
**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

JOHN BAPTIST KOTMAIR, JR.,
and SAVE-A-PATRIOT FELLOWSHIP,

Appellate No. **07-1156**

Defendants/Appellants,

v.

UNITED STATES OF AMERICA,

Plaintiff/Appellee.

District No. **WMN-05-cv-1297**

INFORMAL BRIEF OF APPELLANT JOHN BAPTIST KOTMAIR, JR

John B. Kotmair, Jr.
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No. 07-1156

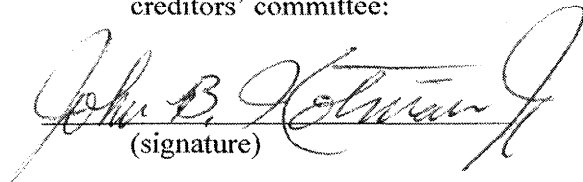
Caption: United States v. Kotmair

Pursuant to FRAP 26.1 and Local Rule 26.1,

John Baptist Kotmair, Jr. who is appellant,
(name of party/amicus) (appellant/appellee/amicus)

makes the following disclosure:

1. Is party/amicus a publicly held corporation or other publicly held entity?
 YES NO
2. Does party/amicus have any parent corporations?
 YES NO
If yes, identify all parent corporations, including grandparent and great-grandparent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?
 YES NO
If yes, identify all such owners:
4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?
 YES NO
If yes, identify entity and nature of interest:
5. Is party a trade association?
 YES NO
If yes, identify all members of the association, their parent corporations, and any publicly held companies that own 10% or more of a member's stock:
6. If case arises out of a bankruptcy proceeding, identify any trustee and the members of any creditors' committee:


(signature)

March 1, 2007
(date)

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ATTACHMENTS:

Exhibit 1	Docket Sheet, Case 05-cv-1297-WMN
Exhibit 2	31 CFR §§ 10.50(a), 10.60(a), 10.60(c), 10.62, and 10.71(a)
Exhibit 3	<i>Save-A-Patriot Fellowship v. United States</i> , 962 F.Supp. 695 (1996).

I. STATEMENT OF SUBJECT MATTER JURISDICTION

Jurisdiction of the District Court

The United States District Court for the District of Maryland had jurisdiction in this civil action arising under the laws of the United States pursuant to Title 26 United States Code §§ 6700, 6701, 7402 and 7408. The final Permanent Injunction Order of the district court was entered November 29, 2006.

Jurisdiction of the Court of Appeals

This court has jurisdiction pursuant to Title 28 U.S.C. § 1291. Venue is proper pursuant to 28 U.S.C. § 1294(1). This appeal is taken from said final Permanent Injunction Order of the U.S. District Court for the District of Maryland, entered November 29, 2006, and the Order entered February 7, 2007, denying Defendants' motions for trial and for modification of the injunction order. Defendants filed a timely notice of appeal on February 16, 2007.

II. ISSUES PRESENTED FOR REVIEW

In a prior case in the United States District Court for the District of Maryland, *Save-A-Patriot Fellowship v. United States.*, 962 F.Supp. 695 (1996), the district court ruled that Save-A-Patriot Fellowship (SAPF) is an unincorporated association, and not a proprietorship of John Baptist Kotmair, Jr. (Kotmair). In bringing a suit for permanent injunction against SAPF, the United States also named John Baptist Kotmair, Jr. a party in the capacity of "d/b/a Save-A-Patriot

Fellowship and National Workers Rights Committee.” The district court declined to dismiss Kotmair as a party in this capacity.

In its complaint, the United States did not make any charges relative to Defendant Kotmair’s representing members of SAPF before the IRS. Subsequently, the United States raised such charges in its motion for summary judgment. The district court found that Kotmair misrepresented his authority to represent members before the IRS.

The following issues are presented for review:

A. Whether the district court’s failure to dismiss Defendant “John Baptist Kotmair, Jr., d/b/a Save-A-Patriot Fellowship and National Workers Rights Committee” from the action below — when the district court ruled in a previous case that Defendant does not do business as Save-A-Patriot Fellowship — was correct as a matter of law.

B. Whether the district court’s finding on summary judgment — that the representative number assigned to Defendant Kotmair by the IRS had been revoked — is proper, in that such finding is inconsistent with the applicable administrative procedural requirements and the federal rules of civil procedure.

III. STATEMENT OF THE CASE

This action was brought by the United States in the United States District Court for the District of Maryland. Plaintiff invoked 26 U.S.C. §§ 7408 and

7402(a), seeking a permanent injunction against Defendants/Appellants John Baptist Kotmair, Jr. d/b/a Save-A-Patriot Fellowship and National Workers Rights Committee, and Save-A-Patriot Fellowship, an unincorporated association. The government alleged that certain speech and activities of Save-A-Patriot Fellowship were violative of 26 U.S.C. §§ 6700 and 6701, and that Defendants were obstructing the Internal Revenue Service from the performance of its duties.

Defendants filed separate motions for summary judgment, and the government filed a cross-motion for summary judgment. The sole issue raised by Defendant Kotmair was that the United States was estopped from joining him as a party to the suit. The district court granted summary judgment in favor of the United States, and issued a permanent injunction order against both Defendants on November 29, 2006. (Docket 70). Subsequently, Defendants jointly filed motions for a trial, for modification of the permanent injunction order, and for a stay pending the resolution of those motions. (Dockets 71, 72, 73). The district court granted the stay on December 19, 2006. (Docket 74).

On February 7, 2007, the district court denied the two post-judgment motions, and lifted its stay of the injunction order. This appeal follows.¹

IV. STATEMENT OF FACTS

Appellant Save-A-Patriot Fellowship (SAPF) has been an unincorporated

¹ The district court granted Defendants' motion for stay pending appeal on

association domiciled in the State of Maryland for over 23 years. See *Save-A-Patriot Fellowship v. U. S.*, 962 F.Supp 695 (1996) (Exhibit 3). Since its founding in early 1984, citizens from all fifty states have joined the Fellowship in order to more effectively advocate their political views, especially with regard to the tax laws of the United States, and to assist each other in exercising their constitutional and due process rights. SAPF publishes opinions on the constitution and tax laws of the United States (the Internal Revenue Code), and documents its research of those laws on its website and in video and audio presentations, newsletters, books, and letters to various parties, including government agencies. Appellant Kotmair is fiduciary of SAPF. (Docket 36, Exhibit 1, ¶ 2).

When writing to employers and other third parties, SAPF uses the letterhead “National Workers’ Rights Committee” (NWRC). Kotmair, in his capacity as fiduciary, adopted the title “Director” of NWRC for the purpose of such correspondence. (Docket 36, Exhibit 1, ¶¶ 3–5). NWRC has never been anything but Save-A-Patriot Fellowship, and the government does not contest this fact.

Because the members of SAPF express opinions on the tax laws that are often contrary to those advocated by the IRS, the Fellowship has frequently been the target of government harassment. In 1993, the IRS raided SAPF, and confiscated SAPF funds in the raid. SAPF sued for a return of the funds taken, and

February 22, 2007. (Docket 83).

the government, in its defense, contended that SAPF was a sole proprietorship of Kotmair, and that the funds in question could be retained by the IRS to satisfy the tax liabilities of Kotmair. *Save A-Patriot Fellowship*, pp. 696, 698. The district court ruled in favor of SAPF, finding that SAPF was in fact an unincorporated association consisting of members, and that Kotmair was not doing business as Save-A-Patriot Fellowship. *Ibid*, p. 698-699. The government appealed to the Fourth Circuit, but ultimately requested dismissal of its own appeal *with prejudice*, which this Court granted.

Despite the district court's final decision eleven years ago on this issue, the United States filed suit in this case against Kotmair in the capacity of doing business as Save-A-Patriot Fellowship and National Workers Rights Committee. In addition to joining Kotmair "d/b/a" as a party, the government alleged specifically that: "Doing business as SAPF and NWRC, 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." (Docket 1, ¶ 4).

Kotmair requested the district court dismiss him as a party to this suit pursuant to the doctrine of *res judicata*, by which the United States is estopped from joining Kotmair as a party "doing business as," or litigating the issue at all. (Docket 36). In opposition, the government claimed that "the United States' complaint defines 'doing business as' as Kotmair's actions as the 'fiduciary' of

SAPF and ‘director’ of the National Workers Rights Committee.” (Docket 42, pp. 8–9). It is clear, however, that the complaint contains no such redefinitions. The court declined to dismiss Kotmair d/b/a SAPF, and so failed to apply the doctrine of collateral estoppel. In so doing, the court referenced no alternative legal theory or authority, stating only that it would “enjoin Kotmairs’ actions [sic].” (Docket 68, p. 23).

Kotmair, in his capacity as fiduciary of SAPF, has represented hundreds of members of the Save-A-Patriot Fellowship before the IRS. The Internal Revenue Service recognized Kotmair’s representative status November 5, 1990 when they assigned him Representative Number 2605-47815R. (Docket 51, Exhibit 4). Since then, and to this day, Kotmair continues to represent members who give him power of attorney to do so.

By letter dated June 3, 1994, IRS District Director Paul Harrington claimed that Kotmair was ineligible to have such representative status. Since 31 CFR § 10.50(a) authorizes revocation of representative status only “after notice and an opportunity for a proceeding,” and Kotmair had not been afforded such, he wrote to Harrington on June 15, 1994, explaining the basis of his authority to represent SAPF members before the IRS. He informed the IRS of his intention to continue, and requested an appeal proceeding in the event the IRS was opposed. (Docket 51, Exhibit 4, p. 4). Despite this and many other letters to the IRS over the years on

this issue, the fact remains that IRS has never pursued a proceeding, as is required by 31 CFR § 10.50(a), to revoke Kotmair's representative status or number. The government does not contest the fact that the IRS did *not* move to revoke representative status via 31 CFR § 10.50(a).

In its complaint, the United States did not make any charges relative to Defendant Kotmair's representing members of SAPF before the IRS (in his official capacity as SAPF fiduciary), nor did the government allege anything with regard to Kotmair's statements about his authority to represent those members. Subsequently, the United States introduced these issues on its motion for summary judgment through the affidavit of Revenue Agent Joan Rowe, who claimed, *inter alia*, that Kotmair was "not authorized" to represent SAPF members before the IRS. (Docket 43, p. 7, ¶ 37). Building on Rowe's affidavit, the government alleged for the first time that Defendant SAPF and Kotmair "continue to falsely advise customers that Kotmair is authorized to represent individuals before the IRS" and that "defendants falsely advertise they can ...represent customers before the IRS. Defendants know these representations are false." (Docket 42, p. 7 and p. 16, FN50). Defendant SAPF objected to this new allegation in its opposition to the government's summary judgment motion. (Docket 54, p. 4-6 and p. 27). The allegation's untimely introduction deprived Defendants of proper notice of the conduct complained of, leaving them without sufficient information to formulate a

defense, nor a period of discovery to learn the facts and depose witnesses with respect to this issue.

Over SAPF's objection, and without an inquiry into the underlying facts, the district court ordered Kotmair to cease and desist in "representing or assisting any other person before the IRS in connection with any matter, including preparing or assisting in the preparation of correspondence to the IRS on behalf of any person..." (Docket 70, ¶ 1(e).) In its memorandum supporting the injunction order, the district court stated: "In addition to these falsehoods about the tax laws, Defendants also misrepresent Kotmair's authority to represent others before the IRS." (Docket 68, p. 13, FN6.)

V. SUMMARY OF THE ARGUMENT

Because the district court ruled over ten years ago that Kotmair is not doing business as Save-A-Patriot Fellowship, and that Save-A-Patriot Fellowship is an unincorporated association, separate and distinct from him, Kotmair should have been dismissed from this action under Federal Rules of Civil Procedure Rule 17(a) and the doctrine of *res judicata* — specifically, the collateral estoppel doctrine precludes Plaintiff United States from bringing suit against Kotmair in that capacity.

The regulations created by the Secretary of the Treasury that govern representation before the Internal Revenue Service establish the procedure by

which Kotmair's representative status must be revoked.² The government does not dispute that those procedures have never been followed with respect to Kotmair. Thus, as a matter of law, Kotmair's representative status has never been revoked. It was therefore error for the District Court to find that Kotmair's representative status had been revoked, and that Defendants misrepresent such status.

Plaintiff may not add new pleadings by affidavit or motion for summary judgment without amending the complaint pursuant to FRCP 15(a). Moreover, the allegation concerning misrepresentation of Kotmair's authority to represent others before the IRS is an allegation of fraud, subject to the heightened pleading standards of FRCP 9(b). Plaintiff's failure to adhere to the rules of civil procedure denied Kotmair his legal right to due process. It is prejudicial error for the district court to find, over Defendant SAPF's objections, that Kotmair's representative status had been revoked and to subsequently enjoin him from representing others.

VI. ARGUMENT

Standard of Review

A district court's award of summary judgment is reviewed by the Fourth Circuit Court of Appeals *de novo*. See *Xoom, Inc. v. Imageline, Inc.*, 323 F.3d 279 (4th Cir. 2003). In addition, "[t]o the extent there are issues of law in dispute, those questions will also be reviewed *de novo*. See *Nelson-Salabes, Inc. v. Morningside*

² See Exhibit 2, 31 Code of Federal Regulations §§10.50(a), 10.60(a) and (c),

Dev., LLC, 284 F.3d 505, 512 (4th Cir.2002),” ibid., at 282.

Discussion of Issues

A. Whether the district court’s failure to dismiss Defendant “John Baptist Kotmair, Jr., d/b/a Save-A-Patriot Fellowship and National Workers Rights Committee” from the action below — when the district court ruled in a previous case that Defendant does not do business as Save-A-Patriot Fellowship — was correct as a matter of law.

According to Rule 17(a) of the Federal Rules of Civil Procedure, every action shall be prosecuted “in the name of the real party in interest.” The question is whether Kotmair d/b/a SAPF is the real party in interest. According to the doctrine of *res judicata*, “Kotmair d/b/a SAPF” does not exist, and so cannot properly be a real party in interest.

Eleven years ago, after a trial on the merits, the United States District Court for the District of Maryland 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 through 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

10.62, and 10.71(a).

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.” *Save-A-Patriot Fellowship v. U. S.*, 962 F.Supp 695 (1996), 698–699. [emphasis added]

Clearly, the District Court found that Kotmair is NOT doing business as SAPF, and therefore, his inclusion as a party in that capacity is precluded by the doctrine of collateral estoppel.

Plaintiff had opportunity to substitute Kotmair in his individual personal capacity as the real party in interest, but failed to do so, instead arguing in its summary judgment motion that the complaint “defined ‘doing business as’ as Kotmair’s actions as the ‘fiduciary’ of SAPF.” (Docket 42, p. 8). Nowhere in the complaint is the term “doing business as” redefined as the actions of a fiduciary, nor is Kotmair aware of any legal theory that would allow for such a redefinition. Rather, the allegation clearly made in the complaint, *inter alia*, is that: “Doing business as SAPF and NWRC, Kotmair organizes and sells tax-fraud schemes... .” (Docket 1, ¶ 4.)

If Kotmair in his individual personal capacity was intended to be the real party in interest, FRCP 17(a) mandates the suit be prosecuted in that name. In replying to the United States’ summary judgment motion, Defendant Kotmair showed by way of reference to the record that the government knows the proper way to sue someone in their individual capacity (Docket 53, p. 2 and Exhibit 1). In

the declaration of Department of Justice Trial Attorney Evan Davis (Docket 45, ¶2), Evans refers to the injunction suit brought against “Thurston Bell, individually, and doing business as National Institute of Taxation Education.”

[Emphasis added]

Plaintiff’s failure to make the substitution of parties, as allowed by FRCP 17(a), even after being made aware of this defect in the complaint, resulted in the prosecution of the injunction suit against a party who is not — and who is estopped by prior judgment from being — a real party in interest. This defect necessitated dismissal of the complaint against Kotmair d/b/a SAPF. Wherefore, with respect to this question, the district court erred in refusing to grant summary judgment in favor of Defendant Kotmair and dismissing him from the action. The district court compounded this error by enjoining the activities of Kotmair individually, since he was never a party in that capacity.

B. Whether the district court’s finding on summary judgment — that the representative number assigned to Defendant Kotmair by the IRS had been revoked — is proper, in that such finding is inconsistent with the applicable administrative procedural requirements and the federal rules of civil procedure.

The regulations that govern practice before the IRS authorize the revocation of representative status only “after notice and an opportunity for a proceeding.” (31 CFR § 10.50(a), Exhibit 2) The process includes prior notice in writing and the

chance to challenge it (31 CFR § 10.60(c), Exhibit 2), the filing of a complaint (31 CFR §§ 10.60(a) and 10.62, Exhibit 2), and a hearing on such complaint before an Administrative Law Judge (31 CFR § 10.71(a), Exhibit 2). However, none of these legal requirements have been met with respect to the alleged revocation of Kotmair's representative status, despite his repeated requests that these procedures be followed and his Privacy Act requests for all the documents relating to said revocation. (Docket 51, Exhibit 4).

Since the legal requirements which provide the only method for revoking Kotmair's status were not met, then said status was never revoked, as a matter of law. Therefore, in light of this due process problem, it was error for the District Court to find that it had been revoked and that Defendants misrepresent that representative status.

Federal Rules of Civil Procedure 15(a) governs the amendment of complaints. As this Court explained in *Gilbane Bldg. Co. v. Federal Reserve Bank*, 80 F3d 895 (4th Cir. 1996), amendment of a complaint without regard to FRCP 15(a) is allowable in the event a trial is conducted, and only in those cases where the defendant has consented to a trial of the non-pled issues:

“Rule 15(b) is an exception to the general rules of pleading. As its heading suggests, it is designed to allow amendment of a pleading when the facts proven at trial differ from those alleged in the complaint, and thus support a cause of action that the claimant did not plead. Because notice to the defendant of the allegations to be proven is essential to sustaining a cause of action, Rule 15(b) applies only

when the defendant has consented to trial of the non-pled factual issues and will not be prejudiced by amendment of the pleadings to include them.” *Gilbane Bldg. Co. v. Federal Reserve Bank, ibid.*, at 901.

In its motion for summary judgment, the United States alleged for the first time that Defendants “continue to falsely advise customers that Kotmair is authorized to represent individuals before the IRS” and that “Defendants know these representations are false.” The particularity for this allegation was introduced by Agent Rowe’s affidavit.³ However, Defendants never consented to the untimely introduction of this claim. Rather, Defendants objected at every opportunity to the government’s attempts to amend the complaint outside of FRCP 15(a)’s requirements. (See , *e.g.*, Docket 54, pp. 4–6, Docket 64, p. 15).

Kotmair was seriously prejudiced by the government’s amending the complaint in this manner: he was deprived of the opportunity to obtain discovery or depose witnesses on this issue, and prevented from gathering and presenting evidence that his representative status is in fact recognized by the Internal Revenue Service.

To further illustrate the plain error involved in granting an injunction on a claim never raised in the complaint, consider the pleading standard of FRCP 9(b), which has been described as requiring that “a complaint must specify the identity of the person making the misrepresentation, the time, place, and content of the

misrepresentation, and the method by which the misrepresentation was communicated to the plaintiff.” *Sears v. Likens*, 912 F.2d 889 (7th Cir. 1990), at p. 893. This requirement must be met within a formal or amended complaint, according to the court in *Miller v. Gain Fin., Inc.*, 995 F.2d 706 (7th Cir.1993):

“[FRCP 9(b)] requires that in pleading special matters, such as fraud, a party must state the circumstances with particularity. In this case, appellants attempted to rely on affidavits for the particularity requirement. We find that to be insufficient, since affidavits are not formal pleadings.” *ibid.*, at p. 709.

At the very least, there is clearly a genuine dispute of material fact with respect to whether Kotmair’s representative status has been validly revoked, making summary judgment on this matter improper.⁴ Wherefore, with respect to this question, the district court erred in refusing to dismiss the untimely raised claim regarding representative status, and in enjoining Kotmair on this ground. This error was compounded when the district court refused to grant Kotmair’s motion to strike the findings related to Kotmair’s representative status as outside

³ Said particularity was also not in accord with the requirements of Rule 9(b).

⁴ It must be noted that even a decision by the court below (upon inquiry into the matter of law referenced *supra*) that the IRS *had* validly revoked Kotmair’s representative status, would not properly reflect Kotmair’s intent and state of mind concerning that representative status, given the long-standing points of contention between parties on this issue. Further, the allegation raised was that Kotmair made false statements about whether he could represent people. Whether true or not, the government has no claim thereon for injunctive relief, because such statements are beyond the scope of injunctions under §§ 7408 and 7402(a), and it was never alleged, shown, nor found that Kotmair’s statements regarding his representative status have caused any harm to the United States.

the scope of the pleadings (Docket 72, p. 7), or to hold a trial on the issue. (Docket 71, p 7).

VII. CONCLUSION

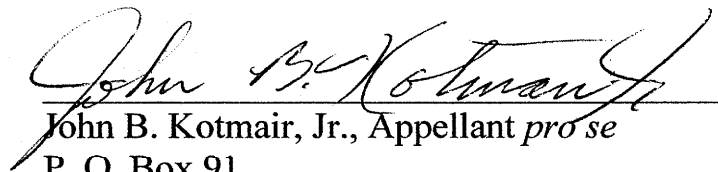
For the reasons stated herein, the Appellant prays that this court:

(1) find that the District Court for Maryland erred in refusing to grant summary judgment in favor of Defendant Kotmair;

(2) order the dismissal of Defendant Kotmair d/b/a SAPF from the action and reverse the “PERMANENT INJUNCTION ORDER” of the District Court for Maryland, insofar as it purports to enjoin the actions of John B. Kotmair, Jr. in his individual personal capacity; and

(3) provide such other relief as this court deems proper.

Dated this 9th day of April, 2007.

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

John B. Kotmair, Jr., Appellant *pro se*

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

Certificate of Compliance with Type-Volume Limitation,
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 3,723 words, excluding the parts of the brief exempted by Fed. R. App. P. 32 (a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word for Windows in 14 point Times New Roman.

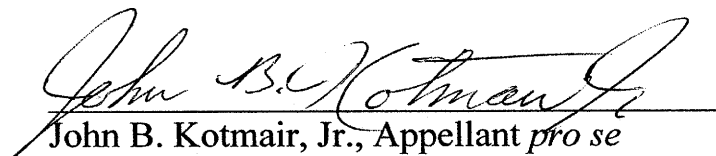

John B. Kotmair, Jr., Appellant *pro se*

CERTIFICATE OF SERVICE

I, John B. Kotmair, Jr., a Citizen of the state of Maryland, am over the age of 21, and do hereby certify that I have sent my INFORMAL APPELLATE BRIEF with attachments and certificate of service, to the parties indicated hereinafter, via the United States Postal Service, postage having been paid, on April 9, 2007.

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John B. Kotmair, Jr., Appellant *pro se*

History

Doc. No.	Dates	Description
<u>1</u>	<i>Filed & Entered:</i> 05/13/2005	Complaint <i>Docket Text:</i> COMPLAINT FOR PERMANENT INJUNCTION against John Baptist Kotmair, Jr, Save-A-Patriot Fellowship , filed by United States of America. (Attachments: # (1) Civil Cover Sheet)(raf, Deputy Clerk)
<u>2</u>	<i>Filed & Entered:</i> 05/16/2005 <i>Terminated:</i> 05/16/2005	Motion to Appear Pro Hac Vice <i>Docket Text:</i> MOTION for Anne Norris Graham to Appear Pro Hac Vice by United States of America. (cag, Deputy Clerk)
<u>3</u>	<i>Filed & Entered:</i> 05/16/2005	Order on Motion to Appear Pro Hac Vice <i>Docket Text:</i> MARGINAL ORDER granting [2] Motion for Anne Norris Graham to Appear Pro Hac Vice (cag, Deputy Clerk)
<u>4</u>	<i>Filed & Entered:</i> 05/17/2005	Summons Issued <i>Docket Text:</i> Summons Issued 20 days as to John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (raf, Deputy Clerk)
<u>5</u>	<i>Filed & Entered:</i> 06/17/2005	Affidavit of Service <i>Docket Text:</i> AFFIDAVIT of Service for Summons & Complaint served on John Baptist Kotmair, Jr., and Save-a-Patriot Fellowship on 06/15/2005, filed by United States of America. (Attachments: # (1) Affidavit Affidavit of Service - Kotmair# (2) Affidavit Affidavit of Service - Save-A-Patriot Fellowship)(Graham, Anne)
<u>6</u>	<i>Filed & Entered:</i> 07/05/2005	Answer to Complaint <i>Docket Text:</i> ANSWER to Complaint for Permanent Injunction by John Baptist Kotmair, Jr.(mcb, Deputy Clerk)
<u>7</u>	<i>Filed & Entered:</i> 07/06/2005	Memorandum to Parties <i>Docket Text:</i> MEMORANDUM to all Counsel/Parties re: This case will remain subject to Electronic Filing as therein set forth. Signed by Judge William M Nickerson on 7/5/05. (c/m 7/6/05 mcb, Deputy Clerk)
<u>8</u>	<i>Filed & Entered:</i> 07/14/2005	Answer to Complaint <i>Docket Text:</i> ANSWER to Complaint by Save-A-Patriot Fellowship.(Harp, George)
<u>9</u>	<i>Filed & Entered:</i> 08/04/2005	Answer to Complaint <i>Docket Text:</i> AMENDED ANSWER to Complaint for Permanent Injunction, by John Baptist Kotmair, Jr. (Attachments: # (1) Proposed Order)(mcb, Deputy Clerk)
<u>10</u>	<i>Filed & Entered:</i> 08/08/2005	Amended Answer to Complaint <i>Docket Text:</i> AMENDED ANSWER to by Save-A-Patriot Fellowship. (Harp, George)
<u>11</u>	<i>Filed & Entered:</i> 10/05/2005	Order <i>Docket Text:</i> PAPERLESS ORDER Approving filing of [9] Amended Answer to Complaint filed by John Baptist Kotmair, Jr., [10] Amended Answer to Complaint filed by Save-A-Patriot Fellowship,. Signed by Judge William M Nickerson on 10/6/05. (cae, Chambers)
<u>12</u>	<i>Filed & Entered:</i> 10/05/2005	Scheduling Order <i>Docket Text:</i> SCHEDULING ORDER: Status Report due by 2/17/2006. Signed by Judge William M Nickerson on 10/5/05. (mcb, Deputy Clerk)
<u>13</u>	<i>Filed & Entered:</i> 12/30/2005 <i>Terminated:</i> 01/10/2006	Motion to Compel <i>Docket Text:</i> (FILED IN ERROR - SHOULD HAVE BEEN FILED AS A NOTICE OF SERVICE OF MOTION TO COMPEL - WILL REFILE) MOTION to Compel <i>Defendants' Discovery Responses</i> by United States of America. Responses due by 1/17/2006 (Attachments: # (1) Memorandum in Support of Motion to Compel# (2) L.R. 104.7

	Certificate of Conference# (3) Exhibit A# (4) Exhibit B# (5) Exhibit C# (6) Exhibit D# (7) Exhibit E# (8) Exhibit F# (9) Exhibit G# (10) Exhibit H)(Graham, Anne) Modified on 1/10/2006 (mcb, Deputy Clerk).	
<u>14</u>	<i>Filed & Entered:</i> <i>Terminated:</i>	01/03/2006 01/10/2006
	Motion to Appear Pro Hac Vice	
	<i>Docket Text:</i> (FILED IN ERROR) MOTION to Appear Pro Hac Vice by <i>Thomas M. Newman</i> by United States of America. (Graham, Anne) Modified on 1/5/2006 (mcb, Deputy Clerk).	
<u>15</u>	<i>Filed & Entered:</i>	01/09/2006
	Notice of Appearance	
	<i>Docket Text:</i> NOTICE of Appearance by Thomas Matthew Newman on behalf of United States of America. (mcb, Deputy Clerk)	
<u>16</u>	<i>Filed & Entered:</i>	01/10/2006
	Notice of service of motion to compel discovery	
	<i>Docket Text:</i> NOTICE of service of motion to compel discovery by United States of America (Attachments: # (1) Motion to Compel# (2) Brief in Support of Motion to Compel# (3) Certificate of Conference# (4) Exhibit A# (5) Exhibit B# (6) Exhibit C# (7) Exhibit D# (8) Exhibit E# (9) Exhibit F# (10) Exhibit G# (11) Exhibit H)(Graham, Anne)	
<u>17</u>	<i>Filed & Entered:</i>	01/17/2006
	Notice of service of response to motion to compel discovery	
	<i>Docket Text:</i> NOTICE of service of response to motion to compel discovery by John Baptist Kotmair, Jr re [16] Notice of service of motion to compel discovery. (hml, Deputy Clerk)	
<u>18</u>	<i>Filed & Entered:</i>	01/18/2006
	Memorandum to Parties	
	<i>Docket Text:</i> MEMORANDUM to Counsel/Parties re Pro Se Party. Signed by Judge William M Nickerson on 1/18/06. (hml, Deputy Clerk)	
<u>19</u>	<i>Filed & Entered:</i>	01/25/2006
	Order Referring Case to Magistrate Judge	
	<i>Docket Text:</i> ORDER REFERRING CASE to Magistrate Judge James K. Bredar for All discovery and related scheduling matters. Signed by Judge William M Nickerson on 1/25/06. (mcb, Deputy Clerk)	
<u>20</u>	<i>Filed & Entered:</i>	01/30/2006
	Reply to Response to Motion	
	<i>Docket Text:</i> Notice of Service of REPLY to Response to Motion re [16] MOTION to Compel <i>Defendants' Discovery Responses</i> filed by John Baptist Kotmair, Jr. (Attachments: # (1) # (2))(Newman, Thomas) Modified on 2/9/2006 (mcb, Deputy Clerk).	
<u>21</u>	<i>Filed & Entered:</i>	02/01/2006
	Notice of service of response to motion to compel discovery	
	<i>Docket Text:</i> NOTICE of service of response in Opposition to Motion to Compel discovery by Save-A-Patriot Fellowship (Attachments: # (1) Response in Opposition to Motion to Compel# (2) Memorandum in Support of Opposition) (Received via e-mail in Clerk's Office on 1/27/06)(mcb, Deputy Clerk)	
<u>22</u>	<i>Filed & Entered:</i>	02/08/2006
	Response	
	<i>Docket Text:</i> Notice of Service of REPLY to Defendant SAPF's Notice of service of response to [16] Motion to Compel discovery, filed by United States of America. (Attachments: # (1) # (2) # (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit)(Newman, Thomas) Modified on 2/9/2006 (mcb, Deputy Clerk).	
<u>23</u>	<i>Filed:</i> <i>Entered:</i>	02/14/2006 02/15/2006
	Correspondence	
	<i>Docket Text:</i> Return pleading letter to Defendant, John B. Kotmair, Jr. (c/m mcb, Deputy Clerk) Additional attachment(s) added on 2/15/2006 (mcb, Deputy Clerk).	
<u>24</u>	<i>Filed & Entered:</i>	02/17/2006
	Status Report	
	<i>Docket Text:</i> STATUS REPORT filed by United States of America. (Attachments: # (1))(Newman, Thomas)	
<u>25</u>	<i>Filed & Entered:</i>	03/09/2006
	Order	
	<i>Docket Text:</i> ORDER SETTING date for a Telephone Status Conference. Signed by Judge William M Nickerson on 3/9/06. (mcb, Deputy Clerk)	
<u>26</u>	<i>Filed & Entered:</i>	03/22/2006
	Scheduling Order	
	<i>Docket Text:</i> AMENDED SCHEDULING ORDER. Signed by Judge William M Nickerson on 3/22/06. (mcb, Deputy Clerk)	
<u>27</u>	<i>Filed & Entered:</i> <i>Terminated:</i>	04/03/2006 11/17/2006
	Motion to Compel	

<u>28</u>	<i>Filed & Entered:</i> <i>Terminated:</i>	04/10/2006 04/12/2006	Motion for Extension of Time to File Response/Reply
	<i>Docket Text:</i> MOTION for Extension of Time to File Response/Reply as to [27] MOTION to Compel by United States of America. Responses due by 4/27/2006 (Newman, Thomas)		
<u>29</u>	<i>Filed & Entered:</i>	04/12/2006	Order on Motion for Extension of Time to File Response/Reply
	<i>Docket Text:</i> PAPERLESS ORDER granting [28] Motion for Extension of Time to File Response/Reply as to [27] MOTION to Compel. Signed by Judge William M Nickerson on 4/12/06. (cae, Chambers)		
<u>30</u>	<i>Filed & Entered:</i> <i>Terminated:</i>	04/25/2006 05/16/2006	Motion to Compel
	<i>Docket Text:</i> MOTION to Compel <i>discovery responses</i> by United States of America. Responses due by 5/12/2006 (Newman, Thomas)		
<u>31</u>	<i>Filed & Entered:</i>	04/25/2006	Certificate of Counsel
	<i>Docket Text:</i> CERTIFICATE of Counsel re [30] MOTION to Compel <i>discovery responses</i> by Thomas Matthew Newman on behalf of United States of America (Newman, Thomas)		
<u>32</u>	<i>Filed & Entered:</i>	05/08/2006	Notice of service of response to motion to compel discovery
	<i>Docket Text:</i> NOTICE of service of response to motion to compel discovery by United States of America re [27] MOTION to Compel <i>discovery</i> (Attachments: # (1) response# (2) declaration# (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit # (9) Exhibit # (10) Exhibit # (11) Exhibit)(Newman, Thomas)		
<u>33</u>	<i>Filed & Entered:</i>	05/16/2006	Order on Motion to Compel
	<i>Docket Text:</i> ORDER granting in part and denying in part [30] Motion to Compel. Signed by Judge James K. Bredar on 5/12/06. (hml, Deputy Clerk)		
<u>34</u>	<i>Filed & Entered:</i>	05/24/2006	Appeal of Magistrate Judge Decision to District Court
	<i>Docket Text:</i> APPEAL OF MAGISTRATE JUDGE DECISION by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship re [33] Order on Motion to Compel (Attachments: # (1) Memorandum in Support# (2) Affidavit of John Baptist Kotmair, Jr.)(hml, Deputy Clerk)		
<u>35</u>	<i>Filed & Entered:</i> <i>Terminated:</i>	05/24/2006 11/29/2006	Motion to Stay
	<i>Docket Text:</i> MOTION to Stay Pending Determination by District Judge of Objection to Order of Magistrate Judge by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 6/12/2006.(hml, Deputy Clerk)		
<u>36</u>	<i>Filed & Entered:</i> <i>Terminated:</i>	05/24/2006 11/29/2006	Motion for Summary Judgment
	<i>Docket Text:</i> MOTION for Summary Judgment by John Baptist Kotmair, Jr. Responses due by 6/12/2006. (Attachments: # (1) Affidavit of John B. Kotmair, Jr.)(hml, Deputy Clerk)		
<u>37</u>	<i>Filed & Entered:</i>	05/30/2006	Response in Opposition to Motion
	<i>Docket Text:</i> RESPONSE in Opposition re [35] MOTION to Stay <i>order compelling discovery responses</i> filed by United States of America. Replies due by 6/13/2006. (Newman, Thomas)		
<u>38</u>	<i>Filed & Entered:</i> <i>Terminated:</i>	05/31/2006 11/29/2006	Motion for Summary Judgment
	<i>Docket Text:</i> MOTION for Summary Judgment by Save-A-Patriot Fellowship. Responses due by 6/19/2006 (Attachments: # (1) Memorandum in support of Motion for Summary Judgment# (2) Exhibit Exhibit 1# (3) Exhibit Exhibit 2# (4) Exhibit Exhibit 3# (5) Exhibit Exhibit 4# (6) Exhibit Exhibit 5# (7) Exhibit Exhibit 6# (8) Exhibit Exhibit 7# (9) Exhibit Exhibit 8# (10) Exhibit Exhibit 9# (11) Exhibit Exhibit 10# (12) Exhibit Exhibit 11# (13) Exhibit Exhibit 12# (14) Exhibit Exhibit 13# (15) Exhibit Exhibit 14# (16) Exhibit Exhibit 15# (17) Exhibit Exhibit 16# (18) Exhibit Exhibit 17# (19) Exhibit Exhibit 18# (20) Exhibit Exhibit 19)(Harp, George)		
<u>39</u>	<i>Filed & Entered:</i> <i>Terminated:</i>	06/08/2006 11/29/2006	Motion for Sanctions
	<i>Docket Text:</i> MOTION for Sanctions <i>for discovery violations filed</i> by United States of America. Responses due by 6/26/2006 (Attachments: # (1) Affidavit # (2) Exhibit # (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit # (9) Exhibit # (10) Exhibit # (11) Exhibit # (12) Exhibit # (13) Exhibit # (14) Exhibit # (15) Exhibit # (16) Exhibit # (17) Exhibit # (18) Exhibit # (19) Exhibit)(Newman, Thomas)		
<u>40</u>	<i>Filed & Entered:</i> <i>Terminated:</i>	06/09/2006 07/19/2006	Motion for Extension of Time to File Response/Reply

	<i>Docket Text:</i> MOTION for Extension of Time to File Response/Reply as to [36] MOTION for Summary Judgment, [38] MOTION for Summary Judgment <i>filed</i> by United States of America. Responses due by 6/26/2006 (Newman, Thomas)
<u>41</u>	<i>Filed & Entered:</i> 06/13/2006 Reply to Response to Motion <i>Docket Text:</i> REPLY to Response to Motion re [35] MOTION to Stay <i>Order to Compel Discovery</i> filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (Attachments: # (1) Exhibit)(Harp, George)
<u>42</u>	<i>Filed & Entered:</i> 06/19/2006 Motion for Summary Judgment <i>Terminated:</i> 11/29/2006 <i>Docket Text:</i> MOTION for Summary Judgment <i>filed</i> by United States of America. Responses due by 7/6/2006 (Attachments: # (1) Supplement Brief in support of motion for summary judgment# (2) Supplement Index of exhibit)(Newman, Thomas)
<u>43</u>	<i>Filed & Entered:</i> 06/19/2006 Affidavit <i>Docket Text:</i> AFFIDAVIT re [42] MOTION for Summary Judgment <i>filed</i> by United States of America. (Attachments: # (1) Exhibit Exhibit 1A# (2) Exhibit Exhibit 1B# (3) Exhibit Exhibit 2# (4) Exhibit Exhibit 3# (5) Exhibit Exhibit 3A# (6) Exhibit Exhibit 4# (7) Exhibit Exhibit 5# (8) Exhibit Exhibit 6# (9) Exhibit Exhibit 6A# (10) Exhibit Exhibit 6B# (11) Exhibit Exhibit 6C# (12) Exhibit Exhibit 6D# (13) Exhibit Exhibit 6E# (14) Exhibit Exhibit 7# (15) Exhibit Exhibit 8# (16) Exhibit Exhibit 9# (17) Exhibit Exhibit 10# (18) Exhibit Exhibit 11# (19) Exhibit Exhibit 12# (20) Exhibit Exhibit 13# (21) Exhibit Exhibit 13A# (22) Exhibit Exhibit 14# (23) Exhibit Exhibit 15# (24) Exhibit Exhibit 16# (25) Exhibit Exhibit 17# (26) Exhibit Exhibit 18# (27) Exhibit Exhibit 19# (28) Exhibit Exhibit 20# (29) Exhibit Exhibit 21# (30) Exhibit Exhibit 22# (31) Exhibit Exhibit 23# (32) Exhibit Exhibit 24# (33) Exhibit Exhibit 25# (34) Errata Exhibit 26# (35) Exhibit Exhibit 27# (36) Exhibit Exhibit 28# (37) Exhibit Exhibit 29# (38) Exhibit Exhibit 30# (39) Exhibit Exhibit 31# (40) Exhibit Exhibit 32# (41) Exhibit Exhibit 33# (42) Exhibit Exhibit 34# (43) Exhibit Exhibit 35)(Newman, Thomas)
<u>44</u>	<i>Filed & Entered:</i> 06/19/2006 Affidavit <i>Docket Text:</i> AFFIDAVIT re [42] MOTION for Summary Judgment <i>filed</i> by United States of America. (Attachments: # (1) Exhibit Exhibit 1# (2) Exhibit Exhibit 2# (3) Exhibit Exhibit 3# (4) Exhibit Exhibit 4# (5) Exhibit Exhibit 5# (6) Exhibit Exhibit 6# (7) Exhibit Exhibit 7# (8) Exhibit Exhibit 8# (9) Exhibit Exhibit 9# (10) Exhibit Exhibit 10# (11) Exhibit Exhibit 11# (12) Exhibit Exhibit 12# (13) Exhibit Exhibit 13# (14) Errata Exhibit 14# (15) Exhibit Exhibit 15# (16) Exhibit Exhibit 16# (17) Exhibit Exhibit 17# (18) Exhibit Exhibit 18# (19) Exhibit Exhibit 19# (20) Exhibit Exhibit 20# (21) Exhibit Exhibit 21# (22) Exhibit Exhibit 22# (23) Exhibit Exhibit 23# (24) Errata Exhibit 24# (25) Exhibit Exhibit 24# (26) Exhibit Exhibit 26# (27) Exhibit Exhibit 27# (28) Exhibit Exhibit 28# (29) Exhibit Exhibit 29# (30) Exhibit Exhibit 30# (31) Exhibit Exhibit 31# (32) Exhibit Exhibit 32# (33) Exhibit Exhibit 33A# (34) Exhibit Exhibit 33B# (35) Exhibit Exhibit 33C# (36) Exhibit Exhibit 33D# (37) Exhibit Exhibit 34# (38) Exhibit Exhibit 35# (39) Exhibit Exhibit 36# (40) Exhibit Exhibit 37# (41) Exhibit Exhibit 38# (42) Exhibit Exhibit 39# (43) Exhibit Exhibit 40# (44) Exhibit Exhibit 41# (45) Exhibit exhibit 42# (46) Exhibit Exhibit 43A# (47) Exhibit Exhibit 43B# (48) Exhibit Exhibit 43C# (49) Exhibit Exhibit 43D)(Newman, Thomas)
<u>45</u>	<i>Filed & Entered:</i> 06/19/2006 Affidavit <i>Docket Text:</i> AFFIDAVIT re [42] MOTION for Summary Judgment <i>filed</i> by United States of America. (Attachments: # (1) Exhibit Exhibit 1)(Newman, Thomas)
<u>46</u>	<i>Filed & Entered:</i> 06/19/2006 Affidavit <i>Docket Text:</i> AFFIDAVIT re [42] MOTION for Summary Judgment <i>filed</i> by United States of America. (Newman, Thomas)
<u>47</u>	<i>Filed & Entered:</i> 06/19/2006 Affidavit <i>Docket Text:</i> AFFIDAVIT re [42] MOTION for Summary Judgment <i>filed</i> by United States of America. (Newman, Thomas)
<u>48</u>	<i>Filed & Entered:</i> 06/19/2006 Affidavit <i>Docket Text:</i> AFFIDAVIT re [42] MOTION for Summary Judgment <i>filed</i> by United States of America. (Attachments: # (1) Exhibit Exhibit 1# (2) Exhibit Exhibit 2# (3) Exhibit Exhibit 3# (4) Exhibit Exhibit 4# (5) Exhibit Exhibit 5# (6) Exhibit Exhibit 6# (7) Exhibit Exhibit 7# (8) Exhibit Exhibit 8# (9) Exhibit Exhibit 9# (10) Exhibit Exhibit 10# (11) Exhibit Exhibit 11# (12) Exhibit Exhibit 12# (13) Exhibit Exhibit 13# (14) Exhibit Exhibit 14(1)# (15) Exhibit Exhibit 14(2)# (16) Exhibit Exhibit 14(3)# (17) Exhibit Exhibit 15# (18) Exhibit Exhibit 16)(Newman, Thomas)
<u>49</u>	<i>Filed & Entered:</i> 06/20/2006 Notice (Other) <i>Docket Text:</i> NOTICE by United States of America re [40] MOTION for Extension of Time to File Response/Reply as to [36] MOTION for Summary Judgment, [38] MOTION for Summary Judgment <i>filed by the United states is Withdrawn</i> (Newman, Thomas)
<u>50</u>	<i>Filed & Entered:</i> 06/26/2006 Response in Opposition to Motion

	<i>Docket Text:</i> RESPONSE in Opposition re [39] MOTION for Sanctions <i>for discovery violations filed</i> filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Replies due by 7/10/2006. (Attachments: # (1) Memorandum in Support of Opposition# (2) Exhibit # (3) Exhibit)(Harp, George)	
<u>51</u>	<i>Filed & Entered:</i> 06/27/2006	Supplemental
	<i>Docket Text:</i> Supplement to [50] RESPONSE in Opposition to [39] Motion of the United States for Sanctions for Discovery Violations, filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (Attachments: # (1) Exhibit # (2) Exhibit # (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit)(Harp, George) Modified on 6/27/2006 (mcb, Deputy Clerk).	
<u>52</u>	<i>Filed & Entered:</i> 06/28/2006	Motion to Strike
	<i>Terminated:</i> 07/19/2006	
	<i>Docket Text:</i> MOTION to Strike [51] Supplemental, <i>untimely response filed</i> by United States of America. Responses due by 7/17/2006 (Newman, Thomas)	
<u>53</u>	<i>Filed & Entered:</i> 07/07/2006	Response
	<i>Docket Text:</i> RESPONSE to [42] MOTION of United States for Summary Judgment, filed by John Baptist Kotmair, Jr. (Attachments: # (1) Exhibit 1)(mcb, Deputy Clerk)	
<u>54</u>	<i>Filed & Entered:</i> 07/07/2006	Response in Opposition to Motion
	<i>Docket Text:</i> RESPONSE in Opposition re [42] MOTION for Summary Judgment <i>filed</i> filed by Save-A-Patriot Fellowship. Replies due by 7/21/2006. (Attachments: # (1) # (2) Exhibit # (3) Exhibit # (4) Exhibit # (5) Exhibit # (6) Exhibit # (7) Exhibit # (8) Exhibit # (9) Exhibit # (10) Exhibit # (11) Exhibit # (12) Exhibit # (13) Exhibit # (14) Exhibit # (15) Exhibit # (16) Exhibit)(Harp, George)	
<u>55</u>	<i>Filed & Entered:</i> 07/10/2006	Reply to Response to Motion
	<i>Docket Text:</i> REPLY to Response to Motion re [39] MOTION for Sanctions <i>for discovery violations filed</i> filed by United States of America. (Attachments: # (1) Exhibit #1# (2) Exhibit #2# (3) Exhibit #3# (4) Exhibit #4# (5) Exhibit #5# (6) Exhibit #6# (7) Exhibit #7)(Newman, Thomas)	
<u>56</u>	<i>Filed & Entered:</i> 07/14/2006	Motion for Leave to File Excess Pages
	<i>Terminated:</i> 07/19/2006	
	<i>Docket Text:</i> MOTION for Leave to File Excess Pages <i>to respond to defendant Save-a-Patriot's reply to the United States' motion for summary judgment filed</i> by United States of America. Responses due by 7/31/2006 (Newman, Thomas)	
<u>57</u>	<i>Filed & Entered:</i> 07/17/2006	Response in Opposition to Motion
	<i>Docket Text:</i> RESPONSE in Opposition re [52] MOTION to Strike [51] Supplemental, <i>untimely response filed</i> filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Replies due by 7/31/2006. (Harp, George)	
<u>58</u>	<i>Filed & Entered:</i> 07/17/2006	Motion to Strike
	<i>Terminated:</i> 07/19/2006	
	<i>Docket Text:</i> MOTION to Strike [55] Reply to Response to Motion, by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 8/3/2006 (Harp, George)	
<u>59</u>	<i>Filed & Entered:</i> 07/17/2006	Response in Opposition to Motion
	<i>Docket Text:</i> RESPONSE in Opposition re [56] MOTION for Leave to File Excess Pages <i>to respond to defendant Save-a-Patriot's reply to the United States' motion for summary judgment filed</i> filed by Save-A-Patriot Fellowship. Replies due by 7/31/2006. (Harp, George)	
<u>60</u>	<i>Filed & Entered:</i> 07/19/2006	Order on Motion for Extension of Time to File Response/Reply
	<i>Docket Text:</i> ORDER denying [40] Motion for Extension of Time to File Response/Reply, denying [52] Motion to Strike, denying [56] Motion for Leave to File Excess Pages, denying [58] Motion to Strike. Signed by Judge William M Nickerson on 7/19/2006. (cae, Chambers)	
<u>61</u>	<i>Filed & Entered:</i> 07/21/2006	Response
	<i>Docket Text:</i> REPLY to Defendant Kotmair's Response in Opposition to [42] Motion for Summary Judgment filed by United States of America. (Newman, Thomas) Modified on 7/24/2006 (mcb, Deputy Clerk).	
<u>62</u>	<i>Filed & Entered:</i> 07/21/2006	Response
	<i>Docket Text:</i> REPLY to SAPF's Response in Opposition to [42] Motion for summary Judgment filed by United States of America. (Attachments: # (1) Affidavit Second Declaration of Revenue Agent Joan Rowe# (2) Exhibit 36# (3) Exhibit 37# (4) Exhibit 38# (5) Exhibit 39# (6) Exhibit 40# (7) Exhibit 41# (8) Exhibit 42# (9) Exhibit 43# (10) Exhibit 44# (11) Exhibit 45# (12) Exhibit 46# (13) Exhibit 47# (14) Exhibit 48# (15) Affidavit Second Declaration of Camille Nagy# (16) Exhibit 1# (17) Exhibit 2# (18) Exhibit 3# (19) Exhibit 4# (20) Affidavit Second Declaration of Joseph Nagy# (21)	

	Exhibit 1# (22) Exhibit 2# (23) Exhibit 3# (24) Exhibit 4# (25) Exhibit 5# (26) Exhibit 6# (27) Exhibit 7# (28) Exhibit 8# (29) Affidavit Declaration of Gary Metcalfe# (30) Declaration of Thomas Newman# (31) Affidavit Second Declaration of Nicholas Taflan# (32) Exhibit 1# (33) Exhibit 2# (34) Exhibit 3# (35) Exhibit 4# (36) Exhibit 5# (37) Exhibit 6# (38) Exhibit 7# (39) Exhibit 8# (40) Exhibit 9#(Newman, Thomas) Modified on 7/24/2006 (mcb, Deputy Clerk).	
<u>63</u>	<i>Filed & Entered:</i> 07/31/2006	Response in Opposition to Motion <i>Docket Text:</i> RESPONSE in Opposition re [58] MOTION to Strike [55] Reply to Response to Motion, filed by United States of America. Replies due by 8/14/2006. (Newman, Thomas)
<u>64</u>	<i>Filed & Entered:</i> 08/10/2006 <i>Terminated:</i> 11/29/2006	Motion to Strike <i>Docket Text:</i> MOTION to Strike [62] Response,,,, to <i>SAPF's Opposition to U.S.'s Motion for Summary Judgment</i> by Save-A-Patriot Fellowship. Responses due by 8/28/2006 (Attachments: # (1) Affidavit # (2) # (3) # (4) # (5))(Harp, George)
<u>65</u>	<i>Filed & Entered:</i> 08/14/2006	Reply to Response to Motion <i>Docket Text:</i> REPLY to Response to Motion re [58] MOTION to Strike [55] Reply to Response to Motion, filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (Harp, George)
<u>66</u>	<i>Filed & Entered:</i> 08/28/2006	Response <i>Docket Text:</i> RESPONSE re [64] MOTION to Strike [62] Response,,,, to <i>SAPF's Opposition to U.S.'s Motion for Summary Judgment</i> filed by United States of America. (Newman, Thomas)
<u>67</u>	<i>Filed & Entered:</i> 09/11/2006	Reply to Response to Motion <i>Docket Text:</i> REPLY to Response to Motion re [64] MOTION to Strike [62] Response,,,, to <i>SAPF's Opposition to U.S.'s Motion for Summary Judgment</i> filed by Save-A-Patriot Fellowship. (Harp, George)
<u>68</u>	<i>Filed & Entered:</i> 11/29/2006	Memorandum Opinion <i>Docket Text:</i> MEMORANDUM. Signed by Judge William M Nickerson on 11/29/06. (mcb, Deputy Clerk)
<u>69</u>	<i>Filed & Entered:</i> 11/29/2006	Order on Motion for Summary Judgment <i>Docket Text:</i> ORDER Denying [38] Motion of Defendant for Summary Judgment; Denying as MOOT [39] Motion of United States for Sanctions; Granting [42] Motion of United States for Summary Judgment; Denying [64] Motion of Defendants to Strike; Overruling [34] Objections of the Defendants to the Magistrate Judge Decision of May 16, 2006; Denying as Moot [35] Motion of Defendants to Stay; Denying [36] Motion of Defendant for Summary Judgment. Signed by Judge William M Nickerson on 11/29/06. (mcb, Deputy Clerk)
<u>70</u>	<i>Filed & Entered:</i> 11/29/2006	Order <i>Docket Text:</i> PERMANENT INJUNCTION ORDER. Signed by Judge William M Nickerson on 11/29/06. (mcb, Deputy Clerk)
<u>71</u>	<i>Filed & Entered:</i> 12/13/2006 <i>Terminated:</i> 02/07/2007	Motion for New Trial <i>Docket Text:</i> MOTION for New Trial by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 1/2/2007 (Attachments: # (1) Memorandum in Support of Motion for New Trial# (2) Exhibit 1# (3) Exhibit 2)(Harp, George)
<u>72</u>	<i>Filed & Entered:</i> 12/13/2006 <i>Terminated:</i> 02/07/2007	Motion to Alter/Amend Judgment <i>Docket Text:</i> MOTION to Alter/Amend Judgment by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 1/2/2007 (Attachments: # (1) Memorandum in Support of Motion for Modification of the Permanent Injunction Order# (2) Exhibit 1)(Harp, George)
<u>73</u>	<i>Filed & Entered:</i> 12/14/2006 <i>Terminated:</i> 12/19/2006	Motion to Stay <i>Docket Text:</i> MOTION to Stay re [70] Order by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 1/2/2007 (Attachments: # (1) Memorandum in Support of Motion for Stay Pending Resolution of Motion for Modification of Permanent Injunction Order and Motion for New Trial)(Harp, George)
<u>74</u>	<i>Filed & Entered:</i> 12/19/2006	Order on Motion to Stay <i>Docket Text:</i> ORDER granting [73] Motion of Defendants to Stay. Signed by Judge William M Nickerson on 12/19/06. (c/m 12/19/06 mcb, Deputy Clerk)
<u>75</u>	<i>Filed & Entered:</i> 12/29/2006	Response in Opposition to Motion

	<i>Docket Text:</i> RESPONSE in Opposition to [71] MOTION for New Trial and [72] MOTION to Alter/Amend Judgment filed by United States of America. Replies due by 1/12/2007. (Newman, Thomas)	
<u>76</u>	<i>Filed & Entered:</i> 01/12/2007	Reply to Response to Motion
	<i>Docket Text:</i> REPLY to Response to Motion re [71] MOTION for New Trial filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (Harp, George)	
<u>77</u>	<i>Filed & Entered:</i> 02/07/2007	Order on Motion for New Trial
	<i>Docket Text:</i> ORDER DENYING [71] Motion for New Trial; DENYING [72] Motion for Modification of the Permanent Injunction Order; LIFTING the Stay on the 11/29/06 Injunction Order. Signed by Judge William M Nickerson on 2/7/07. (hml, Deputy Clerk)	
<u>78</u>	<i>Filed & Entered:</i> 02/14/2007	Motion to Stay
	<i>Terminated:</i> 02/22/2007	
	<i>Docket Text:</i> Emergency MOTION to Stay re [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment <i>pending Appeal</i> by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Responses due by 3/5/2007 (Attachments: # (1) Memorandum)(Harp, George)	
<u>79</u>	<i>Filed & Entered:</i> 02/16/2007	Response in Opposition to Motion
	<i>Docket Text:</i> RESPONSE in Opposition re [78] Emergency MOTION to Stay re [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment <i>pending Appeal</i> Emergency MOTION to Stay re [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment <i>pending Appeal</i> filed by United States of America.Replies due by 3/2/2007. (Newman, Thomas)	
<u>80</u>	<i>Filed & Entered:</i> 02/16/2007	Notice of Appeal
	<i>Docket Text:</i> NOTICE OF APPEAL as to [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment, [70] Order by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. Appeal Record due by 3/19/2007. (Harp, George)	
--	<i>Filed:</i> 02/20/2007	USCA Appeal Fees
	<i>Entered:</i> 02/21/2007	
	<i>Docket Text:</i> USCA Appeal Fees received \$ 455 receipt number 138507 re [80] Notice of Appeal filed by Save-A-Patriot Fellowship, John Baptist Kotmair, Jr. (sls, Deputy Clerk)	
<u>81</u>	<i>Filed & Entered:</i> 02/20/2007	Reply to Response to Motion
	<i>Docket Text:</i> REPLY to Response to Motion re [78] Emergency MOTION to Stay re [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment <i>pending Appeal</i> Emergency MOTION to Stay re [77] Order on Motion for New Trial, Order on Motion to Alter/Amend Judgment <i>pending Appeal</i> filed by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship. (Harp, George)	
<u>82</u>	<i>Filed & Entered:</i> 02/21/2007	Transmission of Notice of Appeal and Docket Sheet to USCA
	<i>Docket Text:</i> Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re [80] Notice of Appeal. IMPORTANT NOTICE: To access forms which you are required to file with the United States Court of Appeals for the Fourth Circuit please go to http://www.ca4.uscourts.gov and click on Forms & Notices. (bmh, Deputy Clerk)	
<u>83</u>	<i>Filed & Entered:</i> 02/22/2007	Order on Motion to Stay
	<i>Docket Text:</i> ORDER granting [78] Motion of defendants to Stay. Signed by Judge William M Nickerson on 2/22/07. (slf, Deputy Clerk)	
--	<i>Filed & Entered:</i> 02/26/2007	Record to 4cca
	<i>Docket Text:</i> Assembled Electronic Record Transmitted to Fourth Circuit -- Initial (sls, Deputy Clerk)	
--	<i>Filed & Entered:</i> 02/28/2007	USCA Case Number
	<i>Docket Text:</i> USCA Case Number 07-1156 for [80] Notice of Appeal filed by Save-A-Patriot Fellowship, John Baptist Kotmair, Jr. Case Manager - Jackie Brown (sls, Deputy Clerk)	
<u>84</u>	<i>Filed & Entered:</i> 03/05/2007	Appeal Transcript Request
	<i>Docket Text:</i> TRANSCRIPT REQUEST by John Baptist Kotmair, Jr, Save-A-Patriot Fellowship re USCA Case Number, [80] Notice of Appeal (Attachments: # (1) Certificate regarding transcripts)(Harp, George)	

PACER Service Center

Transaction Receipt

03/21/2007 15:54:23

PACER Login:		Client Code:	
Description:	History/Documents	Search Criteria:	1:05-cv-01297-WMN
Billable Pages:	7	Cost:	0.56

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one or more Federal tax issues if the practitioner bases the written advice on unreasonable factual or legal assumptions (including assumptions as to future events), unreasonably relies upon representations, statements, findings or agreements of the taxpayer or any other person, does not consider all relevant facts that the practitioner knows or should know, or, in evaluating a Federal tax issue, takes into account the possibility that a tax return will not be audited, that an issue will not be raised on audit, or that an issue will be resolved through settlement if raised. All facts and circumstances, including the scope of the engagement and the type and specificity of the advice sought by the client will be considered in determining whether a practitioner has failed to comply with this section. In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing or recommending to one or more taxpayers a partnership or other entity, investment plan or arrangement a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, the determination of whether a practitioner has failed to comply with this section will be made on the basis of a heightened standard of care because of the greater risk caused by the practitioner's lack of knowledge of the taxpayer's particular circumstances.

(b) *Effective date.* This section applies to written advice that is rendered after June 20, 2005.

[T.D. 9011, 67 FR 48771, July 26, 2002, as amended by T.D. 9165, 69 FR 75842, Dec. 20, 2004; 70 FR 20805, Apr. 21, 2005]

§ 10.38 Establishment of advisory committees.

(a) *Advisory committees.* To promote and maintain the public's confidence in tax advisors, the Director of the Office of Professional Responsibility is authorized to establish one or more advisory committees composed of at least five individuals authorized to practice before the Internal Revenue Service. The Director should ensure that mem-

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bership of an advisory committee is balanced among those who practice as attorneys, accountants, and enrolled agents. Under procedures prescribed by the Director, an advisory committee may review and make general recommendations regarding professional standards or best practices for tax advisors, including whether hypothetical conduct would give rise to a violation of §§ 10.35 or 10.36.

(b) *Effective date.* This section applies after December 20, 2004.

[T.D. 9011, 67 FR 48771, July 26, 2002, as amended by T.D. 9165, 69 FR 75842, Dec. 20, 2004]

Subpart C—Sanctions for Violation of the Regulations

SOURCE: T.D. 9011, 67 FR 48774, July 26, 2002, unless otherwise noted.

§ 10.50 Sanctions.

(a) *Authority to censure, suspend, or disbar.* The Secretary of the Treasury, or his or her delegate, after notice and an opportunity for a proceeding, may censure, suspend or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable, fails to comply with any regulation in this part, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. Censure is a public reprimand.

(b) *Authority to disqualify.* The Secretary of the Treasury, or his or her delegate, after due notice and opportunity for hearing, may disqualify any appraiser with respect to whom a penalty has been assessed under section 6701(a) of the Internal Revenue Code.

(1) If any appraiser is disqualified pursuant to this subpart C, such appraiser is barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or the Internal Revenue Service, unless and until authorized to do so by the Director of Practice pursuant to § 10.81, regardless of whether such evidence or testimony would pertain to an appraisal made prior to or after such date.

(2) Any appraisal made by a disqualified appraiser after the effective date of disqualification will not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. An appraisal otherwise barred from admission into evidence pursuant to this section may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal.

§ 10.51 Incompetence and disreputable conduct.

Incompetence and disreputable conduct for which a practitioner may be censured, suspended or disbarred from practice before the Internal Revenue Service includes, but is not limited to—

(a) Conviction of any criminal offense under the revenue laws of the United States;

(b) Conviction of any criminal offense involving dishonesty or breach of trust;

(c) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service;

(d) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term *information*.

(e) Solicitation of employment as prohibited under § 10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or officer or employee thereof.

(f) Willfully failing to make a Federal tax return in violation of the revenue laws of the United States, willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

(g) Misappropriation of, or failure properly and promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(h) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor or thing of value.

(i) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, territory, possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

(j) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

(k) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations and statements, knowing them to be false, or circulating or publishing malicious or libelous matter.

(l) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (l) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under

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existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the tax opinion or offering material are false or misleading. For purposes of this paragraph (l), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

§ 10.52 Violation of regulations.

(a) *Prohibited conduct.* A practitioner may be censured, suspended or disbarred from practice before the Internal Revenue Service for any of the following:

(1) Willfully violating any of the regulations (other than § 10.33) contained in this part; or

(2) Recklessly or through gross incompetence (within the meaning of § 10.51(1)) violating §§ 10.34, 10.35, 10.36 or 10.37.

(b) *Effective date.* This section applies after June 20, 2005.

[T.D. 9165, 69 FR 75845, Dec. 20, 2004]

§ 10.53 Receipt of information concerning practitioner.

(a) *Officer or employee of the Internal Revenue Service.* If an officer or employee of the Internal Revenue Service has reason to believe that a practitioner has violated any provision of this part, the officer or employee will promptly make a written report to the Director of Practice of the suspected violation. The report will explain the facts and reasons upon which the officer's or employee's belief rests.

(b) *Other persons.* Any person other than an officer or employee of the Internal Revenue Service having information of a violation of any provision

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of this part may make an oral or written report of the alleged violation to the Director of Practice or any officer or employee of the Internal Revenue Service. If the report is made to an officer or employee of the Internal Revenue Service, the officer or employee will make a written report of the suspected violation to the Director of Practice.

(c) *Destruction of report.* No report made under paragraph (a) or (b) of this section shall be maintained by the Director of Practice unless retention of such record is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. The Director of Practice must destroy such reports as soon as permissible under the applicable records control schedule.

(d) *Effect on proceedings under subpart D.* The destruction of any report will not bar any proceeding under subpart D of this part, but precludes the Director of Practice's use of a copy of such report in a proceeding under subpart D of this part.

Subpart D—Rules Applicable to Disciplinary Proceedings

SOURCE: 67 FR 48774, July 26, 2002, unless otherwise noted.

§ 10.60 Institution of proceeding.

(a) Whenever the Director of Practice determines that a practitioner violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the Director of Practice may reprimand the practitioner or, in accordance with § 10.62, institute a proceeding for censure, suspension, or disbarment of the practitioner. A proceeding for censure, suspension, or disbarment of a practitioner is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(b) Whenever the Director of Practice is advised or becomes aware that a penalty has been assessed against an appraiser under section 6701(a) of the Internal Revenue Code, the Director of Practice may reprimand the appraiser or, in accordance with § 10.62, institute

a proceeding for disqualification of the appraiser. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in § 10.62.

(c) Except as provided in § 10.82, a proceeding will not be instituted under this section unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments (including an explanation or description of mitigating circumstances).

§ 10.61 Conferences.

(a) *In general.* The Director of Practice may confer with a practitioner or an appraiser concerning allegations of misconduct irrespective of whether a proceeding for censure, suspension, disbarment, or disqualification has been instituted against the practitioner or appraiser. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Resignation or voluntary censure, suspension or disbarment.* In lieu of a proceeding being instituted or continued under paragraph (a) of § 10.60, a practitioner may offer his or her consent to the issuance of a censure, suspension or disbarment, or, if the practitioner is an enrolled agent, may offer to resign. The Director of Practice may, in his or her discretion, accept or decline the offered censure, suspension, disbarment, or offer of resignation by an enrolled agent, in accordance with the consent offered. In any declination, the Director of Practice may state that he or she would accept an offer of censure, suspension, or disbarment, or, if the practitioner is an enrolled agent, offer of resignation, containing different terms; the Director of Practice may, in his or her discretion, accept or reject a revised offer of censure, suspension, disbarment, or offer of resignation by an enrolled agent, submitted in response to the declination

or may counteroffer and act upon any accepted counteroffer.

(c) *Voluntary disqualification.* In lieu of a proceeding being instituted or continued under paragraph (b) of § 10.60, an appraiser may offer his or her consent to disqualification. The Director of Practice may, in his or her discretion, accept or decline the offered disqualification, in accordance with the consent offered. In any declination, the Director of Practice may state that he or she would accept an offer of disqualification containing different terms; the Director of Practice may, in his or her discretion, accept or reject a revised offer of censure, suspension or disbarment submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

§ 10.62 Contents of complaint.

(a) *Charges.* A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by the Director of Practice or a person representing the Director of Practice under § 10.69(a)(1). A complaint is sufficient if it fairly informs the respondent of the charges brought so that he or she is able to prepare a defense. In the case of a complaint filed against an appraiser, the complaint is sufficient if it refers to a penalty imposed previously on the respondent under section 6701(a) of the Internal Revenue Code.

(b) *Specification of sanction.* The complaint must specify the sanction sought by the Director of Practice against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) *Demand for answer.* The Director of Practice must, in the complaint or in a separate paper attached to the complaint, notify the respondent of the time for answering the complaint, the time for which may not be less than 15 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Director of Practice to whom a copy of the answer must be served, and that a decision by default may be rendered

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against the respondent in the event an answer is not filed as required.

§ 10.63 Service of complaint; service and filing of other papers.

(a) *Service of complaint*—(1) *In general.* The complaint or a copy of the complaint must be served on the respondent by any manner described in paragraphs (a)(2) or (3) of this section.

(2) *Service by certified or first class mail.* (i) Service of the complaint may be made on the respondent by mailing the complaint by certified mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Where service is by certified mail, the returned post office receipt duly signed by the respondent will be proof of service.

(ii) If the certified mail is not claimed or accepted by the respondent, or is returned undelivered, service may be made on the respondent, by mailing the complaint to the respondent by first class mail. Service by this method will be considered complete upon mailing, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(3) *Service by other than certified or first class mail.* (i) Service of the complaint may be made on the respondent by delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent. Service by this method will be considered complete, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(ii) Service of the complaint may be made in person on, or by leaving the complaint at the office or place of business of, the respondent. Service by this method will be considered complete and proof of service will be a written statement, sworn or affirmed by the person who served the complaint, iden-

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tifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(iii) Service may be made by any other means agreed to by the respondent. Proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(4) For purposes of this paragraph (a), "respondent" means the practitioner or appraiser named in the complaint or any other person having the authority to accept mail on behalf of the practitioner or appraiser.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served on the respondent, or his or her authorized representative under § 10.69(a)(2) by:

(1) Mailing the paper by first class mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative,

(2) Delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative, or

(3) As provided in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section.

(c) *Service of papers on the Director of Practice.* Whenever a paper is required or permitted to be served on the Director of Practice in connection with a proceeding under this part, the paper will be served on the Director of Practice's authorized representative under § 10.69(a)(1) at the address designated in the complaint, or at an address provided in a notice of appearance. If no address is designated in the complaint or provided in a notice of appearance, service will be made on the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

Office of the Secretary of the Treasury

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(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues with the consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make decisions.

§ 10.71 Hearings.

(a) *In general.* An Administrative Law Judge will preside at the hearing on a complaint filed under paragraph (c) of §10.60 for the censure, suspension, or disbarment of a practitioner or disqualification of an appraiser. Hearings will be stenographically recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556. A hearing in a proceeding requested under paragraph (g) of §10.82 will be conducted *de novo*. An evidentiary hearing must be held in all proceedings prior to the issuance of a decision by the Administrative Law Judge unless: the Director of Practice withdraws the complaint; the practitioner consents to a sanction pursuant to §10.61(b); a decision is issued by default pursuant to §10.64(d), a decision is issued under §10.82(e); the respondent requests a decision on the record without a hearing; or the Administrative Law Judge issues a decision on a motion that disposes of the case prior to the hearing.

(b) *Publicity of proceedings.* A request by a practitioner or appraiser that a hearing in a disciplinary proceeding concerning him or her be public, and that the record of such disciplinary proceeding be made available for inspection by interested persons may be granted by the Administrative Law Judge where the parties stipulate in advance to protect from disclosure confidential tax information in accordance with all applicable statutes and regulations.

(c) *Location.* The location of the hearing will be determined by the agreement of the parties with the approval of the Administrative Law Judge, but, in the absence of such agreement and

approval, the hearing will be held in Washington, D.C.

(d) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after notice of the proceeding has been sent to him or her, the party will be deemed to have waived the right to a hearing and the Administrative Law Judge may make his or her decision against the absent party by default.

§ 10.72 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings or proceedings conducted under this part. The Administrative Law Judge may, however, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to §10.73 may be admitted into evidence in any proceeding instituted under §10.60.

(c) *Proof of documents.* Official documents, records, and papers of the Internal Revenue Service and the Office of Director of Practice are admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

(d) *Withdrawal of exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions that he or she deems proper.

(e) *Objections.* Objections to evidence are to be made in short form, stating the grounds for the objection. Except as ordered by the Administrative Law Judge, argument on objections will not be recorded or transcribed. Rulings on objections are to be a part of the record, but no exception to a ruling is necessary to preserve the rights of the parties.

§ 10.73 Depositions.

(a) Depositions for use at a hearing may be taken, with the written approval of the Administrative Law

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962 F.Supp. 695, 97-1 USTC P 50,229, 79 A.F.T.R.2d 97-569

United States District Court, D. Maryland.
SAVE-A-PATRIOT FELLOWSHIP, Plaintiff,
v.
UNITED STATES of America, Defendant.
Civil Action No. MJG-95-935.

Dec. 18, 1996.

Organization brought wrongful levy action. After bench trial, the District Court, Garbis, J., held that: (1) organization was unincorporated association that existed independently of tax protester; (2) organization could own property; and (3) organization funds removed by tax protester, mingled with his own assets, and available for his personal use were no longer organization's property immune from levy for protester's tax liabilities.

Judgment accordingly.

[1] Internal Revenue 220 ↪ 4937

220 Internal Revenue

220XXVII Remedies for Wrongful Enforcement

220XXVII(D) Proceedings

220k4937 k. Parties, Process, and Appearance. Most Cited Cases

Organization was unincorporated association that existed independently of tax protester, and could separately maintain wrongful levy action, though it had no written instrument of governance and did not keep records, where it had other members, leased office space in its name, and held assets. 26 U.S.C.A. § 7426.

[2] Associations 41 ↪ 15(3)

41 Associations

41k15 Property and Funds of Association

41k15(3) k. Rights of Association. Most Cited Cases

Under Maryland law, unincorporated association can own property.

[3] Internal Revenue 220 ↪ 4857

220 Internal Revenue

220XXV Collection

220XXV(B) Levy or Distrain

220k4857 k. Property Subject to Distrain. Most Cited Cases

Those organization funds removed by tax protester, mingled with his own assets, and available for his personal use were no longer organization's property immune from levy for protester's tax liabilities. 26 U.S.C.A. § 7426.

*695 Beverly A. Moses, Trial Attorney, Tax Division, U.S. Dept. of Justice, Washington, DC, for Plaintiff.

George E. Harp, Shreveport, LA, for Defendant.

MEMORANDUM OF DECISION

GARBIS, District Judge.

This case was tried before the Court without a jury. The Court has heard the evidence, reviewed the exhibits, considered the materials submitted by the parties and had the benefit of the arguments of counsel. The Court now issues this Memorandum of Decision*696 as its findings of fact and conclusions of law in compliance with Rule 52(a) of the Federal Rules of Civil Procedure.

I. BACKGROUND

At all times relevant to this case, the Save-A-Patriot Fellowship (“the SAP Fellowship”) has been based in a rented facility at 12 Carroll Street (“the Office”) in Westminster, Maryland. Mr. John B. Kotmair, Jr. (“Kotmair”), was the founder and is the leader (called the “Fiduciary”), of the SAP Fellowship, Kotmair resides at 2911 Groves Mill Road (“the Residence”) in Westminster, Maryland.

On December 10, 1993, the Internal Revenue Service (“I.R.S.”) executed search warrants at the Office and the Residence in connection with an investigation of Kotmair. The execution of the search warrants resulted in litigation by Kotmair seeking the return of a vial of Holy Qettorett ^{FN1} allegedly seized by the I.R.S. in the raid. *Kotmair v. United States*, MJG-94-447. The Court decided, in the *Kotmair* case, that the Plaintiff had not established that the substance had been taken by the I.R.S. ^{FN2}

FN1. The sacred substance used in the Temple prior to its destruction and, some believe, necessary to sanctify the Temple upon its reconstruction so that the Messiah can perform prophesied miracles upon his/her return.

FN2. In the *Kotmair* case, the Plaintiff presented the testimony of Professor Vandyl Jones who claimed to be the original for “Indiana Jones.” Professor Jones, was, in fact, searching for the Ark of the Covenant and actually found the ancient “factory” at which the Israelites manufactured and stored Holy Qettorett for Temple use. He found stored there a large quantity of “Holy Qettorett mix” needing only the addition of Sodom Salt and other ingredients. Dr. Jones entrusted a small vial of the substance to a “follower” of Kotmair, Scott Hucklebee, who brought it to America. However, the Court did not find that the vial was in the Residence at the time of the raid. Also, there was a sufficient supply left in Israel for use if, and when, needed so that the loss of the Hucklebee vial would not cause irreparable harm.

The instant case, which involves subject matter more mundane than Holy Qettorett, is brought by the SAP Fellowship. In the December 10, 1993 raid, the I.R.S. seized at the Office various documents, computer disks, files, papers, and other materials relating to the operations of the SAP Fellowship. There was also seized at the Office \$384 of currency, 40 Susan B. Anthony dollars, and 5 money orders valued at \$210.^{FN3}

FN3. In the search warrant return this is described as "APPLICATION & 4 MO-\$175." The \$210 value is found because it is used in the parties' Joint Statement of Facts.

At the Residence the I.R.S. seized various papers and the following items:

1. The sum of \$44,115 of U.S. currency found in one location in the safe.
2. The sum of \$377 of U.S. currency found in another location in the safe.
3. Various numismatic coins and items found in the safe and elsewhere in the Residence.

The items seized in the raid were taken by the Criminal Investigation Division of the I.R.S. for use in a criminal investigation. On December 22, 1993, the I.R.S. Collection Division served a Notice Of Levy on the Criminal Investigation Division so as to take the \$44,115 in currency for application to the outstanding tax liabilities of Kotmair. On September 2, 1994, the Collection Division levied upon the remainder of the above-mentioned seized property for application to the tax liabilities of Kotmair.

The SAP Fellowship filed this law suit on March 29, 1995, a date beyond the nine month limitation period ^{FN4} following the December 22, 1993, levy but within nine months of the September 2, 1994, levy. By Memorandum and Order of May 10, 1996, this Court dismissed the Plaintiff's claim as to the \$44,115 in currency due to the expiration of limitations. There remained for trial the SAP Fellowship's claim to the assets levied upon on September 2, 1994.

FN4. 26 U.S.C. 5 6532(c)(1).

II. NATURE OF THE CASE

As stated in Saltzman, "IRS Practice and Procedure," ¶ 15.07 [2][a] (2nd ed.1991):

"In general, if a levy has been made on property ... any person other than the *697 taxpayer [against whose tax liability the levy was made] who claims (1) an interest in or lien on the property and (2) that the property was wrongfully levied upon by the Service may bring a civil action directly against the United States in federal district court."

The statutory authority for a wrongful levy action is provided by Section 7426 of the Internal Revenue Code. See 26 U.S.C. § 7426. In a wrongful levy action the underlying assessment against the taxpayer (here Kotmair) is "conclusively presumed to be valid." § 7426(c) Hence, the only issue in the case is whether or not the subject property is the property of the wrongful levy claimant (here the SAP Fellowship).

III. DISCUSSION

A. The SAP Fellowship Activities

The SAP Fellowship has been proven to exist, have members, and to function. The organization has assets, leases property, has a defined membership, publishes a newsletter, and has produced at least one video tape program, twelve hours of "Just The Facts."^{FN5}

FN5. That is the "facts" according to the Fellowship as led by Kotmair.

There is no doubt that Kotmair is the major figure in the SAP Fellowship. As far as the Fellowship is concerned, he is, as Theodore Roosevelt aspired to be^{FN6}, "the corpse at every funeral, the bride at every wedding and the baby at every christening."

FN6. As stated by Alice Roosevelt Longworth, Theodore Roosevelt's daughter.

The SAP Fellowship operates without any written governance structure or financial records. Operating assets, such as files, equipment etc. are located at the Office. Money, money orders, and other valuables are received at the Office, but not kept there. Kotmair is free to, and does, take funds from the SAP Fellowship for personal use. However, the evidence does not disclose that Kotmair maintained a high standard of living or that such funds as were accumulated were necessarily his personal hoard.^{FN7}

FN7. The SAP Fellowship claims that the \$44,115 "hoard" was set aside for Fellowship use, noting that it has engaged in expensive activities, such as the production of the "Just The Facts" video tape. The Court makes no finding as to this contention in view of the denial of the claim for these funds on limitations grounds.

The SAP Fellowship describes itself^{FN8} in the following terms:

FN8. See the SAP Fellowship Program Agreement.

The SAP Fellowship is a national organization of American patriots who have joined together to resist the illegal actions of the IRS and other government agencies who would attempt to deceive the public.

The evidence, including testimony and a recent (Fall of 1996) membership newsletter, "Reasonable Action," establishes that the SAP Fellowship has organizational activities, including the providing of "information" regarding tax procedures^{FN9}, views on the U.S. Constitution, and similar matters. The Fellowship offers for sale, or in its lingo "exchange for FRNs"^{FN10}, various publications as well as video tape programs and audio recordings. The material includes

its own publications, an 1828 dictionary ^{FN11}, a deposition of an F.B.I. Agent and a tape of the motion picture "Harry's War" ^{FN12} in which a citizen victimized by unscrupulous I.R.S. employees obtains an armored vehicle and takes on, and wins over to his viewpoint, the U.S. Army.

FN9. For example, a "press release" stating that a Washington State attorney had concluded that the I.R.S. has no authority to seize property in that state for income tax liabilities of "most citizens." This conclusion, it is said, was presented to, and not refuted by, the Washington State Bar Association and Attorney General.

FN10. Presumably Federal Reserve Notes since the Fellowship has an unorthodox view of "dollars."

FN11. Useful, presumably, in supporting arguments as to the original meaning of words in the Constitution and related documents.

FN12. The Court notes that the actor Edward Herrman played the role of a grass roots tax protestor in "Harry's War" and, more recently, the role of the President of the United States in "Pandora's Clock."

The Fellowship also offers the written works of Irwin A. Schiff who calls himself *698 "America's leading untax expert." ^{FN13} Schiff can be viewed as a "prophet" of the tax protester movement and a "guru" for Kotmair. Although convicted of tax felonies ^{FN14} and out of step with legal reality (as seen by federal judges), Schiff presents a most entertaining view of the tax law. He has been described by Judge Guerfein of the Second Circuit ^{FN15} in the following terms:

FN13. See the dust jacket to Irwin A. Schiff *How Anyone Can Stop Paying Income Taxes* (Freedom Books 1982).

FN14. *United States v. Schiff*, 801 F.2d 108 (2nd Cir.1986), *cert denied*. 480 U.S. 945, 107 S.Ct. 1603, 94 L.Ed.2d 789 (1987)

FN15. Schiff in *United States v. Schiff*, 612 F.2d 73, 75 (2nd Cir.1979) (reversing conviction of tax crimes and remanding for new trial).

[Schiff] was in the insurance business. He also fancied himself a "constitutionalist", an extremist who reserved the right to interpret the decisions of the supreme court as he read them from his layman's point of view regardless of and oblivious to interpretations of the judiciary. One can describe his attitude either as contumacious of governmental authority for the purpose of advancing the common weal, or as that of a clever faker who used his own distortions of the Constitution as a flimsy excuse for failing to pay his income taxes.

In addition to affording its membership access to the philosophy of Irwin Schiff and his disciples, the Fellowship offers a program by which, supposedly ^{FN16} :

FN16. The Court is *not* finding that the program operates as asserted, but only that such a program is presented to members.

Fellowship members pledge to reimburse other members for losses of cash or property incurred from illegal confiscation by the IRS and/or their nasty little brothers in state governments. This is done by spreading the reimbursement costs to all members.

Essentially, when a member suffers a “qualified” loss of property or freedom, he/she submits a claim to the SAP Fellowship which, after validation, supposedly results in reimbursement for civil losses (to a \$150,000 maximum) and a stipend of \$25,000 per year of incarceration. The payments are to be made by the membership directly to the validated claimant or the claimant's family.

A civil claim is validated:

... only after S.A.P. has determined that a judgment does exist and that the claimant, to the best of his ability, dragged the plunderers through every agency and court proceedings feasibly possible, using delaying tactics in each and everyone.

A criminal claim is validated:

... only after S.A.P. has determined that the claimant member is actually incarcerated and is given physical proof that said member, to the best of his/her ability, resisted and delayed the tyrants at every step through the criminal investigation and all other agency and court proceedings feasibly possible.

The Fellowship also conducts activities for its “Independent Representatives.” ^{FN17} For example, in October of 1996, the Fellowship offered a series of seminars for members, a Saturday night meeting open to the public, a Sunday social and, as a highlight of the function, the wedding of two of the Independent Representatives. ^{FN18}

FN17. Presumably, its membership or a class of members.

FN18. Kotmair's role in the nuptials is not specified.

B. The SAP Fellowship Is An Unincorporated Association

[1] 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.*699

This Court observes, also, that the I.R.S. itself, quite appropriately, returned to the Office the operating assets seized from the Office (other than cash and numismatic items). These assets, at least some of which had more than nominal value, were simply (and correctly) assumed to be Fellowship property, as distinct from Kotmair's personal property.

The Government's arguments regarding the absence of a written instrument of governance is noted but, in the context of this case, is not determinative. Moreover, the absence of records and record keeping, while significant in terms of the ability of the SAP Fellowship to carry its burden of proof does not overcome the evidence establishing that there is an actual unincorporated association distinct from its members.

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.

C. An Unincorporated Association In Maryland Can Own Property

[2] The Government's second line of defense is that even if the evidence established that the SAP Fellowship is recognized as an unincorporated association, such an entity *cannot* own property as a matter of law.

There is little precedent-in Maryland law or elsewhere-regarding property ownership by unincorporated associations. Presumably, those organizations that have significant assets find it beneficial to formalize their status, as a corporation, trust or other entity. However, the Court can take judicial notice of the fact that there are a multitude of unincorporated associations that function in spite of their informality. For example, there are many PTA's and other affiliations of persons with common interests that have not formalized their existence. Who would, sensibly, argue that a PTA treasury cannot be the property of the PTA?

While the situation may be different in some other jurisdictions ^{FN19} in Maryland the legislature has recognized that an unincorporated association can own property in its own right. ^{FN20}

FN19. For decisions holding that an unincorporated association cannot own property, see *Krumbine v. Lebanon County Tax Claim Bureau*, 541 Pa. 384, 663 A.2d 158, 160 (1995) (real property); *Rock Creek Gardens Tenants Assoc. v. A.M. & L.A. Ferguson*, 404 A.2d 972 (D.C.App.1979) (per curium) (real property); *United States v. Thevis*, 474 F.Supp. 134, 138 (N.D.Ga.1979); *Libby v. Perry*, 311 A.2d 527, 531-32 (Me.1973). *But See Loving Saviour Church v. United States*, 556 F.Supp. 688, 690 (D.S.D.1983) (holding that an unincorporated association is a legal entity and therefore can own property).

FN20. Compare, *Motta v. Samuel Weiser, Inc.*, 768 F.2d 481, 485-86 (1st Cir.1985) (stating that “[c]ourts may determine that ownership vests in the individuals who comprise the organizations.”)

The Maryland Code, Md. Cts. & Jud. Proc.Code Ann. § 6-406 provides:

An unincorporated association ... or other group which has a group name may sue or be sued in the group name on any cause of action affecting the common property, rights and liabilities of the group.

Moreover, Md. Cts. & Jud. Proc. Code Ann. § 11-105 provides: In any cause of action affecting the common property, rights and liabilities of an unincorporated association, or other group which has a recognized group name, a money judgment against the group is enforceable *against the assets of the group as an entity*, but not against the assets of any member.

This Court concludes that, as a matter of law, an unincorporated association in Maryland can own property.

The Government's reliance upon *Bourexis v. Carroll County*, 96 Md.App. 459, 625 A.2d 391 (1993), is misplaced. The Maryland Court of Appeals did not hold that an unincorporated association *cannot* own property. Rather, it held that in *Bourexis*, in which there was no evidence offered as to the “governance, powers, financing, or property” of the organization, there was “nothing to show it [was] an entity that may be sued.” *Id.* 625 A.2d at 395.

***700** For reasons stated herein, this Court concludes that the SAP Fellowship is an unincorporated association and, as such, is legally capable of owning property. It is, therefore, necessary to determine the extent to which the SAP Fellowship has carried its burden of proving that it owned the property at issue.

D. *What Did The Fellowship Prove It Owned?*

[3] The SAP Fellowship chose not to maintain any bank accounts or even maintain records of its finances. That decision may well be consistent with the group's philosophy.^{FN21} The absence of bank accounts or records may also, whether as a deliberately sought “benefit” or not, make it more difficult for law enforcement to investigate its activities. Whatever the reasons for an absence of records—be they philosophical or otherwise—the decision has a price which goes beyond the inability to earn interest on bank deposited funds. That price certainly includes the inconvenience that results when the Fellowship finds itself involved in a legal proceeding in which it has the burden of proof.

FN21. The Fellowship appears to have a distrust of banks.

In this case, had the SAP Fellowship had its own bank account in which it maintained its funds it might have little problem in prevailing as to those funds.^{FN22} Similarly, although perhaps less conclusively, had the SAP Fellowship maintained records of its funds and had Kotmair as Fiduciary keep the association funds completely separate from his own, the Fellowship would have at least a possibility of carrying its burden of proof. However, the Fellowship presents no records whatsoever. Nor does the evidence establish that its funds were maintained separately from those of Kotmair. And, most significantly, there is no evidence from which the Court can determine at what point after Fellowship funds leave the Office in the possession of Kotmair that

they cease to be held exclusively as the property of the SAP Fellowship.

FN22. Compare *Arth v. United States*, 735 F.2d 1190, 1193 (9th Cir.1984), in which the claimant's funds were deposited into the taxpayer's account and were held to have properly been levied upon.

The record establishes that Kotmair was entitled to, felt free to, and did, take funds from the Fellowship and use them for his personal sustenance. Kotmair espouses a doctrine that would have funds that he takes to spend for personal use remain the property of the SAP Fellowship. Indeed, in the world according to Kotmair, if he uses Foundation funds for his food, the Foundation ownership extends to the food even as it proceeds through his digestive system. For example:

THE COURT: [W]e are trying to get an understanding of when something belongs to you and when it doesn't. When it belongs to [the SAP Fellowship], so I just want you to try and help me understand that. If you go to the grocery store and you buy Wheaties [with fellowship funds], when is it yours, after you eat it or.

Kotmair: That is a hard question to answer.

THE COURT: That is why we ask it.

Kotmair: If the energy from it goes to the Fellowship, and it does, I would say it is to the benefit of the fellowship.

The Court declines to follow the "logic" of Kotmair's position or to dwell upon the point in the digestive process at which Kotmair would agree that the I.R.S. could effect collection. Rather, the Court must conclude that once Kotmair takes Fellowship funds for personal use, those funds can no longer be found to be Fellowship property immune from levy for Kotmair's tax liabilities.

The Court finds from the evidence that the SAP Fellowship obtained, and had ownership of, the cash and money orders it received for memberships and the sales of goods, and, possibly services. If the Fellowship had established that Kotmair's possession of particular assets was *solely* as Fiduciary for the SAP Fellowship the ownership could remain in the Fellowship. However, at such point as Kotmair took the assets and did not place *701 them in a location ^{FN23} that was *exclusively* used for the maintenance of Fellowship assets, the ability of the SAP Fellowship to establish ownership in this case was lost. In the context of this case, once the cash and money orders were taken from the Office and placed in something other than a Fellowship depository, the funds were available for the immediate personal use of Kotmair, mingled with his own assets, and no longer had the character of Fellowship assets sufficient to avoid levy.

FN23. Be it an office, a safe, a designated part of a safe, or other container plainly labeled to show Fellowship ownership and rigorously kept as Fellowship property.

In this case, the cash and money orders that had been removed from the Office prior to the raid were found in the Residence in various locations, none of which have been established to be exclusive association depositories. However, the Court finds that the \$384 of cash, the \$210 of money orders and \$40 of Susan B. Anthony Dollars found at the Office were, when found,

property of the SAP Fellowship which had not yet been mingled with Kotmair's personal assets. Accordingly, the Court concludes that the SAP Fellowship has carried its burden of proof and proven ownership with regard to these assets found in the Office, but not as to the cash and money orders found in the Residence.

The evidence regarding the numismatic items is not sufficient to permit any finding for the SAP Fellowship. There are references in the evidence to some association receipts of numismatic items. But, there is an absence of specific evidence relating to any particular item sufficient to carry the burden of proof. Moreover, the evidence is not adequate to establish that any of the numismatic items were maintained in a location that can be found to be a Fellowship depository. There was no record of which items belonged to the association. And, there was nothing, not even a sign, a label, a wrapping, or anything else that would indicate that the ownership of the items was other than that of Kotmair in whose home the items were found. Accordingly, the Court cannot find for the Plaintiff with regard to the numismatic coins and items.

IV. COSTS AND LEGAL FEES

The history of this case, and the related litigation, leads the Court to address the matter of costs and legal fees at this point to avoid further proceedings. The Court has found for the Plaintiff in part and the Defendant in part. Therefore, the parties shall bear their own respective costs.

To the extent that the Plaintiff has prevailed, the Government had a reasonably justified position. Accordingly, there shall be no award of legal fees.

V. CONCLUSION

For the foregoing reasons:

1. The Court determines that the Plaintiff, the SAP Fellowship, is entitled to recover the \$384 in currency, \$40 in Susan B. Anthony Dollars, and \$210 in money orders seized from the Office and levied upon to satisfy the tax liabilities of Kotmair on September 2, 1994.
2. Judgment shall be entered by separate Order awarding the Plaintiff a recovery of \$634, plus interest thereon as provided by law, the parties to bear their own respective costs.