

**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.)

**THE UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANTS'
MOTION FOR NEW TRIAL**

Defendants John B. Kotmair, Jr., Save-a-Patriot Fellowship (SAPF) have filed a joint Motion for New Trial of the permanent injunction order entered against them on November 29, 2006. (Docket No. 71). The United States opposes Defendants' request, which has no sound basis in law.

There is no reason to schedule a new trial in order to alter or amend the judgment under Fed. R. Civ. P. 52(b) and 59(a). Rule 52 allows a court to correct manifest errors of law or to consider the import of newly discovered evidence. *See, e.g., Weyerhaeuser Corp. v. Koppers Co.*, 771 F. Supp. 1406, 1419 (D. Md. 1991); *United States v. Carolina Eastern Chemical Co.*, 639 F. Supp. 1420, 1423 (D.S.C. 1986); 12 *Moore's Fed. Practice* § 59.30[5]. None of these conditions are present here, and Defendants do not argue otherwise.

A Rule 52(b) motion is not to be used to simply re-litigate already-decided matters or to argue new legal theories. *Carolina Eastern Chemical Co.*, 639 F. Supp. 1420. Defendants are using this motion, however, exclusively for that purpose. SAPF and Kotmair want to reargue the summary judgment motions and the related discovery motions. They contend, *inter alia*, that the

Court's findings are unsupported by evidence in the record, the findings of fact and conclusions of law were based on documents improperly made part of the record, and that there was no finding that Defendants violated I.R.C. §§ 6700 or 6701. Defendants also dispute the finding that they "advise" customers and request a hearing to present evidence on this issue.¹ Each of these arguments have already been considered by this Court.

The evidence in the record shows—and the Court found—that Defendants promote abusive tax-fraud schemes in which they knowingly made false or fraudulent statements concerning the tax benefits associated with the schemes. As the Court held, the evidence establishes that Defendants aid or assist their customers in preparing false or fraudulent documents, including, *inter alia*, Affidavits of Revocation and Rescission. Defendants provide sample forms and instructions, and worthless protest letters for customers to use when they get audited. Defendants' activities interfere with and obstruct the enforcement of the internal revenue laws. An injunction is necessary to prevent recurrence of Defendants' conduct.

Defendants further argue that the government's summary judgment motion was unsupported. Each of the facts presented in the motion and necessary for the issuance of an injunction was properly supported by sworn declarations and oftentimes was taken directly from

¹ In *Schiff*, the promoter of a tax-fraud scheme raised an identical argument—that the customers themselves reach the conclusion that they are not required to pay taxes independent of the scheme—which was rejected by the court as "untenable," if not laughable, because it ignores the "influence of the scheme on their actions." *United States v. Schiff*, 269 F. Supp. 1262, 1266 n. 2 (D. Nev. 2003). Like *Schiff*, these Defendants' ignore the influence of the scheme on their customers. Specifically, their promotional materials and services that guided "members" on the use of the Affidavit of Revocation, Statement of Citizenship, and that they tout having knowledge of the "proper administrative remedy if and when the IRS comes calling." (Docket No. 71, p. 5-6). Advertising their services as "proper" remedies is unquestionably misleading advice considering Defendants acknowledge their materials are worthless and considered frivolous by the IRS's and court's—characterized as "meritless, frivolous, wrongheaded, and even stupid." *Kotmair v. Commissioner*, 86 T.C. 1253, 1262 (1986).

Defendants' materials.² Defendants simply did not refute the evidence presented in the summary judgment motion. They presented no admissible evidence that would create a triable issue of material fact. Based on the evidence, the United States is entitled to judgment as a matter of law.

Defendants also argue that the injunction order is vague.³ There is nothing vague about the order or the evidence upon which it is based. The injunction order explains in detail the proscribed conduct engaged in by Defendants and how that conduct violates various Internal Revenue Code statutes (*e.g.*, §§ 6700 and 6701). The order states why an injunction is necessary. The order explains the standards for granting summary judgment and how those standards apply to this case. The order specifically states what evidence supports the Court's findings, and explains the Court's evidentiary rulings. The specificity requirements set forth in Fed. R. Civ. P. 65(d) are satisfied.

Furthermore, the order sets forth the terms of the injunction—*i.e.*, what Defendants must do to comply with the injunction and what they are barred from doing. Foremost, Defendants must get out of the fraudulent tax program business. Defendants' conduct in this regard is described in the order. They must stop aiding or assisting in the preparation of false or fraudulent documents (such as the Statements of Citizenship and Affidavits of Revocation and

² Defendants understate the evidence submitted in support of the injunction entered against them. They contend the evidence is limited to their handbook, five newsletters, and one page from Kotmair's book, which Defendants state is only a "small fraction of [their] materials." (Docket No. 71, p. 4). They are wrong. The materials Defendants describe is what they provided in discovery, which omits numerous affidavits, court cases and pleading submitted. In that regard, Defendants cannot now complain that they possess information warranting a new trial, based on evidence that was never disclosed, and they are precluded from introducing under Fed. R. Civ. P. 37(c)(1).

³ In this brief, the government refers to the "Judgment" (Docket No. 68) and the Order Entering Permanent Injunction (Docket No. 70) interchangeably and often refers to them collectively as the "injunction order" or "order."

Rescission). Defendants must disclose to the United States the identities of those individuals who have purchased their programs (which would include, *inter alia*, purchasers of their IRS response letters, Affidavits of Revocation, and Membership Assistance Program) and notify those persons of the injunction order. These mandates are not vague.

The injunction order also requires Defendants to remove from their website all advertising for their fraudulent tax programs, and post a copy of the injunction order on that website. Along those lines, Defendants must stop making false sales pitches that incite customers to violate the tax laws and buy their products, including such statements as: payment of federal income taxes is voluntary; wages, salaries, and commissions on U.S.-source income is not taxable; that the Internal Revenue Code applies only to federal enclaves; and that individuals who revoke their Social Security numbers are not required to file income tax returns.

In addition, Defendants must stop engaging in conduct that interferes with the administration and enforcement of the internal revenue laws, and stop instructing others to violate the tax laws, including offering “insurance-like” coverage to customers to violate the income tax laws. Defendants must cease encouraging and assisting persons in disrupting or delaying IRS examinations by providing their frivolous IRS response letters. The injunction order is not vague and Defendants cannot feign ignorance of its edicts.

The injunction entered in this case is similar to those entered and upheld by other courts in recent years. *E.g.*, *United States v. Gleason*, 432 F.3d 678 (6th Cir. 2005); *United States v. Bell*, 414 F.3d 474 (3d Cir. 2005); *United States v. Schiff*, 379 F.3d 621 (9th Cir. 2004) (preliminary injunction); *United States v. Raymond*, 228 F.3d 804 (7th Cir. 2000); *United States v. Estate Preservation Services*, 202 F.3d 1093 (9th Cir. 2000) (preliminary injunction). No

grounds exist for a new trial to alter or amend it. Defendants' motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' OPPOSITION TO DEFENDANTS' MOTION FOR NEW TRIAL has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 29th day of December, 2006.

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