

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

UNITED STATES OF AMERICA and
R. L. WILLETT, Revenue Officer,
Internal Revenue Service,

Petitioners,

No. 2:11-mc-00006 GEB KJN

v.

WALTER ANTONIO, JR.,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____ /
This matter came before the undersigned on March 17, 2011, as a result of an order to show cause (“OSC”) entered on January 24, 2011. (OSC, Dkt. No. 3.) The OSC ordered respondent to show cause why he should not be compelled to obey the summonses issued by the Internal Revenue Service (“IRS”) on May 27, 2010, pursuant to 26 U.S.C. § 7602.¹ (See OSC at 1 & ¶¶ 6-7, Dkt. No. 3.) Assistant United States Attorney Yoshinori H. T. Himel appeared on behalf of petitioners, and Revenue Officer Roxanne Willett was also present at counsel’s table. Respondent did not file a written response to the OSC in advance of the hearing

_____ /
¹ This matter is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(9) and 28 U.S.C. § 636(b)(1). Subject matter jurisdiction is proper under 28 U.S.C. §§ 1340 and 1345.

1 and failed to appear at the hearing. For the reasons stated below, the undersigned recommends
2 that petitioners' Verified Petition to Enforce Internal Revenue Service Summons be granted and
3 that respondent be ordered to comply with the summonses at issue.

4 Revenue Officer Willett is conducting an investigation of respondent to
5 determine: (1) respondent's "correct liabilities for personal income tax for the tax years ending
6 December 31, 2007, December 31, 2008, and December 31, 2009"; and (2) "financial
7 information for the collection of assessed Employer's Federal Quarterly Tax (Form 941) for the
8 tax periods ending December 31, 2008, March 31, 2009, June 30, 2009, and September 30, 2009
9 relating to [respondent's] business 'IUCG Sunshine Designs LLC.'" (Verified Petition to
10 Enforce IRS Summons ("Petition") ¶ 4, Dkt. No. 1.) On May 27, 2010, the IRS issued two
11 summonses directing respondent to appear at the IRS's Fairfield, California field office on
12 June 8, 2010, and testify and produce documents called for in the summonses. (*Id.* ¶ 6 &
13 Exhibits, Dkt. No. 1 at 6, 8.²) Although Officer Willett served respondent with the summonses at
14 respondent's home by leaving the summonses with respondent's adult son, respondent failed to
15 appear or otherwise comply with the summonses. (*See* Petition ¶¶ 7-9 & Exhibits, Dkt. No. 1
16 at 7, 9.)

17 Petitioners subsequently filed the Petition seeking enforcement of the May 27,
18 2010 summonses pursuant to 26 U.S.C. § 7604. Upon petitioners' request, the undersigned
19 entered the OSC, which ordered respondent show cause why he should not be compelled to obey
20 the summonses. In the paragraph six of the OSC, the undersigned found that petitioners had met
21 their "slight" burden "to establish that the summons[es] (1) [were] issued pursuant to a
22 'legitimate purpose'; (2) seek[] information 'relevant' to that purpose; (3) seek[] information that
23 is 'not already within the Commissioner's possession'; and (4) satisf[y] all 'administrative steps
24 required by the Code.'" *Stewart v. United States*, 511 F.3d 1251, 1254 (9th Cir. 2008) (quoting

25 ² The summonses are attached as unenumerated exhibits to the Petition. Those
26 summonses can be found in docket entry one, at pages six and eight.

1 United States v. Powell, 379 U.S. 48 (1964)); accord United States v. Richey, 632 F.3d 559, 564
2 (9th Cir. 2011). The undersigned further informed respondent that because petitioners had met
3 their initial burden with respect to obtaining enforcement of the summonses, the burden had
4 shifted to respondent to oppose enforcement. (See OSC ¶¶ 6-7.) Respondent could have
5 successfully opposed enforcement of the summonses and obtained a limited evidentiary hearing
6 by demonstrating “‘an abuse of process’ or ‘the lack of institutional good faith.’” Stewart, 511
7 F.3d at 1255 (quoting Fortney v. United States, 59 F.3d 117, 120 (9th Cir. 1995)); accord Richey,
8 632 F.3d at 564. Respondent has not made such a showing or offered any opposition or
9 argument in this regard and, therefore, has not met his burden to show why the summons should
10 not be enforced. Indeed, respondent failed to appear at the hearing on the OSC. Accordingly, the
11 undersigned recommends that the IRS summonses be enforced.

12 For the foregoing reasons, IT IS HEREBY RECOMMENDED that:

13 1. The Verified Petition to Enforce Internal Revenue Service Summons (Dkt.
14 No. 1) be granted and the IRS summonses issued to respondent Walter Antonio, Jr. be enforced.

15 2. Respondent be ordered to appear at the IRS offices at 4830 Business
16 Center Drive, Suite 250, Fairfield, California 94534, before Revenue Officer R. L. Willett
17 or her designated representative twenty-one days after the adoption of these findings and
18 recommendations, if adopted, or at a later date to be set in writing by Revenue Officer
19 Willett, then and there to be sworn, to give testimony, and to produce for examining and
20 copying the books, checks, records, papers and other data demanded by the summonses.
21 The examination shall continue from day to day until completed.


22 3. The Clerk of Court is directed to serve these findings and
23 recommendations and any future orders by mail to Mr. Walter Antonio, Jr., 2475 Ten Gate
24 Road, Fairfield, California, 94534.

25 These findings and recommendations are submitted to the United States District
26 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen

1 days after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Id.; see also E. Dist. Local Rule 304(b).
3 Such a document should be captioned “Objections to Magistrate Judge’s Findings and
4 Recommendations.” Any response to the objections shall be filed with the court and served on
5 all parties within fourteen days after service of the objections. E. Dist. Local Rule 304(d).
6 Failure to file objections within the specified time may waive the right to appeal the District
7 Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d
8 1153, 1156-57 (9th Cir. 1991).

9 IT IS SO RECOMMENDED.

10 DATED: March 22, 2011

11
12 
13

KENDALL J. NEWMAN
14 UNITED STATES MAGISTRATE JUDGE
15
16
17
18
19
20
21
22
23
24
25
26