

FILED

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

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
JOSE A. FERNANDEZ, ALICIA C.)
BURGOS, and ECONOMY LEGAL)
SERVICES, INC., doing business as)
Economy Legal Services and as Economy)
Income Tax Services II, and formerly doing)
business as Economy Income Tax Service,)
)
Defendants.)

Civil No. 6:04-CV-1772-Orl-31JGG

**FINAL JUDGMENT OF PERMANENT INJUNCTION
AGAINST JOSE A. FERNANDEZ**

The plaintiff United States of America filed its Complaint for Permanent Injunction under sections 7407 and 7402 of the Internal Revenue Code (26 U.S.C.) on December 6, 2004, seeking a permanent injunction barring the defendant, Jose A. Fernandez, individually and d/b/a Economy Legal Services and as Economy Income Tax Services II, and formerly doing business as Economy Income Tax Service, from acting as an income tax return preparer. Fernandez was personally served with process on December 9, 2004, and his default was entered by the Clerk on January 31, 2005, when Fernandez failed to answer the complaint or otherwise appear in this action.

The United States has moved for the entry of a default judgment against Fernandez pursuant to Federal Rule of Civil Procedure 55(b)(2). Because Fernandez has defaulted, he is deemed to have admitted all allegations of fact that are contained in the complaint. A review of the plaintiff's motion and complaint shows that the motion is due to be granted. In accordance

with Federal Rule of Civil Procedure 65(d), the findings of fact and reasons for the entry of a permanent injunction against the defendant, Jose A. Fernandez, are set forth below.

I. STANDARDS FOR PERMANENT INJUNCTION

To obtain an injunction under section 7407, the United States must show: (1) that the defendant is an “income tax return preparer” within the meaning of Internal Revenue Code section 7701(a)(36); (2) that he engaged in conduct described in section 7407(b)(1)(A)-(D); and (3) that injunctive relief is appropriate to prevent the recurrence of such conduct. 26 U.S.C. § 7407(b); United States v. Ernst & Whinney, 735 F.2d 1296, 1303 (11th Cir. 1984), cert. denied, 470 U.S. 1050 (1985); United States v. Savoie, 594 F. Supp. 678, 683 (W.D. La. 1984); United States v. Franchi, 756 F. Supp. 889, 891 (W.D. Pa. 1991). Further, the United States may obtain an injunction preventing the defendant from acting as an income tax return preparer if it shows that the defendant has “continually or repeatedly” engaged in any of the prohibited conduct described in section 7407(b)(1)(A)-(D) and that “an injunction prohibiting such conduct would not be sufficient to prevent such person’s interference with the proper administration” of the internal revenue laws. 26 U.S.C. § 7407(b).

The United States also has sought an injunction against Fernandez under Internal Revenue Code section 7402. An injunction under that provision is appropriate where the United States shows: (1) the likelihood of continuing irreparable injury to the United States; (2) the harm to the United States without the injunction outweighs any harm to the defendant if a permanent injunction is entered; (3) success on the merits of the case; and (4) the public interest

favors the entry of a permanent injunction. United States v. Buttorff, 761 F.2d 1056, 1059 n.3 (5th Cir. 1985); Forest Park II v. Hadley, 336 F.3d 724, 731 (8th Cir. 2003).

II. FINDINGS OF FACT

1. The defendant, Jose A. Fernandez, resides at 1014 Vigo Avenue, Orlando, Florida 32822, within this judicial district, and operates Economy Legal Services Inc., a corporation located and doing business as Economy Legal Services at 7205 Curry Ford Rd., Suite 2, Orlando, Florida 32822 and also doing business as Economy Income Tax Services II at 2050 N. Forsyth Road, Orlando, Florida 32807.

2. Fernandez was properly served with a summons and a copy of the complaint filed in this civil action on December 9, 2004.

3. Fernandez has not answered the complaint or appeared in this action. His default was entered by the Clerk of this Court on January 31, 2005.

4. Fernandez, doing business as Economy Legal Services and Economy Income Tax Services II, has been preparing federal income tax returns since at least 1981.

5. Fernandez achieves unlawful refunds for his customers by fraudulently offsetting his customers' taxable income with fictitious or inflated deductions reported on Schedule A. Examples of fraudulent items that Fernandez and Economy Legal Services and Economy Income Tax Services II place on customers' federal income taxes include:

a. *Improper filing status*: Fernandez and/or Burgos prepared and/or filed returns claiming unsupported filing status such as Head-of-Household. Fernandez prepared and/or filed returns for taxpayers claiming Head-of-Household filing status, although he was aware that they were married and living in the same residence. This was done to increase the clients' refunds.

b. *Sham Business Deductions*: Fernandez and/or Burgos prepared and/or filed tax returns on which there were claimed fictitious business expenses, thereby fraudulently reducing taxable income. Examples of fraudulent business expenses taken by Fernandez's customers include cost of a wedding, costs of all clothing, cost of nail care, haircuts, cosmetics, and drycleaning.

c. *Improper Itemized Deduction for Taxes Paid*: Fernandez and/or Burgos claimed deductions for taxes paid on clients' tax returns when the taxpayers had only paid sales taxes, not taxes for which a deduction is allowed to offset taxable income.

d. *Improper Claim of Dependents*: Fernandez and/or Burgos told clients that if they sent any money at all to a relative they could claim that relative as a dependent, and the dependent did not have to reside with them. Fernandez also asked his clients if they knew of someone who was not being claimed as a dependent, then Fernandez would request that persons Social Security Number and use it on that client's tax return to claim an additional dependent.

6. Both Fernandez and Burgos, in their personal capacities and as officers of Economy Legal Services Inc., know or should know that their scheme is illegal.

7. Fernandez was audited by the Internal Revenue Service for his personal 1997 and 1998 federal income tax returns, and a civil fraud penalty under Internal Revenue Code Section 6663 was asserted.

8. In addition to civil fraud penalties, preparer penalties under Internal Revenue Code Section 6694 were asserted against Fernandez for 1996 and 1997 due to his claiming deductions, dependents and filing status without any reasonable basis.

9. Fernandez acknowledged that he is highly knowledgeable about the Internal Revenue Code rules and regulations.

10. Defendants prepared at least 3,763 tax returns for the tax year 2001. Fernandez indicated in an interview with Internal Revenue Service agents that he prepared between 4,000 to 5,000 tax returns each year since 2000.

11. The Internal Revenue Service has examined at least 113 of those returns and 100 percent of those returns required audit adjustments which increased the tax owed because of the frivolous positions described above.

12. The average audit adjustment for the 113 examined federal income tax returns resulted in increased tax owed of \$2,821 per return. Assuming that examination of all returns prepared by defendants would yield similar increases in tax, the understated tax liability resulting from the defendants' acts for the 3,763 returns prepared for just the year 2001 would result in a tax loss of \$10,615,423. Based on approximately 12,000 returns prepared for 1999 through 2002, the tax loss to the United States' treasury would be in excess of \$33 million.

13. On information and belief, Fernandez continued to prepare federal income tax returns after the 2002 tax year.

III. REASONS FOR ENTRY OF PERMANENT INJUNCTION

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. § 7402(a).

2. A default judgment is properly entered against a defendant who, like Fernandez, fails to answer, plead, or otherwise defend in a civil action. See Fed. R. Civ. P. 55.

3. As the United States has sought injunctive relief in this case, its claim is not for a sum certain or for a sum which can by computation be made certain. Accordingly, the Clerk may not enter judgment in this action under Federal Rule of Civil Procedure 55(b)(1). Any judgment must be entered by the Court under Federal Rule of Civil Procedure 55(b)(2).

4. As a person who prepares income tax returns for compensation, Fernandez is an “income tax return preparer” within the meaning of Internal Revenue Code sections 7407 and 7701(a)(36).

5. Fernandez has continually and repeatedly engaged in conduct subject to penalty under Internal Revenue Code section 6694(b) by preparing federal income tax returns that understate his customers’ federal income tax liabilities. Fernandez, in conjunction with Burgos and Economy Legal Services Inc., willfully understated his customers’ tax liabilities by fabricating or inflating their tax deductions on at least 113 income tax returns that were examined by the IRS.

6. Fernandez also continually and repeatedly engaged in conduct subject to penalty under section 6694(a) when he prepared tax returns that asserted frivolous positions that did not have a realistic possibility of being sustained on the merits. Claiming entirely fabricated or, at the very least, overstated deductions is a frivolous position. Fernandez knew or should have known that there was no realistic possibility of fabricated or inflated tax deductions being sustained on the merits if the returns that he prepared were examined by the IRS.

7. Because Fernandez has continually and repeatedly engaged in willful and reckless conduct that is subject to penalty under Internal Revenue Code section 6694(a) and (b) and has engaged in fraudulent or deceptive conduct that substantially interferes with the proper

administration of the internal revenue laws, the Court finds that Fernandez should be permanently enjoined from acting as an income tax return preparer.

8. The United States and the public will suffer irreparable harm in the absence of a permanent injunction, and Fernandez will suffer little, if any, harm if the permanent injunction is granted.

9. The United States has prevailed on the merits of the issues raised in this civil action, and the public interest will be served through granting a permanent injunction.

10. The record shows that, absent a permanent injunction, Fernandez likely will continue to violate Internal Revenue Code section 6694 and otherwise engage in conduct that substantially interferes with the proper administration of the internal revenue laws. Accordingly, the Court finds that Fernandez also should be permanently enjoined from acting as an income tax return preparer under Internal Revenue Code section 7402.

IV. ORDER

Based on the foregoing factual findings and legal conclusions, and for good cause shown, the Court accordingly ORDERS, ADJUDGES, and DECREES that:

1. The defendant, Jose A. Fernandez, individually and doing business under any other name or using any other entity, and anyone in active concert or participation with him, including any representative, agent, servant, or employee, is permanently enjoined and restrained from, directly or indirectly, by the use of any means or instrumentalities:

- a. Preparing or assisting in the preparation of any federal income tax return for any other person or entity;

- b. Providing any tax advice or services for compensation, including preparing returns, providing consultative services or representation of customers;
- c. 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 or preparing a return or claim for refund that willfully or recklessly understates a tax liability;
- d. Misrepresenting his qualifications and experience as an income tax return preparer;
- e. Guaranteeing the payment of any tax refund or the allowance of any tax credit; and
- f. Engaging in any conduct that interferes with the proper administration and enforcement of the internal revenue laws through the preparation of false tax returns.

2. It is further ORDERED that the defendant, Jose A. Fernandez, at his own expense, shall send by certified mail, return receipt requested, a copy of the final injunction entered against him in this action to each person for whom he, or anyone at his direction or in his employ, prepared federal income tax returns or any other federal tax forms after December 31, 1999.

3. It is further ORDERED that the defendant, Jose A. Fernandez, shall keep records of his compliance with the requirement of paragraph 2, above, which may be produced to the Court, if requested, or to the United States pursuant to paragraph 7, below.

4. It is further ORDERED that the defendant, Jose A. Fernandez, and anyone who prepared tax returns at the direction of or in the employ of the defendant, Jose A. Fernandez, shall turn over to the United States copies of all returns or claims for refund that they prepared for customers after December 31, 1999.

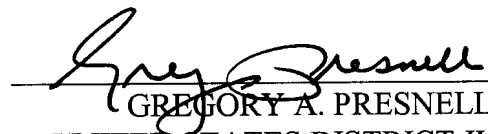
5. It is further ORDERED that the defendant, Jose A. Fernandez, and anyone who prepared tax returns at the direction of or in the employ of the defendant, Jose A. Fernandez, shall turn over to the United States a list with the name, address, telephone number, e-mail address (if known), and social security number or other taxpayer identification number of all customers for whom they prepared returns or claims for refund after December 31, 1999.

6. It is further ORDERED that the defendant, Jose A. Fernandez, within forty-five days of entry of this final injunction, shall file a sworn statement with the Court evidencing his compliance with the requirements of paragraphs 2, 4 and 5, above.

7. It is further ORDERED that the United States may monitor the defendant's, Jose A. Fernandez, compliance with this injunction and may engage in post-judgment discovery in accordance with the Federal Rules of Civil Procedure.

8. It is further ORDERED that this Court shall retain jurisdiction over this action for the purpose of implementing and enforcing this Final Judgment of Permanent Injunction.

DONE and ORDERED in Chambers, Orlando, Florida this 3rd day of May, 2005.



GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE