

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND**

JAN 17 2006

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
JOHN BAPTIST KOTMAIR, JR.,)
and SAVE-A-PATRIOT FELLOWSHIP,)
)
Defendants.)

Civil No. **WMN05CV1297**

**DEFENDANT KOTMAIR'S RESPONSE TO
UNITED STATES MOTION TO COMPEL DEFENDANTS'
DISCOVERY RESPONSES**

The United States, by its attorneys, seeks to compel John B. Kotmair, Jr. a defendant in this action, to produce information which he is not privy to, and documents of which he is not custodian, in his individual capacity; and information which does not exist, and documents which are not available to him, in either his official or individual capacity. That is to say, that certain documents sought from Kotmair, are documents which are the property of Save-A-Patriot Fellowship (hereinafter, "SAPF"), and perhaps obtainable, to the extent they exist, through that party to this action. But it is hardly arguable that the discovery demands of Kotmair, in his individual capacity, are reasonable, as shall be shown hereinafter.

Other information sought is protected from disclosure by the 4th Amendment to the Constitution, and/or immaterial to the present suit.

The government's Motion to Compel commingles its objections to Kotmair's response to the United States Interrogatories and Request for Production of Documents with those objections regarding SAPF. This response shall deal exclusively with Kotmair, in his individual capacity.

Kotmair's objections to relevance.

Since matters of relevancy are of considerable importance in determining if certain of Kotmair's objections were proper, we need to consider that our federal courts have determined that SAPF is separate and distinct from Kotmair. In fact, in the very case that the Motion to Compel cites, the court stated:

*“As noted above, the evidence established that there is an organization and not simply an operation by Kotmair personally. * *
* In sum, the Court finds as a fact: that the SAP Fellowship is an unincorporated association (not just an alter ego or sole proprietorship of Kotmair), has members, and does things through the persons in addition to Kotmair.”*

Thus, since this court has determined that Kotmair is not “doing business as” SAPF or NWRC, Plaintiff's interrogatories for Kotmair can only be with respect to him in his individual, private capacity. In that capacity, Kotmair is protected by the Fourth and Fifth Amendments to the United States Constitution from compelled disclosures of his personal books, papers and effects, and from testimony which can be used against him in any criminal trial.

Relevance, and Rule 26(b)(1)

Federal Rule of Civil Procedure Rule 26(b)(1) states in part:

*“In General. Parties may obtain discovery regarding any matter, not privileged, **that is relevant to the claim or defense of any party**.... The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”* [Emphasis added]

While true that the scope of interrogatories is quite broad, there is a limit to what may be asked, hence the availability of objection. It has been held that discovery requests may be relevant if there is only a “possibility” that the requested information may be “generally relevant” to the subject matter of the litigation. See *Marker v. Union Fidelity Life Insurance Company*, 125 F.R.D. 121 (M.D.N.C. 1989); *Heathman v. United States District Court for Central District*, 503 F.2d 1032 (9th Cir. 1974). The party seeking discovery must demonstrate more than “mere curiosity” or a “vague groping” for clues. See *Jemberg Forgings Co. v. United States*, 598 F.Supp 390 (1984).

While, in this controversy, the Plaintiff seems to be of the belief that there is a liberal policy favoring a broad scope for their discovery, it should be recognized that this policy was repealed by the Amendments to Rule 26 Advisory Committee (language in bold above).

The intention of the drafters was to limit discovery to the pleadings. The Advisory Committee Notes for the 2000 Amendments to Rule 26(b)(1) state, in

part:

*“The committee intends that the parties and the court focus on the actual claims and defenses involved in the action. The dividing line between information relevant to the claims and defenses and that relevant only to the subject matter of the action cannot be defined with precision. A variety of types of information not directly pertinent to the incident in suit could be relevant to the claims or defenses raised in a given action. * * * [T]he determination whether such information is discoverable because it is relevant to the claims or defenses depends on the circumstances of the pending action. The rule change signals to the court that it has the authority to confine discovery to the claims and defenses asserted in the pleadings, and signals to the parties that they have no entitlement to discovery to develop new claims or defenses that are not already identified in the pleadings. In general, it is hoped that reasonable lawyers can cooperate to manage discovery without the need for judicial intervention. When judicial intervention is invoked, the actual scope of discovery should be determined according to the reasonable needs of the action....”*

Even though fishing expeditions are sometimes permitted, the plaintiff should nevertheless be required to state or show a minimal basis for his cause of action before requiring that defendant to submit to discovery. See *Commercial Drapery Contractors v. U.S.*, 133 F.3d 1 (1998); *Kaylor v. Fields*, 661 F.2d 1177 (8th Cir. 1981). And such discovery may not be used as a fishing expedition that would impose unreasonable expenses on the opposing party. See *Martin v. Budd Co.*, 713 N.E.2d 1128.

The government’s interrogatories of Defendant Kotmair

Regarding the objection to Interrogatory 3, it is asked of Kotmair the source and amount of all income he has received since January 1, 2002.

With respect to income from SAPF, Kotmair doesn't know the amounts of any such income, and no records exist pertaining to such matters. Therefore, there is no information which Kotmair can provide in response to this interrogatory. See Kotmair's second amended answer.

Regarding the objection to interrogatory 7(a): it is requested that Kotmair identify by name, TIN, etc of all members, both associate and full, from January 1, 2000 to present. Kotmair in his individual capacity has no authority to disclose such information, to the extent it may exist. It is an interrogatory more properly made of Defendant SAPF.¹

Regarding the objection to Interrogatory 9 (page 8): the names, TIN's addresses, etc. of all those whom letters have been drafted are requested. Again, Kotmair in his individual capacity has no authority to disclose such information, to the extent that it may exist. It is an interrogatory more properly made of Defendant SAPF. Refer to Defendant Kotmair's second amended answer to this interrogatory.

Regarding the objection to Interrogatory 10 (p. 11): The identities of those whom SAPF provided "tax related services" is requested. Again, Kotmair in his individual capacity has no authority to disclose such information, to the extent that it may exist. It is an interrogatory more properly made of Defendant SAPF. Refer to Defendant Kotmair's second amended answer to this interrogatory.

¹ It is expected that Defendant SAPF shall respond to this issue and others in its Response to Motion to Compel.

Regarding the objection to Interrogatory 11 (p. 12): the government again asks for the impossible. Kotmair's amended answer states:

11. Identify all persons, by name, address, telephone number, and e-mail address, having knowledge of your relationship with SAPF.

Amended response to interrogatory number 11: Objection: unduly burdensome. I don't know the names of all such persons, which must surely number in the thousands, perhaps the tens of thousands, and which certainly must include DOJ and IRS personnel, as well as anyone who has ever visited the Save-A-Patriot website. Relative to persons having knowledge of my relationship with Save-A-Patriot Fellowship, who are also members of Save-A-Patriot, such information is protected by the 1st, 4th and 14th Amendments of the United States Constitution. Additionally, it is impossible to answer this interrogatory.

There are those within the Department of Justice, and even Militia Watchdog that know of Kotmair and his relationship to SAPF, but it would serve no useful purpose for Defendants to have this information, even if it were possible to provide *all* such names, etc.

Regarding the objection to Interrogatory 12: The identities of all those whom Kotmair has represented before the IRS are requested. Kotmair, as Fiduciary of SAPF, was assigned the representative number 2605-47815R by the IRS for his representation of Fellowship members and does so under the provisions of Treasury Circular No. 230, at § 10.7(c)(1)(iv). This representation extends only to correspondence with the IRS on behalf of such members. The information requested is contained within such correspondence, all of which is already in the possession of the government. The IRS' Centralized Authorization File (CAF) — a computer database with nation-wide access — contains the information relating to

authorized representatives and the persons they represent. Plaintiff's access to this database puts this information at its fingertips, while it would create a significant burden of time and expense on Defendants to compile that same information. Discovery proceedings should not be utilized to cast upon defendant burden of establishing plaintiff's case when plaintiff can at least as readily establish the requested facts.

Most significantly, however, is that this is a matter dealing with Kotmair in his official capacity as Fiduciary of SAPF, and not proper as an interrogatory of Kotmair in his individual capacity.

Request for Production of Documents


Regarding Request for Production of Documents 7 (page 14): the only portion of this interrogatory that could pertain to Kotmair in his individual capacity would be documents he prepared for himself and sent to the IRS since January 1, 2000. Nonetheless, Kotmair does not recall any such letters having been written in his individual capacity; and so, Kotmair has no documents to produce for this request. See Kotmair's second amended answer.

Regarding Request for Production of Documents 8 (p. 14): Any such files or other records pertaining to all SAPF members are not the property of, or under the control of, Kotmair in his individual capacity i.e., is not the custodian in his individual capacity. This is a request more properly made of Defendant SAPF.

Regarding Request for Production of Documents 13 (p. 15): Though this a request not properly made of Kotmair in his individual capacity, SAPF has already complied with this request, i.e., is not the custodian in his individual capacity.

Kotmair incorporates the legal arguments presented in SAPF's response to the government's Motion to Compel by reference thereto.

Respectfully submitted this 14th day of January, 2006.



John B. Kotmair, Jr.
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CERTIFICATE OF SERVICE

It is hereby certified that the undersigned forwarded the following Defendant Kotmair's Response To United States Motion To Compel Defendant' Discovery Responses via the U.S. Postal Service certified mail number 7705 1820 0003 5652 0938, postage having been paid in full, on the 14th day of January, 2006 to the party indicated hereinafter.

Anne Norris Graham, Trial Attorney
Tax Division, U.S. Dept of Justice
P. O. Box 7238
Washington, D.C. 20044

And first class mail post paid to:

George Harp Esq.
610 Marshall Street, Suite 619
Shreveport, Louisiana 71101


John Baptist Kotmair, Jr.

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NOTICE OF SERVICE OF DEFENDANT KOTMAIR'S RESPONSE TO
UNITED STATES MOTION TO COMPEL DEFENDANTS'
DISCOVERY RESPONSES

Pursuant to Local Rule 104.8.a., John B. Kotmair, Jr. hereby certifies that on
January 14th, 2006, a response to United States Motion to Compel Defendant' Discovery
Responses was served on Plaintiff United States' attorney Anne Norris Graham by
United States Postal Service certified mail receipt number:

7005 1820 0003 5652 0938, postage having been paid in full.

The Defendant Kotmair's Response to United States Motion to Compel Defendant'
Discovery Responses is attached hereto for filing with the United States District Court for
the District of Maryland.



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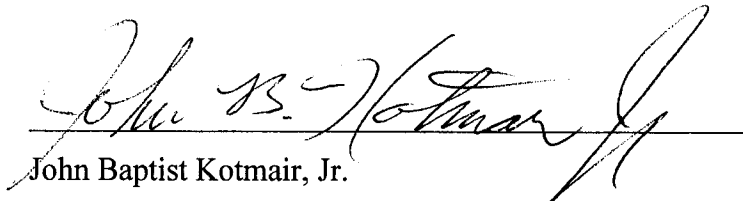
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Anne Norris Graham, Trial Attorney
Tax Division, U.S. Dept of Justice
P. O. Box 7238
Washington, D.C. 20044

And first class mail post paid to:

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John Baptist Kotmair, Jr.