

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil No. **WMN05CV1297**
)
JOHN BAPTIST KOTMAIR, JR.,)
et al.,)
)
Defendants.)

**DEFENDANTS' REPLY TO
UNITED STATES' RESPONSE TO DEFENDANTS' MOTION TO STRIKE**

Defendants Save-A-Patriot Fellowship and John Baptist Kotmair, Jr., continue to request, as they did on July 17, 2006 (Docket 58),¹ that this Court strike statements in Plaintiff's motion for sanctions reply related to its proposition that Defendants' keep records. In that reply, the government attempted to support its proposition by attaching unauthenticated documents, in violation of Fed. R. Evid. 901.²

Plaintiff now asks this Court to deny Defendants' motion to strike because "the exhibits attached to the United States' reply were authenticated through the Second Declaration of Joseph Nagy. (Docket number 62)."

¹ The United States has misstated this motion as being filed on July 18, 2006 as Docket 57.

² The new "evidence" was also beyond the scope of a reply.

The government implies that all the exhibits attached to the United States' motion for sanctions reply (Docket 55) have been authenticated through Joseph Nagy's second declaration, attached to the United States' summary judgment reply (Docket 62). This is not true: comparing the documents which were submitted in the first instance with those more recently submitted, it is clear that only eight of the documents originally submitted have now been "authenticated": five are related to the California Franchise Tax Board,³ two are case file reminders, and one is related to a NWRC letter concerning a W-9 matter.

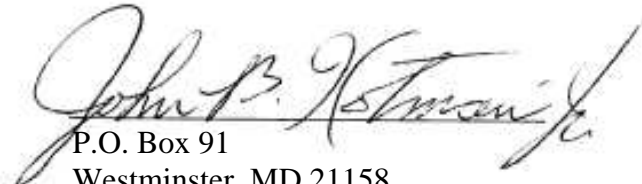
Documents retained by a third party are irrelevant to the question of whether or not records are kept by Defendants, as already pointed out. Nevertheless, these exhibits were re-offered via Nagy's declaration attached to the United States' summary judgment reply, filed just before its response to Defendants' motion to strike was due. Yet these exhibits were not presented in the United States' summary judgment reply to SAPF as evidence of anything at all.⁴ To that extent, they should not be before this Court. Furthermore, the majority of these exhibits (all but three) relate to letters apparently written to the California Franchise Tax Board, and they are immaterial for this reason alone. Defendant SAPF has already moved to strike these documents from the United States' reply as irrelevant and immaterial (see Docket 64).

In retrospect, it is clear that the government's sole purpose in offering the documents with its summary judgment reply to SAPF was to remedy the Rule 901 defect of its motion for sanctions reply. Therefore, the Court should reject the government's request to deny Defendants' motion to strike.

³ Two more are also related to the California FTB, but they state on their face that they are to Camille Nagy, not to Joseph—a direct contradiction of Joseph's statements.

⁴ See page 10:1–3, Docket 64, SAPF's motion to strike US summary judgment reply.

Respectfully submitted on this 14th day of August, 2006.


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CERTIFICATE

The undersigned hereby certifies that a printed copy of “**DEFENDANTS’ REPLY TO UNITED STATES’ RESPONSE TO DEFENDANTS’ MOTION TO STRIKE**” was sent to counsel for the Plaintiff, Thomas Newman, Trial Attorney, Tax Division, U.S. Department of Justice, Post Office Box 7238, Washington, D.C., 20044, by first class U.S. Mail with sufficient postage affixed this 14th day of August, 2006.

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