

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 1:16-cv-1465-YK
)	
v.)	
)	
ORRSTOWN PERSONAL)	
CARE HOME, INC., <i>et al.</i> ,)	
)	
Defendants.)	

CONSENT JUDGMENT AND ORDER FOR PERMANENT INJUNCTION

Upon consent of the parties and for good cause shown, it is hereby:

1. This is an action by the United States instituted under 26 U.S.C. § 7402(a). The complaint seeks equitable relief in connection with the alleged failure of the defendants, Orrstown Personal Care Home, Inc. and Elaine Swartz, acting both in her individual capacity and doing business as Orrstown Personal Care, Inc. (collectively, "Defendants"), to collect and pay over to the United States the federal income and Federal Insurance Contributions Act (FICA) taxes that the Defendants were required to withhold from the wages paid to its employees, and to deposit those funds, along with the employer's share of FICA taxes and Federal Unemployment Tax Act (FUTA) taxes, in an appropriate federal depository institution.

2. This Court finds that the sole proprietorship named “Orrstown Personal Care, Inc.,” is the successor in interest to the corporation Orrstown Personal Care Home, Inc. For simplicity, this Consent Judgment and Order for Permanent Injunction will refer to these entities as “Orrstown Personal.”

3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over the Defendants, pursuant to 26 U.S.C. § 7402(a) and 28 U.S.C. §§ 1340 and 1345.

4. Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

5. The Defendants, without admitting any of the allegations in the complaint except as to jurisdiction and those facts alleged in paragraph 2 to 4, above, waive the entry of the finding of facts and conclusions of law under Fed. R. Civ. P. 52, and consent to the entry of this permanent injunction under Fed. R. Civ. P. 65 and 26 U.S.C. § 7402.

6. The United States and the Defendants agree that the entry of this permanent injunction constitutes a final judgment in this case. The Defendants further waive any right to appeal from this Consent Judgment and Order of Permanent Injunction.

7. The Defendants further acknowledge that the entry of this injunction does not preclude the United States — either through the Internal Revenue Service (“IRS”) or otherwise — from collecting the unpaid balance of the federal

employment and unemployment taxes assessed (or that will be assessed) against either Orrstown Personal or Elaine Swartz.

8. Accordingly, the Defendants are ENJOINED as follows:

a. Parties Covered by Injunction: This injunction binds the Defendants, as well as their agents, employees, and persons in concert or participation with them, in whatever form they continue to carry on their business.

b. Withholding Requirement: The Defendants shall withhold federal income and FICA taxes from the wages Orrstown Personal's employees when those wages are paid, shall keep the withheld funds in an account separate from any operating account or other accounts, and shall pay the withheld taxes to the IRS as they become due and payable.

c. Deposit Requirements: In accordance with federal deposit regulations, the defendants shall make timely deposits of withheld federal income and FICA taxes, the Orrstown Personal's employee's share of FICA, and Federal Unemployment Tax Act (FUTA) taxes, in an appropriate federal depository bank each quarter, in accordance with the federal deposit regulations.

d. Reporting Requirements: Within three business days after Orrstown Personal makes a federal tax deposit as required by paragraph (c), above, the Defendants shall provide proof to the IRS care of Revenue Officer Ruth V. Shank, 16011 11th Avenue, Altoona, Pennsylvania, or such other location as the IRS may

deem appropriate, that the requisite withheld federal income taxes, FICA taxes (both the employees' withheld portion and the employer's portion), and unemployment tax deposits were timely made. The IRS may also designate that this proof may be provided via email, fax, or other means it deems appropriate.

e. Return Requirements: The Defendants shall timely file with the IRS all of the Defendants' employment (Form 941) and unemployment (Form 940) tax returns. The Defendants shall pay any balance due on those returns.

f. Delinquent Returns: Within 90 days of the entry of this Consent Judgment and Order for Permanent Injunction, the Defendants must file all delinquent federal employment, unemployment, and income tax returns.

g. Transfer Prohibition: The Defendants are prohibited after the date of this Consent Judgment and Order for Permanent Injunction from assigning any property or making any disbursements until all income taxes and FICA taxes required to be withheld from employees' wages (together with the employer's liability for FICA taxes and FUTA taxes) are in fact paid to the IRS. This prohibition includes payments of any rent, salary, or other compensation to Elaine Swartz or members of her family.

h. Notification of New Business: For the next five years, the Defendants shall notify the IRS at the address specified in paragraph (d), above, of any new or presently operating company or entity with which he becomes involved in relation

to federal employment tax withholding, depositing, or reporting and shall also inform the IRS if the Defendants assumes a new name or transfers its employees or business operations to another entity. The Defendants shall notify the IRS within 10 days before taking any of these actions.

i. Enforcement of Injunction: The United States shall be permitted to issue discovery to assure that the Defendants are in compliance with the injunction. The Court shall retain jurisdiction of this action for the purposes of implementing and enforcing this injunction and entering all additional decrees and orders necessary and appropriate for the public interest, including entries of civil or criminal contempt.

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9. The United States may deliver actual notice of the entry of this order via certified mail to the two named defendants at their business address (3329 Orrstown Road, Orrstown, Pennsylvania). The Defendants must deliver to all of their current employees a copy of this Consent Judgment and Order of Permanent Injunction and post a copy at the business address in a place calculated to put all employees, officers, directors, and persons acting in concert with them on actual notice of this injunction. Elaine Swartz shall file a certification with this Court that the notice has been delivered and posted within seven days of the entry of this injunction.

ORDERED this 24th day of October, 2016

____s/ Yvette Kane_____
UNITED STATES DISTRICT JUDGE

We have seen and agreed to the terms listed in the six pages above:

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