

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLORADO
Judge Zita L. Weinshienk

Civil No. 06-cv-01056-ZLW-CBS

UNITED STATES OF AMERICA,

Plaintiff,

v.

BARRY HAMILTON;
JANICE HAMILTON; and
COLORADO DEPARTMENT OF REVENUE,

Defendants.

ORDER OF FORECLOSURE AND SALE

Pursuant to 28 U.S.C. §§ 2001 and 2002 and 26 U.S.C. §§ 7402 and 7403, the Court enters this Order of Foreclosure and Decree of Sale. IT IS HEREBY ORDERED THAT:

1. The United States' federal tax liens against Defendants Barry and Janice Hamilton, arising out of the Internal Revenue Service assessments of Form 1040 federal income tax liabilities for the years 1988, 1994, 1995, and 1996 are foreclosed.
2. The United States Marshal for the District of Colorado, or an Internal Revenue Service Property Appraisal and Liquidation Specialist ("IRS Specialist"), is authorized and directed under 28 U.S.C. §§ 2001 and 2002 to offer for public sale and to sell the parcel of real property, including all improvements, buildings, and fixtures on the real property, described as

follows (hereinafter the “Property”):

Sect, Twn, Rng: 30-5-92 Sub: Rifle Creek Est. Amended Lot: 5
Bk: 0455 Pg: 0580 Bk: 0734 Pg: 0763 Bk: 0610 Pg: 0317

The Property has the following street address: 394 Mesa Drive, Rifle, Colorado 81650. An IRS Specialist shall make the arrangements for any sale as set forth in this Order.

3. The Marshall, his or her representative, or an IRS Specialist is authorized to have free access to the Property and to take all actions necessary to preserve the Property, including, but not limited to, retaining a locksmith or other person to change or install locks or other security devices on any part of the Property, until the deed to the Property is delivered to the ultimate purchaser.

4. The terms and conditions of the sale are as follows:

a. the sale of the Property shall be free and clear of the interests of Barry and Janice Hamilton, the Colorado Department of Revenue, and any other party to this suit.

b. the sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the Property, and easements and restrictions of record, if any;

c. the sale shall be held at the courthouse of the county or city in which the Property is located, on the Property’s premises, or at any other place in accordance with the provisions of 28 U.S.C. §§ 2001 and 2002;

d. the date and time for sale are to be announced by the Marshal, his/her representative, or the IRS Specialist;

e. notice of the sale shall be published once a week for at least four consecutive weeks before the sale in a newspaper regularly issued and of general circulation in Garfield County, and, at the discretion of the Marshal, his/her representative, or the IRS Specialist, by any other notice deemed appropriate. The notice shall contain a description of the Property and shall contain the terms and conditions of sale in this order of sale;

f. The minimum bid will be set by the Internal Revenue Service. If the minimum bid is not met or exceeded, the Marshal, his/her representative, or the IRS Specialist may, without further permission of this Court, and under the terms and conditions in this order of sale, hold a new public sale, if necessary, and increase, reduce, or leave unaltered the minimum bid;

g. the successful bidder(s) shall be required to deposit at the time of the sale with the Marshal, his/her representative, or the IRS Specialist a minimum of ten percent of the bid, with the deposit to be made by certified or cashier's check payable to the United States District Court for the District of Colorado. Before being permitted to bid at the sale, bidders shall display to the Marshal, his/her representative, or the IRS Specialist proof that they are able to comply with this requirement. No bids will be received from any person(s) who have not presented proof that, if they are the successful bidders(s), they can make the deposit required by this order of sale;

h. the balance of the purchase price for the Property is to be paid to the Marshal, his/her representative, or the IRS Specialist within 20 days after the date the bid is accepted, by a certified or cashier's check payable to the United States District Court for the District of Colorado. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be

applied to cover the expenses of the sale, with any amount remaining to be applied to the liabilities of Barry and Janice Hamilton at issue herein. The Clerk shall distribute the deposit as directed by the Marshal, his/her representative, or the IRS Specialist by check made to the "United States Treasury." The Property shall be again offered for sale under the terms and conditions of this order of sale or, in the alternative, sold to the second highest bidder.

i. the sale of the Property shall be subject to confirmation by this Court. The Marshal, his/her representative, or the IRS Specialist shall file a report of sale with the Court, together with a proposed order of confirmation of sale and proposed deed, within 20 days from the date of receipt of the balance of the purchase price;

j. on confirmation of the sale, the Marshal, his/her representative, or the IRS Specialist shall execute and deliver a deed of judicial sale conveying the Property to the purchaser;

k. on confirmation of the sale, all interests in, liens against, or claims to, the Property that are held or asserted by all parties to this action are discharged and extinguished;

l. on confirmation of the sale, the Garfield County Colorado Clerk and Recorder, shall cause transfer of the Property to be reflected upon that county's register of title; and

m. the sale is ordered pursuant to 28 U.S.C. § 2001, and is made without right of redemption.

5. Until the Property is sold, Barry and Janice Hamilton shall take all reasonable steps necessary to preserve the Property (including all buildings, improvements, fixtures and appurtenances on the property) in its current condition including, without limitation, maintaining

a fire and casualty insurance policy on the Property. They shall neither commit waste against the property nor cause or permit anyone else to do so. They shall neither do anything that tends to reduce the value or marketability of the Property nor cause or permit anyone else to do so. The defendants shall not record any instruments, publish any notice, or take any other action (such as running newspaper advertisements or posting signs) that may directly or indirectly tend to adversely affect the value of the Property or that may tend to deter or discourage potential bidders from participating in the public auction, nor shall they cause or permit anyone else to do so.

6. All persons occupying the Property shall leave and vacate the Property permanently within 30 days of the date of this Order, each taking with them his or her personal property (but leaving all improvements, buildings, fixtures, and appurtenances to the property). If any person fails or refuses to vacate the Property by the date specified in this Order, the IRS Specialist is authorized to coordinate with the United States Marshal to take all actions that are reasonably necessary to have those persons ejected. Any personal property remaining on the Property 30 days after the date of this Order is deemed forfeited and abandoned, and the IRS Specialist is authorized to dispose of it in any manner they see fit, including sale, in which case the proceeds of the sale are to be applied first to the expenses of sale and the balance to be paid into the Court for further distribution in accordance with the priorities below.

The proceeds arising from sale are to be paid to the Clerk of this Court and applied as far as they shall be sufficient to the following items, in the order specified:

- a. To the United States Marshal, or the IRS Specialist (whichever person conducted the

sale as arranged by the United States) for the costs of the sale;

b. To all taxes unpaid and matured that are owed (to county, borough or school district) for real property taxes on the Property and any other unpaid local taxes; and

c. Any remaining funds to the United States to partially satisfy the outstanding federal tax liabilities of Barry and Janice Hamilton for federal income tax liabilities for the years 1988, 1994, 1995, and 1996, plus all interest and penalties due and owing thereon.

DATED this 1st day of July, 2010.

BY THE COURT

A handwritten signature in blue ink that reads "Zita Leeson Weinsienk". The signature is written in a cursive style with a horizontal line underneath it.

HONORABLE ZITA L. WEINSHIENK
United States District Judge
District of Colorado