FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,	)
Plaintiff,	Judge Bruce S. Jenkins DECK TYPE: Civil DATE STAMP: 11/20/2003 @ 11:25:38 CASE NUMBER: 2:03CV01017 BSJ
v.	
D. MICHAEL BISHOP; ROGER K. FULLER; and CORNERSTONE STRATEGIC ADVISORS, L.L.C.,	))) **COMPLAINT**)
Defendants.	)

The United States of America, plaintiff, for its Complaint against the defendants, D. Michael Bishop, Roger K. Fuller and Cornerstone Strategic Advisors, L.L.C, states as follows:

Nature of Action

1. The United States is bringing this complaint to enjoin D. Michael Bishop, Roger K. Fuller and Cornerstone Strategic Advisors, L.L.C., also known as "CSA," individually and doing business as or through any other entity, and any other person in active concert or participation with them, from directly or indirectly:

(a) Organizing, promoting, marketing, or selling any abusive 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 statements about the securing of any tax benefit by the reason of participating in their program, including the false statement that their employee leasing and foreign deferred compensation program will eliminate taxes on income in excess of consumption levels or will eliminate or defer capital gains taxes;

(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 I.R.C. § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement the defendants know or have reason to know to be false or fraudulent as to any material matter;

(e) Engaging in conduct subject to penalty under I.R.C. § 6701, *i.e.*, assisting in the preparation of any tax forms or other documents used in connection with internal revenue matters that the defendants know, if so used, will result in the understatement of tax liability;

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

2. An injunction is warranted based on the defendants' continuing conduct as promoters of an abusive tax plan. If not enjoined, the defendants' continuing actions will result in the Internal Revenue Service having to devote countless hours to attempt to locate and investigate the defendants' customers, who by participation in the defendants' scheme have stopped filing accurate federal tax returns and have stopped paying their correct federal tax liabilities. The defendants' actions may result in the Internal Revenue Service imposing penalties and other civil and criminal sanctions on those customers.

Jurisdiction and Venue

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

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 I.R.C. §§ 7402 and 7408.

Defendants

6. D. Michael Bishop resides at 9517 South Glacier Lane, Sandy, Utah 84092. Bishop is a law school graduate with extensive experience in financial and tax planning services.

7. Roger K. Fuller resides at 1304 Cambridgetown Cove, Salt Lake City, Utah 84123. Fuller is a certified public accountant with a master's degree in taxation. He has extensive experience in financial and tax planning services.

8. Cornerstone Strategic Advisors, L.L.C. ("Cornerstone"), is a Utah limited liability company with its main office at 6415 South 3000 East, # 200, Salt Lake City, Utah 84121. Bishop and Fuller are the co-founders, principals and managers of Cornerstone.

Defendants' Activities

9. Beginning in 2000, the defendants have promoted and sold the "Employee Leasing and Foreign Deferred Compensation" program, which purports to limit an individual taxpayer's federal tax liabilities.

10. The defendants tout the false concept that, by using their program, a customer can pay tax on only a minor portion of his income; can transfer the remaining income offshore, tax free; and can continue to control and make use of the transferred amount, tax free.

11. Under the program, the defendants' customer typically will have or will establish his own personal corporation, which employs the customer and pays the customer for his services. The customer then purports to terminate his employment relationship with his personal corporation, although he continues to remain in control of the corporation.

12. The customer then ostensibly contracts with a foreign employee leasing company to provide his employment services. The defendants use Global Executive Placement, Ltd. ("GEP"), a Barbados entity, as the program's foreign employee leasing company.

13. In the meantime, the customer's personal corporation, in need of an employee, enters into an employee leasing agreement with a United States domestic employee leasing company in order to hire a new worker to replace the customer who has resigned. The defendants use Executive Placement Services, L.C. ("EPS"), as the program's domestic employee leasing company. Bishop and Fuller are the co-owners of EPS.

14. The domestic employee leasing company then enters into an employee loan-out agreement with the foreign employee leasing company, in which the foreign company gives exclusive rights to the customer's employment services to the domestic company, which in turn subleases the customer to the personal corporation.

15. The end result is that the customer continues to work at his personal corporation, not as its owner however, but as an employee of the foreign leasing company, being leased to the

personal corporation through the domestic leasing company.

16. Only a small portion of the income generated by the customer is reported on that person's federal income tax return. The customer only reports the amount of official salary received from the foreign employee leasing company. The salary from the foreign company is designed to meet the customer's "daily consumption needs and objectives" and is far less than his actual earned income or previously reported income.

17. Under the program, most of the remainder of the income generated by the customer is presumed to wind up with the foreign leasing company, here GEP. Because GEP is a foreign corporation, it supposedly has no obligation to pay United States income or employment taxes, and can accumulate all the income it receives from U.S. sources tax free.

18. So that the customer can have easier access to the funds that he has earned and that are held by the foreign leasing company, the foreign company establishes a trust containing the funds not paid to the customer as salary. The customer can draw on these funds as he deems fit. This arrangement helps achieve one of the program's aims–to improperly defer the customer's reported income (if the income is reported at all) from the period it is earned to a later date.

19. The defendants' program does not in any significant way change or enhance the way the customer has previously conducted his business. It merely changes the amount of income he reports each year on his tax return. The customer receives a Form W-2 (Employee's Withholding Allowance Certificate) each year from one of the defendants' entities that reports his artificially reduced compensation.

20. Through manipulation of deductions and income reporting among the various entities

involved in the program – the personal corporation, the domestic leasing company and the foreign leasing company – most of the income generated in the program goes unreported as taxable income. For example, the personal corporation will deduct the entire amount of net income generated by the customer as a rental expense payable to the domestic leasing company; the domestic company deducts its entire income received from the personal corporation as a rental expense payable to the foreign leasing company; and, as stated above, the foreign leasing company (here, GEP) does not participate in the United States tax system and thus files no return, reports no income, and pays no U.S. taxes.

21. The defendants market their abusive tax program nationwide, including through their website, www.affluentadvisors.com. The defendants attempt to attract self-employed professionals and business owners to the program.

22. In promoting and explaining their scheme, defendants have made the following false or fraudulent statements:

- The program will eliminate all taxes on income in excess of current consumption levels.
- Participation in the program will eliminate or defer all capital gain taxes.
- The program will provide tax-free compounding growth of investments, without first having to pay tax on the money used for the investments.
- The program will eliminate estate taxes.
- The business activities of the foreign employee leasing company will include the acquisition of the personal services of high-quality personnel to be leased to other businesses. The employment relationship between the employee and the foreign company will be in furtherance of this objective.

- The foreign employee leasing company will contractually agree to provide the individual with a long term deferral program, which is taxable only when received by the employee.

- The individual will be subject to the direction and control of the foreign employee leasing company as to time, place and manner of performance of the services.

- Salary or other compensation will not be based on the net profits derived from the individual's services.

- EPS shall remain solely responsible for hiring, replacing, firing and supervising all employees furnished to the individual's personal corporation.

- Funds kept in the trusts are nontaxable, although the individual maintains control over those funds.

23. Participation in the defendants' abusive program results in customers' failing to file accurate federal income tax returns, and failing to pay their correct federal tax liabilities.

24. The defendants charge fees for administering the program, including an initial engagement fee of $7,500 for commencing the program.

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

25. The United States incorporates by reference the allegations contained in paragraphs 1 through 24.

26. I.R.C. § 7408 authorizes a court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. § 6700 from engaging in further such conduct.

27. I.R.C. § 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.

28. Defendants organize and sell an abusive tax scheme. In organizing and selling their abusive tax scheme, defendants make statements regarding the tax benefits associated with participation in the scheme that they know are false or fraudulent as to material matters within the meaning of I.R.C. § 6700.

29. I.R.C. § 6701 imposes a penalty on any person who aids in the preparation of any portion of a tax return or other document, knowing the portion or document will be used in connection with a material matter under the internal revenue laws and knowing the portion will, if used, result in an understatement of tax liability.

30. Defendants aided or assisted in preparing tax returns or other documents, knowing that such documents will be used in connection with a material matter arising under the internal revenue laws, and knowing that such documents (if used) will result in an understatement of tax liability. The defendants' conduct is thus subject to penalty under I.R.C. § 6701.

31. Unless enjoined by this Court, the defendants are likely to continue to organize and sell their abusive tax schemes.

Count II
Injunction under I.R.C. § 7402

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

33. I.R.C. § 7402 authorizes Courts to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws.

34. Defendants, through the actions described above, have engaged in conduct that

interferes substantially with the administration and enforcement of the internal revenue laws.

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

36. Unless 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.

37. If 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 each of the defendants has engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701, and that injunctive relief is appropriate under I.R.C. § 7408 to prevent the defendants, and any business or entity through which they operate, and anyone acting in concert with them, from engaging in further such conduct;

B. That the Court find that each of the defendants has 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 I.R.C. § 7402(a);

C. That the Court, pursuant to I.R.C. §§ 7402 and 7408, enter a permanent injunction prohibiting the defendants, individually and doing business through their web site www.affluentadvisors.com, or 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 the "Employee Leasing and Foreign Deferred Compensation" program;

(2) Making false statements that participation in the "Employee Leasing and Foreign Deferred Compensation" program will eliminate taxes on income in excess of consumption levels or will eliminate or defer capital gains taxes;

(3) Encouraging, instructing, advising and assisting others to violate the tax laws, including to evade the payment of taxes legally due, by participating in the "Employee Leasing and Foreign Deferred Compensation" program;

(4) Engaging in conduct subject to penalty under I.R.C. § 6700, *i.e.*, by making or furnishing, in connection with the organization or sale of an abusive shelter, plan, or arrangement, a statement the defendants know or have reason to know to be false or fraudulent as to any material matter;

(5) Engaging in conduct subject to penalty under I.R.C. § 6701, *i.e.*, assisting in the preparation of any tax forms or other documents used in connection with internal revenue matters that the defendants know, if so used, will 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.

D. That this Court, pursuant to I.R.C. § 7402, enter an injunction requiring defendants to produce to the United States any records in their possession or control, or to which they have access, identifying the persons who have purchased their abusive tax plans, arrangements or programs, including the Employee Leasing and Foreign Deferred Compensation program

described above;

E. That this Court, pursuant to I.R.C. § 7402, enter an injunction requiring defendants to contact by mail (or by e-mail, if an address is unknown) all individuals who have previously purchased their abusive tax shelters, plans, arrangements or programs, including the Employee Leasing and Foreign Deferred Compensation program described above, or any other tax shelter, plan or program in which defendants have been involved either individually or through Cornerstone Strategic Advisors, L.L.C., 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 and their associates and related entities, and to file with the Court, within 20 days of the date the permanent injunction is entered, a certification that they have done so;

F. That this Court, pursuant to I.R.C. § 7402, enter an injunction requiring defendants and their representative, agents, servants, employees, attorneys, and those persons in active concert or participation with them, to remove from their websites, including www.affluentadvisors.com, all references to the "Employee Leasing and Deferred Compensation" program or any program that is substantially similar to the "Employee Leasing and Deferred Compensation" program, and to file with the Court, within 20 days of the date of the permanent injunction, a certification that they have done so;

G. That this Court order that the United States is permitted to engage in post-judgment discovery to ensure compliance with the permanent injunction;

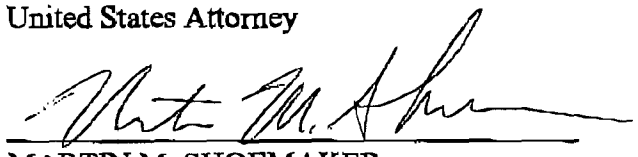
H. That this Court retain jurisdiction over this action for purposes of implementing and

enforcing the final judgment and any additional orders necessary and appropriate to the public interest; and

I. For such other and further relief as this Court may deem proper and just.

Respectfully submitted,

PAUL M. WARNER
United States Attorney



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