

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

HUMES HOUSTON HART : CIVIL ACTION
v. :
UNITED STATES : No. 96-5639
INTERNAL REVENUE SERVICE :
COMMISSIONER OF INTERNAL REVENUE :

Ludwig, J.

April 14, 1998

M E M O R A N D U M

This memorandum accompanies an order entered this date granting summary judgment to defendants on the one outstanding issue in this action and denying plaintiff's most recent motion for sanctions.

By Order-Memorandum of November 21, 1997 defendants' motion to dismiss the amended complaint was granted in all but one respect.¹ Reserved for summary judgment was a claim that involved facts outside plaintiff's pleadings.² The issue concerned a document that plaintiff believed was used by the I.R.S. in reaching

¹ Humes Houston Hart v. United States et al, No. 96-5639, 1997 W.L. 732466 (E.D. Pa. Nov. 21, 1997). Throughout these proceedings, plaintiff has been pro se.

² Summary judgment is appropriate when after considering the record in the light most favorable to the non-moving party, no genuine issue of material fact exists and the moving party is entitled to judgement as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 323-325, 106 S. Ct. 2548, 91 L. Ed.2d 265 (1986); Knabe v. Boury Corp. 114 F.3d 407, 410 n.4 (3d Cir. 1997).

an invalid assessment against him for the 1991 tax year.³ The I.R.S. has denied the existence or use of such a document in assessing plaintiff's tax liabilities, and maintains that the original assessment was based upon "information received by [the I.R.S.] from First Union Brokerage Service and the U.S. Trust Co." See defendants' response to plaintiff's submissions at 4. Plaintiff cites 5 U.S.C. § 552a to require the I.R.S. to divulge the information relating to the contested document.⁴ Am. compl. ¶¶ 113-15. Plaintiff acknowledges that the problem with his 1991 tax assessment has been solved - the original erroneous assessment has been abated, see am. compl. ¶ 77, and a refund of \$190 has been made, see Order of August 28, 1997.

Upon request, the I.R.S. conducted a search of its files in August 1997 and certified under penalty of perjury that no such

³ According to the amended complaint, an employee of the I.R.S. Problem Resolution Office told plaintiff in 1996 that "the problem with [his] 1991 return was failure to report an income item of \$59,000 resulting from an alleged real estate transaction involving a 'Fairmount' or 'Fairmont' Mortgage Company." ¶ 56. In response to his request, an employee of the I.R.S. sent plaintiff a numbered list of the documents used in assessing his 1991 tax liability, with an item missing. Id. ¶ 59. Plaintiff has concluded that item is the contested "Fairmont Mortgage Company" document.

⁴ The Privacy Act, 5 U.S.C. § 552a, requires "each agency that maintains a system of records" to "upon request by any individual to gain access to his record or any information pertaining to him which is contained in the system, permit him...to review the record and have a copy made of all or any portion thereof...." 5 U.S.C. § 552a(d). The Act further provides that if an agency refuses to comply with a request, "an individual may bring a civil action against the agency, and the district courts shall have jurisdiction..." 5 U.S.C. § 552a(g)(1).

document existed in plaintiff's files and no such document was used in assessment of plaintiff's 1991 taxes. See transcript of status conference, August 13, 1997. Defendants submitted an affidavit in support of their position. See defendants' motion to dismiss, declaration of George Curran at 2. In Order of November 21, plaintiff was given an opportunity to submit evidence to rebut that position.⁵

Plaintiff's submissions essentially make two arguments. The first is that the document must have been a part of his ex-wife's tax files - erroneously leading to an assessment against him - and now is being intentionally withheld from him by the I.R.S. The second is that the issue, even though resolved as to his 1991 tax liabilities, is not moot because the I.R.S. has targeted him as a "tax evader," which will cause him problems in the future.

As to the first argument, plaintiff's December 1997 "transmittal" alleges that the document may exist in the file of plaintiff's ex-wife, Vivian Hart. See affidavit of Humes Houston Hart, attached to plaintiff's transmittal, at 7. However, defendants are prohibited by law from divulging the contents of another taxpayer's files without that person's express written

⁵ Plaintiff has made three submissions - "Transmittal of Fairmont Mortgage Company Evidence," filed on December 12, 1997; "Submittal Pursuant to Order of January 15, 1998," filed on February 16, 1998; "Plaintiff's Response to Defendant's Response of February 23, 1998," filed on March 18, 1998. All materials submitted by plaintiff have been considered in resolving the issue on summary judgment.

consent. See defendants' response at 3, n. 1.⁶ Further, plaintiff's March 1998 "response" contends that if this is true, his "right to disclosure" outweighs his ex-wife's "right to privacy," and alternatively, that she is "obligated under their separation agreement to consent to disclosure of documents relative to [his] income tax."⁷ Plaintiff's response at 7-8. In addition, plaintiff's response asserts that defendants have intentionally and willfully refused to disclose the document to him. Id. at 11-14.

Plaintiff may be understandably frustrated with the inability to determine exactly what led to the original erroneous assessment, albeit it was later corrected. However, he has pointed to no evidence, beyond speculation, to support any of the positions taken by him - that the document either exists in his files or was used in assessing his 1991 tax liability; that there was a link between his and his ex-wife's tax files justifying disclosure of information in her files without her express written consent; or that the I.R.S. ever intentionally or willfully

⁶ In response, plaintiff reasons that the Fairmont Mortgage Company document is a "joint return" as defined by 26 U.S.C. § 6103(b)(1) because, under his theory, it must have noted both his and his former wife's names. As such, plaintiff concludes that the I.R.S. must make the document available to him. Plaintiff's reasoning, while creative, is incorrect - a document used in calculating a "return" is not a "return" under the language of the statute. Further, the statute expressly provides that a "return" or "return information" does not include "data in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer." § 6103(b)(1)-(2). This appears to be the situation.

⁷ The obligations of plaintiff's ex-wife under their separation agreement are extraneous to this action against the I.R.S.

withheld any information from him. None of these theories has been supported by any evidence or any proffer beyond conjecture.

Plaintiff's second argument is that defendants have implied that he is a "tax evader" based on the contested document, and he "deserves the opportunity to clear his name." See plaintiff's February 1998 "submittal" at 1. There is no evidentiary basis for this assertion or any presently pending controversy. As noted, plaintiff's 1991 tax liability has been resolved. See am. compl. ¶¶ 77; Order of August 28, 1997. And there are no outstanding I.R.S. proceedings or matters involving plaintiff. If a problem should arise, he has the record of this action to refer to and if wrongly accused, will be given the assistance of this court.

Summary judgment must be granted to defendants, and plaintiff's most recent motion for sanctions will be denied. This action will be closed.

Edmund V. Ludwig, J.