

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
2006 MAY 24 P 2:12

CLERK'S OFFICE
AT BALTIMORE
BY _____ DEPUTY

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 JOHN BAPTIST KOTMAIR, JR.,)
 et al.,)
)
 Defendants.)

Civil No. WMN05CV1297

DEFENDANT KOTMAIR'S MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant John Baptist Kotmair, Jr. (hereinafter "Kotmair"), who moves this court to grant Summary Judgment in favor of Kotmair. This motion is made pursuant to Rule 56 of the Federal Rules of Civil Procedure, and for this, Defendant Kotmair shows and proves to the court as follows:

1. The Plaintiff is estopped from joining John Baptist Kotmair, Jr. as a defendant in this action. Therefore, he should be dismissed as a party from this action.
2. The Complaint alleges, at paragraph 4, that Kotmair is doing business as Save-A-Patriot Fellowship ("SAPF" or "the Fellowship") and National Workers Rights Committee ("NWRC"). Because it was determined by this court, in *Save-A-Patriot Fellowship v. United States*, 962 F.Supp 695 (1996), that Kotmair was not doing business as SAPF, but rather, that SAPF is an unincorporated association, and that

Kotmair is merely the fiduciary of the Fellowship, Kotmair d/b/a Save-A-Patriot Fellowship and d/b/a National Workers Rights Committee should be dismissed from this action, per the doctrine of *res judicata*.

3. NWRC is merely a division of SAPF, rather than a separate entity. Therefore, Kotmair is not doing business as NWRC.

A "Memorandum in Support of Defendant Kotmair's Motion to be Dismissed from this Action" and "Affidavit of John B. Kotmair, Jr's. Motion for Summary Judgment," is incorporated herewith by reference thereto.

WHEREFORE, Defendant John B. Kotmair, Jr. prays that this court dismiss him as a Defendant, in his individual capacity, from this action.

Respectfully submitted this 23rd day of May, 2006.

A handwritten signature in cursive script, reading "John B. Kotmair, Jr.", is written over a horizontal line.

John B. Kotmair, Jr.
P.O. Box 91
Westminster, Md. 21158
410-857-4441

CERTIFICATE OF SERVICE

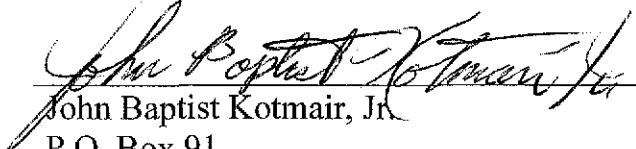
It is hereby certified that the undersigned forwarded the following documents:

- (1) Defendant Kotmair's Motion For Summary Judgment
- (2) Memorandum In Support Of Defendant Kotmair's Motion For Summary Judgment
- (3) Affidavit Of John B. Kotmair, Jr., In Support Of Defendant Kotmair's Motion For Summary Judgment, and
- (4) Certificate Of Service.

via the U.S. Postal Service, postage having been paid in full, on the 24th day of May, 2006, to the parties indicated hereinafter.

Thomas M. Newman
Trial Attorney, Tax Division
Tax Division, U.S. Dept of Justice
P. O. Box 7238
Washington, D.C. 20044

George Harp, Esq.
610 Marshall Street, Suite 619
Shreveport, LA 71101


John Baptist Kotmair, Jr.
P.O. Box 91
Westminster, MD 21158
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**MEMORANDUM IN SUPPORT OF DEFENDANT KOTMAIR'S
MOTION FOR SUMMARY JUDGMENT**

**The Plaintiff is estopped from joining John Baptist Kotmair, Jr.
as a defendant in this action.**

The Plaintiff, at paragraph 4 of the complaint, states,

Defendants' Activities

4. Doing business as SAPF and NWRC, [John B.] Kotmair organizes and sells tax-fraud schemes designed to assist customers in evading their federal tax liabilities and interfering with the administration of the internal revenue laws.

It is alleged that John Baptist Kotmair, Jr. ("Kotmair") is doing business as Save-A-Patriot Fellowship (hereinafter, "SAPF" and "the Fellowship") and the National Workers' Rights Committee ("NWRC"). Moreover, the style of the Complaint also refers to Kotmair as doing business as "Save-A-Patriot Fellowship and National Workers

Rights Committee.” This is not true: Kotmair is separate and distinct from SAPF and its NWRC division.

When writing to employers and other third parties, SAPF uses the title “National Workers’ Rights Committee” as a letterhead. John Kotmair, in his capacity as fiduciary of SAPF, has adopted the title “Director” for the purposes of NWRC. Kotmair does not do business as NWRC, nor has he ever. See Defendants’ Exhibit 1: “Kotmair Affidavit in Support of ‘Defendant Kotmair’s Motion to be Dismissed from This Action’; and Defendants’ Exhibit 2, page 6, *Reasonable Action Newsletter*, vol. VI, no. 2 (March/April, 1990).

This very court made the same determination nine years ago in *Save-A-Patriot Fellowship v. U. S.*, 962 F.Supp 695 (1996). The court stated:

The Government contends, at the threshold, that the SAP Fellowship is not an organization at all, but is solely a name used by Kotmair for his own ‘sole proprietorship’ operation. The Court does not agree, even though it is readily apparent that Kotmair is the major figure in the Fellowship. As noted above, the evidence established that there is an organization and not simply an operation by Kotmair personally. The SAP Fellowship, and not Kotmair personally, leased the Office. There are members, other than Kotmair, who engage in Fellowship activities. This Court observes, also, that the I.R.S. itself, quite appropriately, returned to the Office the operating assets seized from the Office ... In sum, the Court finds as a fact that the SAP Fellowship is an unincorporated association (not just an alter ego or sole proprietorship of Kotmair), has members, and does things through persons in addition to Kotmair.

Furthermore, when the United States of America appealed this Court’s decision in 1997, the government thereafter moved for dismissal of its appeal, “with prejudice.” See Defendants’ Exhibit 3. The United States Court of Appeals granted the government’s motion and issued an order dismissing the appeal. See Defendants’ Exhibit 4.

Having established that this court has previously determined SAPF is not an alter ego or sole proprietorship of Kotmair, it is a matter of well-established law that Kotmair should be dismissed from this action due to the doctrine of *res judicata*. The government has already litigated this issue, and lost.

Courts are uniform in their recognition and application of the doctrine of *res judicata*. The United States Supreme Court stated, in *Hart Steel Co. v. Railroad Supply Co.*, 244 U.S. 294, 299, 37 S.Ct. 506, 507, 61 L.Ed. 1148:

[The] doctrine of res judicata is not a mere matter of practice or procedure It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts

Moreover, in *Federated Department Stores, Inc., et al. v. Moitie*, 101 S.Ct. 2424, 452 U.S. 394, 69 L.Ed.2d 103 (1981), the United States Supreme Court stated:


There is little to be added to the doctrine of res judicata as developed in the case law of this Court. A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Commissioner v. Sunnen, 333 U.S. 591, 597, 68 S.Ct. 715, 719, 92 L.Ed. 898 (1948); Cromwell v. County of Sac, 94 U.S. 351, 352-353, 24 L.Ed. 195 (1877). Nor are the res judicata consequences of a final, unappealed judgment on the merits altered by the fact that the judgment may have been wrong or rested on a legal principle subsequently overruled in another case. Angel v. Bullington, 330 U.S. 183, 187, 67 S.Ct. 657, 659, 91 L.Ed. 832 (1947); Chicot County Drainage District v. Baxter State Bank, 308 U.S. 371, 60 S.Ct. 317, 84 L.Ed. 329 (1940); Wilson's Executor v. Deen, 121 U.S. 525, 534, 7 S.Ct. 1004, 1007, 30 L.Ed. 980 (1887). As this Court explained in Baltimore S.S. Co. v. Phillips, 274 U.S. 316, 325, 47 S.Ct. 600, 604, 71 L.Ed. 1069 (1927), an 'erroneous conclusion' reached by the court in the first suit does not deprive the defendants in the second action 'of their right to rely upon the plea of res judicata.... A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause [of action].' We have observed that '[t]he indulgence of a

contrary view would result in creating elements of uncertainty and confusion and in undermining the conclusive character of judgments, consequences which it was the very purpose of the doctrine of res judicata to avert.' Reed v. Allen, 286 U.S. 191, 201, 52 S.Ct. 532, 534, 76 L.Ed. 1054 (1932).

Nothing has changed over the years with respect to this doctrine. Therefore, this court should grant Summary Judgment on behalf of Kotmair individually, and remove him from this action.

WHEREFORE, Defendant John Baptist Kotmair, Jr. prays this court grant Summary Judgment on behalf of John B. Kotmair, Jr. d/b/a Save-A-Patriot Fellowship and National Workers Rights Committee, and remove him as a party from this action.

Dated this 23rd day of May, 2006.

A handwritten signature in cursive script that reads "John B. Kotmair, Jr." The signature is written in black ink and is positioned above the typed name and address.

John B. Kotmair, Jr.
P.O. Box 91
Westminster, Md. 21158
410-857-4441

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**AFFIDAVIT OF JOHN B. KOTMAIR, JR., IN SUPPORT OF DEFENDANT
KOTMAIR'S MOTION FOR SUMMARY JUDGMENT**

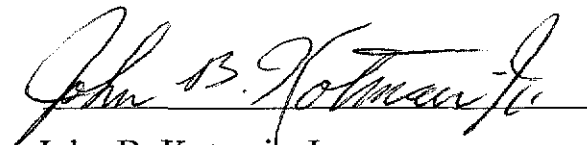
I, John Baptist Kotmair, Jr., do hereby declare as follows:

1. I am a citizen of Maryland and a defendant in the above captioned action.
2. The Save-A-Patriot Fellowship is a first-amendment, unincorporated association, of which I am the Fiduciary of its day-to-day operations.
3. The National Workers' Rights Committee ("NWRC") is a division of the Save-A-Patriot Fellowship, and not a separate entity, having the sole function of serving only the members of the Save-A-Patriot Fellowship.
4. I have the title of "Director" of NWRC only because I am the Fiduciary of Save-A-Patriot Fellowship; it is not a position separate and distinct from the Fiduciary of Save-A-Patriot Fellowship.


5. When writing to employers and other third parties, Save-A-Patriot Fellowship uses the title "National Workers' Rights Committee" as a letterhead. I have adopted the title "Director" for the purposes of NWRC.
6. I have never done business as the Save-A-Patriot Fellowship, nor as the National Worker's Rights Committee.
7. Since the time this court decided, in *Save-A-Patriot Fellowship v. U. S.*, 962 F.Supp 695 (1996), that Save-A-Patriot was an unincorporated association, and that it was not a "sole proprietorship" of mine, SAPF has made no organizational changes, nor does it, to this day, operate any differently than it did in 1993. It continues to be a first-amendment, unincorporated association, engaging in constitutionally protected speech.

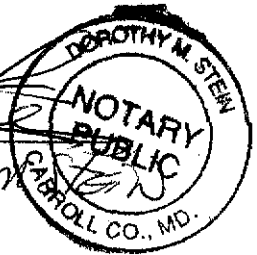
I hereby declare that the foregoing is correct and true to the best of my knowledge, information and belief.

Dated this 22nd day of May, 2006.


John B. Kotmair, Jr.

Subscribed and sworn to before me, a Notary Public, of the State of Maryland, County of Carroll, this 23rd day of May, 2006, that the above named person did appear before me and was identified to be the person executing this document.


Notary Public *Dorothy M. Stern*



My Commission Expires On: October 1st, 2009