

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 11-cv-01930-WYD-KLM

BRIAN AND JILL FLANAGAN,

Plaintiffs,

v.

DEPARTMENT OF THE TREASURY and
FIRSTBANK VAIL,

Defendants.

**ORDER AFFIRMING AND ADOPTING
MAGISTRATE JUDGE'S RECOMMENDATION**

THIS MATTER is before the Court in connection with Plaintiffs' Petition to Quash IRS Administrative Summons. The Petition seeks to quash a Summons issued against Petitioners on July 5, 2011. The Summons was issued by the Internal Revenue Service ("IRS") to Defendant FirstBank of Vail, a record keeper of Petitioners. However, the Summons was withdrawn by Revenue Officer Ginger Wray on August 4, 2011, when she issued a faxed memorandum to Defendant FirstBank informing it to disregard the Summons as she was no longer in need of the information requested in it. Thus, no records were ever received by the IRS from FirstBank as a result of the Summons.

On October 21, 2011, the United States filed a Motion to Dismiss for Mootness pursuant to Fed. R. Civ. P. 12(b)(1). Plaintiffs did not respond to the motion. Defendants' motion was referred to Magistrate Judge Mix for a recommendation by Order of Reference of August 1, 2011 and Memorandum of October 21, 2011.

On January 5, 2012, a Recommendation of United States Magistrate Judge was issued, which is incorporated herein by reference. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Magistrate Judge Mix recommends therein that Defendants' Motion to Dismiss be granted and that Plaintiff's Petition to Quash IRS Administrative Summons be dismissed. She finds that the case is moot and the Court does not have jurisdiction to hear this matter due to the withdrawal by the IRS of the Summons at issue. (Recommendation at 3) (citing *Kearns v. United States*, 580 F. Supp. 8, 10 (S.D. Ohio 1983) (stating that there was no case or controversy to adjudicate with respect to a summons that had been withdrawn by the respondent)).

Magistrate Judge Mix advised the parties that specific written objections were due within fourteen (14) days after service of the Recommendation. (Recommendation at 3-4.) Despite this advisement, no objections were filed to the Magistrate Judge's Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation "under any standard [I] deem[] appropriate." *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Nonetheless, though not required to do so, I review the Recommendation to "satisfy [my]self that there is no clear error on the face of the record."¹ See Fed. R. Civ. P. 72(b) Advisory Committee Notes.

¹ Note, this standard of review is something less than a "clearly erroneous or contrary to law" standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a de novo review, Fed. R. Civ. P. 72(b).

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I agree with Magistrate Judge Mix's analysis and find that the Recommendation should be affirmed. Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge dated January 5, 2012, is **AFFIRMED and ADOPTED**. In accordance therewith, it is

ORDERED that the United States' Motion to Dismiss for Mootness filed October 21, 2012 (ECF No. 4) is **GRANTED**, and this matter is **DISMISSED**.

Dated: February 8, 2012

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge