


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
2008 FEB -6 PM 3:05
CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY

UNITED STATES OF AMERICA, §
PLAINTIFF, §
§
V. §
§
THELL G. PRUEITT, INDIVIDUALLY §
AND D/B/A GRANDVIEW PRAYER §
AND HEALING RETREAT CENTER; §
FRESH START FUNDING GROUP; §
FRESH START FUNDING GROUP §
TAXPAYER EDUCATION §
ASSOCIATION; AND §
THELL G. PRUEITT & FRIENDS, §
DEFENDANT. §

CAUSE NO. A-07-CA-790-LY

FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION

Before the Court is the above styled and numbered cause of action. On November 14, 2007, the Clerk of Court entered an Entry of Default in this cause, which provides that Defendant Thell G. Prueitt individually and d/b/a Grandview Prayer and Healing Retreat Center; Fresh Start Funding Group; Fresh Start Funding Group Taxpayer Education Association; and Thell G. Prueitt & Friends although duly served with a summons and a copy of the Complaint For Permanent Injunction, failed to plead, respond, or otherwise defend in this action as directed (Clerk's Document No. 7). *See* Fed. R. Civ. P. 55(a). Pending before the Court in this cause is Plaintiff United States of America's Motion For Default Judgment of Permanent Injunction Against Thell Prueitt filed January 15, 2007 (Clerk's Document No. 8). *See* Fed. R. Civ. P. 55(b)(2). By its motion, United States seeks default judgment of permanent injunction against Thell G. Prueitt individually and d/b/a Grandview Prayer and Healing Retreat Center; Fresh Start Funding Group; Fresh Start Funding Group Taxpayer Education Association; and Thell G. Prueitt & Friends ("Prueitt") prohibiting Prueitt from promoting

fraudulent and abusive tax schemes and from preparing tax returns. Having considered the motion, the file, and the applicable law, the Court is of the opinion that the United States's motion should be granted, and default judgment and a permanent injunction rendered in favor of the United States and against Prueitt.

The Complaint alleges that Prueitt is doing business as several differently named entities, through which he provides false tax advise to customers and files fraudulent tax returns in violation of the federal internal revenue laws (Clerk's Document No. 1). The United States commenced this action seeking a permanent injunction that would prevent Prueitt from continuing to promote his fraudulent tax schemes. *See* 26 U.S.C. §§ 7402, 7407, & 7408. Additionally, the United States requests that the Court require Prueitt to identify all of his customers and, should the Court render a permanent injunction, require Prueitt to advise all of his customers of the permanent injunction.

The file of this cause reflects that the Clerk of Court issued a summons to Prueitt on September 19, 2007 (Clerk's Document No. 3), the Return Of Service reflects that Prueitt was served personally with the Summons and a copy of the Complaint For Permanent Injunction on October 10, 2007, at 7:30 p.m., and that the return was filed with the Court on November 13 (Clerk's Document No. 5). Also, the Court notes that included as an exhibit to the United States's motion for entry of default by the Clerk is a Verified Affidavit of Service signed by Jacklynn Malarkey, which reflects that she personally delivered to Prueitt at 750 Texas Ave., Kingsland, Texas, 78639, the summons and a copy of the Complaint For Permanent Injunction on October 10. The deadline for Prueitt to file a response to the Complaint For Permanent Injunction was October 30. To date, Prueitt has failed to respond, appear, or have anyone appear on his behalf.

Findings of fact and conclusions of law¹

Based on the file and the affidavit and declaration submitted with the United States's motion for entry of default by the Clerk, the Court finds that Prueitt is not an infant, an incompetent person, nor in the military. The Court also finds that summons was duly issued and, along with the Complaint For Permanent Injunction, properly served on Prueitt in Kingsland, Texas, which is within this Court's jurisdiction. Further, the Court finds that Prueitt failed to timely answer the United States's Complaint For Permanent Injunction and to date has wholly failed to file any response or have anyone appear in this cause on his behalf. The Court finds and concludes that the Clerk properly entered default and further, the United States has met all of the procedural requirements for a default judgment. *See* Fed. R. Civ. P. 55. The Court finds and concludes that due to Prueitt's failure to answer, appear, or otherwise defend the claims alleged against him in this cause of action, the allegations in the United States's Complaint For Permanent Injunction are deemed admitted.

The Court, therefore, finds the following: (1) Prueitt promoted and sold a home-based business scheme knowingly making materially false or fraudulent statements to customers regarding the allowability of deductions for business expenses and their tax liabilities; (2) Prueitt prepared tax returns for customers and he knowingly reported fraudulent deductions for business expenses that were not actually incurred by customers or that were not deductible under the federal internal revenue laws; (3) Prueitt knew that the tax returns he prepared would likely be submitted by customers and would result in understatements of their tax liability; (4) Prueitt's customers filed tax

¹ All findings of fact contained herein that are more appropriately considered conclusions of law are so deemed. Likewise, any conclusion of law more appropriately considered a finding of fact is so deemed.

returns that Prueitt prepared, which contained understatements of Prueitt's customers' tax liabilities; (5) Prueitt promoted an ATM and pay phone scheme whereby he sold customers the equipment at a price well above the true value of the ATMs or phones, and falsely told customers that they were eligible for credits and deductions under the Americans with Disabilities Act ("ADA"); (6) Prueitt falsely told customers they were eligible for the deductions based on the overstated prices of the ATMs and phones knowing that the customers were not actually eligible for the credits and deductions; (7) Prueitt prepared tax returns for customers fraudulently reporting deductions and credits based on the ATM and pay phones he sold; (8) Prueitt prepared the fraudulent tax returns knowing that his customers would likely submit them to the IRS and that the returns would result in understatements of the customers' tax liabilities; (9) Prueitt's customers filed the tax returns Prueitt prepared containing understatements of their tax liabilities; (10) Prueitt prepared tax returns for customers failing to properly report as income money that those customers had withdrawn from their retirement accounts and paid for the purchase of the ATMs and pay phones; (12) Prueitt prepared tax returns for customers and failed to identify himself as the tax-return preparer; (13) Prueitt has failed to respond to IRS inquiries requesting a list of his customers; and (14) Prueitt was previously a promoter and tax-return preparer for Renaissance The Tax People, Inc., based in Kansas, during which time he promoted to customers a tax scheme advising them to claim fraudulent home-based business deductions.

To obtain a permanent injunction the United States must prove: (1) that Prueitt has violated specified provisions of the Internal Revenue Code, and (2) that injunctive relief will fulfill the purposes of the statute. *See* 26 U.S.C. §§ 7402, 7407, 7408. Specifically, for a section 7407 injunction, the United States must prove that Prueitt, an income-tax-return preparer, understated a

taxpayer's liability or failed to inform the taxpayer or perform certain duties for his customers for whom he prepared tax returns.² For a section 7408 injunction, the United States must prove that Prueitt, an income-tax-return preparer, promoted abusive tax shelters and caused another person to make a statement with respect to the allowability of any tax deduction or credit, or aided or abetted the understatement of tax liability.³ Finally, for either injunction, the United States must show that the injunction is necessary or appropriate for the enforcement of the internal revenue laws.⁴

The Court finds that Prueitt made gross valuation overstatements about the value of ATMs and pay phones he sold to customers knowing that those customers would use the overstated purchase prices when claiming ADA credits on their federal income tax returns, and that such claims would result in understatements of the customers' tax liabilities in violations of the Code. *See* 26 U.S.C. §§ 44, 6700. Further, the Court finds that Prueitt made false statements about customers' eligibility for home-based business deductions and ADA credits and deductions, knowing that such statements were false and that customers would rely on such statements in preparing their federal income tax returns in violation of the Code. *See id.* at § 6700. Further Prueitt by preparing federal income tax returns for customers which he knew contained fraudulent deductions for non-business expenses and contained fraudulent claims for ADA deductions and credits. *See id.* at §§ 6694, 6701. Additionally, the Court finds that Prueitt knew that the fraudulent tax returns would be submitted to the IRS and result in understatements of his customers' tax liabilities, and that there was no realistic possibility of the claims being sustained on the merits.

² *See* 26 U.S.C. §§ 6694, 6695.

³ *See* 26 U.S.C. §§ 6700, 6701.

⁴ *See* 26 U.S.C. § 7402(a).

The Court finds and concludes that injunctive relief fulfills the legislative purposes of Internal Revenue Code because Prueitt has demonstrated a pattern of promoting abusive tax schemes. He has attempted to evade detection by the IRS, has failed to cooperate with IRS requests for information, and has continually and repeatedly engaged in violations of the Internal Revenue Code by understating, to an unrealistic extent, taxpayers' liability. *See id.* at § 6694. The Court finds that the United States has met the factors for injunctive relief. *See id.* at §§ 7402, 7407, 7408. Further, the Court finds that a limited injunction prohibiting Prueitt only from participating in the prohibited conduct is insufficient due to his evading IRS investigations, and his continued pattern of violations. Further, the Court finds that the United States has no means to detect all of the fraudulent tax returns prepared by Prueitt because of his failure to sign tax returns identifying himself as the preparer.

The Court will grant the United States's motion for default judgment and will render a permanent injunction.

IT IS ORDERED that the United States Motion For Default Judgment Of Permanent Injunction Against Thell G. Prueitt filed January 15, 2008 (Clerk's Document No. 8) is **GRANTED**.

IT IS FURTHER ORDERED that **DEFAULT JUDGMENT** is rendered in favor of Plaintiff United States and against Defendant, Thell G. Prueitt, individually and doing business as Grandview Prayer and Healing Retreat Center; Fresh Start Funding Group; Fresh Start Funding Group Taxpayer Education Association; and Thell G. Prueitt and Friends.

FURTHER IS RENDERED the following **PERMANENT INJUNCTION**:

1. Defendant, Thell G. Prueitt, individually and doing business as Grandview Prayer and Healing Retreat Center; Fresh Start Funding Group; Fresh Start Funding Group Taxpayer Education

Association; and Thell G. Prueitt and Friends, and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this injunction, are hereby **ENJOINED** under Title 26 United States Code sections 7402, 7407, and 7408 from:

- a. Organizing, promoting or selling any tax shelter, plan or arrangement that advises anyone to violate the internal revenue laws or unlawfully evade the assessment or collection of their federal tax liabilities;
- b. Engaging in activity subject to penalty under Internal Revenue Code section 6700, including selling, organizing or assisting in the organization of a partnership, other entity, any investment plan or arrangement, or other plan or arrangement about which he has made a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which he knows or has reason to know is false or fraudulent as to a material matter, or making a gross valuation overstatement;
- c. Engaging in activity subject to penalty under Title 26 United States Code section 6701, including advising with respect to, preparing, or assisting in the preparation of a return, affidavit, claim, or other document related to a material matter under the internal revenue laws that includes a position he knows will result in an understatement of tax liability;
- d. Engaging in activity subject to penalty under Title 26 United States Code section 6694, including preparing federal tax returns that willfully or recklessly understate federal income tax liability;

e. Engaging in activity subject to penalty under Title 26 United States Code I.R.C. section 6695, including failing to make available for inspection by the IRS a list of customers or a completed copy of any tax return or claim;

f. Making false representations that:

i. an individual or entity is entitled to a home-based business deduction when they are not actually engaged in a business or are not otherwise eligible for such deduction;

ii. an individual or entity is eligible to claim an ADA credit or depreciation deduction for the purchase of a modified ATM or pay phone when the purchaser does not operate a business or otherwise has no obligation under the ADA to make such modifications; or

iii. the value of a modified ATM or pay phone is more than 200% of its actual value, for the purpose of selling such item, knowing that the claimed value of the item is directly related to the amount of any allowable deduction or credit; or

iv. customers are not required to report as taxable income moneys withdrawn from pre-tax retirement accounts that are not invested in another pre-tax investment program.

g. Selling or organizing the establishment of any corporation, trust, limited liability company, or arrangement of business for the purpose of promoting non-compliance with the federal tax laws;

h. Preparing or filing, or assisting in the preparation or filing of federal tax returns for any other person or entity;

i. Engaging in any other activity subject to penalty under Title 26 United States Code sections 6700, 6701, 6694 or 6695; and

j. Engaging in any other conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

2. Prueitt is **ORDERED** to retain a completed copy of any federal income tax return or claim for refund prepared within the last three years, and to make each return available for inspection by the Internal Revenue Service upon request;

3. Prueitt is **ORDERED** to provide to counsel for the United States, **on or before 14 days after the date this Order is signed**, a list stating the names, addresses, email addresses, telephone numbers, and Social Security numbers of all customers to whom he sold any products or services affiliated with Alpha Telcom, ATM Management, Inc., or any other company selling, or involved in the sale or lease of the modified telephones and ATM machines described above. In addition, Prueitt shall, **on or before 15 days after the date this Order is signed**, file with the Court and serve on counsel for the United States a certification, signed under penalty of perjury, stating that he has fully complied with this provision.

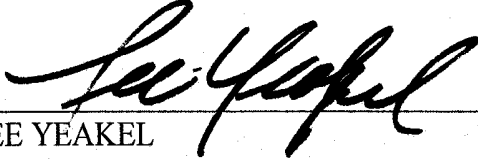
4. Prueitt shall provide to counsel for the United States, **on or before 14 days after the date this Order is signed**, a list stating the names, addresses, email addresses, telephone numbers, and Social Security numbers of all customers for whom he has prepared a federal income tax return or claim for refund for the last three years, or for whom he has aided, abetted, or assisted in the preparation of any portion of a federal income tax return or claim for refund.

5. Prueitt is **ORDERED to send by U.S. mail, within 14 days of the date this Order is signed**, a copy of this injunction to all persons identified in paragraph numbered 4 above, and send confirmation of such mailing to counsel for the United States.

6. The Court shall retain jurisdiction over Prueitt and this action for the purpose of enforcing this Permanent Injunction.

IT IS FURTHER ORDERED that the Clerk of Court shall furnish a copy of this Default Judgment and Permanent Injunction to Defendant Thell Prueitt, individually, by United States Postal Service Certified Mail, Return Receipt Requested, at 750 Texas Avenue, Kingsland, Texas, 78639.

SIGNED this the 6th day of February, 2008.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE