In the United States Court of Federal Claims

No. 07-367 C

(Filed: April 9, 2008)

ARTHUR H. KRUPNICK, Plaintiff, v. THE UNITED STATES, Defendant.	Motion to Dismiss; RCFC 12(b)(1); RCFC 12(b)(6); Motion for Summary Judgment; RCFC 56; Authority of Special Agent and/or Supervisory Special Agent to Approve Award to IRS Informant

Arthur H. Krupnick, Philadelphia, PA, pro se.

William P. Rayel, with whom were Jeffrey S. Bucholtz, Acting Assistant Attorney General, Jeanne E. Davidson, Director, and Todd M. Hughes, Deputy Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, for defendant.

OPINION

HEWITT, Judge

Before the court are Defendant's Motion to Dismiss Or, in the Alternative, For Summary Judgment (defendant's Motion or Def.'s Mot.), Defendant's Proposed Findings of Uncontroverted Fact (defendant's Facts or Def.'s Facts), plaintiff's Response to defendant's Motion (plaintiff's Response or Pl.'s Resp.), Defendant's Reply to Plaintiff's Response to Defendant's Motion to Dismiss Or, in the Alternative, For Summary Judgment (defendant's Reply or Def.'s Reply), Plaintiff[']s Response to US Rebuttal (plaintiff's Sur-Reply or Pl.'s Sur-Reply), and Defendant's Sur-Sur-Reply to Plaintiff's Sur-Reply to Defendant's Reply to Plaintiff's Response to Defendant's Motion to Dismiss Or, in the Alternative, For Summary Judgment (defendant's Sur-Sur-Reply or Def.'s Sur-Sur-Reply).

I. Background

Pro se plaintiff Arthur H. Krupnick filed a complaint with this court on June 11, 2007, alleging that he "was promised a 15% reward for compiling . . . information"[1] for the Internal Revenue Service (IRS). Plaintiff's Complaint (Compl.) ¶ 1. Plaintiff alleges that he entered into an agreement with IRS agents Donna McCoy and John Lafferty. Id. Plaintiff further alleges that he "was promised government protection" that he did not receive. Id. (claiming that there were "three attempts on [his] life" and that the Government only "responded by telling [him] to call the local police"). According to plaintiff, he spent a year putting a case together for the Government and "was taken [a]back when they told [him] how much [he] would receive for the reward." Id. at ¶ 2. Plaintiff states that the percentage he was supposed to receive was based on cooperation and he "almost paid for that cooperation with [his] life, and possible harm to [his] wife and daughters." Id. Plaintiff demands "a judgment against the United States for $1,500,000 dollars." Id. at ¶ 4.

Defendant moves to dismiss plaintiff's complaint pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the United States Court of Federal Claims (RCFC). Def.'s Mot. 1. Defendant argues that this court lacks subject matter jurisdiction over the case and that plaintiff fails to state a claim upon which relief may be granted. Id. "In the alternative, defendant . . . requests that the court grant summary judgment in its favor pursuant to RCFC 56." Id. Defendant argues that plaintiff's claims do not fall within the jurisdiction of this court because Mr. Krupnick has not alleged that he entered into a contract with anyone with actual authority to bind the United States. Id. at 5. Defendant also argues that Mr. Krupnick has failed to satisfy the pleadings standards set forth in rule 9(h) of the RCFC. Id. at 7.

Because the court concludes that plaintiff has failed to support his contract claim with a colorable allegation that he entered into a contract with a Government representative with actual authority to bind the United States, defendant's motion to dismiss for failure to state a claim on which relief can be granted, considered under the standards applicable to a motion for summary judgment, is GRANTED.

II. Legal Standards

---

[1]Plaintiff states that he "was promised a 15% reward for compiling the information in the above complaint." Plaintiff's Complaint (Compl.) ¶ 1. It is not clear, however, to what information plaintiff refers. The Complaint consists of a single page with no attachments. See Compl.

A. Jurisdiction

The jurisdiction of the United States Court of Federal Claims is set forth in the Tucker Act, 28 U.S.C. § 1491 (2006). This court "shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. § 1491(a)(1). Subject matter jurisdiction is a threshold issue that must be determined at the outset of a case. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998); Pods, Inc. v. Porta Stor, Inc., 484 F.3d 1359, 1365 (Fed. Cir. 2007). "If the court finds that it lacks jurisdiction over the subject matter, it must dismiss the claim." Matthews v. United States, 72 Fed. Cl. 274, 278 (2006); see RCFC 12(h)(3). Plaintiff has the burden of establishing subject matter jurisdiction. Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746, 748 (Fed. Cir. 1988) (citing inter alia Zunamon v. Brown, 418 F.2d 883, 886 (8th Cir. 1969); McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936)); Garrett v. United States, 78 Fed. Cl. 668, 670 (2007). As a general matter, complaints filed by pro se plaintiffs are "held to 'less stringent standards than formal pleadings drafted by lawyers.'" Howard v. United States, 74 Fed. Cl. 676, 678 (2006) (quoting Haines v. Kerner, 404 U.S. 519, 520 (1972)). "This latitude, however, does not relieve a pro se plaintiff from meeting jurisdictional requirements." Bernard v. United States, 59 Fed. Cl. 497, 499, aff'd, 98 Fed. Appx. 860 (Fed. Cir. 2004) (Table).

B. Failure to State a Claim

Once a court has taken jurisdiction, the consequence of a plaintiff's failing to establish all the elements of its claim is that "plaintiff loses on the merits for failing to state a claim on which relief can be granted." Fisher v. United States (Fisher), 402 F.3d 1167, 1175-76 (Fed. Cir. 2005); see Adair v. United States (Adair), 497 F.3d 1244, 1251 (Fed. Cir. 2007) (citations omitted) ("If, however, the court concludes that the facts as pled do not fit within the scope of a statute that is money-mandating, the court shall dismiss the claim on the merits under Rule 12(b)(6) for failing to state a claim upon which relief can be granted."). "When reviewing a dismissal for failure to state a claim upon which relief can be granted . . . , we must accept as true all the factual allegations in the complaint, and we must indulge all reasonable inferences in favor of the [plaintiff]." Sommers Oil Co. v. United States, 241 F.3d 1375, 1378 (Fed. Cir. 2001) (citations omitted). If, on a 12(b)(6) motion, "matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in RCFC 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by RCFC 56." RCFC 12(b).

RCFC 56(c) provides:

> [Summary] judgment . . . shall be rendered . . . if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

RCFC 56(c). The moving party has the initial burden of demonstrating "the absence of any genuine issue of material fact and entitlement to judgment as a matter of law." Crater Corp. v. Lucent Techs., Inc., 255 F.3d 1361,1366 (Fed. Cir. 2001) (citations omitted); see Celotex Corp. v. Catrett (Celotex), 477 U.S. 317, 322-23 (1986). The adverse party then "must set forth specific facts showing that there is a genuine issue for trial." RCFC 56(e). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). A fact is material if it "might affect the outcome of the suit under the governing law." Id. at 248. An issue is genuine if it "may reasonably be resolved in favor of either party." Id. at 250; see Matsushita Elec. Ind. Co. v. Zenith Radio Corp. (Matsushita), 475 U.S. 574,587 (1986) (stating that there is no genuine issue "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party"). Under RCFC 56, the court must draw all inferences from the underlying facts in the light most favorable to the nonmoving party. Matsushita, 475 U.S. at 587; Mann v. United States, 334 F.3d 1048, 1050 (Fed. Cir. 2003) (citing Anderson, 477 U.S. at 255).

In order to state a claim under the theory of breach of contract, all the elements of a contract must be met. See City of El Centro v. United States, 922 F.2d 816, 820 (Fed. Cir. 1990). An express or "implied-in-fact contract requires findings of: 1) mutuality of intent to contract; 2) consideration; . . . 3) lack of ambiguity in offer and acceptance[; and, 4)] . . . the Government representative 'whose conduct is relied upon must have actual authority to bind the government in contract.'" Id. (citations omitted); see also City of Cincinnati v. United States, 153 F.3d 1375, 1377 (Fed. Cir. 1998); H. Landau & Co. v. United States (Landau), 886 F.2d 322, 324 (Fed. Cir. 1989). The United States Supreme Court has stated that "[w]hatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority." Fed. Crop Ins. Corp. v. Merrill, 332 U.S. 380, 384 (1947). According to the Supreme Court, "this is so even though . . . the agent himself may have been unaware of the limitations upon his authority." Id. "[F]ederal expenditures would be wholly uncontrollable if Government employees could, of their own volition, enter into contracts

obligating the United States." City of El Centro, 922 F.2d at 820. "The scope of [the Government representative's] authority may be explicitly defined by Congress or through the rule-making power." Id. Actual authority may also include implied actual authority, but not apparent authority. Landau, 886 F.2d at 324. "'Authority to bind the Government is generally implied when such authority is considered to be an integral part of the duties assigned to a Government employee.'" Id. (quoting J. Cibinic & R. Nash, Formation of Government Contracts 43 (1982)) (alterations omitted).

C. Pleading Standard

A complaint asserting a claim for breach of contract against the United States shall include "a description of the contract or treaty sufficient to identify it." RCFC 9(h)(3). Furthermore, "the plaintiff shall plead the substance of those portions of the contract or treaty on which the plaintiff relies or shall annex to the complaint a copy of the contract or treaty, indicating the provisions thereof on which the plaintiff relies. Id.

III. Discussion

The Secretary of the Treasury (Secretary) is authorized to make payments in connection with, inter alia, "detecting underpayments of tax." 26 U.S.C. § 7623(a)(1). Under the relevant provision of the Internal Revenue Code:

> The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for (1) detecting underpayments of tax, or (2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same, in cases where such expenses are not otherwise provided for by law.

Id. at § 7623(a). According to the implementing regulations, "a district or service center director may approve a reward, in a suitable amount." Treas. Reg. § 301.7623-1(a) (2008). However, "[t]he Court of Federal Claims may not exercise jurisdiction over plaintiff's claims to the extent plaintiff relies on I.R.C. § 7623 as a basis for jurisdiction." Confidential Informant v. United States, 46 Fed. Cl. 1, 5, 6 (2000) (finding that 26 U.S.C. § 7623 and Treas. Reg. § 301.7623-1(a) are "not money-mandating within the meaning of the Tucker Act"). Section 7623 and its implementing regulation "amount to an indefinite reward offer that an informant may respond to by his conduct." Merrick v. United States, 846 F.2d 725, 726 (Fed. Cir. 1988) ("The United States cannot be contractually bound merely by invoking [26 U.S.C. § 7623 and Treas. Reg. § 301.7623-1(a)]. An enforceable contract will arise under these authorities only after the informant and the government negotiate and fix a specific amount as the reward." (citations omitted)). Through the

statute and regulation, "the Government invites offers for a reward; the informant makes an offer by his conduct; and the Government accepts the offer by agreeing to pay a specific sum." Krug v. United States, 168 F.3d 1307, 1309 (Fed. Cir. 1999) (emphasis omitted) (stating that "26 U.S.C. § 7623 and its implementing regulation, 26 C.F.R. § 301.7623-1(a), alone do not contractually bind the Government" (citation omitted)).

In addition, 26 U.S.C. § 7623 provides:

> If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive an award at least 15 percent but not more than 30 percent of the collected proceeds . . . resulting from the action . . . or from any settlement in response to such action.

26 U.S.C. § 7623(b)(1) (emphasis added). Defendant states that 26 U.S.C. § 7623(b) is not relevant to this case because it is effective only for information provided after December 20, 2006. Def.'s Mot. 6 n.2; see 26 U.S.C. § 7623(b). Plaintiff states that the alleged contract between plaintiff and Mr. Lafferty was "entered into on or about April or May of 1997," but never discusses the dates on which he provided information to the government. Declaration of Arthur Krupnick, No. 07-367, Docket Entry No. 20 (March 4, 2008) (Krupnick Declaration); see Compl.; Pl.'s Resp.; Pl.'s Sur-Reply. Plaintiff's complaint simply does not describe a scenario that appears to the court to fit under either section 7623(a) or 7623(b) of Title 26. Moreover, plaintiff's complaint never asserts Tucker Act jurisdiction under those provisions.

Plaintiff alleges in his Complaint that Ms. McCoy and/or Mr. Lafferty promised him a specific reward of 15 percent. Compl. ¶ 1. Plaintiff's Complaint therefore alleges a contract with the United States in the nature of an express oral agreement and falls within the contract jurisdiction of the Court of Federal Claims. See 28 U.S.C. § 1491(a)(1); see also Gould, Inc. v. United States (Gould), 67 F.3d 925, 930 (Fed. Cir. 1995) (noting that the Court of Federal Claims must first take jurisdiction before it can determine whether the elements of the alleged contract have been met).

The issue before the court, then, is "whether the complaint contains allegations, that, if proven, are sufficient to entitle a party to relief." Gould, 67 F.3d at 929. In his briefing, plaintiff argues that the agents of defendant with whom plaintiff dealt were authorized to contract with him to make an award. Pl.'s Sur-Reply 1. However, plaintiff's Complaint does not allege that Ms. McCoy or Mr. Lafferty had actual authority (including implied actual authority) to bind the Government in contract. See Compl.; see

also City of El Centro, 922 F.2d at 820. Defendant, in its motion to dismiss, put before the court evidence that, if not controverted, demonstrates that neither Ms. McCoy nor Mr. Lafferty were officials with authority to bind the United States in contract. See Def.'s Mot. App. 1-6. Because "matters outside the pleadings [were] presented to and not excluded by the court, [see, e.g., Def.'s Mot. App. 1,] the [court treats the 12(b)(6)] motion . . . as one for summary judgment," see RCFC 12(b), and notes that plaintiff was "given reasonable opportunity to present all material made pertinent to such a motion by RCFC 56," see RCFC 12(b). Because the court disposes of the motion as provided in RCFC 56, the court draws all reasonable inferences in favor of plaintiff as the nonmoving party. See Matsushita, 475 U.S. at 587.[2]

As defendant points out, Def.'s Mot. 1, the date of the alleged contract between plaintiff and the named IRS agents is not specified in plaintiff's Complaint. See Compl. As a result, the court was unable to determine from the allegations in the Complaint, read together with defendant's evidence, the specific positions held by Ms. McCoy and Mr. Lafferty when the alleged contract was made. Plaintiff was requested by order to "file with the court a declaration regarding the date of the alleged contract." Order of February 25, 2008. Plaintiff filed his declaration on March 4, 2008. Krupnick Declaration. In his declaration, plaintiff stated that "the contract, made between John Lafferty and [plaintiff,] was entered into on or about April or May of 1997." Id. With the assistance of that uncontroverted statement, the court can assess the uncontroverted evidence of the positions and authority to contract of Ms. McCoy and Mr. Lafferty.

Ms. McCoy has been a Special Agent in the Criminal Investigative Division (CID) of the IRS since approximately June 1995. Def.'s Mot. App. 1 (Declaration of Donna Montanez). Ms. McCoy stated that she "met Arthur Krupnick in approximately early 1996." Id. Mr. Lafferty, although currently retired from the IRS, was a Special Agent in the CID when Donna Montanez met him in approximately 1993 and he remained a Special agent until approximately 2001. Id. Mr. Lafferty became a Supervisory Special Agent in the CID in approximately 2001. Id. Ms. McCoy and Mr. Lafferty were therefore both Special Agents when the alleged contract was made. Plaintiff never alleges that either Ms. McCoy or Mr. Lafferty held a position other than Special Agent at the time of the alleged contract. See Compl.; Pl.'s Resp.; Pl.'s Sur-Reply. Therefore, with all factual inferences drawn in favor of plaintiff, the court concludes that Ms. McCoy and Mr. Lafferty were Special Agents when the alleged contract was made "on or about April or May of 1997." See Krupnick Declaration. The court now considers

[2]In addition, defendant has also moved in the alternative for summary judgment. Defendant's Motion to Dismiss Or, in the Alternative, For Summary Judgment (defendant's Motion or Def.'s Mot.) 1.

whether either Ms. McCoy or Mr. Lafferty was authorized to enter into a contract of the type alleged by plaintiff "on or about April or May of 1997." See Id.

According to the implementing regulations, "[n]o person is authorized under this section to make any offer, or promise, or otherwise to bind a district or service center director with respect to the payment of any reward or the amount of the reward." Treas. Reg. § 301.7623-1(c). As previously stated by this court, "Through the relevant implementing regulation, the Secretary has granted authority to district directors to approve rewards." Confidential Informant, 46 Fed. Cl. at 7 (citing Treas. Reg. § 301.7623-1).

The authority to approve awards has been further delegated – but not to Special Agents or Supervisory Special Agents. Def.'s Mot. 6; see Def.'s Mot. App. 3 (I.R.M., I.R.S. Deleg. Order No. 204, Rev. 2 (effective Oct. 4, 1990)), App. 4 (I.R.M., I.R.S. Deleg. Order No. 204, Rev. 3 (effective Mar. 14, 1997)), App. 6 (I.R.M., I.R.S. Deleg. Order No. 25-7 (formerly DO-204, Rev. 3) (effective Feb. 28, 2005)). Under the second revision of Delegation Order No. 204, effective October 4, 1990,

> [t]he authority vested in the Commissioner of Internal Revenue and District Directors by [Treas. Reg. §§ 301.7701-9 and 301.7623-1] to approve rewards for information relating to violations of internal revenue laws is hereby delegated to Service Center Directors, the Director, Austin Compliance Center and the Assistant Commissioner (international). This authority may be redelegated not lower than Chief, Examination Branch or Chief, Examination Division as appropriate.

Def.'s Mot. App. 3 (I.R.M., I.R.S. Deleg. Order No. 204, Rev. 2 (effective Oct. 4, 1990)). Delegation Order No. 204 was revised a third time, effective March 14, 1997, "to reflect additional new organizational titles required by IRS Modernization." I.R.S. Deleg. Order No. 204 (Rev. 3) (effective Mar. 14, 1997). Under the third (March 14, 1997) revision, "authority is also delegated to: Directors, Accounts Management Field and Directors, Compliance Services Field; and Directors, International," and "may be redelegated not lower than Compliance Services Field managers and managers reporting directly to the Director, International." I.R.S. Deleg. Order No. 204 (Rev. 3) (effective Mar. 14, 1997). The alleged contract was entered into "on or about April or May of 1997." Krupnick Declaration. Therefore, the March 14, 1997 revision of the Delegation Order was in effect at the time of the alleged contract.[3] The uncontroverted evidence produced by

[3]Nor have later delegations of authority extended the authority to approve awards to Special Agents or Supervisory Special Agents. The Delegation Order was further revised,

defendant indicates that neither Ms. McCoy nor Mr. Lafferty had actual authority at any time to bind the United States in contract. See I.R.M. 1.2.52.2(3); I.R.S. Deleg. Order No. 204 (Rev. 3) (effective Mar. 14, 1997); Def.'s Mot. App. 3 (I.R.M., I.R.S. Deleg. Order No. 204, Rev. 2 (effective Oct. 4, 1990)); see also Def.'s Mot. App. 1 (Declaration of Donna Montanez).

Plaintiff failed to come forward with evidence that raised a genuine issue of material fact so as to defeat a motion to dismiss, considered as a motion for summary judgment, despite having been afforded a reasonable opportunity to do so. See Pl.'s Resp.; see also Pl.'s Sur-Reply. Plaintiff never responded to defendant's Facts, plaintiff has pointed to "no Constitutional provision, statute or regulation [that] authorized Ms. McCoy or Mr. Lafferty to approve rewards," Def.'s Mot. 7, and the regulations relied on by defendant unambiguously support defendant's argument that no such authority exists, see id.; see also Confidential Informant, 46 Fed. Cl. at 7. Therefore, with all factual inferences drawn in favor of plaintiff, the court concludes that neither Ms. McCoy nor Mr. Lafferty had actual authority to bind the United States in contract at the time the alleged contract was entered into "on or about April or May of 1997." Krupnick Declaration.

Despite the lack of actual authority, plaintiff argues that "[a]s an integral component of Mr. Lafferty's position of investigating claims on behalf of the IRS, Mr. Lafferty had the implicit authority to bind the government." Pl.'s Sur-Reply 1. According to plaintiff, "Mr. Lafferty, as a[n] officer authorized to make contracts in order to further the interests of the IRS in regard to investigations and recovery of unpaid taxes, was authorized to make his promise to [plaintiff] as this was an integral part of his investigation." Id. As defendant points out, however, "Mr. Krupnick provides no support for these statements in his brief, and they are, in fact, incorrect." Def.'s Sur-Sur-Reply 1.

Authority to bind the United States in contract can be implied "'when such authority is considered to be an integral part of the duties assigned to a Government

---

effective February 28, 2005, to delegate authority to approve rewards to "Territory Managers; Area Managers; Area Directors; Director, Compliance Campus Operations; Chief, BSA [Bank Secrecy Act] Policy & Operations; Field Directors, Accounts Management Centers; Field Directors, Compliance Services; and managers reporting directly to Director, International (Large & Mid-Size Business)." I.R.M. 1.2.52.2(3) (2007); see Def.'s Mot. App. 6 (I.R.M., I.R.S. Deleg. Order No. 25-7 (formerly DO-204, Rev. 3) (effective Feb. 28, 2005)). Under this most recent revision, the authority to approve rewards may not be redelegated. I.R.M. 1.2.52.2(3) (2007); see Def.'s Mot. App. 6 (I.R.M., I.R.S. Deleg. Order No. 25-7 (formerly DO-204, Rev. 3) (effective Feb. 28, 2005)).

employee.'" Landau, 886 F.2d at 324 (quoting J. Cibinic & R. Nash, Formation of Government Contracts 43 (1982)) (alteration omitted). The Court of Federal Claims has previously held that "for contracting authority to be 'integral' to an employee's duties, such authority must be 'necessary or essential to . . . carrying out [those] assigned duties.'" Leonardo v. United States, 63 Fed. Cl. 552, 557 (2005) (quoting Cruz-Pagan v. United States (Cruz-Pagan), 35 Fed. Cl. 59, 61 (1996)) (alterations in original). "It is appropriate for the court to inquire into the precise nature of a government employee's duties 'to determine whether implied actual authority exists.'" Arakaki v. United States, 62 Fed. Cl. 244, 262 (2004) (quoting Leonardo, 63 Fed. Cl. at 130). The concept of implied authority "serves to fill in the gap when an agency reasonably must have intended certain representatives to possess contracting authority but failed expressly to grant that authority." Cruz-Pagan, 35 Fed. Cl. at 62-63. However, "the doctrine of implied actual authority cannot be used to create an agent's actual authority to bind the government in contract when the agency's internal procedures specifically preclude that agent from exercising such authority." Id. at 62; see Winter v. Cath-dr/Balti Joint Venture, 497 F.3d 1339, 1346 (Fed. Cir. 2007) (holding that the resident officer in charge of contracts could not have implied authority to modify contracts because government regulations and the language of the contract explicitly state "that only the contracting officer had the authority to modify the contract"). Here, the court does not find that Ms. McCoy or Mr. Lafferty had implied actual authority to bind the government in such a contract. Because specific delegation orders prohibit the delegation to Special Agents or Supervisory Special Agents of the authority to approve rewards for IRS informants, I.R.M. 1.2.52.2(3); I.R.S. Deleg. Order No. 204 (Rev. 3) (effective Mar. 14, 1997); Def.'s Mot. App. 3 (I.R.M., I.R.S. Deleg. Order No. 204, Rev. 2 (effective Oct. 4, 1990)), the authority is not and could not be "'an integral part of the duties assigned to'" Special Agents and Supervisory Special Agents, Landau, 886 F.2d at 324 (quoting J. Cibinic & R. Nash, Formation of Government Contracts 43 (1982)).[4]

[4]With regard to whether Ms. McCoy or Mr. Lafferty had implied actual authority to promise plaintiff a 15 percent reward, defendant argues that "because neither . . . had any express actual authority to approve rewards, they necessarily could not have had implied actual authority." Def.'s Mot. 7 (emphasis omitted); see Defendant's Sur-Sur-Reply to Plaintiff's Sur-Reply to Defendant's Reply to Plaintiff's Response to Defendant's Motion to Dismiss Or, in the Alternative, For Summary Judgment (defendant's Sur-Sur-Reply or Def.'s Sur-Sur-Reply) 2. This argument appears to the court to be circular in nature. Implied actual authority is not identical to express actual authority. Rather, the argument applicable to this case is that implied actual authority will not be found where "an agency adopts internal procedures that preclude the employee from exercising such authority." Cruz-Pagan v. United States, 35 Fed. Cl. 59, 63 (1996) (emphasis added).

Because plaintiff has not claimed to have entered into a contract with a person with actual authority to bind the United States, plaintiff has not pleaded all of the necessary elements of a contract with the United States. Defendant has therefore met its burden of demonstrating "the absence of a genuine issue of material fact," Celotex, 477 U.S. at 323, with respect to whether plaintiff entered into a contract with a Government representative with actual authority, either express or implied, to bind the United States in contract. Under applicable law and the uncontroverted evidence, the court finds that the parties with whom plaintiff allegedly contracted did not have actual authority. Plaintiff has not set forth specific facts showing there is a genuine issue for trial.

IV. Conclusion

For the foregoing reasons, defendant's motion to dismiss for failure to state a claim on which relief can be granted, considered under the standards applicable to a motion for summary judgment, is GRANTED. The Clerk of the Court shall enter judgment dismissing plaintiff's complaint.

IT IS SO ORDERED.

_____
EMILY C. HEWITT
Judge