



UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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Case No. CV 05-6039-RGK (SSx) Date: April 10, 2006 Title: UNITED STATES OF AMERICA v. MICHAEL MUHAMMAD

Present: The Honorable R. GARY KLAUSNER, U.S. DISTRICT JUDGE

Table with 3 columns: Sharon L. Williams (Deputy Clerk), Not Reported (Court Reporter / Recorder), N/A (Tape No.). Includes rows for Attorneys Present for Plaintiffs and Defendants.

Proceedings: (IN CHAMBERS) UNITED STATES OF AMERICA'S MOTION FOR ENTRY OF DEFAULT JUDGMENT AND PERMANENT INJUNCTION (DE 22)

I. INTRODUCTION

On August 18, 2005, the United States of America ("Plaintiff") filed this action for permanent injunction against Michael Muhammad ("Defendant") pursuant to Internal Revenue Code ("I.R.C."), 26 U.S.C. §§ 7402(a), 7407, and 7408.

On December 9, 2005, upon request of Plaintiff, the Clerk of the Court entered default against Defendant. Plaintiff now seeks default judgment against Defendant. For the following reasons, Plaintiff's Motion for Entry of Default Judgment is granted.

II. JUDICIAL STANDARD

Federal Rule of Civil Procedure ("Rule") 55(b)(2) requires an applicant to apply for default judgment in all cases in which the requirements for clerk-entered judgment cannot be met. Fed. R. Civ. P. 55(b)(2). An applicant must apply for a court-ordered default judgment where: (1) the claim is for an amount that is not certain or capable of being made certain by computation; (2) the defendant, although in default, has appeared in the action; (3) the defendant is a minor or incompetent; or (4) the defendant is in military service or is the United States. Fed. R. Civ. P. 55(b)(2).

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Pursuant to Local Rule of the Central District Court of California ("Local Rule") 55-1, the application for a default judgment shall include the following: (1) when and against what party the default was entered; (2) the identification of the pleading to which the default was entered; (3) whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator or other representative; (4) that the Service Members Civil Relief Act (formerly the Soldiers' and Sailors' Civil Relief Act of 1940) does not apply; and (5) that notice has been served on the defaulting party, if required by Rule 55(b)(2). Local Rule 55-1.

III. DISCUSSION

A. Default Judgment is Warranted

Upon consideration of the factors set forth under Local Rule 55-1, the Court finds that Plaintiff is entitled to a default judgment against Defendant. The Court makes the following findings:

- (1) Defendant was served with Plaintiff's Complaint by substituted service on September 14, 2005, and by mail on September 16, 2005;
- (2) Defendant failed to file an Answer or otherwise defend this action;
- (3) The Clerk of the Court entered default against Defendant on December 9, 2005;
- (4) Defendant does not serve in the U.S. military; therefore, the Service Members Civil Relief Act (formerly the Soldiers' and Sailors' Civil Relief Act of 1940) does not apply;
- (5) Defendant is not a minor or incompetent;
- (6) Notice of the Application for Default Judgment was served on Defendant by mail on March 10, 2006; and
- (7) The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1340 and 1345, and I.R.C. §§ 7402(a), 7407, and 7408.

Accordingly, the Court finds that a default judgment against Defendant is appropriate.

B. The Factual Allegations of Plaintiff's Claims are Deemed Admitted

For purposes of default, the well-pleaded allegations of a complaint are taken as true. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 918 (9th Cir. 1987). If the court determines the defendant is in default, the defendant's liability is conclusively established and the factual allegations in the complaint, except those relating to damages, are accepted as true. *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977).

Because the Court has found that Defendant is in default, the factual allegations of Plaintiff's Complaint are deemed admitted as follows:

- (1) Defendant prepares income tax returns according to the following tax-fraud scheme:
 - (a) Defendant advises his customers that the United States is a foreign country in relation to California (or any other state) because the United States includes "only the District of Columbia and territories over which the federal government has exclusive jurisdiction."
 - (b) Defendant prepares IRS Form 2555, Foreign Earned Income, falsely reporting that the customer (who lives in California or another state) spent the entire tax year living outside the United States and that his or her state income is therefore excludible from income on their federal tax returns. Defendant attaches a one-page written explanation of his position to Form 2555.

- (2) Since 2001, Defendant has prepared at least 11 federal income tax returns based on this scheme which falsely reported zero taxable income and sought refunds of all federal income taxes withheld.
- (3) In the years following Defendant's preparation of a customer's return, the customer has little or no federal income tax withheld, and the customer ceases filing returns.
- (4) Since 2001, Defendant has prepared approximately 60 returns or amended returns in total. He charges each customer a fee ranging from \$60 to \$500 per return.
- (5) The returns Defendant prepares fail to provide a Social Security Number, Preparer Tax Identification Number, or Employer Identification Number.
- (6) Defendant claims to have studied the IRC and to have taken a basic tax law course offered by H & R Block. Thus, Defendant knows, or has reason to know, that his tax scheme contains false and fraudulent statements.
- (7) Defendant's conduct has harmed his customers by materially understating their income-tax liabilities, resulting in the likely audit of their returns and assessment of tax, penalties, and interest. For example, the IRS assessed one of Defendant's known customers with a \$25,000 deficiency.
- (8) Defendant's conduct has caused the United States to lose tax revenues and provide erroneous refunds. Defendant's activities also force the IRS to divert its limited resources to investigate, conduct audits, and prepare substitute tax returns for those customers who cease filing returns.
- (9) Defendant intends to continue to function as an income tax return preparer and insists on the viability of his "frivolous" position, despite being advised by the IRS that his conduct is subject to penalty and injunction.
- (10) Defendant also falsely and fraudulently advises his customers that wages or earnings from labor are not subject to tax because the term "income" is not defined by statute or case law as specifically including wages or earnings from labor.

C. Permanent Injunction Is Warranted Pursuant to I.R.C. §§ 7407, 7402, and 7408

Section 7407 of the Internal Revenue Code ("I.R.C.") authorizes the Court to permanently enjoin Defendant from acting as an income tax return preparer if Plaintiff demonstrates that: (a) Defendant is an income tax return preparer; (b) who "continually or repeatedly" engaged in conduct subject to penalty under I.R.C. §§ 6694 or 6695; (c) injunction is appropriate to prevent the recurrence of such conduct; and (d) a limited injunction prohibiting only that specific conduct would not sufficiently prevent Defendant from interfering with the proper administration of the internal revenue laws. I.R.C. § 7407.²

Based on the foregoing admitted allegations, the Court finds that Plaintiff has satisfied the above elements. Accordingly, Plaintiff is entitled to a permanent injunction enjoining Defendant from acting as an income tax return preparer under I.R.C. § 7407. Plaintiff is also entitled to all other injunctive measures specified in the Default Judgment and Permanent Injunction issued concurrently with this Order pursuant to I.R.C. § 7402 and 7408.³

² Because § 7407 expressly authorizes the issuance of an injunction, it is unnecessary to consider the traditional standards for equitable injunctive relief in this case. *See United States v. Estate Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000).

³ Because Defendant is permanently enjoined from acting as an income tax return preparer pursuant to I.R.C. § 7407, the Court need not evaluate Plaintiff's claims for the same injunctive relief authorized under I.R.C. §§ 7402 and 7408. However, to the extent that Defendant has engaged in conduct subject to injunction under these provisions, the Court permanently enjoins Defendant from

IV. CONCLUSION

In light of the foregoing, Plaintiff's Motion for Default Judgment and Permanent Injunction is granted.

IT IS SO ORDERED.

SCANNED

Initials of Preparer

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further engaging in such conduct as specified in the Default Judgment and Permanent Injunction Order.