

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Valdy Patriot,)
Plaintiff)
) Civil no. 8:07-CV-xxxxx-xxx-xxx
V.)
) OBJECTION TO MOTION TO DISMISS
UNITED STATES OF AMERICA) BY GOVERNMENT
Defendant)

Plaintiff Valdy Patriot hereby files his Opposition to the Government's Motion to Dismiss dated July 25, 2007. This is Part I of said objection. Part II will be filed shortly. Plaintiff received said Motion on July 31, 2007. The rules indicate that Plaintiff has only ten days to files his objection. Therefore, Plaintiff is filing his objection in two parts in order to meet the possible short deadline.

1. The Government's Motion to Dismiss is poorly written, confusing, with many factual errors. The DOJ should be required to submit a new one explaining their position.
2. For example, the government alleges many times that Plaintiff did not exhaust his administrative remedies by filing his administrative claim for damages. Plaintiff clearly stated in his complaint that he filed two administrative claims and the IRS responded to one. In the middle of page three of said Motion,

Counsel for the IRS stated:

"Plaintiff filed a claim for damages with the IRS.(Complaint, Ex. B) Plaintiff's claim sought the return of the \$5387.11 that was previously levied by the IRS, statutory damages of \$100,000 and court costs that appear to be associated with Plaintiff's first case. Plaintiff ultimately received a letter denying his claim for damages."

3. Patriot in his complaint stated in paragraphs six and seven:
 6. **Plaintiff filed on May 26, 2006 Administrative Claim for Unauthorized Collection Actions under IRC Section 7433 & 26CFR 301.7433-1 to Area Director, and mailed to 5971 Cattleridge Blvd, Su.102, Sarasota FL 34232. Daryl V. Galloway, Advisory Territory Manager on July 14, 2006 denied above claim.**
 7. **Plaintiff filed on August 6, 2006 Administrative Claim for Unauthorized Collection Actions under section 7433 & 26CFR 301.7433-1 to two different addresses given to Plaintiff by Taxpayer Advocate: 1.Area Director, Compliance Technical Support Manager- Joel Government, 5000 Ellin Rd., Lanham/Seabrook, MD 20706-1348; and 2. and Sandi Nirenberg, 7850 SW 6th Court STOP 5780, Plantation, FL 33324**

These two administrative claims were attached to his complaint with the IRS denial, Exhibit C.

4. The DOJ in said Motion, on the top of page 3, stated that a Collection Due Process Hearing, hereafter CDPH, was held after the dismissal of the lawsuit in this matter or about a year after the levy complained of. However, this has nothing whatsoever to do with this case. The lawsuit involves an illegal levy starting a year before said hearing. Whether Oleander was correct or not correct at the CDP hearing had nothing to do with the earlier levy.
5. The Attorney for the tax collectors keeps referring to an “Administrative claim for refund.” Apparently he is referring to the Form 1040X (Amended Tax Return) or Form 843. This apparently refers to a tax refund suit under IRC 7422. However, this is not a tax refund suit but is a lawsuit for damages under the Unauthorized Tax Collection Act IRC 7433. These are two separate code section, lawsuits and matters.

For Plaintiff’s lawsuit, he is required by law to exhaust his administrative remedies, which he did. This case has nothing to do with the claim for refund.

6. The Motion to Dismiss repeatedly says that” Statutory Damages” do not exists in this case. Black’s Law Dictionary defines: “Statutory damages. Damages resulting from statutorily created causes of actions, as opposed to actions at common law; e.g. wrongful death and survival actions; actions under tort claims acts; under 504 of the federal Copyright Act, a copyright owner has the right to collect statutory damages in lieu of actual damages for copyright infringement.”

Maybe Plaintiff, a non-lawyer is using this term incorrectly, but IRC 7433 is a statute and it does put forth damages that did not exist in common law. Plaintiff did not use the term “minimum statutory damages” which maybe what well-educated trail attorney of the tax division meant.

7. The Plaintiff pro se filed a very good complaint with well-written administrative claims. He covered the bases, is entitled to damages and clearly pointed out the waiver of sovereign immunity. The government has agreed to refund monies wrongfully levied and therefore admitted wrongdoing. Of course, Patriot may have made some mistakes, but has not submitted pleadings as bad as the lawyer for the government.
8. The Government’s Motion to Dismiss should be stricken from the record and resubmitted based on the facts in this case. The DOJ wants to use the unlimited resources of the federal government against a Polish refugee with no resources. For this pleading with so many errors, the DOJ should be required to pay damages to the citizen/taxpayer.
9. Pursuant to Local Rule 3.01(g) defendant counsel before filing motion to dismiss failed to:
 - a. confer with counsel for the opposing party in good faith effort to resolve issues raised by the motion.

- b. failed to file with the motion a statement,
 - i) certifying that the moving counsel has conferred with opposing counsel,
 - ii) stating whether counsel agrees on the resolution of the motion.
- 10. This court has already ruled that the levy was incorrect and stopped the levy in the first case in this matter, No. 8:05-cv-2019-JDW-MAP. Therefore, Plaintiff will not list here the many reasons why the wage garnishment violated the revenue code. However, as an important factor in his proof of damages, Plaintiff will list the reasons the levy was wrongful.
- 11. Well-educated and experienced DOJ Attorney faults Plaintiff for not filing an exhaustive listing of damages and costs. Plaintiff did list most of his damages very clearly in his admin claim attached to the complaint. However, his court costs were not known at the time of the filing of this action. Taxpayer will submit shortly and separately his motion for maximum damages and later his motions for costs.
- 12. As the law provides, the tax collectors were reckless and almost intentional in their disregard of the laws and regulations in their seizure of taxpayer's wages. The tax garnishment was not authorized by law and beyond any doubt was wrongful. Even after the court held the IRS action violated taxpayers rights, the government refused to refund his money and has not as of his date.
- 13. In conclusion, Patriot has put forth an excellent case, proven clearly that he is entitled to damages and met the requirements of the code-section.

CERTIFICATE OF SERVICE: I hereby certify that on or about this date, I mailed properly a copy of this pleading to all parties at their proper addresses, postage pre-paid.

August 3, 2007

Valdy Patriot, Pro Se
North Port, Fl 34286