

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No.: WMN 05 CV 1297
)	
JOHN BAPTIST KOTMAIR, et al.,)	
)	
Defendants.)	

United States’ Reply to Defendant Kotmair’s Response to the United States’ Memorandum of Law in Support of Motion for Summary Judgment

INTRODUCTION

On May 24, 2006, defendant John B. Kotmair, Jr., filed a motion for summary judgment. (Docket number 36.) On June 19, 2006, the United States filed its opposition and cross-moved for summary judgment in its favor. (Docket number 42.) Defendant Kotmair filed his response on June 7, 2006. (Docket number 53.) The United States now files this reply.¹

STATEMENT OF FACTS

The United States filed suit against defendants John B. Kotmair, Jr. (Kotmair), and Save-a-Patriot Fellowship (SAPF) on May 13, 2005, seeking a permanent injunction under Internal Revenue Code (I.R.C., 26 U.S.C.) §§ 7402(a) and 7408 prohibiting them from interfering with the administration of the internal revenue laws, from organizing and selling tax-fraud schemes, and from assisting in preparing false documents relating to federal tax matters.²

¹ The United States is filing a separate reply brief as to Save-a-Patriot’s response to the United States’ motion for summary judgment.

² Docket number 1, ¶ C.

The United States' complaint lists Kotmair, d/b/a Save-a-Patriot Fellowship and the National Workers Rights Committee, and the Save-a-Patriot Fellowship as separate defendants. Paragraph four (4), of the complaint defines Kotmair's separate actions, stating: "Doing business as SAPF and NWRC, Kotmair organizes and sells tax-fraud schemes to assist customers in evading their federal income tax liabilities and interfering with the administration of the internal revenue laws."³ The following paragraph recites a nearly identical allegation that is directed at SAPF.⁴ Each paragraph of the complaint describes the conduct of Kotmair and SAPF as "defendants," or lists one if the conduct pertains only to that party.

On May 17, 2005, the Court issued two summonses for service on defendants. The first directed a response from John B. Kotmair, Jr., and the second was served on John B. Kotmair, Jr., as the fiduciary of the Save-a-Patriot Fellowship. On July 5, 2005, defendant Kotmair filed an answer to the United States' complaint, which he amended on August 4, 2005.⁵

On October 25 and 27, 2005, the United States served interrogatories and requests for production on both Kotmair and SAPF, respectively. Kotmair served responses and amended responses to the United States' discovery requests on November 28 and December 27, 2005, respectively. On January 10, 2006, the United States filed a Notice of Service of a Motion to Compel Discovery, to which Kotmair filed a response on January 17, 2006.⁶ In both his amended discovery responses and response to the motion to compel, Kotmair claimed non-

³ Docket number 1, ¶ 4.

⁴ Docket number 1, ¶ 5.

⁵ Docket numbers 6 & 8.

⁶ Docket number 17.

custodial possession of some of the requested information because he, as an individual, is not allegedly authorized to disclose this information.⁷

LEGAL ARGUMENT

1. The Facts Submitted in Support of the United States' Motion for Summary Judgment are Uncontroverted and Must be Taken as True.

In deciding a motion for summary judgment, uncontroverted material facts submitted in statement by a party are deemed admitted.⁸ Here, Kotmair was afforded the opportunity to explain his conduct through the discovery process and in his motion for summary judgment, but he did not. Thus, this Court should take as true the information submitted in support of the United States' motion for summary judgment, including that Kotmair: (1) organized SAPF and charges membership fees ranging from \$99 to \$697 for participating in his scheme; (2) provides documents which assist members in evading federal income and employment tax payment requirements; (3) provides tax advice; (4) sends written protest letters to the IRS; and (5) drafts court pleadings to block IRS collection efforts. Moreover, Kotmair and SAPF reward customers

⁷ Docket number 16, Exhibit G (Kotmair's Amended discovery responses), and Docket number 17 (response to notice of motion to compel).

⁸ *Kemper v. American Broadcasting Cos.*, 365 F. Supp. 1275 (S.D. Ohio 1973); *Doctors Hospital, Inc. v Recio* 383 F. Supp. 409 (D.C. Puerto Rico 1974); *Katz v. Realty Equities Corp.* 406 F. Supp. 802 (S.D..N.Y. 1976) (Material facts submitted in statement by a party would be deemed admitted since they were not controverted by statement of the party opposing summary judgment.); *Baldini v. International Union, United Auto.*, 435 F. Supp 264 (N.D. Ind. 1977) (Court must take as true party's affidavits on motion for summary judgment where they stand uncontested by sworn testimony; this is required under Rule 56); *Rusack v. Harsha*, 470 F. Supp. 285. (M.D. Pa. 1978) (Court will accept as true facts alleged in complaint, affidavit, and counteraffidavit which are uncontroverted by opposing party.)

who violate the income tax laws through an “insurance-like” scheme he calls the “Patriot Defense Fellowship.”

In addition, Kotmair sells, *inter alia*, an “Affidavit of Revocation”—which allegedly revokes his customers’ Social Security numbers and obligation to file income tax returns— and “Statement of Citizenship” —which he instructs customers to use instead of a Form W-4 so that customers can declare themselves U.S. citizens not subject to income tax withholding. Kotmair further instructs customers that after executing these document, they “cannot” file an IRS Form W-4 with an employer, or any other IRS or state income tax forms.” Kotmair stated that he is the only supervisory employee at SAPF. Thus, all of these actions are performed under his direction.

2. *Kotmair’s Interpretation of the United States’ Complaint is Unreasonably Narrow.*

Federal Rule 8(a)(2) requires “a short and plain statement of the claim showing that the pleader is entitled to relief.”⁹ The technical requirements of Rule 8 provide that a complaint must give a defendant fair notice of what plaintiff’s claim is and grounds upon which it rests.¹⁰ Moreover, subsection (f) of Rule 8 provides that all complaints are to be construed to do substantial justice, which courts have interpreted as reading a complaint in a light most favorable to the plaintiff.¹¹ Here, Kotmair’s argument fails because he reads the United States’ complaint as being restricted only to an interpretation that would bar relief.

⁹ 5 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1217 (2nd ed. 1990); *Stone v. Warfield*, 184 F.R.D. 553 (D. Md. 1999).

¹⁰ *Swierkiewicz v. Sorema*, 534 U.S. 506 (2002).

¹¹ *Carroll v. Morrison Hotel Corp.*, 149 F.2d 404, 406 (7th Cir. 1945); *Melo-Sonics Corp. v. Cropp*, 342 F.2d 856 (3rd Cir. 1965).

Kotmair's misreading of the complaint begins by reading the caption of the complaint, listing him as "doing business as" SAPF, as an allegation that he and SAPF are a single entity. Next, Kotmair asserts that the term "d/b/a" necessarily implies that the entity is a sole-proprietorship and that the relief is barred because, under his interpretation, this Court decided SAPF is not an alter ego of Kotmair.¹²

Kotmair's restrictive interpretation should be rejected, and the complaint should be read as seeking the relief specifically stated, to bar Kotmair individually from activities subject to penalty under I.R.C. §§ 6700 and 6701. Moreover, Kotmair cannot now claim he is surprised by the allegations because he has resisted discovery under the theory that the requests were made to him as an individual. Put simply, Kotmair's argument is without merit and it would not do justice to read the complaint in the manner he suggests.

CONCLUSION

Kotmair's activities have caused, and are causing, substantial harm—to his clients, to the Government, and to taxpayers who pay their proper tax liabilities. The Court should permanently enjoin him to prevent further harm.

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¹² *Save-A-Patriot Fellowship*, 962 F. Supp. 695 (D. Md. 1996).

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing REPLY TO DEFENDANT KOTMAIR'S OPPOSITION TO THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 21st day of July, 2006.

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