

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. **3:11-cv-982-J-25MCR**

**JAMES OTTO PRICE, III, a/k/a/
MICHAEL SANDERSON, d/b/a
NORTH JAX TAX, MADCO FINANCIAL
SERVICES, INC., and MORE THAN
ENOUGH FINANCIAL SERVICES,**

Defendants.

FINAL JUDGMENT AND ORDER OF PERMANENT INJUNCTION

Plaintiff, United States of America, has filed a complaint for permanent injunction against Defendant James Otto Price, III, also known as Michael Sanderson, doing business as North Jax Tax, MADCO Financial Services, Inc. ("MADCO"), and More Than Enough Financial Services, Inc ("MTE"). Upon consideration of the United States' motion for entry of default judgment and supporting memorandum of law, and the other documents filed in this case, the Court finds the following facts and enters the following conclusions of law.

Court finds the following facts and enters the following conclusions of law.

Findings of Fact

The Defendant, James Otto Price, III

1. James Otto Price, III, is an unenrolled tax return preparer.

Price has an associates degree in business. He has taken a course on tax preparation through H&R Block.

2. Price prepared federal income tax returns for customers, as an individual or through one of his businesses, from 1999 through 2009. He has filed income tax returns identifying himself as the tax preparer, and may have prepared and filed tax returns identifying the name "Michael Sanderson" as tax preparer.

3. Price has told customers that he is a former IRS employee, but the IRS has no record that he was ever so employed. Price holds himself out to customers and prospective customers as a tax professional.

4. Price prepared and filed federal income tax returns for customers through MADCO in 2005. Price was identified as its Director

and Registered Agent. MADCO was dissolved by the State of Florida for failure to file an annual report in 1996.

5. Price prepared and filed federal income tax returns for customers through MTE in 2006. He was identified as its Registered Agent. MTE was dissolved by the State of Florida for failure to file an annual report in 2007.

6. Price prepared and filed federal income tax returns for customers through North Jax Tax in 2009. North Jax Tax is a fictitious business name registered with the State of Florida by Price in 2009. The expiration date of the fictitious name is 2014.

Overview of Price's Scheme

7. Price continually and repeatedly prepared false federal income tax returns for customers. He overstated and fabricated income tax deductions and expenses, and fabricated income tax credits for customers, all of which falsely reduced his customers' tax liability and increased their refunds.

8. His illegal conduct includes 1) claiming false or inflated deductions on Schedule A forms; 2) claiming false or inflated deductions on Schedule C forms; 3) claiming false or inflated deductions on Forms

2106-EZ; and 4) claiming false First-Time Homebuyer Credits ("FTHBC") on Forms 5405.

9. Schedule A is a tax form that documents a taxpayer's itemized deductions, such as charitable contributions and unreimbursed employee expenses (like expenses for uniform costs, meals and entertainment, union dues, and personal automobile mileage). It is filed as an attachment to an individual's tax return. Instead of only claiming deductions for which his customers qualified, Price falsely inflated Schedule A deductions to which customers were entitled, or fabricated deductions entirely.

10. Schedule C is a tax form that documents a taxpayer's income or loss from a business. It is filed as an attachment to an individual's tax return. Price routinely conjured up Schedule C businesses for his customers that did not exist, and claimed business expenses and/or losses that did not exist.

11. Form 2106-EZ is a tax form that documents a taxpayer's unreimbursed employee business expenses. It is filed as an attachment to an individual's tax return. Price placed nonexistent unreimbursed employee business expenses on Form 2106 without substantiation.

12. The FTHBC is claimed on a Form 5405, which is filed as an attachment to an individual's federal income tax return for tax years 2008 or 2009. The credit operates like an interest-free loan for the 2008 filing year because it must be repaid over a fifteen year period. The credit is refundable. The credit is equal to ten percent of the purchase price of a qualifying home, with a maximum available credit of \$7,500 for either a single taxpayer or a married couple filing a joint return, or \$3,750 for married persons filing separate returns. Among other eligibility requirements, the home must be purchased after April 8, 2008 and before December 1, 2009. For a home that is being built, the purchase date is the first date that the taxpayer occupies the home. If an eligible purchase was made in 2008, the FTHBC could be claimed on the 2008 tax return. For an eligible purchase in 2009, the taxpayer could choose to claim the credit on either the 2008 (original or amended) or the 2009 tax return. Form 5405 clearly sets forth the requirements for credit eligibility. Form 5405 requires the preparer to list the purchased home's address and acquisition date. Although he knew or had reason to know that his customers did not qualify for the FTHBC, Price claimed it on their 2008 federal income tax returns. Price

misrepresented the requirements for the credit to customers and failed to disclose that his customers must have actually purchased a home to qualify for the credit.

13. The deductions as reported by Price were so substantial that in many cases, his customers' taxable income was reduced to a negligible amount. As a result, Price's customers received a sizable tax refund.

14. When customers asked how their refunds could be so much higher than in years before using Price as their return preparer, Price told them that, because of his expertise, he could give them deductions that other tax preparers miss.

15. But Price knew that the fictitious figures he reported on customers' returns would have the effect of increasing the tax refund paid out to his customers beyond the amounts that they would have received from the IRS in the absence of his false claims.

16. Price profited from preparing these false returns resulting in unwarranted and large refunds by enticing his customers to return to him for tax preparation in future years, and to refer new business to him.

17. Price filed tax returns for customers using a tax-preparer-identification number ("EFIN number") that did not belong to him and which the IRS had not authorized him to use.

18. Price routinely filed customers' tax returns containing false deductions, expenses, and credits electronically, without first reviewing the return with the customer and obtaining consent to file. Only after the return was filed would he provide a copy of the return to the customer.

19. Price's customers often never knew that he was entering false information on their federal income tax returns. When asked, they often did not know how he arrived at the figures he used – the figures were either completely made up or grossly inflated, and the customers had never provided substantiation for the amounts that he reported.

Examples of False Returns Prepared by Price

Shirley and Kelvin Blue

20. Price prepared the 2004 and 2005 federal income tax returns of Shirley and Kelvin Blue. He falsified the Schedules A and Schedules C filed with their returns for both years. On their Schedule A for 2005, Price claimed that the Blues made charitable contributions that totaled \$14,125. Their actual contributions, for which Mrs. Blue

provided receipts to Price, were nowhere near that amount. Mrs. Blue was unaware how Price arrived at the number on their Schedule A.

21. Price deducted "uniform expenses" on the Blues' Schedule C. He told the Blues that, because they dress for work, they could deduct clothing and dry cleaning expenses. In fact, these expenses are not deductible. Price placed a "Mentoring" business on the Blues' Schedule C as a business. But they had no such business. Mrs. Blue told Price that she and her husband mentored children in a volunteer capacity. Price fabricated numbers on their Schedule C for business expenses for "Mentoring" due to automobile use, meals and entertainment, utilities, and maintenance and upkeep.

22. When shown her tax returns for 2004 and 2005, Mrs. Blue had no idea how Price arrived at the numbers for these expenses. She never gave him receipts that would substantiate any of the costs that he claimed.

23. The Blues' actual tax liability for tax year 2004 was \$12,944. But due to Price's illegal falsification of expenses and deductions, he reported their tax liability as \$5,761. The Blues underpaid their taxes for 2004 by \$7,183.

24. The Blues' actual tax liability for tax year 2005 was \$14,036. But due to Price's illegal falsification of expenses and deductions, he reported their tax liability as \$7,351. The Blues underpaid their taxes for 2004 by \$6,685.

25. Due to Price's falsification of their tax returns, the Blues underpaid their taxes for 2004 and 2005 by a total of \$13,868.

William and Leslie Cotner

26. Price prepared the 2004 and 2005 federal income tax return for William and Leslie Cotner. In addition to filing false Schedules A and C with their returns for both years, Price also prepared and filed false Forms 2106-EZ with their returns for both years. Price claimed fabricated "unreimbursed employee expenses" on the Forms 2106-EZ for the Cotners without their knowledge. Price never asked them any questions about unreimbursed employee expenses. In fact, all of their employment expenses were reimbursed by their respective employers.

Charde Hampton

27. Price prepared the 2008 federal income tax return for Charde Hampton. Hampton advised Price that she did not have a house and was not planning on purchasing a house. In spite of this

information, Price told Hampton that she qualified for the FTHBC by virtue of the fact that she had two jobs. This statement is false. Price applied the FTHBC, in the amount of \$7,500, to Hampton's 2008 federal income tax return. He concocted an address for the home that Hampton purportedly "purchased" on January 5, 2009.

28. Price knew that Hampton did not qualify for the FTHBC, but claimed it on her return. Price paid himself a fee of approximately \$1,000 out of Hampton's refund for having filed the return claiming the false FTHBC.

Resulting Harm

29. Price's conduct has caused lost revenue to the United States Treasury through tax refunds wrongfully issued and tax liabilities uncollected. Price's illegal conduct has resulted in substantial harm to the government.

30. In 2005, for tax year 2004, Price filed 223 tax returns through MADCO. 193 of those returns were determined to contain false deductions or expenses on Schedules A and C, and/or Forms 2106-EZ. Based on a sample of returns reviewed by the IRS, the total loss to the

U.S. Treasury from Price's illegal conduct for tax year 2004 is estimated to be \$869,465.

31. In 2006, for tax year 2005, Price filed income tax returns through MTE Financial Services. While the precise number of total tax returns filed and number of tax returns with falsified information are unknown, it is likely that the loss to the U.S. Treasury for his illegal conduct for tax year 2005 exceeds that for tax year 2004. Price's business model created outsized returns for his customers, which led them to return to him for tax preparation and encouraged them to refer his services to friends and family – so his customer base likely expanded for tax year 2005.

32. In 2009, for tax year 2008, North Jax Tax prepared 142 individual income tax returns for customers. Of the 142 tax returns prepared, 90 claimed the FTHBC. But only *one* customer was actually entitled to the credit. Price prepared 54 of the North Jax Tax returns with the FTHBC, and signed his own name as the tax preparer. It is likely that Price prepared, also through North Jax Tax, the remaining returns that claimed the FTHBC, signing "Michael Sanderson" as the tax preparer. For each, he knew that his customers had not made a

qualifying purchase. Some customers were not even aware that Price claimed a FTHBC on their tax returns. The total loss of revenue to the United States as a result of the 89 false FTHBC tax returns prepared and filed by Price, through North Jax Tax, is \$668,391.

33. Price's abusive conduct caused his customers to fail to file proper federal income tax returns, which has either deprived his customers of proper tax refunds to which they may have been entitled or deprived the United States of tax revenue owed by his customers. The United States now must undertake collection efforts against customers, at great cost to the Government's resources. It is highly unlikely that the United States will recover all amounts owed. Price's customers have also incurred direct financial harm from his abusive conduct because they remain liable for any lawful tax unpaid, and may be liable for interest and penalties.

Price's Criminal Charges, Proceedings, and Conviction

34. No later than December 18, 2006, Price was on notice that the IRS was investigating his illegal conduct of creating false or fraudulent deductions and/or expenses on Schedules A and C and Form 2106-EZ.

35. Special Agents from the Criminal Investigation Division of the IRS interviewed Price at his home about this activity. During the interview, Price stated that he claimed only those expenses and deductions for which his customers provided receipts.

36. On April 17, 2007, the IRS issued a books and records summons to Price to obtain additional information. Price obtained an attorney.

37. On May 21, 2007, Special Agents met with Price's attorney and informed him that the IRS was planning to bring criminal charges against Price. They offered the opportunity to negotiate a plea agreement at that time, but Price rejected it.

38. On April 24, 2008, Price voluntarily presented himself to Special Agents for another interview. He was issued another summons for business records relating to his preparation of tax returns.

39. Clearly aware of IRS scrutiny and informed of the illegality of his prior conduct, in 2009 Price changed tactics: he began preparing for customers and filing with the IRS false or fraudulent claims for the FTHBC through North Jax Tax for tax year 2008.

40. On May 13, 2009, the United States indicted Price on 15 counts of willfully aiding and assisting in the preparation of and presentation to the IRS a 2008 individual income tax return, Form 5405, for taxpayers, which was false or fraudulent as to material matters in that it represented that the taxpayers were legally entitled to claim the FTHBC. Price, however, knew and believed that the taxpayers were not entitled to claim the credit.

41. Also on May 13, 2009, the United States indicted Price on 20 counts of willfully aiding and assisting in the preparation of and presentation to the IRS a false or fraudulent tax return for taxpayers claiming expenses and income tax deductions on Schedules A and C, and Forms 2106-EZ, 1040, and 1040-EZ, when Price knew and believed that the taxpayers were not entitled to the expenses and deductions claimed, for tax years 2004 and 2005.

42. In July 2009, the United States and Price entered into a plea agreement in which Price pled guilty to Count One of the indictment, relating to preparing and filing a federal income tax return knowing it to be false or fraudulent in some material way (specifically, false FTHBC), in violation of § 7206(2). On October 21, 2009, Price was sentenced to

a prison term of 30 months. Price was released from federal prison on July 19, 2011.

Events Since Price's Release From Prison

43. On or about August 26, 2011, counsel for the United States spoke with Price regarding the lawsuit against him that would soon be filed. Counsel provided the opportunity for Price to review the draft complaint and a proposed consent injunction before filing suit, in the event that Price chose to consent before filing rather than incur costs of litigation. Price said he would review the documents and provided his address to counsel, which address was "1711 Ave. F, Riviera Beach, Florida, 33404." Counsel sent the documents, but did not hear back from Price.

44. The Complaint was filed on October 3, 2011. The summons for Price issued on the same day. On October 6, 2011, counsel for the United States sent Price Form AO 398, "Notice of a Lawsuit and Request to Waive Service of a Summons," a copy of the Complaint, and a waiver of the service of summons for him to complete if he chose to waive. These documents, along with a self-addressed Federal Express envelope to return the completed waiver, were sent via Federal

Express, to Price's address of 1711 Avenue F, Riviera Beach, FL 33404. But counsel never received a waiver of service from Price.

45. On or about November 21, 2011, counsel for the United States initiated the process of personal service of the Complaint and summons upon Price. Counsel provided Price's address for service at 1711 Avenue F, Riviera Beach, FL 33404. On November 23, 2011, the process server went to that address, but did not serve process. The server informed counsel that the address given was not the address of James Otto Price, III. Instead, it was the residence of "Steve Alarich" who had moved in to the address in August 2011 (at the end of which month Price himself confirmed his address to counsel).

46. On December 7, 2011, counsel confirmed with reliable sources that, in fact, Price was still living at 1711 Avenue F, Riviera Beach, FL, 33404. So she sent the process server out to try again.

47. On December 9, 2011, Price was personally served with a copy of the Complaint and summons. Price also admitted that he had lied to the first process server to reach him on November 23; he told the server that his name was "Steve Alarich" and that he had moved in to the residence in August 2011.

Conclusions of Law

Standard for Default Judgment

Where, as here, default has been entered pursuant to Fed. R. Civ. P. 55(a), the defendant loses his right to present evidence on issues other than unliquidated damages. 10 James Wm. Moore, *Moore's Federal Practice*, ¶ 55.32[1] (3d ed. 1997). "A defendant, by his default, admits the plaintiff's well-pleaded allegations of fact," thus all factual allegations of a complaint are taken as true. *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F.3d 1298, 1307 (11th Cir. 2009) (quotation omitted). The Court may also take judicial notice of its own docket. See *Hollins v. Dep't of Corr.*, 191 F.3d 1324, 1329 (11th Cir. 1999) (parties may rely on court docket to reflect events in a case). The effect of the Court's entry of default in this case on January 11, 2012, therefore, is to preclude Price from contesting the allegations in the Complaint.

Standard for Permanent Injunction

The United States seeks a permanent injunction under 26 U.S.C. §§ 7402, 7407, and 7408¹ to prevent Price from further violating the

¹ Unless otherwise specifically stated, all statutory citations are to the Internal Revenue Code, 26 U.S.C.

Internal Revenue Code and to prevent future harm to the Government and the public. Sections 7407 and 7408 proscribe specific conduct for a tax return preparer or promoter of a tax scheme. Section 7402 creates a broad and deep remedy for the United States for any person who interferes with the internal revenue laws, even if not prohibited by statute.

Section 7407 identifies specified conduct prohibited to tax preparers. The prohibited conduct includes conduct subject to penalty under §§ 6694, 6695 or any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the internal revenue laws. See § 7407(b). Upon a showing that an injunction merely prohibiting the outlawed conduct would be insufficient to prevent further interference with internal revenue laws, a court may enjoin a defendant from further acting as a return preparer altogether. *Id.* Under § 6694(a), an income tax preparer may be penalized for preparing any return or claim for refund to which any part of an understatement of liability is due to an unreasonable position, when the tax preparer knew or should have known of the unreasonable position. A preparer may also be penalized for preparing a return or claim for refund with respect

to which any part of an understatement of liability is due to (1) a willful attempt to understate the liability for tax on the return or claim or (2) a reckless or intentional disregard of rules or regulations. § 6694(b). The facts show that Price is subject to penalty under § 6694(a) and (b).

Under § 6695, an income tax return preparer may be penalized for failing to comply with certain requirements for persons who prepare taxes for other persons, which requirements include (1) furnishing a completed copy of the taxpayer's tax return or claim to the taxpayer no later than the time that the return or claim is offered for the taxpayer's signature, § 6695(a); and (2) placing the tax return preparer's own identifying number, or that of his employer, on all returns or claims for refund prepared by the preparer, § 6695(c). The facts show that Price is subject to penalty under § 6695(a) and (c).

Section 7407(b)(1)(D) permits a court to enjoin a tax preparer because he engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the internal revenue laws. The facts show that Price engaged in fraudulent and deceptive conduct which substantially interferes with the proper administration of the internal revenue laws.

Section 7408 authorizes the Court to issue an injunction barring any person from further engaging in any conduct subject to penalty under § 6701. § 7408(b). Section 6701 specifically imposes a penalty on any person:

(1) who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document,

(2) who knows (or has reason to believe) that such portion will be used in connection with any material matter arising under the internal revenue laws, and

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

§ 6701(a). On numerous occasions, as described above, Price prepared tax returns for customers, which he knew would be used to claim a refund (a material matter under the internal revenue laws). Price knew that the false information on the returns he prepared would result in an understatement of his customers' tax liabilities.

Section 7402(a) grants federal district courts broad authority to issue, "writs and orders of injunction . . . and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws." § 7402. An injunction under Section 7402 may be issued "in

addition to and not exclusive of any and all other remedies of the United States in such courts or otherwise to enforce such laws." *Id.* Section 7402 manifests the "congressional intention to provide the district courts with a full arsenal of powers to compel compliance with the internal revenue laws." *Brody v. United States*, 243 F.2d 378, 384 (1st Cir. 1957), *cited in United States v. Ernst & Whinney*, 735 F.2d 1296, 1300 (11th Cir. 1984). As described thoroughly above, at every turn, Price has engaged in conduct that violates the internal revenue laws. An injunction against him that prohibits him from engaging in any sort of activity relating to preparing federal income tax returns for others is both necessary and appropriate for the enforcement of internal revenue laws.

In light of Price's conduct and because the foregoing facts show that 1) the United States will suffer irreparable injury unless Price is enjoined from acting as a tax preparer; 2) the threatened injury to the United States outweighs whatever damage the proposed injunction may cause Price; and 3) if issued, the injunction would promote the public interest, *see Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000), the Court hereby **ORDERS** that:

1. The Court has jurisdiction over this action under 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. § 7402(a).
2. Price repeatedly and continually engaged in conduct subject to penalty under §§ 6694, 6695(a), and 6701, and injunctive relief is appropriate under §§ 7407 and 7408 to bar Price from acting as a tax return preparer and from engaging in conduct subject to penalty under §§ 6694, 6695, and 6701;
3. Price engaged in conduct that substantially interferes with the proper administration of the internal revenue laws, and injunctive relief against him is appropriate to prevent the recurrence of that conduct pursuant to §§ 7407 and 7402(a);
4. Pursuant to §§ 7402(a), 7407 and 7408, Price and his representatives, agents, servants, employees, attorneys, independent contractors, and anyone in active concert or participation with him, are enjoined from, directly or indirectly:
 - a. engaging in any conduct subject to penalty under §§ 6694, 6695, or 6701;
 - b. acting as a federal tax return preparer or otherwise directly or indirectly preparing or filing, or advising or assisting in the

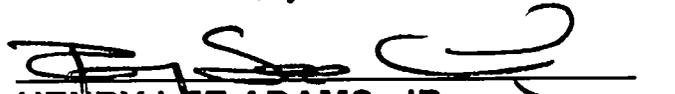
preparation or filing of any federal tax return(s) and/or other related documents and forms for any other person or entity;

- c. engaging in any other activity subject to penalty under the Internal Revenue Code; and
- d. engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws.

5. The United States may engage in post-judgment discovery to ensure compliance with this Order; and

6. This Court will retain jurisdiction over this action for purposes of implementing and enforcing this Order.

DONE AND ORDERED this 27 day of September 2012.


HENRY LEE ADAMS, JR.
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record