

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

Case No: 2:18-mc-13-FtM-29CM

KEVIN M. FLEISHMAN,

Respondent.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #6), filed November 13, 2018, recommending that the Court issue an Order enforcing the summons by directing respondent to comply with its requirements and to appear before a revenue agent. No objections have been filed and the time to do so has expired.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). In the absence of specific objections, there is no requirement that a district judge review factual findings *de novo*, Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993), and the court may accept, reject or modify, in whole or in part, the findings and recommendations. 28 U.S.C. §

636(b)(1). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994); Castro Bobadilla v. Reno, 826 F. Supp. 1428, 1431-32 (S.D. Fla. 1993), aff'd, 28 F.3d 116 (11th Cir. 1994) (Table).

The Petition alleges that Kevin Willis is a Revenue Agent employed by the Internal Revenue Service in Mesa, Arizona. Respondent Kevin M. Fleishman resides in Fort Myers, Florida. On March 13, 2018, an IRS summons was issued by Revenue Agent Willis for respondent to appear on April 16, 2018, at the office in Fort Myers to testify and to produce books, records, or other data. Respondent failed to appear. In the attached Declaration, Revenue Agent Willis states that he issued the Summons, which was served on respondent's wife by Revenue Agent Patrick Shanahan. The Revenue Agent finds it is necessary to obtain testimony and to examine the books, papers, records, or other data sought by the summons to investigate federal tax liabilities of Kevin M. Fleishman, for the years 2015 and 2016, inclusive. (Doc. #1, p. 6, ¶ 9.)

The Magistrate Judge held a show cause hearing, and respondent failed to appear. The Magistrate Judge recommends enforcement of the summons. The Magistrate Judge did not recommend sanctions for the failure to appear at the November 7, 2018, at this time. The

Magistrate Judge denied sanctions without prejudice should respondent fail to comply with any order enforcing the summons.

After conducting an independent examination of the file and upon due consideration of the Report and Recommendation, the Court accepts the Report and Recommendation of the magistrate judge.

Accordingly, it is now

ORDERED:

1. The Report and Recommendation (Doc. #6) is hereby **adopted** and the findings incorporated herein.

2. The government's Petition to Enforce Internal Revenue Service Summons (Doc. #1) is **GRANTED**.

3. The government shall forthwith file a copy of the March 13, 2018, Summons under Notice of Filing for the record.

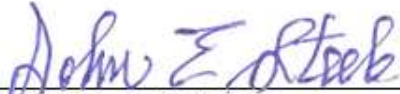
4. The government shall issue a Summons directing Respondent Kevin M. Fleishman to appear before Revenue Officer Patrick Shanahan, or his designee, on **January 4, 2019, at 10:00 a.m.** or at a future date and time reasonably designated by the Revenue Officer, at the IRS building located at 4210 Metro Parkway, Suite 105, Fort Myers, Florida 33916, to fully comply with the summons.¹

¹ The Court notes that a copy of the Summons was not attached to the Petition as Exhibit 2, although thusly stated in the Petition and Declaration. The government will be required to file a copy of the original Summons under notice.

5. The government shall file proof of service of the second summons on respondent.

6. The Clerk shall mail a copy of this Opinion and Order to respondent, terminate all pending motions and deadlines, and close the file.

DONE and ORDERED at Fort Myers, Florida, this 3rd day of December, 2018.



JOHN E. STEELE
SENIOR UNITED STATES DISTRICT JUDGE

Copies:
Hon. Carol Mirando
United States Magistrate Judge

Counsel of Record
Unrepresented parties