

Judge Pechman

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CLERK U.S. DISTRICT COURT
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT C. ARANT, individually, and
dba Olympic Business Systems, LLC,

Defendants.

No. CV07-509L

PRELIMINARY INJUNCTION

Filed Under Seal

NOTED FOR: April 27, 2007

I. INTRODUCTION

This matter comes before the Court on a motion for a temporary restraining order (Dkt. #4) filed by plaintiff, the United States of America (the "United States"). The United States seeks a temporary restraining order which prohibits defendants Robert Arant and the warehouse bank he owns and operates, Olympic Business Systems, LLC ("Olympic"), from operating the warehouse bank and freezing Olympic's assets.

A hearing was held on April 27, 2007, and the United States provided additional evidence in support of its motion. Because a hearing was held, the temporary restraining order entered on April 17, 2007, is converted to a preliminary injunction.

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II. DISCUSSION

A. Background Facts

The United States alleges that since November 2002, Arant has promoted and marketed a “warehouse banking” scheme to assist his customers to evade federal taxes and hide their income, assets, expenditures, and identities from the Internal Revenue Service (“IRS”). Arant had promoted the warehouse bank via the internet. As the term was originally used, a “warehouse bank” was a private, unchartered bank that physically stored its customers cash, gold, silver, and other items. With advances in technology, some modern warehouse banks do not physically store customers’ assets. United States’ Motion at p. 3 n.4.

According to the website, Olympic’s “cornerstone is dependable service and privacy.” Declaration of IRS Revenue Agent Susan Killingsworth (Dkt. #6) (“Killingsworth Decl.”), Ex. 1 at pp. 1, 3. The website advertizes that the company specializes in “offering accounts payable and receivable services to ... customers ... who would rather not deal directly with the banking system.” *Id.* at p. 1. Olympic charges fees for its services.

As part of Olympic’s accounts receivable program, Olympic instructs its customers to endorse checks to Olympic. Olympic’s customers must sign a Customer Banking Affidavit, which authorizes Olympic to endorse and deposit checks written to its customers into Olympic’s bank accounts. The Customer Banking Affidavit also states that all customer deposits into Olympic’s commercial bank accounts are the property of Olympic. *Id.* at p. 16.

Olympic also maintains an accounts payable program whereby it pays customers’ bills at the direction of its customers. Olympic’s customers have used Olympic checks to pay numerous personal expenses. Killingsworth Decl. at ¶28. The United States alleges that customers are able to conceal from the IRS the amount of their income and assets by having Olympic pay their expenses for them.

1 The United States alleges that the warehouse bank scheme interferes with the
2 IRS's enforcement of the Internal Revenue laws in various ways. It assists customers in
3 hiding their assets from the IRS and reduces the amount of taxes customers pay. Also,
4 because customers can "bank" through Olympic without revealing their identities, the IRS
5 is unable to identify Olympic's customers or the money they have deposited.
6 Accordingly, the IRS cannot levy the customers' bank accounts to satisfy their
7 outstanding federal tax liabilities. Furthermore, because their assets are deposited into
8 Olympic's accounts rather than into customer accounts, the IRS is unable to identify the
9 customers' sources of income or the exact amounts deposited, particularly once the funds
10 are commingled with other Olympic funds. Finally, because Olympic customers can use
11 an Olympic account, debit card, or money order to pay bills, the IRS is unable to identify
12 the customers' expenditures.

13 In February and June 2006, the IRS issued summonses to the commercial banks
14 holding Olympic accounts seeking information about the accounts. The IRS was required
15 to give Arant notice of summonses. After Arant learned of the IRS's investigation, he
16 password protected his website, then shut it down. However, he continues to operate the
17 warehouse bank. The IRS has requested various documents and a meeting with him, but
18 Arant has refused to disclose his customer list or to cooperate. Instead, Arant responded
19 with tax-protestor documents contesting the IRS's authority. Killingsworth Decl., Exs. 7,
20 8.

21 The IRS's investigation of Olympic has shown that it has six accounts in three
22 commercial banks. Between 2002 and 2005, Olympic deposited nearly \$28 million in
23 funds obtained from its customers into Olympic's commercial bank accounts.
24 Killingsworth Decl. at ¶50. Olympic has hundreds of customers throughout the United
25 States. Pursuant to the investigation, the IRS has identified 13 Olympic customers who
26 have either failed to file federal income taxes or who have under-reported their income by
27 using Olympic.

1 **B. Analysis**

2 26 U.S.C. § 7408(a) provides that the United States may file an action to enjoin
3 any person from engaging in conduct that violates 26 U.S.C. §§ 6700 and 6701. Section
4 6700 imposes a monetary penalty on any person who organizes, promotes, or sells a
5 “partnership or other entity” or “any other plan or arrangement” and in connection
6 therewith makes or furnishes a statement about the tax consequences to participants
7 which he knows, or has reason to know, is false or fraudulent. 26 U.S.C.
8 § 6701(a)(2)(A). “The traditional requirements for equitable relief need not be satisfied
9 since section 7408 expressly authorizes the issuance of an injunction.” United States v.
10 Stephenson, 313 F. Supp.2d 1054, 1057 (W.D. Wash. 2004) (quoting United States v.
11 Estate Preservation Servs., 202 F.3d 1093, 1098 (9th Cir. 2000)). The United States must
12 provide five elements to obtain injunctions under Sections 6700 and 7408:

13 (1) the defendants organized or sold, or participated in the organization or sale of,
14 an entity, plan, or arrangement; (2) they made or caused to be made, false or
15 fraudulent statements concerning the tax benefits to be derived from the entity,
16 plan, or arrangements; (3) they knew or had reason to know that the statements
were false or fraudulent; (4) the false or fraudulent statements pertained to a
material matter; and (5) an injunction is necessary to prevent recurrence of this
conduct.

17 Estate Preservation Servs., 202 F.3d at 1098 (citing 26 U.S.C. §§ 6700(a), 7408(b)).

18 In this case, the Court finds that Arant, individually and through Olympic,
19 participated in the sale of accounts with the warehouse bank, which is an entity, plan or
20 arrangement within the meaning of Section 6700(a)(1)(A). In promoting the warehouse
21 bank, Arant and Olympic made false or fraudulent statements that their contractual
22 obligations superceded all other laws, that the warehouse bank would be beyond the reach
23 of the IRS, and that the tax code and related laws do not apply. For example, the
24 Customer Service Agreement Instructions state:

25 17. We regard our contractual obligation as superceding any imperative for
26 compliance with and [sic] *ex post facto* law impairing such obligations.

27 Killingsworth Decl., Ex. 1 at p. 10. Similarly, the Customer Service Agreement provides:

28 The parties expressly recognize as the basis of the Agreement, the Constitution of
the United States of America and the State constitution for the above-mentioned
State of the Union, and American Common Law with enumerated Unalienable

1 Rights from Almighty God the Creator of all. The parties freely enter into this
2 Client Service Agreement unrestricted by any acts, statutes, ordinances, regulations
3 or customs working to the deprivation of any such private Citizen's Rights,
Privileges, and Immunities secured or protected by the Nation's Founding
Documents.

4 Id. at p. 8. The fact that these statements attempt subtlety is irrelevant; their message is
5 clear. Furthermore, Arant knew or had reason to know of the falsity of the statements.
6 Arant is or should be aware that the tax laws apply to defendants, their customers, and to
7 this "banking" arrangement. Arant is or should be aware that courts have repeatedly held
8 that warehouse banks are tax evasion schemes. Arant's statements are "material" within
9 the meaning of the statute because they pertain to the legality of a scheme to hide income,
10 expenditures and identities from the IRS.

11 Moreover, an injunction is necessary to prevent recurrence of this conduct. Arant
12 continued to make the false statements and operate the warehouse bank after the IRS
13 notified him that Olympic was under investigation. Olympic's customers have failed to
14 file federal tax returns and have used Olympic and its six commercial bank accounts to
15 hide their income, assets, expenditures, and identities from the IRS. Arant also attempted
16 to withdraw funds from Town Center Bank, in violation of the temporary restraining
17 order.

18 **IT IS HEREBY ORDERED AND DECREED THAT:**

- 19 1. The Court GRANTS the motion for a preliminary injunction.
- 20 2. Pursuant to 26 U.S.C. § 7408, a preliminary injunction is entered
21 prohibiting Arant, individually and doing business as Olympic Business Systems LLC,
22 and his representatives, agents, servants, employees, attorneys, and those persons acting
23 in concert or participation with him, from directly or indirectly promoting, marketing, or
24 selling the warehouse bank scheme referenced above, or any similar false and fraudulent
25 schemes, and from providing services to Olympic's customers.
- 26 3. That Arant and his representative, agents, servants, employees, attorneys,
27 and those persons acting in concert or participation with him are preliminarily enjoined
28 from transferring, converting, encumbering, selling, concealing, dissipating, disbursing,

1 assigning, spending, withdrawing, or otherwise disposing of any funds, property, or other
2 assets, wherever located, and that (1) owned or controlled by defendants, in whole or in
3 part; or (2) in the actual or constructive possession of defendants; or (3) owned,
4 controlled by, or in the actual or constructive possession of defendants or any other entity
5 that is directly or indirectly owned, managed, or controlled by, or under common control
6 with, defendants, including but not limited to, any assets held by or for defendants in any
7 account at any bank or savings and loan institution, or with any broker-dealer, escrow
8 agent, title company, commodity trading company, precious metal dealer, or other
9 financial institution of any kind, including the assets in the bank accounts listed in the
10 United States' proposed order on this motion.

11 Defendants are also preliminarily enjoined from opening or causing to be opened
12 any safe deposit boxes or storage facilities titled in the name of any defendants, or subject
13 to access by any defendants or under their control, without providing the Department of
14 Justice with prior notice and an opportunity to inspect the contents in order to determine
15 that they contain no assets covered by this Order.

16 4. The assets affected by this Order shall include both existing assets and
17 assets acquired after the effective date of this Order, and defendants shall hold and
18 account for such property and assets and payments received by them, including but not
19 limited to borrowed property and gifts.

20 5. Any financial or brokerage institution, escrow agent, title company, storage
21 facility, commodity trading company, business entity, or person maintaining or having
22 custody or control of any account or other asset of the defendants, or any corporation,
23 partnership, or other entity directly or indirectly owned, managed, or controlled by, or
24 under common control with, the defendants or that at any time since 2002, has maintained
25 or had custody of any such account or other asset, and which is served with a copy of this
26 Order, or otherwise has actual knowledge of this Order, shall:

27 a. Prohibit the withdrawal, removal, assignment, transfer, pledge,
28 hypothecation, encumbrance, disbursement, dissipation, conversion, sale, or other

