

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
MICHAEL E. BEST,)	
d/b/a M.E. BEST INVESTMENT)	
SERVICES,)	
)	
Defendant.)	

COMPLAINT FOR PERMANENT INJUNCTION

Plaintiff, United States of America brings suit against Defendant Michael E. Best, individually and doing business as M.E. Best Investment Services, for violations of Title 26, United States Code (Internal Revenue Code), §§ 6700 and 6701, and requests a permanent injunction pursuant to I.R.C. § 7408.

Authorization

1. This action has been authorized and requested by the Chief Counsel of the Internal Revenue Service (IRS), a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of I.R.C. (26 U.S.C.) §§ 7402 and 7408.

Jurisdiction and Venue

2. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and I.R.C. §§ 7402(a), and 7408.

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396 because defendant Michael E. Best is a resident of Sarasota, Florida.

Defendant and Basic Facts

4. Defendant Michael E. Best does business under the name M.E. Best Investment Services.

5. From 1999 to 2001, Defendant Best contracted with Alpha Telecom, Inc., an Oregon corporation, to sell and promote purported business investments. Under the scheme, Best and Alpha purportedly sold pay phones to customers who then contracted with Alpha for it to “manage” the phones, which were purportedly modified to allow access by certain disabled users. In selling the scheme, Best falsely told customers that, by purchasing the phones, they were entitled to a disabled-access federal income tax credit and depreciation federal income tax deductions. In fact, customers were not entitled to either tax benefit, and Best’s false statements regarding the allowability of deductions and credits, constituted conduct subject to penalty under 26 U.S.C. § 6700. Best also advised customers about how to complete IRS forms to claim the improper credits.

6. The United States seeks an injunction prohibiting Best from (a) promoting any investment, business venture, or other plan or arrangement and in connection therewith making false or fraudulent representations about federal tax benefits, (b) engaging in any other activity subject to penalty under I.R.C. §§ 6700, 6701, or any other penalty

provision in the I.R.C., and (c) engaging in any other conduct that interferes with the administration or enforcement of the internal revenue laws.

Defendant's Promotion

7. Paul A. Rubera founded Alpha in 1986. The company originally sold, installed and maintained telephones and business systems.

8. In 1997, Rubera, who was president of Alpha, and Charles Tummino, a financial advisor and past acquaintance, devised a scheme to market and sell purported investments in a Customer Owned Coin Operated Telephone (COCOT) program. Under the scheme, customers would purportedly buy a modified pay phone, which Alpha was to install at their purported places of business. The proceeds from the customers' initial purchase were used for the phone equipment as well as to pay "profits" to earlier customers. The phones were coin-operated telephones with adjustable height, a volume control button, and an extra-long handset, which Alpha claimed were modifications to facilitate use by disabled persons.

9. Alpha contracted with Tummino initially, then the Strategic Partnership Alliance LLC (SPA) to market the pay phone program. Tummino and SPA recruited sales representatives nationwide to sell and promote the Alpha scheme. Tummino and SPA also controlled the sales force, paid the commissions, created training materials, trained the salesmen, and handled any problems that occurred.

10. In 1999, Defendant Best became a sales representative for Alpha.

11. From 1999 through 2001, Best promoted and sold the COCOT phone scheme for Alpha. To generate sales, Best contacted prospective customers by telephone and then visited them in person to distribute his own and Alpha's promotional material.

12. Best falsely told prospective customers that the telephones would generate guaranteed income and enable customers to claim an income tax credit and deduction. Best also distributed Alpha promotional materials falsely stating that customers would be eligible for the federal tax benefits described above.

13. Best told customers they would receive a 14-16 % annual yield, payable monthly. The monthly payments were purportedly based on the revenue generated by each customer's pay phone, but customers received a minimum monthly payment of \$53.84 regardless of the revenue generated from their pay phone. If a particular phone generated purported revenue above the minimum for a given month, that customer would receive thirty percent of the net revenue, while Alpha would receive seventy percent.

14. The minimum monthly payment \$58.34 for each phone totaled over twelve months added up to approximately 14% of the original purported phone purchase price. Although Best and Alpha characterized the money as dividends, customers did not receive any shares in Alpha, and any money that was actually distributed was from other customers' subsequent phone purchases, which typifies a Ponzi scheme.

15. Best had customers sign a Telephone Equipment Purchase Agreement. Under the Purchase Agreement, Alpha purportedly provided and serviced the pay telephone equipment. Best told customers that the pay phones qualified for an ADA

credit because (a) the height of their enclosures could be modified to be accessible by wheelchair or standing users, (b) they were equipped with a volume control button that allowed disabled users to adjust the volume of the handset, and (c) they had extra-long handsets, making the phones easily accessible to all users, either by a wheelchair or standing. The phones Alpha distributed were called “smart phones.”

16. Best directed customers to choose between four purported levels of service, and sign a Telephone Services Agreement. The great majority of customers chose the level four Service Agreement, whereby Alpha purportedly performed all necessary services to maintain the phones. Alpha was to select the locations of the phones, install the phones, maintain the phones, and purportedly collect any revenue from the phones.

17. Best also persuaded customers to invest in Alpha based on a buy-back provision under which Alpha guaranteed that it would repurchase the phone from a customer at a price based on how long that customer had kept the phone.

18. Best also promoted the COCOT scheme by falsely telling customers that the purported investment would qualify them for an ADA tax credit in an amount equal to 50% of the purported purchase price under I.R.C. § 44, and yearly depreciation deductions pursuant to I.R.C. § 179.

19. Best provided customers with IRS Form 8826 (“Disabled Access Credit”) and explained how to complete the form in order to claim the ADA tax credit.

20. In actuality, customers were not eligible for the tax credit or deduction for several reasons. Many customers were not eligible for the credit because they did not

own or operate any business. Moreover, the modifications to the phones did not involve expenditures made in order to comply with the ADA. Additionally, customers were not eligible for depreciation deductions because they did not bear the benefits and burdens of ownership of the phones.

21. Based on Best's and Alpha's misrepresentations, customers improperly claimed credits and deductions on their federal income tax returns.

22. Best's customers had to pay additional taxes, interest, and penalties once their participation in the Alpha scheme was detected.

23. Best sold the pay phones for a purported sum of \$5,000 for each telephone and modifying equipment. The total retail cost of a similar phone and equipment ranged from approximately \$766 to \$1,532. Best thus made gross valuation overstatements within the meaning of I.R.C. § 6700 in connection with selling the Alpha scheme.

24. Best sold approximately \$985,000 of COCOT phones in 2000 and \$1,204,000 in 2001. From those sales, Best earned a commission of 10%, or \$98,500 in 2000, and \$120,400 in 2001.

25. From Best's sales alone, the IRS estimates that customers may have improperly claimed ADA credits of \$1,094,500 from 2000 to 2001.

26. Alpha filed for Bankruptcy in August 2001 after the Securities and Exchange Commission notified it that the COCOT scheme constituted the sale of securities. The SEC successfully sued Alpha, and both Alpha and Best were assessed large penalties for the unlawful sale of unregistered securities.

Count I - Injunction under I.R.C. § 7408

27. The United States incorporates by reference the allegations in paragraphs 1 through 26.

28. I.R.C. § 7408 authorizes a district court to enjoin any person from further engaging in conduct subject to penalty under either I.R.C. § 6700 or § 6701, if injunctive relief is appropriate to prevent recurrence of that conduct.

29. I.R.C. § 6700 provides that a penalty will be imposed against any person who organizes or assists in the organization of a partnership or other investment plan or arrangement, or participates in the sale of an interest in an entity or plan, and (a) knowingly makes a false or fraudulent statement as to the allowability of a deduction or credit, the excludability of any income, the securing of another tax benefit, because of an interest held in the entity or because of his participation in the plan, or (b) makes a gross valuation overstatement as to any material matter.

30. A gross valuation overstatement is “any statement as to the value of any property or services if ... the value so stated exceeds 200 percent of the amount determined to be the correct valuation, and the value of such property or services is directly related to the amount of any deduction or credit allowable under [I.R.C. §§ 1-1400L] to any participant.” I.R.C. § 6700(b)(1).

31. Best, in promoting and selling the Alpha scheme, made materially false or fraudulent statements to customers regarding the allowability of ADA credits under

I.R.C. § 44 and depreciation deductions under I.R.C. § 179. He knew or had reason to know that these statements were false or fraudulent.

32. A taxpayer can claim a credit under I.R.C. § 44 for eligible access expenditures, or money spent for necessary modifications or equipment upgrades in order to comply with the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101-12213 (2005). The credit is available, however, only if the equipment is used in an eligible small business as defined by I.R.C. §44(b), and if the business has an obligation to become compliant with the ADA regulations. The credit is limited to the reasonable and necessary cost of the modification.

33. The Alpha phones did not involve necessary expenditures under the ADA.

34. A taxpayer can claim a depreciation deduction under I.R.C. §§ 167 or 179 only if a taxpayer has an investment in and actual ownership of property used in a trade or business or held for the production of income. If a taxpayer does not have the benefits and burdens of ownership, the taxpayer is not entitled to the deduction.

35. Best falsely told customers they were eligible for a depreciation deduction, but they were not eligible because Alpha retained the benefits and burdens of ownership, and the majority of customers had only legal title to the phones.

36. In *Arevalo v. Commissioner*, 124 T.C. 244 (2005), the Tax Court specifically found that an Alpha customer was not eligible for either the ADA credit or a depreciation deduction based on his participation in the Alpha scheme.

37. Defendant Best made gross valuation overstatements in promoting the Alpha scheme.

38. Best overstated the value of the ADA credit, falsely telling customers that the entire price of the pay phones qualified as an eligible access expenditure, rather than the cost of any necessary modifications to the phones. Best also sold the pay phones for an amount greatly exceeding the actual value of the modified phones, and customers improperly used the overstated purchase price to determine the value of their claimed credits.

39. I.R.C. § 6701 imposes a penalty on any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having a reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws, and knowing that if so used it would result in an understatement of another person's tax liability.

40. Best provided customers with IRS Form 8826 ("Disabled Access Credit") and explained how to complete the form in order to receive the ADA tax credit. Best did so knowing that customers were likely to submit the completed forms with their tax returns and knowing that this would result in understatements of customers' tax liability.

41. Best engaged in conduct subject to penalty under I.R.C. §§ 6700 and 6701, and he is subject to an injunction under I.R.C. § 7408.

42. I.R.C. §§ 7402 and 7408 authorize a court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws. Best, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

43. The United States has suffered financial harm due to Best's misconduct. Best sold approximately 197 telephone units in 2000 and 241 units in 2001, which have a potential tax loss to the government of \$492,500 in 2000 and \$602,500 in 2001.

44. Best has demonstrated a pattern of continued unlawful activity, including the promotion of other unlawful investment schemes, in at least two instances, despite notice of the unlawful nature of his conduct. A) In 1999, Best was fined by the Florida Department of Agriculture and Consumer Services for violating the state's Do Not Call list. In 2003, Best was sued again for the same violations, fined \$109,500, and the Department of Agriculture obtained a permanent injunction prohibiting him from continuing to call people on the list. B) Best was convicted in Manatee County Circuit Court on two counts of the sale of an unregistered security in violation of state law for conduct from March 1999. Best was similarly unlawfully engaged in the sale of unregistered securities under the scheme alleged herein. In 2003, Best was ordered to disgorge the profits of he made from the sale of unregistered securities, after the SEC brought suit against Alpha, Rubera and other Alpha principals.

45. Best's misconduct is likely to recur in the absence of an injunction.

WHEREFORE, the Plaintiff, United States of America, respectfully prays for the following:

1. That the Court find that Best engaged in conduct subject to penalty under I.R.C. (26 U.S.C.) §§ 6700 and 6701.
2. That the Court enter a permanent injunction pursuant to I.R.C. § 7408, prohibiting Best from: (a) organizing or selling any investment, plan, or other arrangement and in connection therewith making false or fraudulent representations about the securing of any tax benefits or making gross valuation overstatements; (b) engaging in any activity subject to penalty under I.R.C. §§ 6700, 6701, or any other penalty provision in the I.R.C.; and (c) engaging in any other conduct that interferes with the administration and enforcement of the internal revenue laws.
3. That the Court order Best to turn over to counsel for the United States a list of the names, addresses, e-mail addresses, phone numbers, and Social Security numbers of all customers to whom he sold any Alpha products or services.

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Dated: March 22, 2006