

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case Number: 10-cv-20937-JLK

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID SANTIAGO and
SANTIAGO INVESTMENT & CONSULTING, INC.,

Defendants.

DEFAULT JUDGMENT AND PERMANENT INJUNCTION

This matter comes before the Court on the United States' Motion for Default Judgment and Permanent Injunction. Having reviewed the record in this case, the Court makes the following findings of fact and conclusions of law and enters this permanent injunction against David Santiago and Santiago Investment & Consulting, Inc.

FINDINGS OF FACT

1. The United States brought this action under §§ 7402, 7407 and 7408 of the Internal Revenue Code, 26 U.S.C. (the "Code"). Jurisdiction is proper under 28 U.S.C. §§ 1340 and 1345, and Code §§ 7402(a), 7407 and 7408. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the defendants reside or conduct business in this district and because a substantial part of the actions giving rise to this suit took place in this district.
2. David Santiago resides and conducts business as a tax return preparer in Miami, Florida. He prepares other people's federal tax returns for compensation.
3. Santiago Investment & Consulting, Inc. is located and conducts business as a tax

return preparer in Miami, Florida. It prepares other peoples' federal tax returns for compensation. It was incorporated by David Santiago with the State of Florida in November 2008. David Santiago is its president and owner.

4. David Santiago is an experienced tax return preparer who has prepared returns since at least 2006. He conducts his tax return preparation business using Santiago Investment & Consulting, Inc. Prior to the formation of Santiago Investment & Consulting, Inc., Santiago prepared returns using another corporation he owned and operated, Santiago Tax Services, Inc.

5. As a means to strengthen the real estate market and help the economy, Congress enacted the First-Time Homebuyer Credit ("the credit") in July 2008. The credit allowed first-time homebuyers a credit against their federal income tax of the lesser of ten percent of the home's purchase price or \$8,000. The credit, which is codified at Code § 36, is claimed by completing and attaching to the income tax return an IRS Form 5405. Form 5405 sets forth the requirements for credit eligibility. Form 5405 requires the preparer to list the purchased home's address and acquisition date. To be eligible for the credit (as in effect for tax year 2008) a person must not have owned a home in the previous three years and must have actually purchased a home after April 8, 2008 and during the tax year for which the credit is claimed.

6. The Internal Revenue Service has identified 229 returns prepared by the defendants for tax year 2008. The IRS has reviewed 33 of those returns and 22 of them claimed the First-Time Homebuyer Credit. The IRS review determined that none of the 22 taxpayers was entitled to claim the credit.

7. The defendants made no attempt to determine whether their customers were qualified to claim the credit. To the contrary, the defendants and their agents misrepresented the requirements for the credit to customers and failed to mention that there must have been an actual

home purchased in order to claim the credit.

8. For example, a customer, Michele Vinales, went to the defendants' office in February 2009 to have an amended 2008 federal income tax return prepared. She had originally filed a 2008 return, which had been prepared by another preparer, that did not claim the homebuyer credit. Santiago falsely told her that she could take the credit if she was trying to buy a home. Vinales informed Santiago that she had not bought a home, but Santiago improperly claimed the credit on her amended 2008 return anyway. Vinales did not purchase a home in 2008 or 2009.

9. Another customer, Ricardo Garcia, went to defendants' offices to have his 2008 federal income tax return prepared and was falsely told by an employee of Santiago Investment & Consulting, Inc., that he qualified to "apply" for the credit and that the credit could then be used to purchase a house. Garcia did not purchase a house, but the defendants nevertheless prepared a tax return for him that improperly claimed the credit.

10. Similarly, customer Lien Parra went to see Santiago at his office in April 2009 to have her 2008 federal income tax return prepared. Parra told Santiago that she was planning on buying a house but had not bought one yet. Nevertheless, Santiago prepared Parra's 2008 return and improperly claimed the credit. Santiago falsely reported on the return that Parra purchased a home on March 31, 2009.

11. Parra, who was twenty-one years old in 2008, is described on her 2008 return as a student and, according to her return, had total income of \$5,453 in 2008. The return, which was prepared by Santiago, claims that Parra purchased a home that cost at least \$80,000. Santiago improperly failed to identify himself as the preparer on the 2008 return he prepared for Parra.

12. The defendants are claiming the credit on returns they prepare with knowledge that the customers have not purchased a home during the applicable time period or are otherwise not

qualified for the credit.

13. On at least three of the 22 returns reviewed by the IRS in which the defendants claimed the credit, the defendants reported a home purchase date that was after the date the return was prepared and filed. For example, the defendants prepared and filed a 2008 federal income tax return for customer Ricardo Garcia on April 15, 2009, that falsely reported a home purchase date of November 23, 2009.

14. The minimum credit claimed by the defendants was in the amount of \$7,050 on the 22 returns reviewed by the IRS that claimed the credit. In other words, the defendants claimed that each of these 22 customers purchased a home after April 8, 2008, that cost at least \$70,500.

15. Of the 22 returns reviewed by the IRS that claimed the credit, one return reported adjusted gross income of \$16,535 and one reported adjusted gross income of \$14,889. The other 20 returns reported adjusted gross income of less than \$10,000, including four returns that reported AGI of zero or less. In addition to the fact that customers informed the defendants that the customers had not purchased a home, this absence of income should have alerted the defendants that the customers did not have sufficient income to purchase a home that would have entitled them to the credit claimed.

16. In addition to preparing returns that falsely claimed the First-Time Homebuyer Credit, the defendants prepared returns that included a fictitious Schedule C. A Schedule C is a tax form meant for individuals to report income and expenses from their self-proprietorships. The profit or loss shown on the Schedule C is reported on an individual's Form 1040. The defendants created false Schedule C forms to understate customers' federal tax liability.

17. For instance, Santiago prepared federal income tax returns for Tommy and Ivette Torres for tax years 2006 and 2007. Tommy Torres was a registered nurse at a local hospital and

Ivette was a housewife. They informed Santiago that their only income came from Tommy's hospital wages and rental income from Puerto Rican property that was reported on Schedule E. Nevertheless, Santiago prepared returns containing a fabricated Schedule C that included false income and that deducted nondeductible expense items. The IRS assessed penalties against Santiago and his company, Santiago Tax Services, pursuant to 26 U.S.C. § 6694 for those returns on September 29 and December 29, 2008, respectively.

18. The penalties failed to stop the defendants' misconduct. The defendants' fabrication of a Schedule C continued in the next year. On the amended 2008 federal income tax return the defendants prepared in 2009 for Michele Vinales, Santiago attached a Schedule C which reported false income and expense items. Vinales told an IRS agent that she did not operate a sole proprietorship as shown on the Schedule C, and does not know where the figures listed on the schedule originated. She did not provide that information to Santiago. The false Schedule C created by Santiago improperly reduced Vinales' taxable income by \$13,751 on her amended 2008 return.

19. Furthermore, four of the 33 returns reviewed by the IRS contain improper vehicle deductions. As is made clear in the instructions to Schedule C and elsewhere, a taxpayer may claim either a standard mileage rate for vehicle expenses or actual expenses (including depreciation), but not both. Nevertheless, Santiago improperly claimed both a standard mileage deduction and depreciation deductions on at least four tax year 2008 returns he prepared for customers.

20. The defendants do not maintain adequate customer records or copies of returns that they prepare. Pursuant to an IRS request on October 22, 2009, for a customer list, the defendants failed to provide an adequate list. Their customer list was incomplete and failed to list the

identification numbers of any of the customers. The list contained 333 names, although Santiago told an IRS agent in an October 22, 2009, interview that he had prepared 1,500 returns for tax year 2008. Santiago told the IRS agent that the list is not comprehensive because he does not maintain customer records or keep copies of returns that he prepares.

21. Santiago prepared and filed federal tax returns that did not contain his correct preparer identification number. Santiago told an IRS agent in an October 22, 2009, interview that he files most of the returns he prepares electronically. The returns he prepares and files electronically do not contain his preparer identification number or any other information identifying him as the preparer. This helps explain why the IRS records identify him as having prepared 229 returns for tax year 2008, while in the interview, Santiago claimed he prepared 1,500 returns for that year.

22. In addition, on six different occasions Santiago used the identification number assigned to his wife, who is not a preparer, on returns he prepared for tax year 2008.

23. The United States filed its Complaint for Permanent Injunction and Other Relief on March 25, 2010, and copies of the complaint and summonses were served on the defendants on March 26, 2010. The defendants have failed to answer the complaint. Default was entered against them by the Clerk of Court on April 21, 2010.

24. Santiago is neither incompetent, an infant, nor on active military duty.

CONCLUSIONS OF LAW

25. Code § 7407 authorizes a court to enjoin a tax return preparer if, *inter alia*, the court finds that the return preparer has engaged in conduct subject to penalty under Code §§ 6694 or 6695, and that injunctive relief is appropriate to prevent the recurrence of the conduct.

26. Code § 6694(b) imposes penalties on a tax return preparer who willfully attempts to

understate the tax liability of another person or whose reckless or intentional disregard of rules and regulations results in the understatement of the tax liability. The defendants continually and repeatedly engaged in conduct subject to penalty under Code § 6694(b) by preparing returns that they know understate the liabilities of their customers. The defendants' misconduct includes preparing returns that they know contain erroneous claims for the First Time Homebuyer Credit and false income and expense items.

27. Code § 6109(a) requires a preparer to include his proper identification number on the returns he prepares. Code § 6695(c) imposes penalties on preparers who fail to furnish the preparer's correct identification number on a return. The defendants engaged in conduct subject to penalty under Code § 6695(c) by failing to include the correct preparer identification number on returns they prepared.

28. Code § 6107(b) requires that a preparer keep a copy of those returns he prepares for at least three years or retain a list of those persons, including name and taxpayer identification number, for whom he has prepared a return. Code § 6695(d) penalizes preparers who fail to keep such material and make it available to the IRS upon request. The defendants engaged in conduct subject to penalty under Code § 6695(d) by failing to provide a complete customer list upon request of the Internal Revenue Service.

29. Injunctive relief is appropriate to prevent this misconduct because, absent an injunction, the defendants are likely to continue preparing and filing false federal income tax returns of the type described in this complaint, and to continue to fail to furnish proper identification numbers on returns they prepare, and to continue to fail to keep adequate customers records and furnish adequate customer information to the IRS on request.

30. The defendants should be permanently enjoined under Code § 7407 from acting as

tax return preparers. Their repeated and continual conduct subject to injunction under Code § 7407 demonstrates that a narrower injunction prohibiting specific misconduct would be insufficient to prevent their interference with the proper administration of the internal revenue laws.

31. Code § 7408 authorizes courts to enjoin any person from engaging in conduct that is subject to penalty under Code § 6701 if injunctive relief is appropriate to prevent recurrence of that conduct.

32. Code § 6701(a) penalizes any person who aids or assists in the preparation of any portion of a federal tax return or other document knowing that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it would result in an understatement of another person's tax liability. The defendants have prepared federal tax returns and related documents for others knowing that the returns and documents improperly claim the First-Time Homebuyer Credit and contain false income and expense items thus understating the customers' correct federal tax liability. Their conduct is subject to penalty under Code § 6701. Unless enjoined by the Court, the defendants are likely to continue to prepare tax returns that they know will result in the understatement of tax liability.

33. Accordingly, the defendants should be enjoined under Code § 7408 from engaging in conduct subject to penalty under Code § 6701.

34. Code § 7402 authorizes courts to issue injunctions "as may be necessary or appropriate for the enforcement of the internal revenue laws." The remedies available to the United States under that statute "are in addition to and not exclusive of any and all other penalties." Code § 7402(a). The defendants, through the actions described above, have engaged in conduct that substantially interferes with the administration and enforcement of the internal

revenue laws, and are likely to continue to engage in such conduct unless enjoined. The defendants' conduct is causing irreparable injury to the United States and an injunction under Code § 7402(a) is necessary and appropriate. If the defendants are not enjoined from preparing tax returns the United States will suffer irreparable injury by erroneously providing tax refunds to persons not entitled to receive them and by taxpayers not reporting and paying the correct amount of taxes.

35. Unless the defendants are enjoined, the IRS will have to devote substantial time and resources to identify and locate their customers, and then examine those customers' tax returns and property records. Pursuing all individual customers may be impossible given the IRS's limited resources. In addition to the harm caused by the defendants' preparation of false income tax returns, the defendants' activities undermine confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws. Enjoining the defendants is in the public interest because an injunction will stop their illegal conduct and the harm it causes the United States.

36. Injunctive relief under Code §§ 7402(a), 7407 and 7408, is therefore appropriate and necessary.

INJUNCTION ORDER

Based on the above findings and for good cause shown, the United States' Motion for Default Judgment and Permanent Injunction is GRANTED. Accordingly,

IT IS ORDERED that David Santiago and Santiago Investment & Consulting, Inc., and any entity through which either of them conducts business and all persons and entities in active concert or participation with either of them, are enjoined and restrained from, directly or indirectly:

- a. Preparing or filing, or assisting in the preparation or filing, of federal tax returns or other related documents and forms for others; and
- b. Engaging in conduct subject to penalty under 26 U.S.C. §§ 6694, 6695 and 6701.

IT IS FURTHER ORDERED that the defendants shall contact by United States mail (or by e-mail, if a postal address is unknown) all persons for whom they prepared a federal tax return since January 1, 2008, to inform them of the Court's findings in this matter and enclose a copy of this injunction order, and to file with the Court within fifteen days of the date this injunction order is entered, a certification signed under penalty of perjury by David Santiago that they have done so;

IT IS FURTHER ORDERED that the United States is authorized to engage in post-judgment discovery pursuant to the Federal Rules of Civil Procedure in order to monitor compliance with the terms of this injunction order.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction over this action to ensure that this judgment is implemented and enforced as herein provided.

The Clerk shall **CLOSE** this case. The hearing scheduled for May 5, 2010 is **CANCELLED**.

DONE AND ORDERED in chambers at the James Lawrence King Federal Justice Building in Miami, Florida this 23rd day of April, 2010.


JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

CC:
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ATTORNEY TO BE NOTICED