

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
ALEXANDER KLOSEK; BRYAN NOEL;)	
PINNACLE FINANCIAL AND TRUST)	
GROUP, INC.; PINNACLE ADVISORS, LLC;)	
SILVERADO FINANCIAL GROUP, INC.; and)	
CERTIFIED ESTATE PLANNERS, INC.,)	
)	
Defendants.)	
)	

**COMPLAINT
FOR PERMANENT INJUNCTION AND FOR OTHER RELIEF**

This is a civil action brought by the United States to permanently enjoin defendants Alexander Klosek, Bryan Noel, Pinnacle Financial and Trust Group, Inc., Pinnacle Advisors, LLC, Silverado Financial Group, Inc., and Certified Estate Planners, Inc. from promoting tax-fraud schemes and preparing fraudulent tax returns.

Jurisdiction and Venue

1. This action has been requested by the Chief Counsel of the Internal Revenue Service (IRS), a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to 26 U.S.C. (hereinafter, "Internal Revenue Code" or "I.R.C.") §§ 7402(a), 7407, and 7408.

2. Jurisdiction is conferred on this court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a), 7407, and 7408.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.

Defendants

4. Bryan Noel resides in Hendersonville, North Carolina.

5. Noel learned how to sell and market the trust arrangements, discussed herein, through his involvement with Rex Black and Liberty Institute.

6. Through his contact with this group, Noel held himself out to be a “certified estate planner.” The title “certified estate planner” is not one recognized by a standardized test or conferring any specialized knowledge; it is merely a term the Liberty Institute conferred on its salespersons who marketed their program.

7. The Liberty Institute terminated Noel’s relationship with the company in 1998 after it received complaints that Noel was overcharging customers for its products. In spite of the terminated relationship, Noel continued to sell the same trust arrangements without the endorsement of Liberty Institute. In 1999, Noel incorporated Certified Estate Planners, Inc. (hereinafter, “CEP, Inc.”), in which he would sell substantially the same “trusts.” Noel is the president of CEP, Inc.

8. Noel continued to create other companies to further promote and facilitate his fraudulent trust schemes.

9. On June 14, 2002, Black and the Liberty Institute were enjoined from selling trust arrangements. *United States v. Michael D. Richmond, et al.*, 02cv01559, No. 39 (N.D. Ill.) (order entering the permanent injunction against Rex E. Black, *et al.*).

10. Alexander Klosek (hereinafter, “Klosek”) resides in Etowah, North Carolina.

11. Klosek has been preparing income tax returns since at least 1999 and began working with Noel in May 2000. On September 5, 2001, Klosek became the registered agent of CEP, Inc.

12. Klosek's activities included preparing customers' trust returns and managing customers investments by transferring the funds to various accounts and conducting short-term stock trades. Klosek is neither a licensed nor a registered tax return preparer. Klosek is an unenrolled tax return preparer.

13. Klosek is an unlicensed broker, and is not registered with the Securities Exchange Commission (SEC) to sell securities. Klosek is not a Certified Financial Planner.

14. Pinnacle Advisors, LLC (PA) was founded in September 1999 by Noel. Pinnacle Advisors was set up as a trustee company to provide trustee services (i.e., managing assets, securities, annuities, insurance contracts, etc.) for the irrevocable trusts of CEP, Inc.'s customers. On September 5, 2001, Klosek became the registered agent for Pinnacle Advisors and began performing trustee services and preparing income-tax returns for customers.

15. In March 2001, Noel and Klosek formed Pinnacle Fiduciary and Trust Group (PFTG) as an "irrevocable" trust for the purpose of managing all of the clients' assets. Klosek serves as the PFTG trustee.

16. Silverado Financial Group, Inc. (hereinafter, "Silverado") is a company, founded in February 2001 to facilitate the preparation of returns for the trust customers. Noel and Klosek founded Silverado as equal partners. Klosek is listed as the registered agent for Silverado.

17. Klosek conducts business as Silverado while he prepares tax returns for the trust customers.

Defendants' First Fraudulent Tax Scheme: 2000 - 2002

18. From 2000 to 2002 the Defendant's sold "irrevocable trust" tax schemes substantially similar to the "trusts" promoted by the now enjoined Liberty Institute.

19. The sole purpose of these "trusts" created by the defendants is to evade the customer's tax obligations.

20. In marketing the "trusts," Noel would target primarily wealthy elderly customers to join CEP, Inc. CEP, Inc. advertised its scheme through flyers, conferences, and via their website.

21. These advertisements falsely claimed that the customers would be able to avoid their income taxes by placing their assets in trust while still continuing to "manag[e] everything" but "own nothing."

22. Once a customer joined, the Defendants would create an individual "irrevocable trust" for that customer. Each trust would obtain an Employer Identification Number (EIN) from the IRS. These "trusts" typically listed Klosek as a trustee and Noel as co-trustee.

23. After the trust was established, customers would withdraw assets from their retirement accounts, IRAs, annuities and other deferred tax devices and deposit the funds into their "irrevocable trust." The customers then used these assets for personal expenses such as mortgage payments and home repairs.

24. The early withdrawal of these funds and subsequent use for non-tax-exempt purposes should have resulted in the assets being subject to taxation and early withdrawal penalties. As a result, the income should have been reported on the customer's individual federal income tax Return. However, the Defendant's scheme resulted in the customer not reporting this taxable income.

25. As part of this scheme, Klosek prepared customers' Form 1040 Individual Federal Tax Return and Form 1041 Federal Tax returns for the customer's "trust." Instead of reporting the withdrawn assets as personal income subject to taxation on the customer's individual Form 1040, Klosek improperly reported the customer's withdrawn funds on the customer's Form 1041 "trust" tax return. Further, Klosek would consistently under-report the total amount of this income on the Form.

26. After reporting this taxable income on the wrong form, Klosek would make fraudulent deductions on the customer's Form 1041 return to fully deduct, or "zero out," the income reported. This would result in customers paying nominal, if any, taxes on this income. Klosek improperly listed personal expenses (such as mortgage payments, utility bills, rent, and health insurance) as deductions on the customer's Form 1041 trust return.

27. Klosek would further reduce the customer's reported income by reporting large K-1 distribution fees, claiming that the customer's "trust" distributed the income to the customer. However, these large "distributions" were not then reported on the customer's Form 1040.

Defendants' Second Tax Scheme 2002 - present

28. In 2002 the IRS began audits of Defendants' customers who had purchased "irrevocable living trusts."

29. After this investigation commenced, the Defendants ceased selling the "irrevocable living trusts." The Defendants, in 2002, began selling "revocable asset management trusts."

30. The Defendants marketed the revocable asset management trusts to their customers as a way to avoid taxes on their investments.

31. As part of this scheme the Defendants created a new trust, Pinnacle Fiduciary and Trust Group (PFTG), designating Klosek as the trustee. As before, the customers transferred all their assets into the PFTG trust. This “trust” was designed to be a meta-trust, meaning it held all of the assets of all of PFTG’s customers in one trust. The Defendants commingled the customers’ funds in order to conceal them from the IRS.

32. Once deposited into this “trust” the Defendants did not track the individual customers’ funds. As a result all of the various customers’ funds became indistinguishable and the Defendants were unable to determine the value of each customer’s “investment.”

33. The Defendant’s would then use the funds in the PFTG “trust” to “invest” at their discretion.

34. These “investments” consisted of the Defendants making short-term trades, “investing” money in Noel’s enjoined mineral business, and withdrawing large account management fees.

35. Customers were not aware of the Defendants’ “investments” and the Defendants only issued reports of the customer’s account activity upon request. However, these reports did not accurately represent the customer’s account “activity” because the Defendants were unable to determine which percentage of the PFTG “trust” belonged to an individual customer.

36. The Defendants used the PFTG “trust” as a shelter to hide their customers’ assets from the IRS and avoid their correct income tax responsibility.

37. Defendants evaded taxes by falsely reporting trust performance on a Form 1041, utilizing arbitrary amounts that eliminated the tax liabilities. In essence, these returns underreported the customers’ tax liabilities by not accurately reporting the basis for tax

calculations, such as income earned on the customer's assets in the meta-trust, early withdrawal penalties, and capital gains the customer would have incurred.

38. As a result of the scheme, the customers evaded taxation of income earned on assets held in the PFTG trust by claiming that the assets were fully distributed.

39. Additionally, the Defendants did not issue Forms 1099 (forms that report non-wage income) to all of their customers; instead, they only issued the Forms 1099 to those customers who requested the information. However, even on the Forms 1099 that Defendants did issue, the Defendants were unable to report the accurate gains and losses for each customer because the Defendants had combined all customers' assets and failed to keep records. As a result the Defendants merely reported arbitrary amounts.

40. In 2006 customers began withdrawing assets from the PFTG "trust." Because the Defendants are not able to differentiate each customer's "share" of the PFTG "trust," the Defendants arbitrarily determined the customers' assets.

41. As more customers withdrew their assets from the undifferentiated group of funds in the "trust," the assets available for other customers were diminished.

42. In 2006 the Defendants exhausted the trust's funds and the remaining customers were unable to recover the assets they "invested" with PFTG.

Defendants' Knowledge of the Falsity of their Representations about Tax Benefits

43. Both Klosek and Noel hold themselves out as experts in estate planning, trusts, investments, and preparing tax returns.

44. Noel knew, or should have known, that the trusts he were selling were fraudulent.

45. In 2000, Noel was the subject of an IRS audit. During this audit the revenue agent informed Noel that the trust he was using personally was not valid and the agent made substantial adjustments to his income taxes. During the audit Noel stated that he now understood that the trust was invalid for income tax purposes. After the audit Noel continued to market and create substantially similar “trusts” for his customers.

46. In 2002, Noel received a letter from a customer’s attorney detailing the invalidity of the trust and threatening suit against Noel and CEP, Inc. Specifically, the letter detailed that the customers were not properly advised about the consequences of the transfer of assets to the trust, nor was the trust an appropriate estate planning, income tax, or asset protection strategy. Noel showed the letter to attorney Scott Sheffron, a colleague of Noel’s.

47. After receiving and reading the letter Noel received from the customer’s attorney, attorney Scott Sheffron warned Noel about the trusts he was promoting. Sheffron had prepared estate planning documents for Noel’s customers in response to referrals from Noel and Klosek, utilizing purportedly standardized forms provided to him by Noel and Klosek. The letter Noel showed Sheffron caused him to question the validity of the trusts. As a result, Sheffron conducted his own research on the validity of the trusts and was unable to find any legal or tax information to support these types of trusts. Sheffron informed Noel of that finding in writing.

48. Noel knew, or had reason to know, that in 2002 the Liberty Institute, the company which originally trained and “certified” him, was enjoined from selling fraudulent trusts designed to avoid taxation.

49. Klosek has been preparing returns since 1999.

50. Klosek knows, or should know, that he is preparing fraudulent returns.

51. Several of Klosek's customers have been audited by the IRS and informed that the reported positions Klosek took were incorrect. Those customers informed Klosek that the reported positions were incorrect and Klosek filed amended returns to rectify these positions.

52. After taking action to amend the incorrect returns, Klosek has continued in the same manner by fraudulently underreporting the customer's income and reporting fraudulent deductions.

Harm to the Government

53. The Defendants have sold fraudulent tax schemes and prepared returns for at least 93 customers for tax years 2000 to 2004. The estimated total harm to the United States Treasury exceeds \$55,243,189.45.

First Scheme

54. The Defendants' first scheme, operating from 2000 to 2002, resulted in an estimated tax loss of \$403,248.

55. In determining the harm from this scheme the IRS conducted audits on three customers resulting in an average tax owed of \$4,336 per customer. During this period from 2000 to 2002 the Defendant's had at least 93 customers.

56. In addition to the direct loss to the Treasury, the government is harmed because it must devote IRS resources to the detection, audit and collection of under reported taxes of defendants' customers.

Second Scheme

57. The Defendants' second scheme from 2002 to present results in harm to the government by masking the customer's assets in the PFTG trust and customers not paying taxes on their assets, resulting in the interest, dividends, and capital gains on the assets in the PFTG trust escaping taxation.

58. Because the Defendants failed to provide Forms 1099 to their customers it is impossible to know the exact amount of harm the scheme caused to the government. However, an approximate figure can be found by finding the amount of taxable income generated by the PFTG “trust” that was not reported on the customers’ returns.

	2002	2003	2004
Capital Gains	\$24,742,805	\$96,108,140	\$25,474,056
Untaxed Pensions and Annuities	\$696,850	\$3,225,285	\$7,713,654
Total Taxable Income in PFTG “Trust”	\$25,439,655	\$99,333,425	\$33,187,710
PFTG Income Defendants Reported	(\$113,293)	(\$512,596)	(\$648,815)
Total Untaxed PFTG Income	\$25,326,362	\$98,820,290	\$32,538,895

59. From 2002 to 2004 the total amount of taxable income that evaded taxation was \$156,685,547 ($\$25,326,362 + \$98,820,290 + \$32,538,895$). At an average thirty-five percent tax rate through the PFTG trust customers would have evaded paying \$54,839,941.45 in taxes.

60. The harm to the government will increase if Defendants are not stopped because unless they are enjoined the Defendants will continue to prepare returns that fraudulently understate their customer’s tax liabilities.

61. Some of this revenue loss may never be recovered.

Count I: Injunction under I.R.C. § 7408 for violations of §§ 6700 and 6701

62. The United States incorporates by reference the allegations contained in paragraphs 1 through 61.

63. Section § 7408, I.R.C., authorizes this Court to enjoin persons who have engaged in conduct subject to penalty under I.R.C. §§ 6700 or 6701 from engaging in further such conduct if the Court finds that injunctive relief is appropriate to prevent recurrence of the conduct.

64. Section § 6700, I.R.C., imposes a penalty on any person who organizes or participates in the sale of a plan or arrangement and in so doing makes a statement with respect to the allowance of any deduction or credit, the exclusion of any income, or the securing of any tax benefit by participating in the plan or arrangement which that person knows or has reason to know is false or fraudulent as to any material matter.

65. Section § 6701, I.R.C., penalizes a person who aids, assists, or advises with respect to the preparation or presentation of any portion of a return or other document, knowing or having reason to believe that such document will be used in connection with any material matter under the tax laws, and knowing that such portion, if used, would result in an understatement of another person's tax liability.

66. Defendants organize, promote, and market a tax-fraud scheme involving the use of fraudulent charitable deductions.

67. In promoting their scheme, the defendants have made false and fraudulent statements regarding the tax benefits available to their customers. The defendants know or have reason to know that their statements are false or fraudulent.

68. Injunction relief is appropriate to prevent recurrence of this conduct.

Count II: Injunction under I.R.C. § 7407

69. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 68 above.

70. Section 7407, I.R.C., authorizes a district court to enjoin income tax return preparers from:

- a. Engaging in conduct subject to penalty under I.R.C. § 6694 (which penalizes a return preparer who knowingly prepares or submits a return that contains an unrealistic position);

- b. Engaging in conduct subject to penalty under 26 U.S.C. § 6695 (which penalizes a return preparer who wilfully fails to sign a return when required, who fails to furnish an identifying number as required, or who fails to keep a customer list as required by 26 U.S.C. § 6107(b));
- c. Misrepresenting their experience or education as an income tax return preparers; or
- d. Engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws;

if the Court finds that injunctive relief is appropriate to prevent recurrence of such conduct.

Additionally, if the Court finds that the preparer has continually or repeatedly engaged in such misconduct and if the Court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper administration of federal tax laws, the Court may enjoin the person from further acting as a federal income tax return preparer.

71. Defendants Noel and Klosek have worked in concert to continually and repeatedly engage in conduct subject to penalty under I.R.C. § 6694 by preparing returns (Forms 1040) claiming frivolous and fraudulent deductions. Noel and Klosek knew the positions asserted on income tax returns Klosek prepared were frivolous and unrealistic.

72. Noel and Klosek have continually and repeatedly engaged in fraudulent and deceptive conduct that substantially interferes with the proper administration of the internal revenue laws.

73. Noel and Klosek's actions fall within I.R.C. §§ 7407(b)(1)(A) and (D), and are thus subject to injunction under § 7407.

74. Because of Noel and Klosek's continual and repeated conduct subject to injunction under I.R.C. § 7407, combined with their other conduct described in this complaint, they should be permanently enjoined from acting as income tax return preparers.

Count III: Injunction Under I.R.C. § 7402

75. The United States incorporates by reference the allegations contained in paragraphs 1 through 74.

76. Section 7402(a), I.R.C., authorizes a court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws, even if the United States has other remedies available for enforcing those laws.

77. Defendants substantially interfere with the enforcement of the internal revenue laws by promoting their “trust” schemes through which customers underreport their taxable income and take fraudulent deductions on their federal income tax returns.

78. Defendants’ conduct results in irreparable harm to the United States for which the United States has no adequate remedy at law.

79. Unless enjoined by this Court, defendants are likely to continue to engage in such conduct. The United States is entitled to injunctive relief under I.R.C. § 7402(a).

WHEREFORE, plaintiff, the United States of America, prays for the following relief:

- A. That pursuant to I.R.C. §§ 7402(a), 7407, and 7408, Alexander Klosek, Bryan Noel, Pinnacle Financial and Trust Group, Inc., Pinnacle Advisors, LLC, Certified Estate Planners, Inc., Silverado, Inc., and anyone acting in concert with them, be enjoined and restrained from, directly or indirectly, by use of any means or instrumentalities:
1. Preparing or filing, or assisting in the preparation or filing of any federal tax return for anyone other than themselves;
 2. Advising, counseling, or instructing anyone about the preparation of a federal tax return;
 3. Owning, managing, controlling, working for, or volunteering for a tax-return-preparation business;

4. Representing customers in connection with any matter before the IRS; and
 5. Organizing, promoting, marketing, or selling any “trust,” tax preparation service, or other plan or arrangement that advises, encourages, or assists taxpayers to attempt to violate the internal revenue laws or unlawfully evade the assessment of their federal tax liabilities;
 6. Causing other persons and entities to understate their federal tax liabilities;
 7. Making false statements about the allowance of any deduction or credit, the exclusion of any income, or the securing of any tax benefit by reason of participating in such a plan or arrangement;
 8. Encouraging, instructing, advising or assisting others to violate the federal tax laws, including to evade the payment of taxes;
 9. Engaging in any other conduct subject to penalty under I.R.C. § 6700; i.e., by making or furnishing, in connection with the organization or sale of a “trust” or down payment assistance promotion, tax shelter, entity, plan, or arrangement, a statement the defendants know or have reason to know to be false or fraudulent as to any material matter under the federal tax laws;
 10. Further engaging in any conduct subject to penalty under I.R.C. § 6701, *i.e.*, aiding, assisting, or advising with respect to the preparation or presentation of any portion of a return or other document knowing that such document will result in the understatement of another person’s tax liability, if used;
 11. Promoting the false and frivolous position that federal-income taxes can be legally reduced or eliminated by claiming fraudulent deductions or underreporting income;
 12. Further engaging in any conduct that interferes with the administration and enforcement of the internal revenue laws.
- B. That the Court find that Defendants engaged in conduct subject to penalty under 26 U.S.C. § 6701 and that injunctive relief is appropriate under 26 U.S.C. § 7408 to prevent Defendants from engaging in any further such conduct;
- C. That the Court find that Defendants, engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief against Defendants is appropriate pursuant to I.R.C. § 7402(a) and I.R.C. § 7407 to prevent recurrence of that conduct;

- D. Pursuant to I.R.C. § 7402, that Defendants, at their own expense and as a corrective measure, be required to provide a copy of the complaint and injunction to each of their customers, current and former, within eleven days of entry of the injunction. That Defendants be required to file sworn certificates of compliance stating that he has complied with this portion of the Order, within twelve days of the date of this Order, and be required to attach a copy of all correspondence sent with the complaint and injunction;
- E. Pursuant to I.R.C. §§ 7402 and 7408, that Defendants within eleven days of entry of an injunction order be required to file with the court and serve on plaintiff's counsel a complete list of defendants' former and current employees and associates; and
- F. That the United States be permitted to engage in post-injunction discovery to monitor defendants' compliance with this and any other order entered by this Court.
- G. That the United States be permitted to engage in post-injunction discovery to monitor defendants' compliance with this and any other order entered by this Court.
- H. That the Court grant the United States such other and further relief as the Court deems appropriate.

Dated this ____ day of September, 2007.

GRETCHEN C. F. SHAPPERT
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