

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
JAMES K. BREDAR
U.S. MAGISTRATE JUDGE

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May 12, 2006

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Subject: *United States of America v John Baptist Kotmair, Jr., et al.*
Civil Action No. WMN-05-1297

Dear Counsel and Mr. Kotmair:

This action has been referred to me for disposition of discovery disputes. The plaintiff has filed a motion to compel discovery (Paper No. 30). No hearing is necessary. Local Rule 105.6. For the reasons set forth below, the motion is hereby GRANTED IN PART and DENIED IN PART.

The underlying complaint is one for permanent injunction and alleges that the defendants are engaged in the organization and sale of tax-fraud schemes. The instant motion refers both to interrogatories and requests for production posited both to Defendant John Baptist Kotmair, Jr., who is proceeding *pro se*, and to Defendant Save-A-Patriot Fellowship (SAPF). The discovery requests in dispute will be addressed in the order set forth in the motion.

However, before addressing those individual requests, it will be useful to elucidate an issue that is raised by Defendant SAPF and that impacts various of the discovery responses at issue. SAPF contends *inter alia* that this Court, in *Save-A-Patriot Fellowship v. United States*, 962 F. Supp. 695 (D. Md. 1996) held that SAPF was not a business. That decidedly is not what the Court held. Rather, the Court held that SAPF was an unincorporated association and distinct from Mr. Kotmair and not his alter ego, as the government was contending in that case. *Id.* at 699. The Court further held that the SAPF was legally capable of owning property. Moreover, the Court found that once Mr. Kotmair took SAPF funds for his personal use, those funds no longer were SAPF property

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immune from Mr. Kotmair's tax liabilities.¹ *Id.* at 700. In sum, the leap in law and logic suggested here by SAPF -- that because it was an unincorporated fellowship, it was not a business -- was not one that was taken by the Court. In fact, the Court wrote:

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.

Id. That sounds very much like an entity that could be considered to be a business.

The Court now turns to the discovery requests.

Kotmair Interrogatory No. 3 seeks the identification of all sources of income, including amounts, since January 1, 2002. It is objected to on grounds of relevance. The objection is overruled, and Defendant Kotmair is directed to respond fully to the interrogatory.

Kotmair Interrogatory No. 7(a) seeks the identity by name, taxpayer identification number, address, telephone number and e-mail address of all members of SAPF from January 1, 2000, to the present. The interrogatory is objected to on grounds of relevance and undue burden and that the information is protected by the 1st, 4th and 14th Amendments to the Constitution. The objection is overruled as to relevance and undue burden, no showing of undue burden having been offered. The claim to constitutional protection is rebutted by a myriad of authorities offered by the plaintiff, and there is no attempt to distinguish those cases. Accordingly, the claim to constitutional protection is overruled, and Defendant Kotmair is directed to respond fully to the interrogatory.

Kotmair Interrogatory No. 9 seeks the identity by name, taxpayer identification number and e-mail address of all persons for whom Mr. Kotmair has drafted letters to be sent to the IRS at any time from January 1, 2000, to the present. The interrogatory is objected to on grounds of relevance; on the ground that it is duplicative because the IRS already possesses the information (because the letters were sent to it); and on the aforesaid constitutional grounds. The objections are overruled, and Mr. Kotmair is directed to respond fully to the interrogatory.

Kotmair Interrogatory No. 10 seeks the identity by name, taxpayer identification number, address, telephone number and e-mail address of all persons to whom Mr. Kotmair has provided any tax-related services from January 1, 2000, to the present. The interrogatory is objected to on grounds of undue burden and that it is duplicative. The objections are overruled, and Mr. Kotmair is directed to respond fully to the interrogatory.

¹On questioning from the Court, Mr. Kotmair had contended that if he purchased Wheaties with fellowship funds and if the energy derived from the Wheaties post-ingestion was expended on behalf of SAPF then it effectively remained SAPF property.

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Kotmair Interrogatory No. 11 seeks the identity of all persons having knowledge of Mr. Kotmair's relationship with SAPF. Although the interrogatory is objected to as unduly burdensome, the objection actually goes to scope and it is sustained. The interrogatory, as drafted, defies response, it being unclear how anyone could answer such a question.

Kotmair Interrogatory No. 12 seeks the identity by name, taxpayer identification number, address, telephone number and e-mail address of all persons whom Mr. Kotmair has represented before the IRS since January 1, 2000. The interrogatory is objected to on grounds of relevance, undue burden and that it is duplicative, along with the aforesaid claim that the information is constitutionally protected. The objections are overruled, and Mr. Kotmair is directed to respond fully to the interrogatory.

Kotmair Request for Production No. 7 seeks copies of all correspondence to the IRS on behalf of any person that Mr. Kotmair drafted or assisted in drafting at any time since January 1, 2000. The request is objected to on the grounds of undue burden and that it is duplicative, as well as financially prohibitive. The objections are overruled, and Mr. Kotmair is directed to make the documents available to the government for copying at government expense.

Kotmair Request for Production No. 8 seeks copies of all files or records, including electronic records, pertaining to all SAPF members and all other persons who have purchased SAPF's products or services at any time since January 1, 2000. The Court is troubled by the scope of this request inasmuch as it appears to take in the full universe of records in SAPF for more than five years. The objection is sustained.

Kotmair Request for Production No. 13 seeks copies of all audiotapes, videotapes, books and other products that Mr. Kotmair, SAPF or NWRC (National Workers Rights Committee) offer for sale. Plaintiff's counsel, upon inquiry by the Court, has advised that this request no longer is at issue, so, as to this request, the motion to compel is denied as moot.

SAPF Interrogatory No. 6 seeks the identity by name, taxpayer identification number, address, telephone number and e-mail address of all members of SAPF from January 1, 2000, to the present. The interrogatory is objected to on grounds of relevance and that the information is protected by the 1st, 4th and 14th Amendments to the Constitution. The objection is overruled as to relevance. The claim to constitutional protection is rebutted by a myriad of authorities offered by the plaintiff, and there is no attempt to distinguish those cases. Accordingly, the claim to constitutional protection is overruled, and SAPF is directed to respond fully to the interrogatory.

SAPF Interrogatory No. 9(a) seeks, as to identified SAPF staff, the position held, the nature of services performed, the dates of performance and the amount paid for such services. SAPF objected to furnishing the amount paid for services on grounds of relevance. The objection is overruled, and SAPF is directed to respond fully to the interrogatory.

SAPF Interrogatory No. 9(b) seeks the identity by name, taxpayer identification number and e-mail address of all persons for whom SAPF drafted letters to be sent to the IRS at any time from

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January 1, 2000, to the present. The interrogatory is objected to on the ground that it is unnecessarily duplicative. The objection is overruled, and SAPF is directed to respond fully to the interrogatory.

SAPF Interrogatory No. 10 seeks the identity by name, taxpayer identification number, address, telephone number and e-mail address of all persons to whom SAPF has provided any tax-related services from January 1, 2000, to the present. The interrogatory is objected to on the ground that the term "tax-related services" is undefined, vague and ambiguous. The objection is overruled, and SAPF is directed to respond fully to the interrogatory.

SAPF Interrogatory No. 11 seeks identification by case name, court name and docket number of all cases in which SAPF or anyone working under its direction or supervision has drafted or assisted in drafting and court filing from January 1, 2000, to the present. The interrogatory is objected to on grounds of relevance. The objection is overruled, and SAPF is directed to respond fully to the interrogatory.

SAPF Interrogatory No. 21 seeks the identity by name, taxpayer identification number and e-mail address of all participants in the Member Assistance Program. The interrogatory is objected to on grounds of relevance and undue burden and that the information is protected by the 1st, 4th and 14th Amendments to the Constitution. The objection is overruled as to relevance and undue burden, no showing of undue burden having been offered. The claim to constitutional protection is rebutted by a myriad of authorities offered by the plaintiff and there is no attempt to distinguish those cases. Accordingly, the claim to constitutional protection is overruled, and SAPF is directed to respond fully to the interrogatory.

SAPF Interrogatory No. 22 seeks the identity by name, taxpayer identification number and e-mail address of all participants in the Victory Express. The interrogatory is objected to on grounds of relevance and undue burden and that the information is protected by the 1st, 4th and 14th Amendments to the Constitution. The objection is overruled as to relevance and undue burden, no showing burden having been offered. The claim to constitutional protection is rebutted by a myriad of authorities offered by the plaintiff, and there is no attempt to distinguish those cases. Accordingly, the claim to constitutional protection is overruled, and SAPF is directed to respond fully to the interrogatory.

SAPF Interrogatory No. 24 seeks the identities of recipients by name, date of payment and amount of all benefits or other payments made to any participant in the Member Assistance Program, the Victory Express and the Patriot Defense Fund. SAPF contends that the information is protected by the 1st, 4th and 14th Amendments to the Constitution. The claim to constitutional protection is rebutted by a myriad of authorities offered by the plaintiff, and there is no attempt to distinguish those cases. Accordingly, the claim to constitutional protection is overruled, and SAPF is directed to respond fully to the interrogatory.

SAPF Request for Production No. 7 seeks copies of all correspondence to the IRS on behalf of any person that SAPF or anyone working with SAPF drafted or assisted in drafting at any time

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since January 1, 2000. The request is objected to on the grounds of overbreadth, undue burden and that it is unreasonably duplicative. The objections are overruled, and SAPF is directed to make the documents available to the government for copying at government expense.

SAPF Request for Production No. 8 seeks copies of all files or records, including electronic records, pertaining to all SAPF members and all other persons who have purchased SAPF's products or services at any time since January 1, 2000. The Court is troubled by the scope of this request inasmuch as it appears to take in the full universe of records in SAPF for more than five years. The objection is sustained.

SAPF Request for Production No. 10 seeks copies of all bankruptcy petitions and other court filings that SAPF or anyone working with SAPF has drafted or assisted in drafting. The request is objected to on ground of relevance. The objections are overruled, and SAPF is directed to make the documents available to the government for copying at government expense.

SAPF Request for Production No. 16 seeks copies of all contracts or agreements with SAPF members and other persons regarding the Member Assistance Program, the Victory Express and the Patriot Defense Fund. SAPF contends that the information is protected by the 1st, 4th and 14th Amendments to the Constitution. The claim to constitutional protection is rebutted by a myriad of authorities offered by the plaintiff, and there is no attempt to distinguish those cases. Accordingly, the claim to constitutional protection is overruled, and SAPF is directed to respond fully to the interrogatory.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an Order.

Very truly yours,

/s/

James K. Bredar
United States Magistrate Judge

JKB/cw

cc: The Hon. William M. Nickerson
Court file
Chambers file