plan or arrangement regarding the securing of any tax benefit that they know or have reason to know is false or fraudulent as to any material matter; and
4. Engaging in any other activity subject to penalty under I.R.C. §§ 6700 or 6701 or any other penalty provision in the Internal Revenue Code;

D. That this Court, pursuant to I.R.C. §§ 7408 and 7402(a), enter a permanent injunction prohibiting defendants, individually and doing business under the names listed in this complaint or under any other name or using any other entity, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, from directly or indirectly:

1. Representing or assisting any other person before the IRS in connection with any matter, including preparing or assisting in the preparation of correspondence to the IRS on behalf of any other person;
2. Preparing or assisting in the preparation of court filings, including bankruptcy petitions, on behalf of any other person;
3. Preparing or assisting in the preparation of FOIA and Privacy Act requests on behalf of any other person;

4. Obstructing or advising or assisting anyone to obstruct IRS examinations, collections, or other IRS proceedings;
5. Advising anyone that they are not required to file federal tax returns or pay federal taxes;
6. Instructing, advising, or assisting anyone to stop the withholding of federal employment taxes from wages;
7. Providing incentives, financial or otherwise, either directly or through the Member Assistance Program, the Victory Express, the Patriot Defense Fund, or any other plan or arrangement, for others to violate the internal revenue laws;
8. Selling or distributing any newsletter, book, manual, videotape, audiotape, or other material containing false commercial speech regarding the internal revenue laws or speech likely to incite others imminently to violate the internal revenue laws;
9. Organizing or selling any document purporting to enable the customer to discontinue payment of federal tax; and
10. Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws;

E. That this Court, pursuant to I.R.C. § 7402(a), order defendants, at their own expense, to notify all SAPF members (both associate and full members) and all individuals who have purchased defendants' tax plans, arrangements, and materials of the permanent injunction against defendants and to provide them with a copy of the permanent injunction against defendants;

F. That this Court, pursuant to I.R.C. § 7402(a), order defendants to produce to counsel for the United States a list identifying by name, address, e-mail address, telephone number, and Social Security number, all SAPF members (both associate and full members) and all persons and entities who have purchased defendants' tax-fraud plans, arrangements, or materials;

G. That this Court, pursuant to I.R.C. § 7402(a), order defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them to remove from defendants' websites and those websites over which they have control all tax-fraud scheme promotional materials, false commercial speech regarding the internal revenue laws, and speech likely to incite others imminently to violate of the internal revenue laws; to display prominently on the first page of those websites a complete copy of the permanent injunction; and to maintain those websites for one year with a complete copy of the Court's permanent injunction so displayed throughout that time;

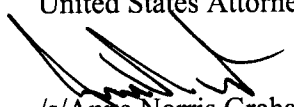
H. That this Court, pursuant to I.R.C. § 7402(a) and the Court's inherent equitable powers, order defendants to complete the requirements of paragraphs E through G, *supra*, within 11 days of the permanent injunction and file a certification of compliance with those requirements within 12 days of the permanent injunction;

I. That this Court permit the United States to conduct post-judgment discovery to ensure defendants' compliance with the permanent injunction; and

J. That this Court grant the United States such other relief, including costs, as is just and equitable.

Respectfully submitted,

ALLEN F. LOUCKS
United States Attorney



/s/Anne Norris Graham

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Anne Norris Graham, U.S. Department of Justice, Tax Division, P.O. Box 7238, Washington, D.C. 20044, Tel. 202-353-4384

DEFENDANTS

John Baptist Kotmair, Jr., d/b/a Safe-a-Patriot Fellowship and National Workers Rights Committee; and Save-a-Patriot Fellowship

County of Residence of First Listed Defendant Carroll County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

BY [Signature] Attorney (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF 1 1 Incorporated or Principal Place of Business In This State
PTF DEF 2 2 Incorporated and Principal Place of Business In Another State
PTF DEF 3 3 Foreign Nation
PTF DEF 4 4
PTF DEF 5 5
PTF DEF 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 26 U.S.C. sections 7402(a) and 7408

Brief description of cause: Complaint for permanent injunction from organization and sale of tax-fraud schemes.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 05/12/2005 SIGNATURE OF ATTORNEY OF RECORD Anne Norris Graham

Digitally signed by Anne Norris Graham DN: cn=Anne Norris Graham, o=U.S. Department of Justice, ou=Tax Division, c=US Date: 2005.05.12 15:06:27 -0400

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE