

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL ACTION NO. 5:19-MC-00008-KDB-DSC

UNITED STATES OF AMERICA,)
)
Petitioner)
)
v.)
)
KEVIN B. CRAFT,)
)
Respondent)

FILED
CHARLOTTE, NC
FEB -3 2020
US DISTRICT COURT
WESTERN DISTRICT OF NC

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pursuant to the October 10, 2019 Order to Show Cause (Doc. 2) and the Order Continuing Show Cause Hearing to Enforce IRS Summons (Doc. 5), this matter came before the undersigned United States Magistrate Judge for Show Cause Hearing on December 17, 2019, then continued until February 3, 2020, on the Petition of the United States of America, on behalf of the Internal Revenue Service (the “IRS”), under the authority of 26 U.S.C. §§ 7402(b) and 7604(a), to judicially enforce an IRS Summons issued to Respondent Kevin B. Craft (“Respondent”) on March 21, 2019 (the “Summons”).

In support of its request to judicially enforce the Summons, the United States tendered the October 9, 2019 Declaration of Teresa H. Driver (the “Driver Declaration”), who is a duly-commissioned Revenue Officer of the IRS, employed in the Small Business/Self-Employed Division, South Atlantic Compliance Area.

Upon the Petition and the Driver Declaration, this Court entered its October 10, 2019 Order to Show Cause, in which the Court found that the United States had made a *prima facie* showing that:

- 1) An investigation is being conducted by the IRS for a legitimate purpose;

- 2) The inquiries made may be relevant to that purpose;
- 3) The information sought is not already within the possession of the IRS; and,
- 4) The administrative steps required by the Internal Revenue Code have been substantially followed.

See Doc. 2, at p. 2, ¶ 3; *see also United State v. Powell*, 379 U.S. 48, 57-58 (1964); *Conner v. United States*, 434 F.3d 676, 680 (4th Cir. 2006); *Alphin v. United States*, 809 F.2d 236, 238 (4th Cir. 1987).

The Court also found in the October 10, 2019 Order to Show Cause that the burden of coming forward and opposing enforcement of the Summons had shifted to Respondent, ordered Respondent to appear for the Show Cause Hearing on December 17, 2019, and further ordered Respondent to present any defenses or opposition to the Petition in writing to be filed with the Clerk and served on counsel for the United States at least 21 days prior to the Show Cause Hearing. *See* Doc. 2, at p. 2, ¶ 4.

Pursuant to Federal Rule of Civil Procedure 4(e)(1) and North Carolina Rule of Civil Procedure 4(j)(1)(c), Revenue Officer Driver personally served Respondent with copies of the Petition, with exhibits, and the Order to Show Cause by mailing a copy of these documents certified mail, return receipt requested to Respondent Kevin B. Craft, 126 Chandeleur Drive, Mooresville, North Carolina 28117. A signed copy of the green card evidencing delivery and receipt on October 19, 2019 was attached to the United States' Proof of Service. *See* Doc. 3.

Respondent did not file any response to the Petition, nor did Respondent appear at the Show Cause Hearing. Assistant United States Attorney (“AUSA”) Seth Johnson appeared at the December 17, 2019 Show Cause Hearing on behalf of Petitioner. Revenue Officer Driver was also present. At the Show Cause Hearing, AUSA Johnson informed the Court that Respondent had not

contacted his office nor had Respondent contacted Revenue Officer Driver since service of the Petition, with exhibits, and Order to Show Cause.

Thereafter, Respondent informed the Government and the Court that he had appeared for the December 17, 2019 Show Cause Hearing at the incorrect courthouse. The Government moved to continue the show cause hearing, which the Court granted. (Docs. 5 and 6).

Respondent Craft failed to comply with the IRS Summons prior to the February 3, 2020 continued Show Cause Hearing.

ORC *Respondent failed to appear on February 3, 2020.*

IT IS THEREFORE RECOMMENDED that the Petition (Docket Entry 1) be **GRANTED** and that an Order (the “Enforcement Order”) be entered compelling Respondent Kevin B. Craft to fully comply with and obey the Summons, by producing to Revenue Officer Driver, or any other person designated by the IRS, all books, papers, records, and other data that are demanded by the Summons and that are in his possession, custody, or control, by no later than April 3, 2020, by appearing on April 3, 2020 at 10:00 a.m., at the IRS’s office located at 4905 Koger Blvd, Suite 102, Greensboro, NC 27407, before Revenue Officer Driver, or any other person designated by the IRS, and give testimony, as demanded by the Summons.

Within 14 days of being served with this Recommendation, Respondent and/or Petitioner may file written objections with the Court and serve a copy of those objections on all parties. Such a document should be entered “Objections to Recommendation of United States Magistrate Judge.” Any response to the Objections must be filed and served on all parties within 14 days after service of the Objections. Failure to file Objections within the specified time may waive the right of appeal of the Court’s Enforcement Order. *See Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

THE UNITED STATES MARSHAL FOR THIS DISTRICT SHALL SERVE THIS
RECOMMENDATION ON RESPONDENT KEVIN B. CRAFT WITHIN 14 DAYS OF
THE DATE OF THIS REFERRAL.



THE HONORABLE DAVID S. CAYER
UNITED STATES MAGISTRATE JUDGE

2-3-20