IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Richard P. Matsch

Civil Action No 93-M-1012

UNITED STATES OF AMERICA,

Plaintiff,

v.

STANLEY H. OLSEN,

Defendant.

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ORDER FOR PERMANENT INJUNCTION

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Invoking the special grant of jurisdiction in 26 U.S.C. § 7402(a), the United States, acting through the Internal Revenue Service ("IRS"), brought this civil action to enjoin Stanley H. Olsen from acting as an "income tax preparer" as defined in 26 U.S.C. § 7701(a)(36)(A). Because an action for a permanent injunction was historically an action in equity, the issues are to be decided by the court without a jury.

This action was referred to United States Magistrate Judge Bruce D. Pringle by an order of reference under 28 U.S.C. § 636(b)(1)(A) and (B) and Fed. R. Civ. P. 72(a) and (b) on July 29, 1993.

The plaintiff filed a motion for preliminary injunction which came on for hearing before this court on August 30, 1994 The defendant appeared without counsel and has represented himself throughout these proceedings. He is not a lawyer. At the

hearing on August 30, 1994, the court concluded that because the IRS was relying on allegations of patterns of practices followed by the defendant over a period of more than ten years, involving hundreds of income tax returns, the case should proceed to trial. Without objection, a special order of reference to Magistrate Judge Pringle was entered on October 7, 1994, directing him to serve as a special master at a trial to the court pursuant to Fed. R. Civ. P. 53.

Magistrate Judge Pringle conducted the trial from December 5, 1994, through December 9, 1994, and filed his report, including findings of fact, conclusions of law, and recommended disposition on January 19, 1995. After a procedural delay caused by the defendant's motion for a transcript of the trial testimony, the court entered an order setting the time for objections to the special master's report. The defendant filed his objections to the special master's report on June 3, 1996, and the government filed its response on June 10, 1996. A hearing on the objections was held before this court on July 10, 1996.

One of the questions raised by the defendant at that hearing was whether the court's adoption of the proposed findings of fact and conclusions of law would result in the imposition of additional taxes and penalties on Mr. Olsen and his customers and have any binding effects on any litigation between them. Mindful of those concerns and the potential for other collateral consequences, this court has made a full review of the evidence presented at the trial. The testimony is on audio cassette tapes bearing numbers 107-120 and in transcripts of depositions taken before trial and admitted into evidence over the defendant's objection. A large volume of exhibits was also received.

Rule 53(e)(2) requires that the court accept the master's findings of fact unless they are clearly erroneous. The conclusions of law are to be considered *de novo*. The special master's report separately states his findings of fact and conclusions of law in accordance with Rule 52. Some of the findings of fact attempt to resolve mixed questions of law and fact without a clear statement of the legal principles applied. Thus, the special master characterized some of the defendant's practices as a "scheme to evade" and "plan to evade" self-employment taxes and F.I.C.A. tax without showing an adequate appreciation for the need to prove the mental element that distinguishes tax evasion from tax avoidance. In the course of these proceedings, the IRS disclosed that it had undertaken a full investigation of Stanley Olsen and his tax preparer business to determine the potential for criminal prosecution. The criminal investigation was terminated on January 30, 1992. While the government has elected to pursue only this civil remedy, the court must be careful in applying the language of the Internal Revenue Code and follow the case law interpreting it.

A willful attempt to evade income taxes is made a felony by 26 U.S.C. § 7201. A willful failure to pay a tax is criminalized by § 7203. Aiding and abetting these offenses subjects a person to the same penalties under 18 U.S.C. § 2. Aiding or assisting in preparation of material false statements on a tax return is a specific offense under § 7206(2). The Supreme Court recognized the special problems of defining "willful" conduct in the context of the complexities of the Internal Revenue Code in *Cheek v. United States*, 498 U.S. § 192 (1991). There the court said:

> Willfulness, as construed by our prior decisions in criminal tax

> cases, requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty. We deal first with the case where the issue is whether the defendant knew of the duty purportedly imposed by the provision of the statute or regulation he is accused of violating, a case in which there is no claim that the provision at issue is invalid. In such a case, if the Government proves actual knowledge of the pertinent legal duty, the prosecution, without more, has satisfied the knowledge component of the willfulness requirement. But carrying this burden requires negating a defendant's claim of ignorance of the law or a claim that because of a misunderstanding of the law, he had a good-faith belief that he was not violating any of the provisions of the tax laws. This is so because one cannot be aware that the law imposes a duty upon him and yet be ignorant of it, misunderstand the law, or believe that the duty does not exist. In the end, the issue is whether, based on all the evidence, the Government has proved that the defendant was aware of the duty at issue, which cannot be true if the jury credits a good-faith misunderstanding and belief submission, whether or not the claimed belief or misunderstanding is objectively reasonable.

498 U.S. at 201-202.

What was recognized in that and many subsequent cases before the lower courts is that in a self-reporting tax system in a free market economy there are many areas of uncertainty and disagreement regarding the tax consequences of particular economic activity and the structure of financial transactions.

The master's report contains findings that between 1983 and 1987, Stanley Olsen followed a clearly discernible pattern, in preparing returns for his self-employed taxpayer clients, misusing the "spousal wage deduction" in identifying the spouse of the owner of the business as an employee receiving substantial wages (exempt from F.I.C.A. and self-employment tax under the law then in effect), and showing little or no payment of wages to the owner on a joint return. There is testimony that this information was not correct on the returns identified as examples in paragraph 8D of

the findings. These findings are fully supported in the evidentiary record. Paragraph 8E of the findings reads as follows:

> The Court finds that the evidence demonstrates that prior to 1987, Olsen did in fact engage in a scheme or plan to evade F.I.C.A. and self-employment taxes by preparing Schedule Cs containing fictitious data regarding the owners of the business enterprises and the wages paid to the non-owner spouses.

The evidence does not support this finding because there is no proof of Mr. Olsen's knowledge of the facts or of any intent of the taxpayers or the defendant to defraud the government. Accordingly, paragraph 8E is rejected as clearly erroneous.

The master's findings in paragraph 9A reflect a different pattern shown in returns filed between 1987 and 1990, involving the incorporation of small businesses and rental payments to the individual taxpayers, providing expense deductions to the corporations and little or no wage payments to the taxpayers. Specific examples are described in paragraphs 9C, D and E. These findings are supported by the record and are accepted, with the exception of the mixed finding and conclusion that the tax returns and testimony sustain the government's position that this was another scheme to evade payment of F.I.C.A. and self-employment taxes. Again, the required proof of knowledge and intent is lacking.

The third pattern appears in paragraphs 10B and C, describing the substitution of "business trusts" for corporations. In paragraph 10D, the master finds and concludes

that the trust return was "an artifice designed to evade the payment of F.I.C.A. or self-employment tax" and motivated by the "desire to evade payment of F.I.C.A. or self-employment tax." There is no specific finding as to Mr. Olsen's knowledge of the facts or of any intent to defraud. The evidence does not support such findings of criminal conduct to evade taxes.

In paragraph 12B of the findings, the special master notes that the testimony is in conflict regarding Mr. Olsen's role in generating the information shown on the returns. After observing that most of the client witnesses testified that they arrived at the expense deductions without any input from Mr. Olsen, the master concluded that the patterns shown on the tax returns "are the result of deliberate schemes to evade F.I.C.A. and self-employment tax, and that the schemes emanated from a common source." He further found that "Olsen initiated, directed, and participated in the schemes to evade F.I.C.A. and self-employment tax," as described in Findings 8, 9, and 10." The master relied heavily on the testimony of Alan Hull, an IRS technical adviser, who examined many tax returns prepared by the defendant or his employees. The evidence, as a whole, does not support a finding of knowledge and intent to evade taxes.

The special master described the evidence concerning specific alleged "improprieties" raised by the government and found them not proven in paragraphs 13A through H.

In his conclusions of law, the special master correctly recited the statutory standards for the injunction requested in this civil action. Under Section 7407, the court

may enjoin an income tax preparer if he has engaged in conduct subjecting him to a penalty under Section 6694. Before January 1, 1990, tax preparers could be penalized for an understatement of liability on a tax return due to negligent or intentional disregard of rules and regulations. Alternatively a willful attempt to understate tax liability was penalized. An amendment, effective on January 1, 1990, added a penalty for taking an unrealistic or frivolous position, of which the tax preparer knows or reasonably should know and then fails adequately to disclose the position on the return.

Section 7407 also provides for an injunction when an income tax preparer engages in conduct subject to criminal penalty. The special master concluded that Mr. Olsen's conduct would be subject to criminal penalties under 26 U.S.C. § 7206(1) (false information) and § 7207 (false or fraudulent return). These conclusions are not justified from the record.

The master acknowledged in paragraph 8 of his Conclusions of Law that the defendant contends that his advice and tax preparation methods were for legitimate tax avoidance. The master rejected that assertion because the "schemes" "cannot reasonably be deemed legitimate tax avoidance." In that statement, the master incorrectly applied an objective reasonableness test, contrary to the holding in *Cheek v. United States.* What is shown in the trial record is that Stanley Olsen regularly misapprehended, misconstrued and misapplied the Internal Revenue Code and regulations in the information he gave to his customers and in the preparation of their income tax returns. It does not show that he acted with fraudulent intent or that he did not believe that his advice and conduct were appropriate means to avoid taxation. He

was negligent in his efforts to understand the law and the positions he advised his clients to take were unrealistic and frivolous. That is sufficient to support the only relief requested in this case.

With the exceptions noted herein, the findings and conclusions of the magistrate judge, sitting as special master are accepted and adopted. It is therefore

ORDERED that Stanley H. Olsen is permanently enjoined from acting as an income tax preparer.

DATED: July 15, 1997

BY THE COURT:

Richard P. Matsch, Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 93-M-1012

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

STANLEY H. OLSEN,

Defendant(s).



**REPORT OF UNITED STATES MAGISTRATE JUDGE SITTING AS SPECIAL MASTER, INCLUDING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED DISPOSITION**

**REPORT ENTERED BY MAGISTRATE JUDGE BRUCE D. PRINGLE, SITTING AS SPECIAL MASTER**

On October 7, 1994, a Special Order of Reference to Magistrate Judge was entered, referring this case to a magistrate judge to conduct a trial to the Court as a special master pursuant to Fed. R. Civ. P. 53 and 28 U.S.C. § 636(b)(2). A trial was held commencing on December 5, 1994 and concluding on December 9, 1994. The Court now submits the following Report, including Findings of Fact, Conclusions of Law, and a Recommended Disposition:

**FINDINGS OF FACT**

1. Defendant Stanley H. Olsen (Olsen) is a resident of Colorado, and currently resides at 3681 South Zeno Way, Aurora, Co. 80013.

2. Olsen attende[redacted]ollege at Arizona State University, [redacted]ere he obtained a Bachelor of Science degree in business administration.

3. Olsen does business under the name Olsen Financial Services, Ltd. or OFS, Ltd., Aurora, Colorado. His business consists of preparing tax returns for his clients, as well as educating and advising clients regarding tax issues. In particular, Olsen's advice typically concerns: (a) how to minimize taxes; and (b) how to prepare records which can be utilized to prepare and support the tax returns. Olsen's advice regarding minimization of taxes frequently involves the creation of corporations or trusts. Olsen customarily prepares the paperwork necessary to create these corporate or trust entities on behalf of his clients.

4. For a period of time, Olsen also gave seminars on tax planning. Olsen testified that he no longer conducts such seminars.

5. Olsen has been in the tax advice and tax return preparation business from at least 1983 to the present.

6. As indicated in Finding 3 above, Olsen customarily advised clients who were self-employed to either incorporate their businesses, or to create business trusts. He discussed with the clients the tax advantages of creating corporations or business trusts, as well as other benefits such as the potential for protecting their personal assets from liability arising from the conduct of their businesses.

7. According to Olsen, he has employed a consistent procedure in preparing tax returns for his clients. Specifically, Olsen initially advises the client regarding what categories of deductions are appropriate. The client then utilizes these categories in

compiling the information necessary to prepare the tax return. Once this has been accomplished, Olsen meets with the client and fills out a draft tax return using the information compiled by the client. Olsen takes the draft return back to his office, and he or one of his employees copies the information on the draft return onto a final tax return. Virtually all of the clients who testified at trial confirmed that the above described procedures were utilized by Olsen in preparing their returns.

8. The Pre-1988 Returns

A. The Court finds that between 1983 and 1987, the tax returns prepared by Olsen for his self-employed taxpayer clients followed a clearly discernible pattern. A joint personal tax return would be prepared for the self-employed taxpayer and his or her spouse. Each of these tax returns would include a Schedule C for the business. The Schedule C would identify one spouse as the owner of the business and would indicate that the owner-spouse received little or no wages, while a substantial wage was paid to the non-owner spouse. Until 1987, wages paid to a spouse were exempt from F.I.C.A. and self-employment tax (the spousal wage deduction). Because the tax returns showed little or no payment of wages to the owner spouse and substantial payment of wages to the non-owner spouse, little or no F.I.C.A. or self-employment tax was paid.

B. The government contends that the above described pattern reflects a scheme to evade F.I.C.A. and self-employment taxes through the use of the

spousal wage deduction. The government asserts that the Schedule Cs prepared by Olsen invariably showed one spouse as the owner of the business and the other spouse as receiving virtually all of the wages paid by the business, regardless of which spouse actually owned the business or what the true allocation of work was between the spouses. As a result, notes the government, in many cases the tax return would show substantial wages paid to a spouse who did little or no work for the business, with no wages paid to the spouse who performed and provided the lion's share of the income generating work and services.

C. On the other hand, Olsen points out that the Schedule C deduction for wages paid to a spouse was perfectly proper, and that, under the then existing tax laws, wages paid to a spouse were exempt from F.I.C.A. and self-employment tax. Consequently, observes Olsen, there was nothing wrong with paying wages to the non-owner spouse, thereby avoiding F.I.C.A. and self-employment tax. Olsen contends that he did not make the decision as to who the owner of the business would be, whether the non-owner spouse would work for the business, or how much would be paid in wages to the non-owner spouse. He asserts that all of this information was supplied by the clients, and that he merely incorporated the information provided to him by the clients into the tax returns.

D. The Court finds that Olsen's use of the spousal wage deduction in the manner alleged by the government is supported by the tax returns admitted into evidence. For example, the 1986 individual tax return for Gary L. and Donna K. Horwath (Exhibit 19-6) contains two Schedule Cs. The first of these is for a nursing business and indicates that Gary Horwath is the owner thereof. The nursing business Schedule C also indicates that $3,768 was paid in wages, all to Mrs. Horwath, the non-owner spouse. The second Schedule C relates to a wallpapering business. The Schedule states that Donna K. Horwath is the owner of this enterprise. The return indicates that the wallcovering business paid $11,784 in wages to Gary Horwath, the non-owner spouse. The result of having all wages paid to the non-owner spouse was to completely avoid the payment of any F.I.C.A. or self-employment tax.

Although Mr. Horwath is listed as the owner of the nursing business, Mrs. Horwath testified that he really had nothing to do with this enterprise and knew nothing about it. She further testified that Olsen set up the procedure of having the tax return show Gary Horwath as the owner of the nursing business and Donna Horwath as the owner of the wallpapering business.

Schedule C of Exhibit 17-3, the 1987 individual tax return for Danny L. and Diane M. Ackerman, presents another example supportive of the government's position. The Schedule C lists Diane M. Ackerman as the owner of Petra Enterprises, a sole proprietorship engaged in performing

janitorial services. Of the $27, 292 shown on Schedule C as wage expense, $20,712 was purportedly paid to Mr. Ackerman. Because Mr. Ackerman was a non-owner spouse, this $20,712 was not subject to F.I.C.A. or self-employment tax.

Yet another example can be found in the 1987 tax return for Christopher R. and Vicki L. Brock, Exhibit 12-2. Schedule C indicates that Christopher Brock was the proprietor of a Chick-Fil-A restaurant, but the return states that all of the wages expensed by the business ($30,500) were paid to Vicki Brock. Because Vicki was a non-owner spouse, the amount shown as wages paid to her was not subject to F.I.C.A. or self-employment tax.

In addition to these examples, Mr. Hull, the government's summary witness, testified that he had personally examined 50 to 60 tax returns prepared by Olsen prior to 1988 in which the Schedule C reflected wage payments to the non-owner spouse, with little or no wages paid to the spouse listed as the owner.

E. The Court finds that the evidence demonstrates that prior to 1987, Olsen did in fact engage in a scheme or plan to evade F.I.C.A. and self-employment taxes by preparing Schedule Cs containing fictitious data regarding the owners of the business enterprises and the wages paid to the non-owner spouses.

9. The Corporate Returns

A. The Court finds that between 1987 and 1990, the tax returns prepared by Olsen followed a pattern which, like the pre-1988 returns discussed in paragraph 8 above, resulted in little or no payment of F.I.C.A. or self-employment tax. Olsen would advise his clients to incorporate their businesses and to lease vehicles, equipment and office space to the corporation. In each case, the revenues shown on the corporate tax return were primarily for services rendered by the corporate owner to third parties. The corporate tax returns for these businesses (forms 1120-A) all reflected substantial rental payments, and little or no payment of wages or compensation to officers. The rental and wage arrangements between the corporations and their owners were not arms-length transactions. When combined with the other corporate business expenses, the rental expense deduction uniformly left each of the companies with very minimal taxable income. Because virtually no wages were reflected on the returns, little or no F.I.C.A. was paid. A review of the individual returns for the owners of the corporations reflect the rental payments as income.

B. The government contends that the returns prepared by Olsen between 1987 and 1990 comprise a second scheme to evade the payment of F.I.C.A. and self-employment taxes by attributing large rental expenses to businesses conducted through a corporate form. In essence, the government asserts that

the rental deductions reflected on the corporate tax returns bear no relationship to any reasonable rental value, and that they are simply contrived figures designed to camouflage wages or dividends paid to the shareholders and to bring the corporations' taxable incomes close to zero. The government notes that the spousal wage exception to the payment of F.I.C.A. and self-employment tax was eliminated in 1987. It offers this event as explanation for Olsen's abandonment of the pre-1988 scheme utilizing the spousal wage deduction and his adoption of a new scheme employing the corporate structure and the rental expense deduction to evade F.I.C.A. and self-employment tax.

C. The Court finds that the tax returns in evidence, along with the testimony presented, sustains the government's position. For example, Olsen assisted Dwight Boyles in forming a corporation for his construction business. Olsen also prepared Boyles' individual and corporate tax returns for 1988 through 1990. The 1989 corporate tax return 1120-A (Exhibit 22-5) reflected net revenues of $85,190.49, expenses of $49,007.86, and a rental expense of $34,176. The corporation's taxable income was $6.63. The itemization of expenses indicated no payment of wages, and no compensation paid to officers. Because the corporate return showed no employee wages or compensation to officers, no F.I.C.A. or self-employment taxes were paid.

Nearly identical situations are depicted on the following tax returns prepared by Olsen:

1. 1989 corporate tax return for Highlands Wallcovering, Ltd. (Donna K. Horwath)(Exhibit 19-10): Net revenues--$30,789.32; compensation of officers--$2,000;[1] wages--$0; expenses excluding rent--$11,422.60; rental expense paid to shareholders--$17,148; taxable income--$4.51.

2. 1989 corporate tax return for C.C.D. Inc. (Derrick Crossland)(Exhibit 13-8): Net revenues--$41,952.64; compensation to officers--$798; wages--$0; expenses excluding rent--$20,773.14; rental expense paid to shareholders--$20,280; taxable income-- $4.44.

3. 1989 corporate tax return for United Services of America, Inc. (Michael and Janet Michalcin)(Exhibit 15-23): Net revenues--$48,846.95; compensation to officers--$2,000; wages--$0; expenses excluding rent--$26,929.58; rental expense paid to shareholders--$14,826.37; taxable income--$6.50.

4. 1988 corporate tax return for Wittig-Parker Enterprises Ltd. (Jeffrey Wittig and Katherine Parker)(Exhibit 11-7): Net revenues--$24,937.24; compensation to officers--$0; wages--$0; expenses excluding rent--

[1] Where wages or compensation to officers was shown, it typically approximated the minimum amount necessary to qualify the recipient for social security credit for the year.

$[redacted]37.14; rental expense paid to [redacted]areholders--$4,460; taxable income--$3.61.

5. 1989 corporate tax return for Polcats of Ft. Myers, Inc. (Robert Pohle)(Exhibit 2-8, attached to Pohl's deposition testimony): Net revenues--$28,926.79; compensation to officers--$2,000; wages--$0; expenses excluding rent--$15,912.45; rental expense paid to shareholders--$10,494; taxable income--$6.30.

In addition, Mr. Hull, the government's summary witness, testified that he personally reviewed some 80 to 100 corporate and associated tax returns prepared by Olsen from 1987 to 1990, and each of them reflected a substantial rental expense paid to the owner of the corporation which, when combined with the other business expenses, reduced the taxable income of the corporation to near zero. Hull further testified that each of these returns shows either no or minimal amounts paid in wages or officer compensation. D. Most of the witnesses testified that they determined what items to rent to their corporations and how much rent to charge. The Court finds, however, that many of the items had no business purpose and were of no value to the corporation. For example, the list of rental items prepared by witness Boyles indicates that his corporation, which was engaged in the construction business, rented a library from him which included "Real Men Don't Eat Quiche," " Shakespeare Stories," "Fascinating World of Animals," and "National

Geographic on Indians of the Americas." See Exhibit 22-10. Boyle testified that he supplied this list of rental materials to Olsen in connection with the preparation of his tax returns.

E. The evidence clearly establishes, and the Court finds, that the rental values placed on the items which Olsen's customers rented to their corporations bore no relationship to what reasonably could be considered fair rental value. For example, the list of rental items prepared by Boyles, Exhibit 22-10, shows that his corporation was charged $495 in rent for a workbench which had a cash value of only $50. Likewise, Boyles charged his corporation $2,688 in rent for two circular saws that had a cash value of $159.90.

Exhibits 29-8 and 29-9, the 1990 corporate tax return for REO Specialists, Inc. (Dale Daugherty) and a list of rental items respectively, provide another particularly vivid example supporting the Court's finding regarding the gross overstatement of rental values. The corporate tax return follows the same pattern as that discussed in 9(A) above. The rental amount of $68,262 purportedly paid by the corporation to its owner, Mr. Daugherty, was comprised of such items as a 16-foot extension ladder rented to the corporation at a rate of $160 per month; a spade rented to the corporation at the rate of $96 per month; and two rakes rented to the corporation at the rate of $224 per month.

10. The Trust Returns

A. The Court finds that in approximately 1990, Olsen began advising his clients to create business trusts in lieu of incorporating. The government contends that, like the corporations discussed in Finding 9 above, the business trusts were employed to evade the payment of F.I.C.A. and self-employment taxes through the deduction of rents paid to the trustees and through the failure to pay any wages to those who generated the trusts' revenues by providing personal services to third parties.

B. The Court finds that from approximately 1990 to the present, Olsen prepared numerous tax returns involving business trusts which he created for his clients. In each case, the trust tax return indicated that the trust was involved in a business enterprise; that the trust received revenues from the business; and that the trust paid certain expenses associated with the business. All of the trust returns in evidence contained substantial deductions for rental expense. The trust returns uniformly reflected a payment of $0 or $1 in wages, although the revenues generated by the trust invariably were the result of personal services provided by the settlor-trustee to third parties. As was the case with respect to the corporate entities discussed in paragraph 9 of these Findings, the rental and wage transactions between the trust and the settlor-trustee were not arm's length.

Unlike the corporate returns discussed in paragraph 9 of the Findings, the trust returns show net income generated to the trust. Many of the trust returns show fees

paid to the trustee, and, from the few instances in which the government has introduced into evidence both the trust return and corresponding individual income tax return, it appears that self-employment tax was paid on these trustee fees.

C. The Court finds and concludes that the rental expenses shown on the trust returns prepared by Olsen are simply contrived figures designed to permit the trust to distribute funds to the settlor-trustee in a manner which did not trigger liability for F.I.C.A. or self-employment tax. In support of this finding, the Court notes that although there is seemingly no connection between the businesses or the individuals filing the various trust returns, many of the returns carry precisely the same amounts for rental expense. *Compare* Exhibit 28-47 (fiduciary income tax return for Johnson Originals, Ltd. showing car rental expense of $6,000 and rental expense for other business property of $6,000); Exhibit 28-80 (fiduciary income tax return for Turn Key Home Services, Ltd., showing a car rental expense of $6,000 and a rental expense for other business property of $6,000); Exhibit 28-82 (fiduciary income tax return for W.L. Toney, Ltd., showing car rental expense of $6,000 and rental expense for other business property of $6,000); and Exhibit 28-84 (fiduciary income tax return for WTR Enterprises, Ltd., showing a car rental expense of $6,000 and a rental expense for other business property of $6,000).

Likewise, although some of the trust returns do not utilize the $6,000 rental amount which characterizes the above described returns, they do reflect the pattern of utilizing precisely the same amount for both car rental expense and rental expense

for other business property. *Compare* Exhibit 28-20 (fiduciary income tax return for Acclaimed Wallcovering, showing a car rental expense of $1,250 and a rental expense for other business property of $1,250); Exhibit 28-52 (fiduciary income tax return for Mixon Enterprises, Ltd., showing a car rental expense of $4,000 and a rental expense for other business property of $4,000); and Exhibit 28-74 (fiduciary income tax return for Shaw Enterprises, Ltd., showing a car rental expense of $18,000 and a rental expense for other business property of $18,000). The court rejects the notion that this pattern can be explained as simply happenstance.

D. The Court further finds that the $0 or $1 shown as wages on virtually every trust return is an artifice designed to evade the payment of F.I.C.A. or self-employment tax. The Court notes that each of the trusts purportedly owned a business which was operated by the settlor-trustee and, in some cases, his or her family. These businesses invariably involved personal services provided by the settlor-trustees to third parties (contracting, wall covering, carpentry, real estate brokerage, etc.). As a result, the Court finds that were it not for the trust vehicles, the amounts earned through these service-related businesses clearly would have been subject to self-employment tax. It is apparent to the Court that in any arm's-length situation, one who performed services for a trust entity would have required compensation in the form of wages. Thus, the Court finds that the failure of the trusts to pay more than nominal wages to the settlor-trustees was not justified by any legitimate business purpose, and was solely the result of the non-arm's length relationship between the

trusts and settlor-trustees and the desire to evade payment of F.I.C.A. or self-employment tax.

11. Understatement of taxes

A. All of the tax returns introduced into evidence by the government as proof of the schemes to avoid F.I.C.A. and self-employment taxes, as discussed in paragraphs 8, 9, and 10 of these Findings, were subjected to audit by the I.R.S. The audits were conducted as part of a program to audit the returns of Olsen's clients. In each case, the spousal wage deduction or the rental expense deduction was substantially disallowed, resulting in a large assessment of taxes, interest, and penalties to each of the taxpayers.

B. Olsen introduced into evidence a pre-1987 individual income tax return and a 1989 corporate tax return which utilized the spousal wage deduction and rental expense deduction respectively in the manner described in Findings 8 and 9 above. Both of these returns were audited and no assessments of additional taxes were made. These two audits, however, were not part of the Olsen audit program referred to in paragraph 11(A) above.

12. Nexus Between the Information on the Tax Returns and Defendant Olsen

A. Olsen argues that even if the tax returns discussed in Findings 8, 9, and 10 above contain fictitious or contrived information regarding the ownership of the businesses, rental expenses, and/or wages, the responsibility cannot be laid at his feet. He asserts that he simply advised his clients regarding the tax laws, provided the clients with

expense categories to utilize in keeping their business records, and recorded the information provided by the clients on the appropriate tax return forms. Olsen further asserts that he consistently urged his clients to keep accurate records and to base rental expenses on objective data regarding fair rental value. Finally, he points out that he customarily sent newsletters and bulletins to his clients advising them of changes in the tax laws. If he learned that any prior advice which he had given to clients was inaccurate, he would prepare and circulate a corrective bulletin.

B. The testimony is in conflict regarding the part that Olsen played in generating the information and financial data contained on the tax returns discussed in Findings 8, 9, and 10. Most of the client-witnesses called by both Olsen and the government testified that they arrived at all of the expense deductions, including rental expense and wages on their own, and without any input from Olsen. On the other hand, Kevin Wilson, who at one time worked for Olsen preparing tax returns for Olsen's clients, testified that Olsen instructed him to simply plug in an amount for rental expense approximating the difference between the corporate revenues and other expense deductions if the client did not provide a rent figure. The most significant evidence on this issue, however, is the clear pattern which runs through all of the subject tax returns. The pre-1988 individual returns uniformly reflected that wages were paid only to the non-owner spouse. The 1987-90 corporate tax returns uniformly indicated that no wages were paid, and, in almost every case, the combination of the rental expense deduction and the deduction for other expenses

left the corporation with minimal taxable income. Finally, every fiduciary tax return indicated that either no wages were paid, or that wages were paid in the amount of $1. The pattern reflected on the trust tax returns regarding the amount of the rental expense deduction has been fully discussed in Finding 10(C) above.

The Court resolves this factual conflict in favor of the government. The above described patterns cannot be explained as coincidence. The Court finds that these patterns are the result of deliberate schemes to evade F.I.C.A. and self- employment tax, and that the schemes emanated from a common source. Olsen is the only common link between the numerous unrelated businesses and individuals whose tax returns are at issue here. Consequently, the Court finds that Olsen initiated, directed, and participated in the schemes to evade F.I.C.A. and self-employment tax, as described in Findings 8, 9, and 10.

13. Other Alleged Improprieties Raised by the Government

A. The government contends that Olsen directed his clients to sign blank tax return forms, which he filled out at a later time and mailed to the Internal Revenue Service. The evidence establishes, and the Court finds, that Olsen would meet in person with his clients and would fill out a draft return in the client's presence. For a period of time, it was Olsen's practice at these meetings to have the client sign a blank tax return form. Olsen would take the draft prepared in the client's presence and the executed blank form to his office and either he or one of his employees would transfer the data on the draft onto the executed form. When Olsen was informed

that it was improper for his clients to sign blank tax return forms, he ceased this practice.

B. The government alleges that, in connection with an audit, Olsen directed one of his clients to alter documents supporting certain expense deductions shown on the client's tax return. The evidence is in conflict on this matter. Jeffrey Wittig testified that he hired Olsen to represent him in connection with an audit of Wittig's 1985 tax return. The return was not prepared by Olsen. Wittig stated that Olsen told him to alter his canceled checks so that they would reflect payments of business related expenses. Wittig identified Exhibits 11-15 and 11-16 as examples of alterations recommended by Olsen. Olsen flatly denies that he ever told Wittig to alter checks. The Court finds that Wittig's testimony is more credible in this regard, and, hence, resolves this factual dispute against Olsen and in favor of the government.

C. The government asserts that Olsen instructed his clients that certain items of personal expense could be deducted as business expense. Specifically, the government contends that Olsen told his clients to deduct as business expenses personal automobile use, lunches and dinners with friends, vacations, and birthday parties. There is little or no documentary evidence to support the government's contentions in this regard, and there is a conflict in the testimony. While a few witnesses testified that they deducted such items at Olsen's suggestion, the majority of witnesses stated that Olsen never instructed them to treat their personal expenses as business-related. Olsen denies that he ever told clients to deduct expenses

unrelated to their businesses. The Court resolves this factual dispute in favor of Olsen and against the government.

D. The government points out that Olsen instructed clients to file corporate tax returns even though they were not incorporated for the year in question. The Court finds that on occasion, Olsen did recommend that a taxpayer treat his or her business as a corporation and file a corporate tax return, even though the business was not formally incorporated during the tax year in question. The Court further finds that this advice was based upon Olsen's understanding that, under the de facto corporation doctrine, a corporation could exist even though it had not been formally incorporated in accordance with the applicable state laws.

E. The government asserts that Olsen told clients that they could hire their children to work in the family business and pay wages to them which would be exempt from F.I.C.A. or self-employment tax under the pre-1987 tax laws. The evidence supports the fact that Olsen so informed his clients, but the evidence also establishes, and the Court finds that in these instances, the children were already employed and were actually performing services for the businesses.

F. The government argues that on at least one occasion, Olsen prepared a tax return which included a deduction for a medical expense that he knew had been reimbursed by Medicare or Medicaid. The evidence on this point reveals that Phillip Cochran, a client of Olsen's, signed a blank tax return and gave it to Olsen to complete. Olsen included a medical expense on Schedule A which had been reimbursed by Medicare

or Medicaid. Cochran testified that he did not know the deduction had been taken until he was contacted by the Internal Revenue Service. However, there is no evidence as to how Olsen learned of the medical expense, nor is there sufficient evidence from which an inference can be drawn that Olsen knew the medical expense had been reimbursed. Accordingly, the Court finds that the evidence fails to sustain the government's position.

G. The government contends that on at least one occasion, Olsen prepared a fictitious tax return for a client to present to a financial institution in connection with a loan application. The evidence establishes that Christopher Brock submitted a loan application to a financial institution, along with a copy of his tax returns which had been prepared by Olsen. The loan officer informed Brock that the tax returns did not show enough income to qualify for the loan. With the loan officer's knowledge and at the loan officer's suggestion, Olsen prepared another tax return form which reorganized the data contained on the return filed with the I.R.S., and Brock submitted this reformatted return to the financial institution. No evidence was presented identifying the particular changes that were made in the tax return submitted to the lending institution. While one might speculate on this point, the Court finds that there is insufficient evidence in the record to sustain the government's position that Olsen's conduct was fraudulent.

H. The government alleges that Olsen failed to sign and/or used an incorrect identifying number on tax returns which he prepared, in violation of Treasury

Regulations §§1[redacted]95-1 and 26 U.S.C. § 6109(a)(4) re[redacted]pectively. The only evidence that would arguably support the government's position relates to tax returns signed by Kevin Wilson, but which may have utilized Olsen's business name and tax preparer identification number. Wilson worked with Olsen for a period of time, but the record is unclear as to precisely when Wilson completely severed his ties with Olsen. The Court finds that there is insufficient evidence to sustain the government's factual allegations on this point.

## CONCLUSIONS OF LAW

1. The Court finds and concludes that it has jurisdiction over the subject matter of this controversy pursuant to 26 U.S.C. § 7402; 26 U.S.C. § 7407, 28 U.S.C. § 1340, and 28 U.S.C. § 1345. Defendant Olsen has entered an appearance *pro se*; has filed an answer; has defended the action on its merits; and has stipulated that the Court has *in personam* jurisdiction over him. *See* Scheduling Order, Section III (Undisputed Facts), paragraph D. Accordingly, the Court finds and concludes that it has personal jurisdiction over the defendant. Venue is proper pursuant to 26 U.S.C. § 7407, in that Defendant Olsen resides in the District of Colorado.

2. This action is brought pursuant to 26 U.S.C. § 7407. Section 7407 permits the Court to enter injunctive relief against an income tax return preparer if the preparer has: (a) engaged in any conduct subject to penalty under 26 U.S.C. § 6694 or § 6695, or conduct subject to criminal penalty under Title 26; (b) misrepresented his eligibility to practice before the Internal Revenue Service, or otherwise misrepresented his experience or education as

an income tax return preparer; (c) guaranteed the payment of any tax refund or the allowance of any tax credit; or (d) engaged in any other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws. If the defendant is an income tax return preparer, and if the conduct falls within one of the above-described categories, then an injunction may issue upon a finding that injunctive relief is appropriate to prevent the recurrence thereof. *See United States v. Franchi*, 756 F. Supp. 889, 891 (W.D. Pa. 1991), *aff'd without op.*, 952 F.2d 1394 (3d Cir. 1991), *cert. denied*, 112 S.Ct. 2311 (1992).

3. An "income tax return preparer" is defined as "any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by subtitle A or any claim for refund tax imposed by subtitle A." 26 U.S.C. §7701(a)(36)(A). The Court finds and concludes that Olsen is an "income tax return preparer" within the meaning of 26 U.S.C. § 7407.

4. Prior to 12/31/89, a tax preparer violated 26 U.S.C. § 6694 if any part of any understatement of liability on a tax return was due to the negligent or intentional disregard of rules and regulations. Alternatively, a violation of § 6694 occurred if any part of an understatement of liability on a tax return was due to a willful attempt in any manner to understate the liability for a tax. As amended effective 1/1/90, § 6694 continues to impose penalties on return preparers who either intentionally or recklessly disregard internal revenue rules and regulations, or who willfully attempt to understate the tax liability of another person. In addition, §6694 now prohibits a tax preparer from taking an unrealistic

or frivolous position, of which the preparer knows or reasonably should know, and then failing adequately to disclose the position on the return. *United States v. Bailey*, 789 F. Supp. 788, 812 (N.D. Tex. 1992). "[W]illfulness does not require fraudulent intent or an evil motive; it merely requires a conscious act or omission made in the knowledge that a duty is therefore not being met." *Pickering v. United States,* 691 F.2d 853, 855 (8th Cir. 1982).

A. The Court finds and concludes that Defendant Olsen willfully engaged in schemes to understate his clients' liability for F.I.C.A. or self-employment tax, and intentionally disregarded the rules or regulations regarding the spousal wage deduction, the rental expense deduction, and the deduction for wages, in violation of both the pre-1990 version of 26 U.S.C. § 6694(b) and the present version of 26 U.S.C. § 6694(b)(1) and (2). Prior to 1988, the scheme involved use of the spousal wage deduction. Olsen knew that wages paid by the owner of a business to a non-owner spouse employee were exempt from F.I.C.A. and self-employment tax. During this period of time, Olsen generated income tax returns identifying one spouse as the owner of a business and the other spouse as receiving substantially all of the wages paid by the business. The information on these returns regarding ownership of the businesses and wages paid to the non-owner spouses was largely fabricated for the purpose of evading F.I.C.A. and self-employment tax. The evidence demonstrates that Olsen knew that the information was false, or generated the returns in reckless disregard of whether the information was true or false.

Between approximately 1987 and 1990, the Court finds and concludes that Olsen altered his scheme. This alteration was required by virtue of the elimination of the spousal wage deduction. The Court finds and concludes that Olsen devised and implemented a scheme to incorporate his clients' businesses and to then utilize fabricated rental deduction figures so that the clients could receive distributions from the corporation without categorizing them as wages or dividends. The Court finds and concludes that Olsen knew that the rental deduction figures utilized on the corporate returns discussed in Finding 9 above were fabricated and/or bore no reasonable relationship to fair rental value.

Finally, the Court finds and concludes that in approximately 1990, Olsen again altered his scheme to understate the tax liability of his clients for F.I.C.A. and self-employment tax. The alteration was necessitated by the fact that many of Olsen's clients were being audited, and the fictitious rental expense deductions on their corporate returns were being disallowed. Olsen devised a scheme utilizing a business trust. The fiduciary tax returns generated by Olsen under this scheme accomplished an understatement of F.I.C.A. and self-employment tax through a combination of fictitious rental expense deductions and the purported payment of either no wages or $1.00 in wages. The Court finds and concludes that Olsen knew that rental expenses and wages shown on the trust returns were fictitious, and that the rental expenses reflected on the returns bore no reasonable relationship to fair rental value.

Taking the evidence as a whole, the Court has serious doubts that the business trusts

had any economic reality. It is a close question as to whether or not these trusts were simply shams created to evade F.I.C.A. and self-employment tax. *See Chase v. Commissioner of Internal Revenue* , 926 F.2d 737, 740 (8th Cir. 1991)(business trusts which are merely a sham to avoid self-employment tax are properly ignored). However, for purposes of the instant case, the Court need not venture so far, since the evidence overwhelmingly establishes that the rental and wage deductions taken by these trusts were mere fabrications, and that Olsen knew them to be so.

B. The other allegations of misconduct which might arguably demonstrate a violation of § 6694 are those referenced in Findings 13(B), 13(C), 13(D), 13(E) and 13(F) above. The Court finds that the government has failed to sustain its burden of proof as to the allegations discussed in Findings 13(C) and 13(F). The Court further finds and concludes that, based upon the findings made in paragraphs 13(D) and 13(E) of the Findings of Fact, the advice described therein would not amount to a violation of § 6694.

The Court does find and conclude that the advice given by Olsen to alter checks supporting deductions taken by the Wittigs on their 1985 tax return, as more fully described in Finding 13(B) above, violated 26 U.S.C. § 6694, in that it constituted a willful and intentional disregard of rules and regulations and resulted in an understatement of liability.

5. Section 6695 of Title 26 provides for the assessment of penalties against an income tax preparer for failure to sign returns and/or failure to furnish an identifying number.

Based on Finding 13(H), the Court concludes that the government has failed to sustain its burden of establishing a violation of 26 U.S.C. § 6695.

6. Injunctive relief may also be appropriate under 26 U.S.C. § 7407, where an income tax preparer engages in any conduct subject to criminal penalty pursuant to Title 26. Section 7206 of Title 26 states that criminal penalties shall be imposed against any person who "[w]illfully makes and subscribes any return . . . which contains or is verified by a written declaration that it is made under penalties of perjury, and which he does not believe to be true and correct as to every material matter." Section 7207 of Title 26 likewise provides for criminal penalties against one who "willfully delivers . . . to the Secretary any . . . return . . . known by him to be fraudulent or to be false as to any material matter . . . ." The Court finds and concludes that the government has established by a preponderance of the evidence that Olsen's conduct as described in Findings 8-10, 13(B), and paragraph 4(A) of the Conclusions of Law would be subject to criminal penalty under 26 U.S.C. § 7206(1) and 26 U.S.C. §7207.

7. Finally, 26 U.S.C. § 7407(b)(1)(D) authorizes injunctive relief where an income tax return preparer has engaged in other fraudulent or deceptive conduct which substantially interferes with the proper administration of the Internal Revenue laws. The word "other" in § 7407(b)(1)(D) indicates that this subsection is intended to apply to conduct which does not fall within categories b(1)(A)-(C). The Court has previously determined that the conduct described in Findings 8-10 and 13(B) falls within the scope of 26 U.S.C. § 7407(b)(1)(A). Based on Findings 13(A) and 13(C)-(H), the Court finds and concludes that

the government has failed to prove that conduct discussed therein was fraudulent or deceptive. Accordingly, the Court finds and concludes that 26 U.S.C. § 7407(b)(1)(D) is inapplicable.

8. Olsen contends that his advice and tax preparation methods simply reflect lawful tax avoidance sanctioned by *Gregory v. Helvering*, 293 U.S. 465 (1935), and its progeny. He further points out that deductions for rental expenses are proper, even when the rental transactions are between related parties. *See Safeway Steel Scaffolds Co. v. United States,* 590 F.2d 1360 (5th Cir. 1979). The Court concurs that tax avoidance, as opposed to tax evasion, is entirely proper. The rental payments by a corporation to its sole shareholder may afford a legitimate corporate expense deduction if the rental transaction has economic substance, and if the rental payments reflect the fair rental value of the leased property. These principles, however, have no application to the case at bar. There is no statutory or case law supportive of the proposition that one may utilize fraudulent or fabricated data to generate deductions in order to obviate liability which would otherwise exist for F.I.C.A. and self-employment taxes. As one approaches the line between tax avoidance and tax evasion, it is sometimes difficult to accurately assess on which side particular conduct might fall. However, there is a substantial distance between this demarcation line and the conduct here in question. The Court finds and concludes that the schemes described in Findings 8-10 and the conduct described in Finding 13(B) cannot reasonably be deemed legitimate tax avoidance.

9. Olsen points to the fact that at least two returns (Defendant's Exhibits 1 and 2) passed audit. He argues that this constitutes proof that his methodologies regarding the spousal wage deduction and rental expense deduction are legitimate. The Court rejects this position. Any of the returns introduced into evidence, when viewed in isolation, may appear to be legitimate. It is only when a number of the returns prepared by Olsen are compared with one another that the fraudulent nature of the data supportive of the spousal wage deduction and the rental expense deduction becomes apparent.

10. Injunctive Relief

A. Section 7407(b)(2) of Title 26 provides that after making the threshold finding that an income tax preparer has engaged in the unlawful conduct described in § 7407(b)(1), the Court may grant injunctive relief if such relief is appropriate to prevent the recurrence of such conduct. The statute contemplates that normally the injunction will prohibit the income tax preparer from engaging in the conduct found to fall within § 7407(b)(1). However, if the Court finds that an injunction prohibiting the complained-of conduct will not be sufficient to prevent the preparer's interference with the proper administration of Title 26, the statute authorizes the Court to enjoin the individual from acting as an income tax return preparer.

B. In an action for a statutory injunction, the party seeking the injunction need only establish a violation of the statutory provision and show that there is a reasonable likelihood of future violations. *United States v. Kaun*, 827 F.2d

1144, 114[redacted]7th Cir. 1987); *United States v. Fra[redacted]ni*, 756 F. Supp. at 893. In assessing the likelihood of future violations, a court must consider the totality of the circumstances, including the gravity of the harm caused by the conduct; the extent of the defendant's participation and the degree of scienter; the isolated or recurrent nature of the infraction; the likelihood that defendant's customary business activities might again involve him in such transactions; the defendant's recognition of culpability; and the sincerity of assurances against future violations. *Securities and Exchange Comm'n v. Holschuh*, 694 F. 2d 130, 144 (7th Cir. 1982); *United States v. Richlyn Labs., Inc* ., 827 F. Supp. 1145, 1150 (E.D. Pa. 1992). A likelihood of future violations can be inferred from past unlawful conduct. *Commodity Futures Trading Comm'n v. British Am. Commodity Options Corp.*, 560 F.2d 135, 142 (2d Cir. 1977), *cert. denied*, 438 U.S. 905 (1978).

Based upon Findings 8-12 and Conclusions 3, 4 and 6, the Court finds and concludes that the harm to Olsen's clients caused by his schemes to evade the payment of F.I.C.A. and self-employment taxes has been substantial; that Olsen was the architect and implementer of these schemes; and that his unlawful conduct spanned approximately a 9-year period and ended only when he agreed to cease preparing tax returns during the pendency of this action in order to avoid a hearing on the government's motion for preliminary injunction. The Court further finds and concludes that Olsen acted with a

high degree of scienter. Absent an injunction, his customary business activities will clearly involve him in the preparation of income tax returns in the future. Olsen has never acknowledged any culpability with respect to the schemes described in Findings 8-10. Rather, he has consistently taken the position that he is merely engaging in permissible tax avoidance, and that to the extent any of the information or deductions on individual, corporate, or fiduciary tax returns was fictitious or fraudulent, the blame lies with the clients, and not with him. Accordingly, the Court finds and concludes that absent an injunction, there is a high likelihood of future violations.

C. There remains to be considered the appropriate scope of the injunctive relief. Section 7407 identifies two options, namely, an injunction prohibiting the specific conduct found to be unlawful and an injunction prohibiting the defendant from acting as an income tax preparer. Obviously, the latter type of injunction is a much more drastic remedy than the former. In addition, the Court is not limited to these alternative forms of injunctive relief, and may fashion injunctive relief that falls in between the two statutorily identified extremes. *See United States v. Franchi* , 756 F. Supp. at 896.

The key question in arriving at the appropriate form of injunctive relief is whether an injunction which simply prohibits the defendant from engaging in specific improper tax preparation methods will be sufficient to prevent the defendant from further interfering with the proper administration of Title 26.

An injunction prohibiting Olsen from acting as an income tax preparer would put him out of the business which has provided his livelihood for many years. This is indeed a harsh result. On the other hand, three factors lead the Court to the conclusion that nothing less than this more drastic form of injunctive relief will be effective to prevent future violations. First, Olsen's conduct in devising and orchestrating schemes to evade the payment of F.I.C.A. and self-employment tax is longstanding and obdurate. Second, Olsen has shown a remarkable adeptness at innovating new artifices when an existing scheme is rendered unworkable, either by a change in the law or by I.R.S. audits of his clients' returns. Third, although each of the schemes described in Findings 8-10 above are premised on the use of fictitious and fraudulent data, Olsen continues to maintain that they are permissible forms of tax avoidance. Based on the totality of the circumstances, and, with specific emphasis on these three factors, the Court finds and concludes that an injunction which merely prohibits Olsen from engaging in certain specified conduct will not be sufficient to prevent his interference with the proper administration of the internal revenue laws, as set forth in Title 26, U.S.C. The Court further finds and concludes that this is an appropriate case for imposition of an injunction permanently prohibiting Olsen from acting as an income tax return preparer.

## RECOMMENDED DISPOSITION

Based upon the above Findings of Fact and Conclusions of Law, it is hereby RECOMMENDED that judgment be entered in favor of the United States and against Defendant Olsen, and that a permanent injunction issue prohibiting Defendant from acting as an income tax return preparer.

It is ORDERED that, pursuant to Fed. R. Civ. P. 53(e)(2), within 10 days after being served with notice of the filing of this Report any party may serve written objections thereto upon the other parties. Application to the Court for action upon the Report and upon objections thereto shall be by motion and upon notice as prescribed in Fed. R. Civ. P. 6(d). The Court, after hearing, may adopt the Report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

DATED THIS 19th DAY OF JANUARY, 1995;

BY THE COURT:

United States Magistrate Judge,
sitting as Special Master