

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

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ROBERT H. SIMONWELL, CLERK
BY _____ DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
RICHARD A. FUSELIER and)
RICHARD J. ORTT, each)
individually and d/b/a COMPENSATION)
CONSULTANTS,)
)
Defendants.)

CV 04-2432 L-0
Civil Action No.

JUDGE MELANÇON

MAGISTRATE JUDGE HILL

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

The United States of America, plaintiff, for its Complaint states as follows.

Nature of Action

1. The United States brings this complaint to enjoin Richard A. Fuselier and Richard J. Ortt, each individually and doing business as Compensation Consultants or through any other entity, and any other persons in active concert or participation with them, from directly or indirectly:

- (a) Organizing, promoting, marketing, or selling any tax shelter, plan or arrangement that advises or encourages customers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;
- (b) Making false or fraudulent statements about the securing of any tax benefit by the reason of participating in any tax plan or arrangement, including the false statements that individuals can obtain tax freedom by participating in their program and that wages or compensation for labor constitutes nontaxable income;

- (c) Encouraging, instructing, advising and assisting others to violate the tax laws, including to evade the payment of taxes;
- (d) Engaging in conduct subject to penalty under 26 U.S.C. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position;
- (e) Engaging in conduct subject to penalty under 26 U.S.C. § 6695, including failing to furnish their customer list upon request of the Internal Revenue Service;
- (f) 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 a shelter, plan, or arrangement, a statement the defendant knows or has reason to know to be false or fraudulent as to any material matter under the federal tax laws;
- (g) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, *i.e.*, preparing or assisting others 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;
- (h) Providing any tax advice or services for compensation, including preparing or assisting in the preparation of tax returns for any other person or entity, providing consultative services, or representing any persons or entities before the Internal Revenue Service in any manner, either directly or indirectly; and
- (i) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws, including filing frivolous administrative tort claims against the Federal Government or its employees.

2. An injunction is warranted based on the defendants' continuing conduct as promoters of an abusive tax plan and preparers of frivolous income tax returns. If they are not enjoined, the defendants' continuing actions will result in the Internal Revenue Service having to devote scarce resources to pursue and investigate the defendants' customers, who by participation in the defendants' scheme have filed erroneous federal income tax returns and stopped paying the correct amount of federal income taxes. The defendants' actions, if not stopped, may result in penalties and other civil and criminal sanctions being imposed on those customers.

Jurisdiction and Venue

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345, and §§ 7402(a), 7407 and 7408 of the Internal Revenue Code of 1986 (26 U.S.C.; the “Code”).

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

Authorization

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

Defendants

6. Richard A. Fuselier conducts business at 304 La Rue France, Suite 102, Lafayette, Louisiana 70508.

7. Richard J. Ortt conducts business at 304 La Rue France, Suite 102, Lafayette, Louisiana 70508.

Defendants’ Activities

8. The defendants are involved in several tax evasion schemes, including the so-called “claim of right” program, and, more recently, a “not for profit” scheme under which all compensation or earnings are falsely deemed nontaxable. The defendants promote a grossly inaccurate interpretation of tax law and prepare returns and pursue litigation in accordance with their fraudulent programs.

9. The defendants’ fraudulent tax promotion purports to give participants “100% tax freedom.” To participate in the program, the defendants urge customers to sign a contract with Compensation Consultants. As part of the contract, the defendants prepare and file income tax

returns or amended returns on behalf of the participants claiming a deduction in the amount of the participants' income, thus purportedly entitling the participants to a refund.

10. The defendants falsely state that the deduction is based on either Code §§ 183, 212 or 1341.

11. The defendants make numerous false or fraudulent statements in support of their abusive program, including the following:

- Compensation earned is immune from taxation.
- Money earned in exchange for personal labor or services does not constitute taxable income and may be deducted.
- Income earned for labor is a not for profit activity and thus deductible on tax returns.
- Their "claim of right" or "not for profit" claim is a "mandatory deduction allowed by United States law."

12. As part of their marketing spiel, the defendants tell customers that the "United States will be billed for cost when the refund is received," and if a refund is not issued, the determination "will be litigated in a court proceeding."

13. The defendants admit that their program involves "an extreme tax position that will require litigation to resolve." Participants in the program are required to give the defendants a power of attorney to represent them against the Government, and "to consent to litigate any determination issuing in which the taxpayer does not substantially prevail." The power of attorney is for a minimum three-year term.

14. Furthermore, the participants are required to let Compensation Consultants act as "counsel, personal representative and attorney in fact." Neither Fuselier nor Ortt are attorneys,

although they describe themselves as “attorneys in fact.”

15. The IRS has identified over 400 frivolous federal tax returns signed by Fuselier or Ortt as preparers for the years 2001-2003. Additional returns have been prepared by other representatives or agents of Compensation Consultants.

16. The IRS has requested from the defendants a list of those persons for whom the defendants have prepared income tax returns. The defendants have refused to provide such list.

17. Also as part of their abusive program, the defendants have filed numerous frivolous actions in the Court of Federal Claims ostensibly on behalf of their customers.

18. In addition to the false tax returns and the frivolous Court of Federal Claims litigation, the defendants instruct and assist their customers in submitting bogus \$250,000 administrative tort claims against the Federal Government for “insufficiency of due process.” The tort claims are filed if the IRS disallows the participants’ sham deductions or denies their tax refund claims. The tort claims are intended to hinder tax administration and collection.

19. The defendants further instruct their customers to file complaints for an “automatic stay” of IRS collection activities while their claims are litigated.

20. The defendants charge participants \$500 per year for the program, plus participants are required to assign to them 25% of all tort damages collectable by the customer.

21. The defendants market their program through word-of-mouth and on the Internet, including on their website www.commonlawcollege.com. The defendants have an affiliation with the website www.civil-liberties.com, on which they also promote their program.

22. The IRS has notified the defendants that their program is under investigation, and that their conduct is subject to penalty under Code §§ 6694, 6700 and 6701 and subject to

injunction under Code §§ 7402, 7407 and 7408.

Count I

Injunction under Code § 7407 for violations of Code §§ 6694 and 6695

23. The United States incorporates herein by reference the allegations and averments in paragraphs 1 through 22.

24. Code § 7407 authorizes a court to enjoin an income tax return preparer if, *inter alia*, the court finds that the return preparer has engaged in conduct subject to penalty under Code §§ 6694 or 6695, and that injunctive relief is appropriate to prevent the recurrence of the conduct.

25. Code § 6694 imposes penalties on income tax return preparers who prepare returns that contain frivolous positions, or who willfully understate the tax liability of another person.

26. The defendants have engaged in conduct subject to the Code § 6694 penalty because they have willfully prepared or assisted in preparing returns that understated the tax liability of other persons. The defendants prepare federal income tax returns (Forms 1040) and claims for refund (Form 1040X) based on false and fraudulent theories, such as their “claim of right” or “not for profit” theory. The defendants knew, or should have known, that the so-called claim of right deduction (or similar not for profit deduction claim) is a frivolous position with no realistic possibility of being sustained on the merits.

27. Code § 6695 imposes penalties on income tax return preparers who refuse to provide a copy of their client list upon request of the IRS.

28. The IRS has requested from the defendants a list of those persons for whom the defendants have prepared income tax returns. The defendants have engaged in conduct subject to the Code § 6695 penalty because they have refused to provide such list to the IRS.

29. Code § 7407 also authorizes a court to enjoin an income tax return preparer if the court finds (i) that the return preparer has engaged in any fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws, and (ii) that injunctive relief is appropriate to prevent the recurrence of the conduct.

30. The defendants have engaged in fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws by, among other things, filing false and fictitious returns or amended returns based on wholly unrealistic positions.

31. Because of the defendants' continued and repeated conduct subject to injunction under Code § 7407 they should be permanently enjoined from acting as income tax preparers and from engaging in conduct that substantially interferes with the proper administration of the internal revenue laws.

Count II

Injunction under Code § 7408 for violations of Code §§ 6700 and 6701

32. The United States incorporates by reference the allegations contained in paragraphs 1 through 31.

33. Code § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under Code §§ 6700 or 6701 from engaging in further such conduct.

34. Code § 6700 imposes a penalty on any person who organizes or sells a plan or arrangement and in so doing makes a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any tax benefit by participating in the plan or arrangement that the person knows or has reason to know is false or fraudulent as to any material matter.

35. Code § 6701 imposes a penalty on any person who aids in or advises with respect to the preparation of any portion of a tax return or other document that the person knows or has reason to believe will be used in connection with a material matter under the internal revenue laws, and that the person knows would result in an understatement of tax liability.

36. The defendants organize and sell a fraudulent tax scheme--namely, their Compensation Consultants claim of right program. In organizing and selling the scheme, the defendants make statements regarding the tax benefits associated with participation in the scheme that they know or have reason to know are false or fraudulent as to material matters within the meaning of Code § 6700. The defendants have therefore engaged in conduct subject to penalty under Code § 6700.

37. The defendants aid or assist in, or advise with respect to, the preparation of tax returns or other documents, knowing (or having reason to believe) that such documents would be used in connection with a material matter arising under the internal revenue laws. The defendants know that the documents, if so used, will result in the understatement of the participant's tax liability. The defendants have therefore engaged in conduct subject to penalty under § 6701.

38. The defendants have persisted in promoting their fraudulent tax scheme after being advised that their conduct was subject to penalty under Code §§ 6700 or 6701, and subject to injunction under Code § 7408.

39. Unless enjoined by this Court, the defendants are likely to continue to organize and sell their fraudulent tax scheme, and to prepare tax returns or other documents that they know will result in the understatement of tax liability.

Count III

Injunction under Code § 7402

40. The United States incorporates by reference the allegations contained in paragraphs 1 through 39.

41. Code § 7402 authorizes Courts to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws.

42. The defendants, through the actions described above, have engaged in conduct that interferes substantially with the administration and enforcement of the internal revenue laws.

43. The defendants' conduct results in irreparable harm to the United States and the United States has no adequate remedy at law. The defendants' conduct is causing and will continue to cause substantial revenue losses to the United States Treasury, much of which may be unrecoverable.

44. Unless the defendants are enjoined, the IRS will have to devote substantial time and resources to identify and locate their customers, and then construct and examine those persons' tax returns and liabilities. The burden of pursuing individual customers may be an insurmountable obstacle, given the IRS's limited resources.

45. Furthermore, unless the defendants are enjoined, the United States will have to continue to defend frivolous administrative tort claims and frivolous litigation in the Court of Federal Claims.

46. If the defendants are not enjoined, they likely will continue to engage in conduct that obstructs and interferes with the enforcement of the internal revenue laws.

Relief Sought

WHEREFORE, the United States prays for the following relief:

A. That the Court find that the defendants, individually and doing business as Compensation Consultants, have engaged in conduct subject to penalty under Code §§ 6694, 6695, 6700 and 6701, and that injunctive relief is appropriate under Code §§ 7407 and 7408 to prevent the defendants, and any business or entity through which they operate, and anyone acting in concert with them, from further engaging in such conduct;

B. That the Court find that the defendants, individually and doing business as Compensation Consultants, have engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against the defendants, and any business or entity through which they operate, and anyone acting in concert with them, is appropriate to prevent the recurrence of that conduct pursuant to the Court's powers under Code § 7402(a);

C. That the Court, pursuant to Code §§ 7402, 7407 and 7408, enter a permanent injunction prohibiting the defendants, individually and doing business through 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) Organizing, promoting, marketing, or selling any tax shelter, plan or arrangement that advises or encourages customers to attempt to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;
- (2) Making false or fraudulent statements about the securing of any tax benefit by the reason of participating in any tax plan or arrangement, including the false statements that individuals can obtain tax freedom by participating in their program and that wages or compensation for labor constitutes nontaxable income;
- (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. § 6694, including preparing a return or claim for refund that includes an unrealistic or frivolous position;
- (5) Engaging in conduct subject to penalty under 26 U.S.C. § 6695, including failing to furnish their customer list upon request of the Internal Revenue Service;
- (6) 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 a shelter, plan, or arrangement, a statement the defendant knows or has reason to know to be false or fraudulent as to any material matter under the federal tax laws;
- (7) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, *i.e.*, preparing or assisting others 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;
- (8) Providing any tax advice or services for compensation, including preparing or assisting in the preparation of tax returns for any other person or entity, providing consultative services, or representing any persons or entities before the Internal Revenue Service in any manner, either directly or indirectly; and
- (9) Engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws, including filing frivolous administrative tort claims against the Federal Government or its employees.

D. That the Court, pursuant to Code §§ 7402 and 7407, enter an injunction requiring the defendants to provide to counsel for the United States a list identifying (with names, mailing and e-mail addresses, phone numbers and social security or taxpayer-identification numbers) all persons and entities for whom they have prepared any federal income tax returns, amended returns, or refund claims since December 31, 1999, and all individuals or entities who have entered into their Compensation Consultants contract, or any other tax-related shelter, plan or arrangement;

E. That the Court, pursuant to Code §§ 7402 and 7407, enter an injunction requiring the defendants to turn over to the United States copies of all federal tax returns, amended returns, or refund claims prepared by them after December 31, 1999;

F. That the Court, pursuant to Code § 7402, enter an injunction requiring the defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, to remove from their websites, including www.commonlawcollege.com and www.civil-liberties.com, all abusive tax scheme promotional materials, false commercial speech, and materials designed to incite others imminently to violate the law (including the tax laws), to display prominently on the first page of those websites a complete copy of the Court's permanent injunction, and to maintain the web sites for one year with a complete copy of the Court's permanent injunction so displayed throughout that time;

G. That the Court, pursuant to Code § 7402, enter an injunction requiring the defendants to contact by mail all individuals who have purchased their abusive tax shelters, plans, arrangements or programs, or who have had their tax returns or refund claims prepared by the defendants, and inform those individuals of the Court's findings concerning the falsity of the defendants' prior representations and attach a copy of the permanent injunction against the defendants;

H. That the Court, pursuant to Code § 7402, enter an injunction prohibiting the defendants from representing any persons before the Internal Revenue Service for any reason, and to enjoin them from abetting or encouraging noncompliance with the IRS during the examination of those persons' tax returns;

I. That the Court order that the United States is permitted to engage in post-judgment

discovery to ensure compliance with the permanent injunction;

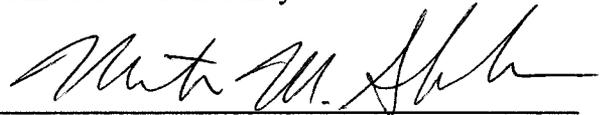
J. That the Court retain jurisdiction over this action for purposes of implementing and enforcing the final judgment and any additional orders necessary and appropriate to the public interest; and

K. For such other and further relief as the Court may deem proper and just.

Date: November 29, 2004.

Respectfully submitted,

DONALD W. WASHINGTON
United States Attorney

A handwritten signature in black ink, appearing to read "Martin M. Shoemaker", written over a horizontal line.

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