

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil No. 5:03-cv-436-Oc-10GRJ
)
EDDIE RAY KAHN, a/k/a EDDIE RAY, a/k/a)
EDDIE RAY: HOUSE OF KAHN;)
MILTON HARGRAVES BAXLEY, II;)
BRYAN MALATESTA;)
KATHLEEN KAHN, a/k/a KOOKIE KAHN;)
DAVID STEPHEN LOKIETZ, a/k/a DAVID-)
STEPHEN: HOUSE OF LOKIETZ;)
AMERICAN RIGHTS LITIGATORS, a)
purported trust; GUIDING LIGHT OF GOD)
MINISTRIES, a purported corporation sole; and)
EDDIE KAHN AND ASSOCIATES, a)
purported limited liability corporation,)
)
Defendants.)

**DEFAULT JUDGMENT AND PERMANENT INJUNCTION AGAINST DEFENDANTS
EDDIE KAHN, KATHLEEN KAHN, BRYAN MALATESTA, DAVID STEPHEN
LOKIETZ, AMERICAN RIGHTS LITIGATORS, GUIDING LIGHT OF GOD
MINISTRIES, AND EDDIE KAHN & ASSOCIATES**

The clerk previously entered default against defendants Eddie Kahn, Bryan Malatesta, David Stephen Lokietz, American Rights Litigators, Guiding Light of God Ministries, and Eddie Kahn & Associates (hereinafter “defendants”).¹ Docket No. 104. The plaintiff, United States of America, has moved for entry of a default judgment and permanent injunction against the defendants. For the reasons stated below, including the findings of fact and conclusions of law, the Court hereby enters a default judgment and permanent injunction against the defendants.

¹The only defendant who has not defaulted is Milton Hargraves Baxley, II.

Standards for Permanent Injunction

To obtain a permanent injunction pursuant to 26 U.S.C. (Internal Revenue Code, I.R.C.) § 7408, the United States must show that defendants have engaged in conduct subject to penalty under §§ 6700 or 6701 and that injunctive relief is appropriate to prevent the recurrence of such conduct. For an injunction under § 7402(a), the Eleventh Circuit requires a showing that: (1) it is likely that the United States will suffer irreparable injury if the defendant's conduct continues; (2) it is unlikely that the defendant will be harmed by the injunction; and (3) an injunction will serve the public interest. *United States v. Ernst & Whinney*, 735 F.2d 1296, 1301 (11th Cir. 1984).

Findings of Fact

Based on the well-pleaded allegations, evidence presented, and the parties' arguments, the Court finds as follows:

1. Defendants Eddie Ray Kahn, Bryan Malatesta, Kathleen Kahn, David Stephen Lokietz, American Rights Litigators (ARL), Guiding Light of God Ministries (GLGM), and Eddie Kahn & Associates organize and sell, or participate in the organization and sale of, several abusive tax schemes, including counterfeit checks and bonds, UCC-financing statements and related documents, corporations sole, and an IMF/BMF decoding package.
2. Defendants interfere with the administration of the internal revenue laws through their abusive tax schemes and through frivolous and harassing letters directed to the IRS and to third parties, false and frivolous complaints to the Treasury Inspector General for Tax Administration (TIGTA), assisting customers in hiding assets from the IRS in corporations sole, advising customers to obstruct IRS examinations and collections, and advising customers to not file federal tax returns or pay federal taxes.
3. Defendants promote their abusive tax schemes through seminars, web-based radio shows, and the Internet, including the following websites: www.eddiekahn.com, www.taxtruthnews.com, www.glgm.org, and www.eddiekahnoverseer.org.

4. Defendants charge customers for products and services related to their abusive tax schemes.
5. Defendants make or caused to be made false and fraudulent statements concerning the tax benefits to be derived from their abusive schemes, including that:
 - a. ARL/GLGM's counterfeit checks are "valid forms of payment."
 - b. The Government maintains a "Treasury Direct Account" for each American.
 - c. By using a corporation sole, customers' income becomes tax-exempt and their assets become collection-proof.
 - d. A corporation sole is "Something the IRS Cannot Touch."
 - e. What the IRS does "to collect money is usually not correct. They don't want the public to understand that much less [sic] understand how to expose their deceptive tax practices. Therefore, they would rather let a person go than to let such information become public knowledge even if the amount the person supposedly owes is one million dollars."
 - f. The IRS cannot answer the question "What Specific Tax Form Am I Required by Law to File?"
 - g. "There is no law that requires anyone to file a 1040 form."
 - h. Sending ARL/GLGM's blank POA package to the IRS "eliminat[es] willful failure to file a tax return and tax evasion [charges]."
 - i. "Based on our research, no American is liable for Individual Income Tax."
 - j. Kahn's "registered bills of exchange" and "registered bonds" can be used to satisfy tax liabilities.
 - k. "Anyone can create their own corporation sole and take advantage of all its inherent benefits."
 - l. "[A] corporation sole has no filing requirements with the Internal Revenue. It has no requirement to file taxes. So the money is flowing through [the corporation sole] just on a tax-free basis, it works like a ministry."

6. Defendants knew or had reason to know that their statements were false and fraudulent because (a) defendants' schemes are frivolous on their face; (b) Kahn has been convicted of tax crimes; (c) at least two of defendants' customers have been convicted of tax crimes; (d) co-defendant Baxley has been sanctioned by two federal district courts for his tax protestor arguments and conduct; (e) co-defendant Baxley has been disbarred by the IRS; and (f) Kahn and Malatesta hold themselves out to be tax experts.
7. Defendants' false or fraudulent statements pertain to a material matter: the assessment and collection of federal tax.
8. Defendants did not cease their abusive tax scheme promotion or interference with the administration of the internal revenue laws even after two of their customers were convicted of tax crimes and co-defendant Baxley was sanctioned by two federal district courts.
9. Defendants have prepared documents for filing with or presentation to the IRS, including counterfeit checks, counterfeit bonds, and frivolous letters, that they knew would, if accepted, result in understatements of tax liability. Defendants' preparation of these documents has substantially interfered with the administration of the internal revenue laws.
10. Absent this permanent injunction, defendants are unlikely to stop their abusive tax scheme promotion or their interference with the administration of the internal revenue laws.

To the extent that any of the factual findings above can also be construed as legal conclusions, they shall also serve as conclusions of law.

Conclusions of Law

The defendants failed to respond to the United States' complaint and the clerk therefore entered default. The United States presented evidence in support of its motion for temporary restraining order, which defendants failed to rebut. In addition to defendants' failure to answer the complaint, this evidence demonstrates that the United States is entitled to a default judgment as requested in the complaint. The court hereby enters a default judgment against the defendants, based on their failure to answer the United States' complaint.

Therefore the Court finds that defendants Eddie Ray Kahn, Bryan Malatesta, Kathleen Kahn, David Stephen Lokietz, ARL, GLGM, and Eddie Kahn & Associates are engaging in conduct subject to penalty under I.R.C. §§ 6700 and 6701 and are interfering with the administration of the internal revenue laws. Accordingly, the court finds that defendants should be permanently enjoined under I.R.C. §§ 7408 and 7402(a).

The Court finds that the United States has presented persuasive evidence that the United States and the public will suffer irreparable harm in the absence of this permanent injunction order and that defendants will suffer little, if any, harm if the permanent injunction order is granted. The United States also has presented evidence and argument sufficient to convince the Court that defendants' tax positions are frivolous. Further, the United States has presented credible evidence and argument that shows the public interest will be served through granting this permanent injunction. Finally, the evidence presented shows that absent this permanent injunction, defendants will continue to violate I.R.C. §§ 6700 and 6701 and to interfere with the administration of the internal revenue laws. Accordingly, the Court finds that a permanent injunction under I.R.C. §§ 7408 and 7402 are necessary and appropriate for the enforcement of the internal revenue laws.

Order

Based on the foregoing factual findings and for good cause shown, the Court ORDERS pursuant to I.R.C. § 7408 that defendants Eddie Ray Kahn, Bryan Malatesta, Kathleen Kahn, David Stephen Lokietz, ARL, GLGM, and Eddie Kahn & Associates, their agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Order are permanently enjoined, directly or indirectly, from:

1. Engaging in activity subject to penalty under I.R.C. § 6700, including organizing or selling a plan or arrangement and making a statement regarding the excludibility of income that they know or have reason to know is false or fraudulent as to any material matter;
2. Engaging in activity subject to penalty under I.R.C. § 6701, including preparing and/or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know will result in an understatement of tax liability;
3. Promoting, marketing, organizing, selling, or receiving payment for any plan or arrangement regarding the excludibility of income that they know or have reason to know is false or fraudulent as to any material matter; and
4. Engaging in any other activity subject to penalty under I.R.C. §§ 6700 or 6701.

The Court ORDERS pursuant to I.R.C. § 7402(a) that defendants, individually and doing business under the various names listed in this complaint or under any other name or using any other entity, and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them are permanently enjoined from directly or indirectly:

1. Preparing or assisting in the preparation of correspondence to the IRS on behalf of any other person;
2. Preparing or assisting in the preparation of UCC forms purporting to give the customer a security interest in his or herself, own name, own birth certificate, or own property;

3. Selling or organizing any business arrangement, including corporations sole, that encourages noncompliance with the income tax laws, misrepresents the tax savings realized by using the arrangement, or conceals the receipt of income;
4. Preparing or assisting in the preparation of complaints to TIGTA;
5. Preparing or assisting in the preparation of FOIA and Privacy Act requests on behalf of any other person;
6. Representing any other person before the IRS;
7. Preparing or assisting in the preparation of documents purporting to “decode” IRS files;
8. Falsely advising anyone that they are not required to file federal tax returns or pay federal taxes; and
9. Engaging in other similar conduct that substantially interferes with the administration and enforcement of the internal revenue laws.

The Court ORDERS pursuant to I.R.C. § 7402(a) that defendants must contact by mail all individuals who have purchased their abusive tax shelters, plans, arrangements, programs, or newsletters as described above, inform those individuals of the Court’s findings concerning the falsity of defendants’ prior representations, and attach a copy of the permanent injunction. Defendants must each individually file a sworn certificate of compliance stating that he or she has complied with this portion of the Order, within eleven days of the date of this Order.

The Court ORDERS pursuant to I.R.C. § 7402(a) that defendants are enjoined from distributing any newsletter containing abusive tax scheme promotional materials or materials designed to incite others imminently to violate the law.

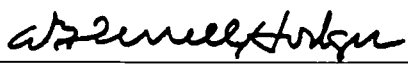
The Court ORDERS pursuant to I.R.C. § 7402(a) and the Court’s inherent equitable powers that defendants are enjoined from receiving any additional payments for their abusive tax schemes and that within fifteen days of the permanent injunction defendants are ORDERED to

disgorge to their customers all ARL/GLGM membership fees and all payments for their abusive tax schemes and services received since ARL was formed in 1996. Defendants must each individually file a sworn certificate of compliance stating that he or she has complied with this portion of the Order, within eleven days of the date of this Order.

The Court ORDERS pursuant to 26 U.S.C. § 7402(a) that defendants and their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them, remove from defendants' websites all abusive tax scheme promotional materials and materials designed to incite others imminently to violate the law and display prominently on the first page of those websites so long as the websites are in operation a complete copy of the Court's permanent injunction. Defendants must each individually file a sworn certificate of compliance stating that he or she has complied with this portion of the Order, within eleven days of the date of this Order.

The Court ORDERS that the United States shall be entitled to conduct post-judgment discovery permitted under the Federal Rules of Civil Procedure to monitor the defendants' compliance with the terms of this Final Judgment of Permanent Injunction. Nothing in this order shall be construed to prevent the United States from conducting discovery of the defendants otherwise permitted under the Federal Rules of Civil Procedure.

SO ORDERED this 12th day of August, 2004.



WILLIAM T. HODGES
United States Senior District Judge