

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WANDA P. CHOCALLO : CIVIL ACTION
: :
v. : :
INTERNAL REVENUE SERVICE : NO. 04-3737

UNITED STATES OF AMERICA : CIVIL ACTION
: :
v. : :
WANDA P. CHOCALLO : NO. 06-539

MEMORANDUM AND ORDER

McLaughlin, J.

January 3, 2008

These consolidated actions concern a tax dispute between Wanda P. Chocallo and the Internal Revenue Service. The Court set forth the history of this case in its Memorandum and Order dated July 16, 2007, granting in part and denying in part motions to dismiss filed by the parties and a motion for summary judgment filed by the United States. The Court incorporates that discussion herein.

Over the past several months, the Court has scheduled three final pretrial conferences and a trial date in an attempt to bring this litigation to a conclusion. The United States filed final pretrial memoranda in both cases and appeared at the three scheduled final pretrial conferences. Ms. Chocallo neither

filed a final pretrial memorandum nor appeared at any of the hearings, notwithstanding the Court's orders for her to do so. Ms. Chocallo has refused to appear at any hearing on the ground that she has appealed this Court's July 16, 2007, decision. The Court will dismiss Ms. Chocallo's remaining claim against the United States in Civil Action No. 04-3737 and will enter judgment for the United States in Civil Action No. 06-539.

In its July 16, 2007, order, the Court granted summary judgment to the United States in Civil Action No. 04-3737 to the extent Ms. Chocallo's claim was grounded in 26 U.S.C. § 7433 and denied the motion to dismiss to the extent Ms. Chocallo's claim was grounded in 26 U.S.C. § 7422. The Court denied the United States' motion for summary judgment in Civil Action No. 06-539 and Ms. Chocallo's motion to dismiss in Civil Action No. 06-539.

In its last order dated December 3, 2007, giving Ms. Chocallo a third chance to appear at the final pretrial conference, the Court described the sequence of events that led to the scheduling of the January 2, 2008, conference. The Court incorporates that description herein. The only appropriate sanction for Ms. Chocallo's failure to prosecute her remaining claim in Civil Action No. 04-3737 is dismissal of that claim. As to the claim brought by the United States against Ms. Chocallo in Civil Action No. 06-539, an appropriate sanction is also the entry of judgment against Ms. Chocallo. The Court, nevertheless,

has reviewed that claim on the merits and finds that judgment is appropriate on the merits as well.

In Civil Action No. 06-539, the United States seeks recovery of an erroneously issued tax refund check in the amount of \$22,935.55 relating to the 1998 tax year. The United States claims that it mistakenly issued two refund checks to Ms. Chocallo in this amount and that Ms. Chocallo received and negotiated the duplicate check. In its July 16, 2007, order, the Court denied the motion of the United States for summary judgment on this claim because the United States did not present evidence that Ms. Chocallo had actually received the duplicate check. The United States did present evidence that the check had been erroneously issued to Chocallo. In its final pretrial memorandum, the United States submitted its list of exhibits to be offered at trial. Two of its exhibits are the two checks in the amounts of \$22,935.55 endorsed by Ms. Chocallo. Had the Court had these two exhibits at the summary judgment stage, it would have granted summary judgment to the United States. For that reason, the Court will enter judgment for the United States in Civil Action No. 06-539.

An appropriate order follows.

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WANDA P. CHOCALLO : NO. 06-539

ORDER

AND NOW, this 3rd day of January, 2008, IT IS HEREBY ORDERED that for the reasons stated in the accompanying Memorandum, Case No. 04-3737 is hereby dismissed and judgment is entered for the United States and against Wanda P. Chocallo in Civil Action No. 06-539 in the amount of \$22,935.55. These cases are closed.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.