

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) v.) Civil No. WMN05CV1297
)
) JOHN B. KOTMAIR, Jr., et al.)
)
)
) Defendants.)

DECLARATION OF GEORGE HARP IN SUPPORT OF DEFENDANTS' OPPOSITION
TO UNITED STATES MOTION FOR SANCTIONS

1. This declaration is submitted under 28 U.S.C. § 1746 in connection with Save-A-Patriot's reply to the United States' Motion for Sanctions for Discovery Violations. I am the attorney for Save-A-Patriot Fellowship in this action.
2. On January 15, 2006, I mailed "Interrogatories and Requests for Production of Documents Propounded to Plaintiff" to the Tax Division of the U.S. Department of Justice.
3. According to the "Track & Confirm" web page of the United State Postal Service, the interrogatories and requests were delivered by Express Mail on January 17, 2006.
4. At the occasion of the deposition of Joan Rowe on February 14, 2006, and again at the occasion of the deposition of Gary Metcalfe on March 16, 2006, the defendants requested opposing counsel to furnish a copy of the referral made by the IRS to the Department of Justice. It has never been provided.

Exhibit 1

5. I participated by telephone in the court-ordered conference on February 17, 2006. Also present were Mr. Newman, counsel for the United States and Mr. Kotmair, a defendant in this action.
6. On February 17, 2006, at the court-ordered conference, I inquired of Mr. Newman whether he had submitted an answer to Save-A-Patriot Fellowship's discovery requests. He indicated that he had not received them, and I told him that I would fax them to him, which I did on the same day, along with documents verifying the sending and delivery of the discovery requests.
7. I have no recollection of Mr. Newman stating at the February 17, 2006 conference that he would supply the answers in two weeks, nor that I or Mr. Kotmair agreed to this, as Mr. Newman claims in a letter dated April 7, 2006 (See Exhibit 7 of Newman's Declaration in Support of the United States' Opposition to SAPF's Motion to Compel, Docket 32).
8. I have no recollection of Mr. Newman stating at that same conference that he "did not consider the objections waived." Further, I have no recollection of either I or Mr. Kotmair agreeing to such statement.
9. I have reviewed the status report submitted to the Court by all three parties, and signed by me, on February 17, 2006, and it contains no mention of a possible extension of time.
10. Mr. Newman never requested from me an extension of time to file answers to SAPF's first set of interrogatories and requests for production of documents in the time period prescribed in Discovery Guideline 8(a), or at any time before the due date of February 17, 2006.
11. In subsequent discussions with Mr. Newman on February 17, 2006 (and on any other dates), it is possible he discussed an extension with me, but I have no recollection of agreeing, and I did not formalize any such discussions by letter or memorandum.

12. On April 3, 2006, Save-A-Patriot Fellowship filed a motion to compel, in which it is argued that the objections raised by the United States were untimely and therefore waived.
13. I have reviewed Mr. Newman's letter of April 7, 2006, and the only thing it "memorializes" regarding our conversation on April 6, 2006 was that I agreed to a 30-day extension on the United States' response to SAPF's motion to compel discovery. I do recall granting him a 30-day extension to file his response to SAPF's motion to compel on or about that date. (See Exhibit 7 of Newman's Declaration, Docket 32).
14. I have reviewed Mr. Newman's letter of April 17, 2006, and it does not "memorialize" an agreement by me that I "would withdraw this assertion [of untimeliness of the response] and notify the Court on that date." (See Exhibit 8 of Newman's Declaration, Docket 32).
15. *I called Mr. Newman on or about April 18, 2006, and told him that although my phone bill showed several phone calls between us on February 17, I had no recollection of him asking for any extension of time to answer interrogatories on that date, nor any recollection of my granting an extension. I further told him that if he had asked me at that time, it would have been likely that I would have agreed to an extension, but that I had no recollection of such a request. I never said that I considered "the United States' responses timely and no objections waived."* (See Exhibit 9 of Newman's Declaration, Docket 32).
16. At no time have I ever considered the United States' answers to the interrogatories and requests for production of documents timely.
17. To date, the United States has not fully complied with SAPF's discovery requests. Although Mr. Newman mailed a letter on March 2, 2006, stating that he would disclose which witnesses and documents would be used at trial as soon as the information becomes

available, he has not listed any specific document or witness (other than Mr. Kotmair) to this date.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 26th day of June, 2006.

/s/George E. Harp
George E. Harp, Esq.
610 Marshall Street, Ste. 619
Shreveport, LA 71101
(318) 424-2003

IRS SERVICE CENTER
PHILADELPHIA, PA 19255

96-9044-28-016-59
DATE OF THIS NOTICE:
NOV 05, 1990

JOHN B KOTHAIR JR

PO BOX 91
WESTMINSTER MD 21157

REPRESENTATIVE NUMBER:
2605-47815R

YOU HAVE BEEN ASSIGNED A REPRESENTATIVE NUMBER.

WE HAVE A POWER OF ATTORNEY AUTHORIZING YOU TO ACT FOR A TAXPAYER. WE ARE RECORDING THIS AUTHORIZATION ON A COMPUTERIZED FILE. FOR IDENTIFICATION PURPOSES, WE HAVE ASSIGNED YOU THE NUMBER SHOWN ABOVE. IT IS YOUR PERMANENT REPRESENTATIVE IDENTIFICATION NUMBER. PLEASE REFER TO THIS NUMBER IN ANY COMMUNICATION WITH THE IRS ABOUT THE TAXPAYER'S ACCOUNT. IF YOU HAVE BEEN AUTHORIZED TO ACT FOR MORE THAN ONE TAXPAYER, USE THE SAME NUMBER IN COMMUNICATIONS REGARDING ANY OF THEIR ACCOUNTS. IN ADDITION, PLEASE INCLUDE THIS NUMBER WHEN SUBMITTING FUTURE POWER OF ATTORNEY AUTHORIZATIONS. ALSO INCLUDE THIS NUMBER WITH YOUR NAME AND ADDRESS ON ANY DOCUMENTS YOU FURNISH IRS AS A REPRESENTATIVE FOR THESE TAXPAYERS.

IF YOU MAINTAIN MORE THAN ONE OFFICE OR MAILING ADDRESS, YOU MUST SELECT ONE TO WHICH ALL OF YOUR POWER OF ATTORNEY RELATED CORRESPONDENCE CAN BE SENT. DO NOT SUBMIT A POWER OF ATTORNEY IN THE FUTURE WITH A DIFFERENT ADDRESS UNLESS YOU INTEND TO CHANGE YOUR ADDRESS PERMANENTLY.

IF YOU HAVE ANY QUESTIONS ABOUT THIS NUMBER OR ITS USE, PLEASE LET US KNOW. IF YOU HAVE BEEN ASSIGNED MORE THAN ONE REPRESENTATIVE IDENTIFICATION NUMBER, PLEASE RETURN COPIES OF THE NOTICES THAT ASSIGNED THE NUMBER SO WE CAN ASSIGN YOU A SINGLE NUMBER. WE WILL ASSIGN THE FIRST NUMBER OF THE TWO OR MORE THAT HAVE BEEN RECORDED FOR YOU. WE HAVE ENCLOSED AN ENVELOPE FOR YOUR CONVENIENCE.

THANK YOU FOR YOUR COOPERATION.



CP-547 (1-85)

Exhibit 4

Internal Revenue Service

Department of the Treasury

District
Director

Baltimore District

31 Hopkins Plaza, Baltimore, Md. 21201

▷ JUN 3 1994

Mr. John B. Kotmair, Jr.
P.O. Box 91
Westminster, Maryland 21158

Dear Mr. Kotmair:

This is to inform you of our final determination that you are ineligible to practice before the Internal Revenue Service Baltimore District Office or before any other office of the Internal Revenue Service. We provided to you notice of our proposed determination of your ineligibility to practice by letter dated May 11, 1993.

Under 26 CFR 601.502 and Treasury Department Circular No. 230, Section 10.3, the following categories of individuals are eligible to practice before the Internal Revenue Service: attorneys, certified public accountants, enrolled agents, enrolled actuaries, and other individuals described in Section 10.7 (including unenrolled return preparers or individuals with whom a special relationship with a taxpayer exists) and Subsection 10.5(c) (individuals who have applied for and received temporary recognition from the Director of Practice).

You have not shown you are an attorney, certified public accountant, enrolled agent, or enrolled actuary. Nor have you provided evidence you are eligible for limited practice as an unenrolled preparer or as one who has a special relationship with a taxpayer. Further, there is no indication you have applied for and received temporary recognition from the Director of Practice.

You have recently asserted that you qualify to represent taxpayers under Subsection 10.7(a)(2) of Circular 230, which states that, "Corporations (including parents, subsidiaries or affiliated corporations), trusts, estates, associations or organized groups may be represented by bona fide officers or regular full-time employees." However, the taxpayers you attempted to represent were not corporations, trusts, estates, associations, or organized groups of which you were a bona fide officer or a regular full-time employee. They, in fact, were individuals for whom representation would be subject to Subsection 10.7(a)(1) of Circular 230. This provision states, "An individual may represent another individual who is his regular full-time employer, may represent a partnership of which he is a member or a regular full-time employee, or may represent without compensation a member of his immediate family." You did not provide

-2-

Mr. John B. Kotmair, Jr.

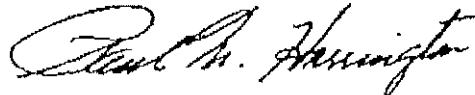
evidence that you met this requirement for any individual for whom you attempted to provide representation.

Finally, you indicated you were assigned a CAF (Centralized Authorization File) number by the Philadelphia Service Center. You stated this supported your contention that you are authorized to represent taxpayers before the Service. Although the CAF number is an identification number for representatives, it is not in itself an indication of authority to practice.

Accordingly, as we advised you in our notice of May 11, 1993, you are ineligible to practice before the Internal Revenue Service since you have not established you are within any of the categories of individuals authorized to practice.

If you have any questions concerning this letter, you may direct your inquiries to Mr. Pat McDonough, Supervisory Attorney, Office of Director of Practice, at (202) 376-1428.

Sincerely yours,



Paul M. Harrington
District Director

cc: All Regional Commissioners
All Chief Compliance Officers
All Service Center Directors
All Compliance Center Directors
All Computing Center Directors
Headquarters Office of Disclosure
MAR Regional Disclosure Officer

June 15, 1994

Certified Mail No.: P 329 427 203

Mr. Paul M. Harrington, District Director
Internal Revenue Service
31 Hopkins Plaza
Baltimore, Maryland 21201

Dear Mr. Harrington:

Your letter of June 3, 1994, has been received. For the record, I take exception to your determination that I do not meet the qualifications to represent the members of the organization known as Save-A-Patriot Fellowship. To support my position, I draw your attention to the following:

1. I have a common law right to represent anyone as an Attorney-in-Fact who gives me written authorization to do so;
2. Title 26 Code of Federal Regulations § 601.502(b)(5)(ii), cited in your June 3rd letter, states in pertinent part:

. . . an individual who is a bona fide officer or regular full-time employee of a corporation or **certain other organizations** may represent that **entity**.
(emphasis added).

The term "entity" is defined in Black's Law Dictionary in pertinent part as:

Entity. A real being; existence. . . Entity includes **person**, estate, trust, governmental unit. (emphasis added).

The term "person" is defined in the same reference in pertinent part as:

Person. In general usage, a human being (i.e. natural person)

3. Treasury Department Circular No. 230 at § 10.7(a)(2), cited in your June 3rd Letter, states in pertinent part:

§10.7 Limited practice; special appearances; return preparation and furnishing information.

(a) In general. Individuals may appear on their own behalf and may otherwise appear without enrollment, provided they present satisfactory identification, in the following classes of cases:

(1) An individual may represent another individual who is his regular full-time employer, may represent a partnership of which he is a member or a regular full-time employee, or **may represent without compensation a member of his family.**

(2) Corporations (including parents, subsidiaries or affiliated corporations) trusts, estates, **associations, or organized groups may be represented by bona fide officers or regular full time employees.** (emphasis added).

4. After citing the above regulations, you continue:

You did not provide evidence that you met this requirement for any individual for whom you attempted to provide representation.

Nothing could be further from the truth. Every Power-of-Attorney form submitted to the Internal Revenue Service was given to me by a member of the Save-A-Patriot Fellowship, an **organization** of which I am an **officer of**. Wherefore, the provisions of the regulations above, cited by you, and also cited within the Power-of-Attorney forms, were and are being fully complied with.

5. Your final contention is somewhat confusing wherein you state:

Finally, you indicated you were assigned a CAF (Centralized Authorization File) number by the Philadelphia Service Center. You stated this supported your contention that you are authorized to represent taxpayers before the Service. Although the CAF number is an identification number for representatives, it is not in itself an indication of authority to practice.

Mr. Harrington, if the "Representative Number" identifies "representatives," as you say *supra*, wouldn't that tend to recognize someone as such? Coupling this with the fact that I am an officer of an organization, and thus, as such, authorized to represent the members that are the organization, realistically, would this not tend to support my position?

IN CONCLUSION:

If you persist in the stance stated within your June 3rd letter, I demand my appeal rights so that I may exhaust all of my administrative remedies. You stated if I have any questions to contact Mr. Pat McDonough, Supervisory Attorney, Office of Director of Practice, but you did not give me his address. If Mr. McDonough is the person to whom I am to appeal your "determination," would you please forward his address, and the rules that I am to follow.

Please be advised, because I obviously have common law to represent anyone, and regulatory right to represent members of Save-A-Patriot Fellowship and family members, I will continue to do so until I receive an order from a court of last appeal to the contrary.

If I do not hear from you within 30 days of your receipt of this letter advising me of my appeal rights, it will be presumed that you are no longer in opposition to my representation of the aforementioned individuals.

Semper Fidelis que Libertas, Veritas ad Justitia

John B. Kotmair, Jr.

Enclosure:

Copy of your letter dated June 3, 1994.

cc:

All Regional Commissioners
All Chief Compliance Officers
All Service Center Directors
All Compliance Center Directors
All Computing Center Directors
Headquarters Office of Disclosure
MAR Regional Disclosure Officer

PRIVACY ACT
REQUEST FOR NOTIFICATION AND ACCESS

Concerning:

John B. Kotmair, Jr.

Post Office Box 91

Westminster, Maryland 21158

IRS reference number: 216-32-9839 (Form SS-5 application revoked 12-02-85)

October 28, 1994

Certified Mail No: P 329 427 225

Ms. Cynthia J. Mills, Disclosure Officer

Internal Revenue Service Center

Post Office Box 245

Bensalem, Pennsylvania 19020

Dear Ms. Mills:

This is a request under the Privacy Act, 5 USC 552a.

This is my firm promise to pay costs up to \$17.00 for duplicating the documents requested below, as required 5 USC 552a(f)(5). If costs are expected to exceed the stated amount, please send me an estimate of costs. Please respond within 10 days pursuant to IR Manual 1272 Chapter (18)22(5), (18)41(3) and (18)43(3)(a).

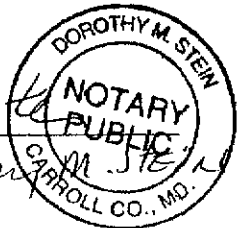
If you find this request imperfect in any way please provide me with a copy of all the rules necessary for me to perfect this request. In addition please advise me of any and all procedures required to exhaust all administrative remedies before requesting judicial review.

Please be advised that I am requesting records pursuant to 5 USC 552a(d)(1). I am not requesting any amendment of records. If this request is determined to come under the certain provisions of the Privacy Act that are exempt from disclosure, please give a detailed explanation why the following document(s) comes under the exempt provision.

Please forward a copy of all the documents relating to the issuance of the Representative Number 2605-47815R pertaining to John B. Kotmair, Jr.. I checked the Federal Register and could not find the system of records that would contain the document(s) requested, please advise. Thank you.

John B. Kotmair, Jr.
John B. Kotmair, Jr.

Subscribed and sworn to before me, a Notary Public, of the State of
Maryland, County of Carroll, this 28th day of
October, 1994, that the above named person did appear before
me and was identified to be the person executing this document.

Dorothy M. Stein
Notary Public DOROTHY M. STEIN


My Commission Expires On: October 4, 1997

Enclosure: Notice CP-547, dated November 5, 1990.

PRIVACY ACT
REQUEST FOR NOTIFICATION AND ACCESS

Concerning:

John B. Kotmair, Jr.

Post Office Box 91

Westminster, Maryland 21158

IRS reference number: 216-32-9839 (Form SS-5 application revoked 12-02-85)

October 28, 1994

Certified Mail No: P 329 427 226

Director of Practice

Internal Revenue Service

1200 Pennsylvania Avenue, Room 1413

Washington, D.C. 20224

Dear Director:

This is a request under the Privacy Act, 5 USC 552a.

This is my firm promise to pay costs up to \$17.00 for duplicating the documents requested below, as required 5 USC 552a(f)(5). If costs are expected to exceed the stated amount, please send me an estimate of costs. Please respond within 10 days pursuant to IR Manual 1272 Chapter (18)22(5), (18)41(3) and (18)43(3)(a).

If you find this request imperfect in any way please provide me with a copy of all the rules necessary for me to perfect this request. In addition please advise me of any and all procedures required to exhaust all administrative remedies before requesting judicial review.

Please be advised that I am requesting records pursuant to 5 USC 552a(d)(1). I am not requesting any amendment of records. If this request is determined to come under the certain provisions of the Privacy Act that are exempt from disclosure, please give a detailed explanation why the following document(s) comes under the exempt provision.

Please forward a copy of all the documents pertaining to John B. Kotmair, Jr. contained within the following system of records:

Treasury/IRS 37.002,

Files containing derogatory information about individuals whose applications for enrollment to practice before the IRS have been denied and Applicant Appeal Files;

Treasury/IRS 37.004,

Derogatory Information (No Action);

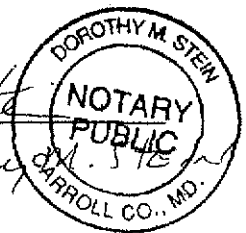
Treasury/IRS 37.005,

Present Suspensions and Disbarments Resulting From Administrative Proceeding;
Treasury/IRS 37.007,
Inventory.

John B. Kotmair, Jr.
John B. Kotmair, Jr.

Subscribed and sworn to before me, a Notary Public, of the State of
Maryland, County of Carroll, this 28th day of
October, 1994, that the above named person did appear before
me and was identified to be the person executing this document.

Dorothy M. Stein
Notary Public



My Commission Expires On: October 4, 1997

Enclosure: Notice CP-547, dated November 5, 1990.

Concerning:

John B. Kotmair, Jr.

Post Office Box 91

Westminster, Maryland 21158

IRS reference number: 216-32-9839 (Form SS-5 application revoked 12-02-85)

January 26, 1995

Certified Mail No. P 244 544 049

Re: Privacy Act request dated October 28, 1994.

Ms. Cynthia J. Mills, Disclosure Officer

Internal Revenue Service Center

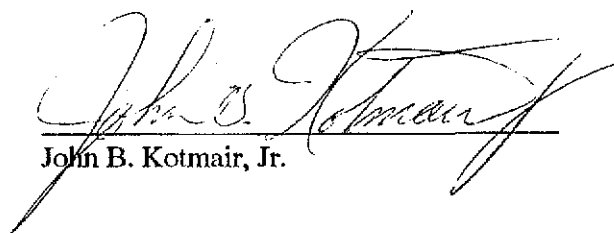
Post Office Box 245

Bensalem, Pennsylvania 19020

Dear Ms. Mills:

On October 27, 1994 I made a request for a copy of all the documents relating to the issuance of the Representative Number 2605-47815R pertaining to John B. Kotmair, Jr., contained within the following system of records. This is a request under the Privacy Act, 5 USC 552a, and was sent Certified Mail, receipt No. P 329 427 225. The U.S. Postal green return receipt card indicated that this request was received by your office on October 31, 1994, and as of this date I have not received any response. Does your non-response mean that this request has been denied?

Sincerely,



John B. Kotmair, Jr.

Enclosure:

Copy of the «ReqDate» request.

Copy retained to file.

Concerning:

John B. Kotmair, Jr.

Post Office Box 91

Westminster, Maryland 21158

IRS reference number: 216-32-9839 (Form SS-5 application revoked 12-02-85)

January 26, 1995

Certified Mail No. P 244 544 050

Re: Privacy Act request dated October 28, 1994.

Director of Practice
Internal Revenue Service
1200 Pennsylvania Avenue, Room 1413
Washington, D.C. 20224

Dear Director:

On October 28, 1994 I made a request for a copy of all the documents pertaining to John B. Kotmair, Jr. contained within the following system of records. This is a request under the Privacy Act, 5 USC 552a, and was sent Certified Mail, receipt No. P 329 427 226. The U.S. Postal green return receipt card indicated that this request was received by your office on October 31, 1994, and as of this date I have not received any response. Does your non-response mean that this request has been denied?

Sincerely,


John B. Kotmair, Jr.

Enclosure:

Copy of the «ReqDate» request.

Copy retained to file.

INTERNAL REVENUE SERVICE
District Director

Quality Measurement Staff

JFK Bldg., Stop 41175
P.O. Box 9112
Boston, MA 02203

Date: February 18, 1997

Re: Your Inquiry Dated
January 27, 1997

Jeffrey Kevin Schlaffer
c/o John B. Kotmair, Jr.
P.O. Box 91
Westminster, MD 21158

Dear Dr. Schlaffer:

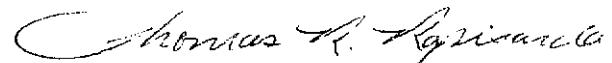
I have received correspondence dated January 27, 1997 from John B. Kotmair, regarding his attempt to represent you before the Internal Revenue Service. This is to reiterate our correspondence to you dated October 28, 1996, and to provide additional information we hope you will find of value.

Our position remains that Mr. Kotmair is not qualified to represent you. Mr. Kotmair's use of an IRS "Reference Number 2605-47815R" is not an indication of his qualification to practice before the service, because the number had been provided in error, and has been revoked. The Summons issue referenced in Mr. Kotmair's letter, is immaterial to this determination, because it pre-dated the revocation of the erroneously assigned number above.

Mr. Kotmair continues to assert that his relationship to you meets the requirements of Circular No. 230, Section 10.7(c)(iv). Our position remains that he might represent the association, but not the individual members thereof. We disagree that "association" is synonymous with "member" or that Mr. Kotmair has any right to represent you, personally, before the Service. The District Court Civil Action copied in the correspondence pertained to division of Mr. Kotmair's personal property, from that of the Fellowship. The ruling provides no basis to a claim that a "major figure in the Fellowship" might represent the individual members of the Fellowship before the IRS; no more than a regular full-time employee of a corporation, association or organized group might presume to represent any other employee of the corporation, association or organized group. The import of our position for your circumstance, is that we will proceed on the basis of information available to us until we hear from you or an authorized representative of your choice.

If you have any questions or problems with this information, please phone me at (617) 565-4305.

Sincerely,



Thomas R. Rapisarda
TA/Reviewer
Fax (617) 565-1899

JFK Federal Bldg., Boston, MA 02203

PRIVACY ACT
REQUEST FOR NOTIFICATION AND ACCESS

COPY

Concerning:
John B. Kotmair, Jr.
Post Office Box 91
Westminster, MD 21158

February 21, 1997

Certified Mail No. P 435 230 116

Perry Castellani, Disclosure Officer
Internal Revenue Service Center
P.O. Box 245
Bensalem, Pennsylvania 19020

Dear Mr. Castellani:

This is a request under the Privacy Act, 5 USC 552a.

This is my firm promise to pay costs up to \$17.00 for duplicating the documents requested below, as required 5 USC 552a(f)(5). If costs are expected to exceed the stated amount, please send me an estimate of costs. Please reply within 10 days of your receipt of this request and provide me with instructions on perfecting any errors, pursuant to IRM, Handbook No. 1272, (18)22(5). Otherwise, please process it in a timely manner pursuant to IRM, Handbook No. 1272, (18)22(4), not later than 30 days of your receipt, pursuant to IR Manual 1272, (18)22(15).

If you find this request imperfect in any way please provide me with a copy of all the rules necessary for me to perfect this request. In addition please advise me of any and all procedures required to exhaust all administrative remedies before requesting judicial review.

Please be advised that I am requesting records pursuant to 5 USC 552a(d)(1). I am not requesting any amendment of records.

Please forward copies of all documents relating to the alleged revocation of the Centralized Authorization File Number assigned to me: 2605-47815R. The revocation was referenced in a February 18, 1997, correspondence from Thomas R. Rapisarda, Tax Auditor/Reviewer in the Boston, Massachusetts, IRS District Office.

Please search the following systems of records for the document(s) requested:

Treasury/IRS 22.032,
Individual Microfilm Retention Register, D:R:R;
Treasury/IRS 22.034,

Individual Returns Files, Adjustments and Miscellaneous Documents File;
Treasury/IRS 22.060,
Unit Ledger Cards;
Treasury/IRS 24.013,
Combined Account Number File, Returns and Information Processing, D:R:R;
Treasury/IRS 24.029,
Individual Account Number File (IANF), Returns and Information Processing;
Treasury/IRS 26.016,
Returns Compliance Program (RCP), OP:C;
Treasury/IRS 26.020,
TDI (Taxpayer Delinquency Investigation Files);
Treasury/IRS 34.018,
Integrated Data Retrieval System (IDRS);
Treasury/IRS 36.001,
Appeals, Grievances, and Complaints Records;
Treasury/IRS 37.002,
Files containing derogatory information about individuals whose applications for
enrollment to practice before the IRS have been denied and Applicant Appeals Files;
Treasury/IRS 37.003,
Closed files containing derogatory information about individuals' practice before the
Internal Revenue Service and files of attorneys and Certified Public Accountants
formerly enrolled to practice;
Treasury/IRS 37.004,
Derogatory information (no action);
Treasury/IRS 37.005,
Present suspensions and disbarments resulting from Administrative Proceedings;
Treasury/IRS 37.006,
General correspondence file;
Treasury/IRS 37.011,
Present suspensions from practice before the Internal Revenue Service;
Treasury/IRS 42.001,
Examination Administrative File;
Treasury/IRS 42.008,
Audit Information Management System (AIMS);
Treasury/IRS 42.013,
Project files for the uniform application of laws as result of technical determinations and
court decisions;
Treasury/IRS 42.021,
Compliance Programs and Projects Files;
Treasury/IRS 46.004,
Controlled Accounts -- Open and Closed;
Treasury/IRS 90.004,
Chief Counsel general legal services case files
Treasury/IRS 90.007,
Chief Counsel Legislation and Regulations Division, Employee Plans and Exempt

Organizations Division, and Associate Chief Counsel (Technical and International) correspondence and private bill files;

Treasury/IRS 90.010,

Digest room files containing briefs, legal opinions, and digests of documents generated internally or by the Department of Justice relating to the administration of the Revenue Laws;

Treasury/IRS 90.013,

Legal case files of the Chief Counsel, Deputy Chief Counsels (Policy and Programs) and (Management and Operations), Associate Chief Counsels [(Litigation) and (Technical and International)];

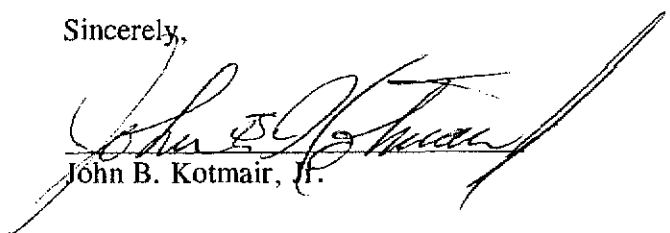
Treasury/IRS 90.017,

Correspondence control and records, Associate Chief Counsel (Technical and International);

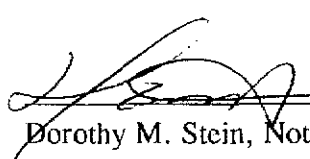
As you're probably aware, certain systems of records identified in this request have been generally deemed exempt from notification and access under 5 U.S.C. § 552a(k)(2). In order to expedite processing of the request in light of this fact, I am hereby notifying you pursuant to IRM, Handbook No. 1272, (18)21(1)(j), that I am being denied my rights to access which I would otherwise be entitled to under Federal law (5 USC § 552a(d)(1)) as a result of the maintenance of such material. In light of this notification, the only documents that survive my request are those specific documents that "...would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence..." Therefore, please promptly provide copies of all requested documents, redacting any portions that identify a government informant.

The foregoing is true to the best of my knowledge and belief.

Sincerely,


John B. Kotmair, Jr.

Subscribed and sworn to before me, a Notary Public, of the State of Maryland, County of Carroll, this 21st day of September, 1997, that the above named person did appear before me and was identified to be the person executing this document.


Dorothy M. Stein, Notary Public



My Commission Expires On October 4, 1997.

Enclosures: Copy of February 18, 1997, correspondence.

cc: Retained to file.

DEPARTMENT OF THE TREASURY

District Director

MR JOHN B. KOTMAIR
PO BOX 91
WESTMINSTER MD 21158

INTERNAL REVENUE SERVICE

11510 Georgia Ave. SUITE 209
Wheaton, MD 20902-1925

Person to Contact:

R.BUCHANAN

Telephone Number:

(202) 283-8152

Refer Reply to:

CFF:FBIII:3322

Date: April 17, 1997

Re:

Dear Mr. Kotmair

You have been previously advised by letter dated May 11th, 1993 that you are ineligible to practice before the Internal Revenue Service.

Under 26 CFR 601.502 and Treasury Department Circular No. 230, Section 10.3 the following categories of individuals are eligible to practice before the Internal Revenue Service: attorneys, certified public accountants, enrolled agents, enrolled actuaries, and other individuals described in Section 10.7 (including unenrolled return preparers or individuals with whom a special relationship with a taxpayer exists) and Subsection 10.5© (individuals who have applied for and received temporary recognition from the Director of Practice).

You have not shown you are a attorney, certified public accountant, enrolled agent, or enrolled actuary. Nor have you provided evidence you are eligible for limited practice as an unenrolled preparer or as one who has a special relationship with a taxpayer. Further, there is no indication you have applied for and received temporary recognition from the Director of Practice.

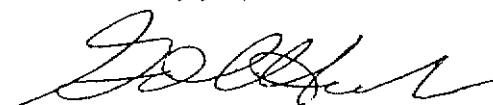
You have recently asserted that you qualify to represent taxpayers under Subsection 10.7(a)(2) of Circular 230, which states that, "Corporations (including parents, subsidiaries or affiliated corporations), trusts, estates, associations or organized groups may be represented by bona fide officers or regular full-time employees." However, the taxpayers you attempted to represent were not corporations, trusts, estates, associations or organized groups of which you were a bona fide officer or a regular full-time employee. They, in fact, were individuals for whom representation would be subject to Subsection 10.7(a)(1) of Circular 230. This provision states, "An individual may represent another individual who is his regular full-time employer, may represent a partnership of which he is a member or a regular full time employee, or may represent without compensation a member of his immediate family." You did not provide evidence that you met this requirement for any individual for whom you attempted to provide representation.

Finally, you indicated you were assigned a CAF (Centralized Authorization File) number by the Philadelphia Service Center. You stated this supported your contention that you are authorized to represent taxpayers before the Service. Although the CAF number is an identification number for representatives, it is not in itself an indication of authority to practice.

Accordingly, as we advised you in our notice of May 11th, 1993, you are ineligible to practice before the Internal Revenue Service since you have not established you are within any of the categories of individuals authorized to practice.

If you have questions concerning this letter, you may direct your inquiries to Mr. Pat McDonough, Supervisory Attorney, Office of Director of Practice, at (202) 376-1428.

Sincerely yours,



Gordon R. Handler

A U.S. district court has ruled that the IRS must return property it seized from an unincorporated tax protester group during a criminal investigation of its founder, concluding that the group was an "organization" that could own property under state law.

John Kotmair founded and served as the major figure in the Save-A-Patriot Fellowship, a tax protester group. The fellowship leases its offices, has members, publishes a newspaper, and has produced a video tape. The fellowship, however, has no written governing structure or financial records. All of the fellowship's assets are located at its leased offices, except for money, money orders, and other valuables.

On December 10, 1993, the IRS executed search warrants at the fellowship's office and Kotmair's personal residence in connection with its investigation of Kotmair. The Service seized \$44,000 of cash and some numismatic coins from Kotmair's residence. From the office, it seized equipment, documents, a small amount of cash, and some Susan B. Anthony dollars; the IRS later returned the equipment and documents.

On December 22, the IRS collection division served a levy notice on the IRS criminal division to apply the \$44,000 to Kotmair's outstanding tax liabilities. In September 1994, the collection division levied on the remaining property seized.

In March 1995, the fellowship filed a wrongful levy suit to recover the levied property. Because the fellowship's claim to the cash was not filed within nine months of the December 22, 1993 levy, that portion was dismissed. As to the recovery of the remaining property, the IRS contended that the fellowship was not an organization but simply Kotmair's sole proprietorship. Even if it were an organization, argued the IRS, it could not own property as an unincorporated organization under state (Maryland) law.

District Judge Marvin J. Garbis concluded that the fellowship was an organization because it leased its offices, had members, and was engaged in activities; the absence of a written instrument of governance was not determinative. In fact, noted Judge Garbis, many unincorporated associations, such as parent-teacher associations, function without having formalized their existence. The court also found that the fellowship is allowed by Maryland law to own property.

The court stated, however, that the fellowship's failure to maintain financial records had a "price," including the inconvenience that the fellowship would face in a legal proceeding, like the instant one, in which it has the burden of proof. The court concluded that the fellowship proved that the property seized from its offices was its property and, thus, was immune from levy. As to the property found in Kotmair's residence that was available for his personal use, the court ruled that the fellowship had not proven that the property belonged to it; thus, that property was not immune from levy.



Save-A-Patriot Fellowship

Post Office Box 91, Westminster, Maryland 21158 Tel. (410) 857-4441 FAX (410) 857-5249

Together We Must Stand -- Or -- Separately You Will Be Stood On!!!

April 29, 1997

Certified Mail Receipt No.: P 172 100 217

Mr. Gordon R. Handler
Internal Revenue Service
11510 Georgia Avenue
Wheaton, Maryland 20902-1925

Dear Mr. Handler:

Thank you for your letter, dated April 17, 1997, concerning my eligibility to practice before the Internal Revenue Service.

The fourth paragraph of your letter states:

You have recently asserted that you qualify to represent taxpayers under Subsection 10.7(a)(2) of Circular 230, which states that, "Corporations (including parents, subsidiaries or affiliated corporations), trusts, estates, associations or organized groups may be represented by bona fide officers or regular full-time employees." However, the taxpayers you attempted to represent were not corporations, trusts, estates, associations or organized groups of which you were a bona fide officer or a regular full-time employee. They, in fact, were individuals for whom representation would be subject to Subsection 10.7(a)(1) of Circular 230. This provision states, "An individual may represent another individual who is his regular full-time employer, may represent a partnership of which he is a member or a regular full time employee, or may represent without compensation a member of his immediate family." You did not provide evidence that you met this requirement for any individual for whom you attempted to provide representation.

Mr. Handler, there are some glaring errors in the above statement. First, the Individuals that gave me power-of-attorney to represent them have not by any law been determined to be "taxpayers." Secondly, I have on many occasions for sometime, to numerous Internal Revenue Service offices, stated that I am authorized under Subsection 10.7(a)(2) of Circular 230, to wit: ". . .organized groups may be represented by bona fide officers or regular full-time employees." The argument that the Internal Revenue Service continually countered with was tried in the United States District Court for the District of Maryland, and that argument did not prevail. Evidently, you were not informed.

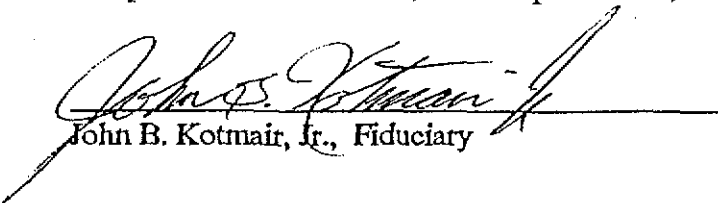
As you are well aware, on December 10, 1993, the Internal Revenue Service raided the offices of the Save-A-Patriot Fellowship located at 12 Carroll Street in Westminster, Maryland. Their affidavit of probable cause stated, among other things, that the Fellowship was my personal business. Later the government retreated from that position,¹ but contended to the Court that the Fellowship could not exist as an *unincorporated association*. On December 18, 1996, (three years and 221 days after the notice referred to in your letter), the Court informed the government that their contention was totally wrong, Save-A-Patriot Fellowship had every right to exist without government regulation. Thus verifying that the First Amendment to the United States Constitution was still being recognized by the Court.

Apparently the Order of the Court was circulated throughout the Internal Revenue Service, as our members started receiving copies from IRS offices in various States of the union. Evidently, from your statement that I was not “. . . bona fide officers or regular full-time employee” of an *organized group*, you had not been afforded a copy of this Order. Wherefore, I am enclosing a copy for your convenience.

Just in case you are not getting a clear picture of what I'm saying, unlike a corporation or other regulated association, in a Fellowship the members, jointly and individually, are the *organized group*. If you will read the power-of-attorney that was given to me very carefully you will see that everyone giving me power-of-attorney is a member of the Fellowship.

You did not mention the name of individual whose power-of-attorney you were addressing. I would appreciate it very much if you would identify that individual to me. Also, if that individual was erroneously informed that he/she could not give me power-of-attorney, would you please correct that. Thank you.

Semper Fidelis ad Libertas, Veritas que Justitia,


John B. Kotmair, Jr., Fiduciary

Enclosures:

Copy of your letter dated April 17, 1997; and IRS cover notice and Court Order being circulated through the Internal Revenue Service.

cc:

Mr. Paul M. Harrington
District Director
Internal Revenue Service
31 Hopkins Plaza
Baltimore, MD 21201

Mr. Pat McDonough, Supervisory Attorney
Office of Director of Practice
Internal Revenue Service
1111 Constitution Ave.
Washington, D.C. 20224

¹ On September 8, 1994, the IRS returned all the property taken in the raid, except for the Federal Reserve Notes and coins.

Concerning:
John B. Kotmair, Jr.
Post Office Box 91
Westminster, Maryland 21158

May 8, 1997

Certified Mail Receipt No.: P 148 403 241

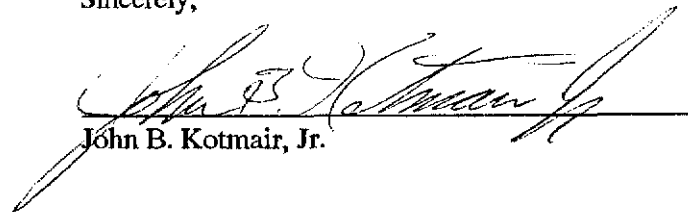
Mr. Perry Castellani, Disclosure Officer
Internal Revenue Service Center
Post Office Box 245
Bensalem, Pennsylvania 19020

Dear Mr. Castellani:

On February 21, 1997, I made a Privacy Act Request for all documents relating to the alleged revocation of the Centralized Authorization File Number assigned to me : 2605-47815R, which was referenced in a correspondence, dated February 18, 1997, authored by one Thomas R. Rapisarda, Tax Auditor/Reviewer in the Boston, Massachusetts, IRS District Office. As of this date I have not received any response from you. Does your none response mean that my request has been denied?

Please respond within 10 days pursuant to IR Manual 1272 Chapter (18)22(5), (18)41(3) and (18)43(3)(a).

Sincerely,



John B. Kotmair, Jr.

Enclosure:

Copy of the Privacy Act Request, dated February 21, 1997.

Internal Revenue Service

Department of the Treasury

Internal Revenue Service Center
Northeast Region
Philadelphia, Pa.

P.O. Box 245, Bensalem, Pa 19020

John B. Kotmair Jr.
P.O. Box 91
Westminster, MD 21158

Person to Contact: R. Epstein

Telephone Number: (215) 516-2536

Refer Reply to: D97-414

Date:

16 JUN 1997

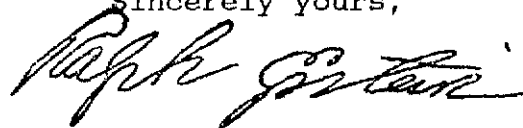
Dear Mr. Kotmair:


This is in response to your inquiry dated May 08, 1997.

We are unable to comply with your request for information. The document related to Centralized Authorization File Number (CAF) 2605-4781R has been destroyed in accordance with our Records Disposition Schedule. The fact that you were issued a CAF number does not authorize you to represent individuals before the Service. You must still meet the requirements of Code of Federal Regulations Section 601.501.

This concludes our response to your request. If we can be of further service contact the Disclosure Office at the above number.

Sincerely yours,



 Perry Castellani
Disclosure Officer

Treasury
Department
Circular No. 230
(Rev. 6-2005)

**Regulations Governing the
Practice of Attorneys,
Certified Public Accountants,
Enrolled Agents,
Enrolled Actuaries, and
Appraisers before the
Internal Revenue Service**

Department
of the
Treasury
**Internal
Revenue
Service**

**Title 31 Code of Federal Regulations,
Subtitle A, Part 10, revised as of
June 20, 2005**

**PART 10 -- PRACTICE BEFORE
THE INTERNAL REVENUE
SERVICE**

Sec.

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Paragraph 1. The authority citation for subtitle A, part 10 is revised to read as follows:

Authority: Sec.3, 23 Stat. 258, secs. 2-12, 60 Stat. 237 et seq.; 5 U.S.C. 301, 500, 551-559; 31 U.S.C. 330; Reorg. Plan No. 26 of 1950, 15 FR 4935, 64 Stat. 1280, 3 CFR, 1949-1953 Comp., p. 1017.

§ 10.0 Scope of part.

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing taxpayers before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal

Revenue Service; Subpart B of this part prescribes the duties and restrictions relating to such practice; Subpart C of this part prescribes the sanctions for violating the regulations; Subpart D of this part contains the rules applicable to disciplinary proceedings; and Subpart E of this part contains general provisions including provisions relating to the availability of official records.

Subpart A -- Rules Governing Authority to Practice

§ 10.1 Director of Practice.

(a) *Establishment of office.* The Office of Director of Practice is established in the Office of the Secretary of the Treasury. The Director of Practice is appointed by the Secretary of the Treasury, or his or her designate.

(b) *Duties.* The Director of Practice acts on applications for enrollment to practice before the Internal Revenue Service; makes inquiries with respect to matters under his or her jurisdiction; institutes and provides for the conduct of disciplinary proceedings relating to attorneys, certified public accountants, enrolled agents, enrolled actuaries and appraisers; and performs other duties as are necessary or appropriate to carry out his or her functions under this part or as are prescribed by the Secretary of the Treasury, or his or her delegate.

(c) *Acting Director of Practice.* The Secretary of the Treasury, or his or her delegate, will designate an officer or employee of the Treasury Department to act as Director of Practice in the absence of the Director or a vacancy in that office.

§ 10.2 Definitions.

the suspected violation to the Director of Practice.

(c) Destruction of report. No report made under paragraph (a) or (b) of this section shall be maintained by the Director of Practice unless retention of such record is permissible under the applicable records control schedule as approved by the National Archives and Records Administration and designated in the Internal Revenue Manual. The Director of Practice must destroy such reports as soon as permissible under the applicable records control schedule.

(d) Effect on proceedings under subpart D. The destruction of any report will not bar any proceeding under subpart D of this part, but precludes the Director of Practice's use of a copy of such report in a proceeding under subpart D of this part.

Subpart D -- Rules Applicable to Disciplinary Proceedings

§10.60 Institution of proceeding.

(a) Whenever the Director of Practice determines that a practitioner violated any provision of the laws or regulations in this part, the Director of Practice may reprimand the practitioner or, in accordance with §10.62, institute a proceeding for censure, suspension, or disbarment of the practitioner. A proceeding for censure, suspension, or disbarment of a practitioner is instituted by the filing of a complaint, the contents of which are more fully described in §10.62.

(b) Whenever the Director of Practice is advised or becomes aware that a penalty has been assessed against an appraiser under section 6701(a) of the Internal Revenue Code, the Director of

Practice may reprimand the appraiser or, in accordance with §10.62, institute a proceeding for disqualification of the appraiser. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in §10.62.

(c) Except as provided in §10.82, a proceeding will not be instituted under this section unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments (including an explanation or description of mitigating circumstances).

§10.61 Conferences.

(a) In general. The Director of Practice may confer with a practitioner or an appraiser concerning allegations of misconduct irrespective of whether a proceeding for censure, suspension, disbarment, or disqualification has been instituted against the practitioner or appraiser. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) Resignation or voluntary censure, suspension or disbarment. In lieu of a proceeding being instituted or continued under paragraph (a) of §10.60, a practitioner may offer his or her consent to the issuance of a censure, suspension or disbarment, or, if the practitioner is an enrolled agent, may offer to resign. The Director of Practice may, in his or her discretion, accept or decline the offered

censure, suspension, disbarment, or offer of resignation by an enrolled agent, in accordance with the consent offered. In any declination, the Director of Practice may state that he or she would accept an offer of censure, suspension, or disbarment, or, if the practitioner is an enrolled agent, offer of resignation, containing different terms; the Director of Practice may, in his or her discretion, accept or reject a revised offer of censure, suspension, disbarment, or offer of resignation by an enrolled agent, submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

(c) Voluntary disqualification. In lieu of a proceeding being instituted or continued under paragraph (b) of §10.60, an appraiser may offer his or her consent to disqualification. The Director of Practice may, in his or her discretion, accept or decline the offered disqualification, in accordance with the consent offered. In any declination, the Director of Practice may state that he or she would accept an offer of disqualification containing different terms; the Director of Practice may, in his or her discretion, accept or reject a revised offer of censure, suspension or disbarment submitted in response to the declination or may counteroffer and act upon any accepted counteroffer.

§10.62 Contents of complaint.

(a) Charges. A complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by the Director of Practice or a person representing the Director of Practice under §10.69(a)(1). A complaint is sufficient if it fairly informs the

respondent of the charges brought so that he or she is able to prepare a defense. In the case of a complaint filed against an appraiser, the complaint is sufficient if it refers to a penalty imposed previously on the respondent under section 6701(a) of the Internal Revenue Code.

(b) Specification of sanction. The complaint must specify the sanction sought by the Director of Practice against the practitioner or appraiser. If the sanction sought is a suspension, the duration of the suspension sought must be specified.

(c) Demand for answer. The Director of Practice must, in the complaint or in a separate paper attached to the complaint, notify the respondent of the time for answering the complaint, the time for which may not be less than 15 days from the date of service of the complaint, the name and address of the Administrative Law Judge with whom the answer must be filed, the name and address of the person representing the Director of Practice to whom a copy of the answer must be served, and that a decision by default may be rendered against the respondent in the event an answer is not filed as required.

§10.63 Service of complaint; service and filing of other papers.

(a) Service of complaint.

(1) In general. The complaint or a copy of the complaint must be served on the respondent by any manner described in paragraphs (a) (2) or (3) of this section.

(2) Service by certified or first class mail. (i) Service of the complaint may be made on the respondent by mailing the complaint by certified mail to the last known address (as determined under section 6212 of the Internal Revenue

Code and the regulations thereunder) of the respondent. Where service is by certified mail, the returned post office receipt duly signed by the respondent will be proof of service.

(ii) If the certified mail is not claimed or accepted by the respondent, or is returned undelivered, service may be made on the respondent, by mailing the complaint to the respondent by first class mail. Service by this method will be considered complete upon mailing, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(3) Service by other than certified or first class mail. (i) Service of the complaint may be made on the respondent by delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations there under) of the respondent. Service by this method will be considered complete, provided the complaint is addressed to the respondent at the respondent's last known address as determined under section 6212 of the Internal Revenue Code and the regulations thereunder.

(ii) Service of the complaint may be made in person on, or by leaving the complaint at the office or place of business of, the respondent. Service by this method will be considered complete and proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service,

including the recipient, relationship of recipient to respondent, place, date and time of service.

(iii) Service may be made by any other means agreed to by the respondent. Proof of service will be a written statement, sworn or affirmed by the person who served the complaint, identifying the manner of service, including the recipient, relationship of recipient to respondent, place, date and time of service.

(4) For purposes of this paragraph

(a) "respondent" means the practitioner or appraiser named in the complaint or any other person having the authority to accept mail on behalf of the practitioner or appraiser.

(b) Service of papers other than complaint. Any paper other than the complaint may be served on the respondent, or his or her authorized representative under §10.69(a)(2) by:

(1) mailing the paper by first class mail to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative,

(2) delivery by a private delivery service designated pursuant to section 7502(f) of the Internal Revenue Code to the last known address (as determined under section 6212 of the Internal Revenue Code and the regulations thereunder) of the respondent or the respondent's authorized representative, or

(3) as provided in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section.

(c) Service of papers on the Director of Practice. Whenever a paper is required or permitted to be served on the Director of Practice in connection with a proceeding under this part, the paper will

be served on the Director of Practice's authorized representative under §10.69(a)(1) at the address designated in the complaint, or at an address provided in a notice of appearance. If no address is designated in the complaint or provided in a notice of appearance, service will be made on the Director of Practice, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

(d) Filing of papers. Whenever the filing of a paper is required or permitted in connection with a proceeding under this part, the original paper, plus one additional copy, must be filed with the Administrative Law Judge at the address specified in the complaint or at an address otherwise specified by the Administrative Law Judge. All papers filed in connection with a proceeding under this part must be served on the other party, unless the Administrative Law Judge directs otherwise. A certificate evidencing such must be attached to the original paper filed with the Administrative Law Judge.

§10.64 Answer; default.

(a) Filing. The respondent's answer must be filed with the Administrative Law Judge, and served on the Director of Practice, within the time specified in the complaint unless, on request or application of the respondent, the time is extended by the Administrative Law Judge.

(b) Contents. The answer must be written and contain a statement of facts that constitute the respondent's grounds of defense. General denials are not permitted. The respondent must specifically admit or deny each allegation set forth in the complaint,

except that the respondent may state that the respondent is without sufficient information to admit or deny a specific allegation. The respondent, nevertheless, may not deny a material allegation in the complaint that the respondent knows to be true, or state that the respondent is without sufficient information to form a belief, when the respondent possesses the required information. The respondent also must state affirmatively any special matters of defense on which he or she relies.

(c) Failure to deny or answer allegations in the complaint. Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing.

(d) Default. Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under §10.76.

(e) Signature. The answer must be signed by the respondent or the respondent's authorized representative under §10.69(a)(2) and must include a statement directly above the signature acknowledging that the statements made in the answer are true and correct and that knowing and willful false statements may be punishable under 18 U.S.C. 1001.

§10.65 Supplemental charges.

If it appears that the respondent, in his or her answer, falsely and in bad faith, denies a material allegation of fact in the complaint or states that the respondent has insufficient knowledge to form a belief, when the respondent in fact possesses such information, or if it appears that the respondent has knowingly introduced false testimony during proceedings for his or her censure, suspension, disbarment, or disqualification, the Director of Practice may file supplemental charges against the respondent. The supplemental charges may be heard with other charges in the case, provided the respondent is given due notice of the charges and is afforded an opportunity to prepare a defense to such charges.

§10.66 Reply to answer.

The Director of Practice may file a reply to the respondent's answer, but unless otherwise ordered by the Administrative Law Judge, no reply to the respondent's answer is required. If a reply is not filed, new matter in the answer is deemed denied.

§10.67 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in pleadings and the evidence adduced in support of the pleadings, the Administrative Law Judge, at any time before decision, may order or authorize amendment of the pleadings to conform to the evidence. The party who would otherwise be prejudiced by the amendment must be given a reasonable opportunity to address the allegations of the pleadings as amended and the Administrative Law Judge must make findings on any issue presented by the

pleadings as amended.

§10.68 Motions and requests.

(a) *Motions.* At any time after the filing of the complaint, any party may file a motion with the Administrative Law Judge. Unless otherwise ordered by the Administrative Law Judge, motions must be in writing and must be served on the opposing party as provided in §10.63(b). A motion must concisely specify its grounds and the relief sought, and, if appropriate, must contain a memorandum of facts and law in support. Before moving, a party must make a good faith effort to resolve with the other party any dispute that gives rise to, or is a concern of, the motion. The movant must certify such an attempt was made and state, if it is known, whether the opposing party opposes the motion.

(b) *Response.* Unless otherwise ordered by the Administrative Law Judge, the nonmoving party is not required to file a response to a motion. If the Administrative Law Judge does not order the nonmoving party to file a response, the nonmoving party is deemed to oppose the motion.

(c) *Oral motions and arguments.* The Administrative Law Judge may, for good cause and with notice to the parties, permit oral motions and oral opposition to motions. The Administrative Law Judge may, within his or her discretion, permit oral argument on any motion.

§10.69 Representation; ex parte communication.

(a) *Representation.*

(1) The Director of Practice may be represented in proceedings under this part by an attorney or other employee of the Internal Revenue Service. An

attorney or an employee of the Internal Revenue Service representing the Director of Practice in a proceeding under this part may sign the complaint or any document required to be filed in the proceeding on behalf of the Director of Practice.

(2) A respondent may appear in person, be represented by a practitioner, or be represented by an attorney who has not filed a declaration with the Internal Revenue Service pursuant to §10.3. A practitioner or an attorney representing a respondent or proposed respondent may sign the answer or any document required to be filed in the proceeding on behalf of the respondent.

(b) Ex parte communication.

The Director of Practice, the respondent, and any representatives of either party, may not attempt to initiate or participate in ex parte discussions concerning a proceeding or potential proceeding with the Administrative Law Judge (or any person who is likely to advise the Administrative Law Judge on a ruling or decision) in the proceeding before or during the pendency of the proceeding. Any memorandum, letter or other communication concerning the merits of the proceeding, addressed to the Administrative Law Judge, by or on behalf of any party shall be regarded as an argument in the proceeding and shall be served on the other party.

§10.70 Administrative Law Judge.

(a) Appointment. Proceedings on complaints for the censure, suspension or disbarment of a practitioner or the disqualification of an appraiser will be conducted by an Administrative Law Judge appointed as provided by 5 U.S.C. 3105.

(b) Powers of the Administrative Law Judge. The Administrative Law Judge, among other powers, has the authority, in connection with any proceeding under §10.60 assigned or referred to him or her, to do the following:

- (1) Administer oaths and affirmations;
- (2) Make rulings on motions and requests, which rulings may not be appealed prior to the close of a hearing except in extraordinary circumstances and at the discretion of the Administrative Law Judge;
- (3) Determine the time and place of hearing and regulate its course and conduct;
- (4) Adopt rules of procedure and modify the same from time to time as needed for the orderly disposition of proceedings;
- (5) Rule on offers of proof, receive relevant evidence, and examine witnesses;
- (6) Take or authorize the taking of depositions;
- (7) Receive and consider oral or written argument on facts or law;
- (8) Hold or provide for the holding of conferences for the settlement or simplification of the issues with the consent of the parties;
- (9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and
- (10) Make decisions.

§10.71 Hearings.

(a) In general. An Administrative Law Judge will preside at the hearing on a complaint filed under paragraph (c) of §10.60 for the censure, suspension, or disbarment of a practitioner or disqualification of an appraiser. Hearings will be stenographically

recorded and transcribed and the testimony of witnesses will be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556. A hearing in a proceeding requested under paragraph (g) of §10.82 will be conducted de novo. An evidentiary hearing must be held in all proceedings prior to the issuance of a decision by the Administrative Law Judge unless: the Director of Practice withdraws the complaint; the practitioner consents to a sanction pursuant to §10.61(b); a decision is issued by default pursuant to §10.64(d), a decision is issued under §10.82(e); the respondent requests a decision on the record without a hearing; or the Administrative Law Judge issues a decision on a motion that disposes of the case prior to the hearing.

(b) Publicity of Proceedings. A request by a practitioner or appraiser that a hearing in a disciplinary proceeding concerning him or her be public, and that the record of such disciplinary proceeding be made available for inspection by interested persons may be granted by the Administrative Law Judge where the parties stipulate in advance to protect from disclosure confidential tax information in accordance with all applicable statutes and regulations.

(c) Location. The location of the hearing will be determined by the agreement of the parties with the approval of the Administrative Law Judge, but, in the absence of such agreement and approval, the hearing will be held in Washington, D.C.

(d) Failure to appear. If either party to the proceeding fails to appear at the hearing, after notice of the proceeding has been sent to him or her, the party will be deemed to have waived the right to a hearing and the Administrative Law

Judge may make his or her decision against the absent party by default.

§10.72 Evidence.

(a) In general. The rules of evidence prevailing in courts of law and equity are not controlling in hearings or proceedings conducted under this part. The Administrative Law Judge may, however, exclude evidence that is irrelevant, immaterial, or unduly repetitious,

(b) Depositions. The deposition of any witness taken pursuant to §10.73 may be admitted into evidence in any proceeding instituted under §10.60.

(c) Proof of documents. Official documents, records, and papers of the Internal Revenue Service and the Office of Director of Practice are admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Internal Revenue Service or the Treasury Department, as the case may be.

(d) Withdrawal of exhibits. If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions that he or she deems proper.

(e) Objections. Objections to evidence are to be made in short form, stating the grounds for the objection. Except as ordered by the Administrative Law Judge, argument on objections will not be recorded or transcribed. Rulings on objections are to be a part of the record, but no exception to a ruling is necessary to preserve the rights of the parties.

§10.73 Depositions.

(a) Depositions for use at a hearing may be taken, with the written approval of the Administrative Law Judge, by either the Director of Practice or the respondent or their duly authorized representatives. Depositions may be taken before any officer duly authorized to administer an oath for general purposes or before an officer or employee of the Internal Revenue Service who is authorized to administer an oath in internal revenue matters.

(b) The party taking the deposition must provide the deponent and the other party with 10 days written notice of the deposition, unless the deponent and the parties agree otherwise. The notice must specify the name of the deponent, the time and place where the deposition is to be taken, and whether the deposition will be taken by oral or written interrogatories. When a deposition is taken by written interrogatories, any cross-examination also will be by written interrogatories. Copies of the written interrogatories must be served on the other party with the notice of deposition, and copies of any written cross-interrogation must be mailed or delivered to the opposing party at least 5 days before the date that the deposition will be taken, unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken must file the responses to the written interrogatories or a transcript of the oral deposition with the Administrative Law Judge and serve copies on the opposing party and the deponent. Expenses in the reporting of depositions will be borne by the party that requested the deposition.

§10.74 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Internal Revenue Service, a copy will be supplied to the respondent either without charge or upon the payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Public Law 82-137)(65 Stat. 290)(31 U.S.C. 483a).

§10.75 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the parties must be afforded a reasonable opportunity to submit proposed findings and conclusions and their supporting reasons to the Administrative Law Judge.

§10.76 Decision of Administrative Law Judge.

(a) As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge will enter a decision in the case. The decision must include a statement of findings and conclusions, as well as the reasons or basis for making such findings and conclusions, and an order of censure, suspension, disbarment,

disqualification, or dismissal of the complaint. If the sanction is censure or a suspension of less than six month duration, the Administrative Law Judge, in rendering findings and conclusions, will consider an allegation of fact to be proven if it is established by the party who is alleging the fact by a preponderance of evidence in the record. In the event that the sanction is disbarment or a suspension of a duration of six months or longer, an allegation of fact that is necessary for a finding against the practitioner must be proven by clear and convincing evidence in the record. An allegation of fact that is necessary for a finding of disqualification against an appraiser must be proven by clear and convincing evidence in the record. The Administrative Law Judge will provide the decision to the Director of Practice and a copy of the decision to the respondent or the respondent's authorized representative.

(b) In the absence of an appeal to the Secretary of the Treasury or his or her designee, or review of the decision on motion of the Secretary or his or her designee, the decision of the Administrative Law Judge will, without further proceedings, become the decision of the agency 30 days after the date of the Administrative Law Judge's decision.

§10.77 Appeal of decision of Administrative Law Judge.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Secretary of the Treasury, or his or her delegate. The respondent must file his or her appeal with the Director of Practice in duplicate and a notice of appeal must include exceptions to the decision of the

Administrative Law Judge and supporting reasons for such exceptions. If the Director of Practice files an appeal, he or she must provide a copy to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director of Practice. If the reply brief is filed by the Director of Practice, he or she must provide a copy of it to the respondent. The Director of Practice must provide the entire record to the Secretary of the Treasury, or his or her delegate, after the appeal and any reply brief has been filed.

§10.78 Decision on appeal.

On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or his or her delegate, will make the agency decision. The Secretary of the Treasury, or his or delegate, will provide a copy of the agency decision to the Director of Practice and the respondent or the respondent's authorized representative. The decision of the Administrative Law Judge will not be reversed unless the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary of the Treasury, or his or her delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence. A copy of the agency decision or that of his or her delegate will be provided to the Director of Practice and the respondent contemporaneously.

§10.79 Effect of disbarment, suspension, or censure.

(a) *Disbarment.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for disbarment, the respondent will not be permitted to practice before the Internal Revenue Service unless and until authorized to do so by the Director of Practice pursuant to §10.81.

(b) *Suspension.* When the final decision in a case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for suspension, the respondent will not be permitted to practice before the Internal Revenue Service during the period of suspension. For periods after the suspension, the practitioner's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(c) *Censure.* When the final decision in the case is against the respondent (or the respondent has offered his or her consent and such consent has been accepted by the Director of Practice) and such decision is for censure, the respondent will be permitted to practice before the Internal Revenue Service, but the respondent's future representations may be subject to conditions as authorized by paragraph (d) of this section.

(d) *Conditions.* After being subject to the sanction of either suspension or censure, the future representations of a practitioner so sanctioned shall be subject to conditions prescribed by the

Director of Practice designed to promote high standards of conduct. These conditions can be imposed for a reasonable period in light of the gravity of the practitioner's violations. For example, where a practitioner is censured because he or she failed to advise his or her clients about a potential conflict of interest or failed to obtain the clients' written consents, the Director of Practice may require the practitioner to provide the Director of Practice or another Internal Revenue Service official with a copy of all consents obtained by the practitioner for an appropriate period following censure, whether or not such consents are specifically requested.

§10.80 Notice of disbarment, suspension, censure, or disqualification.

On the issuance of a final order censuring, suspending, or disbaring a practitioner or a final order disqualifying an appraiser, the Director of Practice may give notice of the censure, suspension, disbarment, or disqualification to appropriate officers and employees of the Internal Revenue Service and to interested departments and agencies of the Federal government. The Director of Practice may determine the manner of giving notice to the proper authorities of the State by which the censured, suspended, or disbarred person was licensed to practice.

§10.81 Petition for reinstatement.

The Director of Practice may entertain a petition for reinstatement from any person disbarred from practice before the Internal Revenue Service or any disqualified appraiser after the expiration

of 5 years following such disbarment or disqualification. Reinstatement may not be granted unless the Director of Practice is satisfied that the petitioner, thereafter, is not likely to conduct himself contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest.

§10.82 Expedited suspension upon criminal conviction or loss of license for cause.

(a) When applicable. Whenever the Director of Practice determines that a practitioner is described in paragraph (b) of this section, the Director of Practice may institute a proceeding under this section to suspend the practitioner from practice before the Internal Revenue Service.

(b) To whom applicable. This section applies to any practitioner who, within 5 years of the date a complaint instituting a proceeding under this section is served:

(1) Has had his or her license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause (not including a failure to pay a professional licensing fee) by any authority or court, agency, body, or board described in §10.51(i); or

(2) Has, irrespective of whether an appeal has been taken, been convicted of any crime under title 26 of the United States Code, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

(3) Has violated conditions designed to promote high standards of conduct established pursuant to §10.79(d).

(c) Instituting a proceeding. A proceeding under this section will be instituted by a complaint that names the respondent, is signed by the Director of Practice or a person representing the Director of Practice under §10.69(a)(1), is filed in the Director of Practice's office, and is served according to the rules set forth in paragraph (a) of §10.63. The complaint must give a plain and concise description of the allegations that constitute the basis for the proceeding. The complaint must notify the respondent--

(1) Of the place and due date for filing an answer;

(2) That a decision by default may be rendered if the respondent fails to file an answer as required;

(3) That the respondent may request a conference with the Director of Practice to address the merits of the complaint and that any such request must be made in the answer; and

(4) That the respondent may be suspended either immediately following the expiration of the period within which an answer must be filed or, if a conference is requested, immediately following the conference.

(d) Answer. The answer to a complaint described in this section must be filed no later than 30 calendar days following the date the complaint is served, unless the Director of Practice extends the time for filing. The answer must be filed in accordance with the rules set forth in §10.64, except as otherwise provided in this section. A respondent is entitled to a conference with the Director of Practice only if the conference is requested in a timely filed answer. If a request for a conference is not made in the answer or the answer is not timely filed, the respondent will be deemed to have waived his or her right

to a conference and the Director of Practice may suspend such respondent at any time following the date on which the answer was due.

(e) Conference. The Director of Practice or his or her designee will preside at a conference described in this section. The conference will be held at a place and time selected by the Director of Practice, but no sooner than 14 calendar days after the date by which the answer must be filed with the Director of Practice, unless the respondent agrees to an earlier date. An authorized representative may represent the respondent at the conference. Following the conference, upon a finding that the respondent is described in paragraph (b) of this section, or upon the respondent's failure to appear at the conference either personally or through an authorized representative, the Director of Practice may immediately suspend the respondent from practice before the Internal Revenue Service.

(f) Duration of suspension. A suspension under this section will commence on the date that written notice of the suspension is issued. A practitioner's suspension will remain effective until the earlier of the following--

(1) The Director of Practice lifts the suspension after determining that the practitioner is no longer described in paragraph (b) of this section or for any other reason; or

(2) The suspension is lifted by an Administrative Law Judge or the Secretary of the Treasury in a proceeding referred to in paragraph (g) of this section and instituted under §10.60.

(g) Proceeding instituted under §10.60. If the Director of Practice suspends a practitioner under this

section, the practitioner may ask the Director of Practice to issue a complaint under §10.60. The request must be made in writing within 2 years from the date on which the practitioner's suspension commences. The Director of Practice must issue a complaint requested under this paragraph within 30 calendar days of receiving the request.

Subpart E--General Provisions

§10.90 Records.

Availability. The Director of Practice will make available for public inspection at the Office of Director Practice the roster of all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers. Other records of the Director of Practice may be disclosed upon specific request, in accordance with the applicable disclosure rules of the Internal Revenue Service and the Treasury Department.

§10.91 Saving Clause.

Any proceeding instituted under regulations in effect prior to July 26, 2002, that is not final prior to July 26, 2002, will not be affected by this part and will apply the rules set forth at 31 CFR part 10 revised as of July 1, 2002. Any proceeding under this part based on conduct engaged in prior to July 26, 2002, which is instituted after that date, shall apply Subpart D and E of this part, but the conduct engaged in prior to July 26, 2002, shall be judged by the regulations in effect at the time the conduct occurred.

§10.92 Special Orders.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND

3 SAVE-A-PATRIOT FELLOWSHIP *
4 Plaintiff *
5 *
6 vs. * MJG 95-935
7 USA *
8 Defendants *

9

10 + + + + + + + +

11 Hearing was held in the above referenced case
12 on September 20, 1996 before the Honorable Marvin J.
13 Garbis.

14

15 A P P E A R A N C E S

16 For the Plaintiffs:
17 George Harp, Esquire

18

19 For the Government:
20 Gregory Hrebiniak, Esquire

21

22 Reported by:
23 Barbara J. Shaulis,
24 Official Court Reporter

25

1 attorneys. We do legal briefs for a lot of
2 attorneys. That our members hire. And if the member
3 goes pro se we will do it.

4 THE COURT: You are not practicing law.

5 THE WITNESS: We are not practicing law, not
6 at all. We only work with our members within the
7 fellowship.

8 THE COURT: Although Mr. Kotmair is capable
9 of trying a case very well.

10 THE WITNESS: Thank you, sir.

11 BY MR. HREBINIAK:

12 Q Now, but when the donations come in, you keep no
13 books and records as to --

14 A No.

15 Q So do you have any money in your wallet now?

16 A Sure.

17 Q Who does that belong to?

18 A I can count it out if you want.

19 Q Well, who does that belong to?

20 A It probably belongs to the fellowship. I do
21 receive, you know, I have to live. I do buy groceries
22 and everything.

23 Q Now, how do you live, I mean do you take a salary
24 from Save-A-Patriot?

25 A No, I just purchase the needs, that is all.

1 lawyer. I wouldn't say that, Your Honor.

2 THE COURT: Okay, the answer is that some
3 people who render services for other members might
4 receive money --

5 THE WITNESS: From the members, right.

6 BY MR. HREBINIAK:

7 Q But do you keep any record of this at all?

8 A I don't, no. The members, the person who is there
9 might keep a record, but I don't keep a record of it,
10 no.

11 BY MR. HREBINIAK:

12 Q And I have no further questions.

13 THE COURT: Let's see if I have any. I may
14 have some as things go on Mr. Kotmair. Does anyone
15 else have any function in the Save-A-Patriot
16 foundation in terms of making decisions. Whether it
17 is, let's say a decision whether to buy IBM computer
18 or Gateway computer?

19 A No, that lies with me. The only -- if we would
20 change from the agreement, then we go to the
21 membership and we ask them if they want to do that.

22 THE COURT: What is the agreement that you
23 are referring to.

24 THE WITNESS: Well, we have an agreement that
25 they sign when they join. That was done one time in

1 circumstances of where it was located and where it was
2 possessed, you know, might have some probative value,
3 but the direct testimony, everybody is in agreement it
4 did not -- it all belonged to the fellowship.

5 THE COURT: You are an attorney and you can
6 answer a little different than Mr. Kotmair. Wouldn't
7 you agree when he goes to the grocery store and buys a
8 box of Wheaties, that is his, that box of Wheaties is
9 his. It is not -- it is fueling him to carry on the
10 great work of the fellowship, but so is whatever you
11 had for breakfast fueling you to do your business.
12 You don't think about -- you should pardon the
13 expression in this case, deducting from the tax return
14 that I am sure you file Mr. Harp, I am not asking you.
15 Your breakfast helps you to be a better lawyer.

16 MR. HARP: Your Honor, for a normal
17 circumstance and the normal situation and the normal
18 client, Mr. Hrebiniak's argument may have some merit
19 but --

20 THE COURT: I realize we don't have any of
21 that.

22 MR. HARP: We don't have that here.

23 THE COURT: I don't think anybody can deny
24 the sincerity of Mr. Kotmair. I mean we can only
25 disagree with him of course. We can't deny his

1 sincerity.

2 MR. HARP: I mean --

3 THE COURT: Or at least his consistency.

4 MR. HARP: Your Honor, the Court has had
5 other dealings with Mr. Kotmair in the past and
6 irrespective of whatever the feelings the Court or the
7 government may have about him, I don't think anybody
8 has ever been able to find any kind of reproach
9 whatsoever about his dedication and what he has done
10 over the years.

11 THE COURT: I think there is no contest about
12 his sincerity and his consistent statement of views
13 that are consistent. That is his way of looking at
14 the world.

15 MR. HARP: And Mr. Hrebiniak characterized, I
16 think wrongfully that the Save-A-Patriot fellowship is
17 loosely organized, and from what I know about it, it
18 is not. I would be inclined to describe it more as
19 compartmentalized rather than loosely organized. But
20 the reasons they have had to do that over the years, I
21 think probably these warrants that were issued out
22 here in 93 is main good evidence of some of the
23 problems they have had or potential problems they had
24 from time to time. All of the assets we are talking
25 about to, whether it be these collectible coins or

1 and why it was returned.

2 MR. HARP: Your Honor, I will suggest --

3 THE COURT: No, first of all, as I understand
4 it, now six thousand square feet for this operation,
5 and we have to remember, we are dealing where an
6 organization that has expressed views, views that are
7 unpopular with federal law enforcement and that is the
8 nature of this organization, which is why we have to
9 be scrupulously careful to honor their first amendment
10 rights. Nobody is trying to jump on those, but there
11 is obviously something going on there that is
12 proselytizing the views of Mr. Kotmair and his
13 compatriots, and anybody -- unless they are violating
14 some law, nobody wants to interfere with their rights
15 to sell their ideas, correct, so you can't deny they
16 are actually doing some first amendment activity.

17 MR. HREBINIAK: No, you cannot.

18 THE COURT: And therefore that there has to
19 be in fairness, some assets that are devoted to that.
20 To that because so to speak, now, whether that is Mr.
21 Kotmair himself or this fellowship as an
22 unincorporated association, is in debate.

23 MR. HREBINIAK: Or maybe Your Honor hit the
24 distinction there. That certainly any assets devoted
25 to that, like the computers and whatever, but

1 stated. You know, the money goes in and he uses it to
2 pay the business of the fellowship.

3 Q Everybody knows this?

4 A Everybody in the office knows that.

5 Q And is that the way it has always been done?

6 A It has always been done that way.

7 Q Like for years and years it has been done?

8 A As long as I have been there.

9 Q And the office has always paid its bills and
10 existed?

11 A Well, except for the time they were a little
12 short. But generally they --

13 Q I mean the fellowship has been in existence a
14 number of years and it has gone from one room
15 operation to what it is now?

16 A That is correct. I remember when they had two
17 rooms.

18 Q Do you or any of the other members, other than Mr.
19 Kotmair keep track of the money donations that come
20 in?

21 A Not to my knowledge, I know I don't.

22 Q You are not aware of anybody else that would keep
23 track of these things?

24 A No.

25 Q Are you aware of whether or not there are any

1 books kept by fellowship?

2 A There are what?

3 Q Any books kept by the fellowship relative to --

4 A Not to my knowledge.

5 Q So you have never seen any books or logs or

6 ledgers or records of any kind relative to donations

7 or monies or anything received?

8 A No, I haven't.

9 Q And are you aware of where funds and donations
10 that come in are kept as a general rule?

11 A Well, yes, there is nothing left overnight and Mr.
12 Kotmair takes home anything that, any surplus.

13 Q And this is always the way it has been since you
14 have been involved with the fellowship?

15 A Yes.

16 Q And why is that done that way?

17 A Because as he said, we have no security there, and
18 he always felt it would be more secure at his home
19 because he is there all night.

20 Q And have you ever been out to 2911 Gross Mill
21 Road?

22 A Yes, I have.

23 Q Is that in town or is that out in the country
24 or --

25 A It is in the country.

1 THE COURT: Mr. Harp, this questioning is
2 addressed to forty some thousand dollars.

3 MR. HARP: Yes, sir, that is the last of that
4 line of questioning.

5 THE COURT: Okay.

6 BY MR. HARP:

7 Q And also Mr. Erchak, are you aware from time to
8 time that donations would come in to the fellowship
9 that would be in a form other than currency or money
10 orders?

11 A Yes. Yes, occasionally they would. And you know,
12 I heard talk of people sending in other forms of
13 donations.

14 Q And would the fact that there would be some
15 collectible coins or coin collections be consistent
16 with your knowledge of what kind of types of donations
17 that come in from time to time?

18 A I have heard of them but I never -- didn't really
19 see them much.

20 Q But that wasn't what, you didn't have a function
21 of receiving the mail or anything?

22 A No.

23 Q Witness with you.

24 CROSS-EXAMINATION BY MR. HREBINIAK:

25 Q Mr. Erchak, who else takes money home with them to

1 keep at their residence from Save-A-Patriot?

2 A Nobody that I know of that takes money home from
3 Save-A-Patriot.

4 Q Who else pays the bills for Save-A-Patriot?

5 A No one else that I know of.

6 Q And you know of no one who keeps records of what
7 comes in and what goes out to Save-A-Patriot?

8 A No, I don't.

9 Q And do you have any source of income or funds
10 other than Save-A-Patriot?

11 A Yes, I have a retirement from my former job.

12 Q And do you receive any --

13 MR. HARP: Your Honor, I object to this as
14 not being relevant.

15 THE COURT: Well, we are not -- you can ask
16 generalized questions, but I don't think we have to
17 get into this persons particular finances. You can
18 ask him. What I think your next question is going to
19 be.

20 BY MR. HREBINIAK:

21 Q You said you were one of these brief writers and
22 do you occasionally receive anything from
23 Save-A-Patriot?

24 A Not really from them. They come from the members,
25 the members will send in donations.

1 Q And do you have any idea of you yourself, of how
2 much comes into Save-A-Patriot at any given day or
3 week or a year?

4 A Not really. Because it is not my job.

5 Q And who is the only one who would know?

6 A Mr. Kotmair, and I don't think he even knows
7 because I don't think he keeps any books that I know
8 of.

9 Q I have no further questions.

10 THE COURT: What is your understanding Mr.
11 Erchak, suppose something happened to Mr. Kotmair, he
12 went to jail, who would run the fellowship?

13 THE WITNESS: I really have no idea. We don't
14 have a line of -- it has never been brought up who
15 would run it. It would probably fall apart.

16 THE COURT: Suppose people were dissatisfied
17 with Mr. Kotmair. What do you understand your ability
18 is to devote the assets of the fellowship to its true
19 goal rather than something he is doing that you no
20 longer agree with?

21 THE WITNESS: I am not sure I understand
22 that.

23 THE COURT: Suppose Mr. Kotmair decided to
24 utilize the corporation, the entity's funds for a
25 cause that you didn't agree with, you thought he was

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CERTIFICATE

I, Barbara J. Shaulis, Official Reporter for the United States District Court for the District of Maryland, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and accurate transcript of the proceedings made in the aforementioned and numbered case on the date hereinbefore set forth, and I do further certify that the foregoing transcript has been prepared by me or under my supervision.

Barbara J. Shaulis

Barbara J. Shaulis
Court Reporter 11-9-96

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GEORGE E. HARP

Attorney at Law

610 Marshall Street, Suite 619
Shreveport, Louisiana 71101

Telephone (318) 424-2003

Facsimile (318) 424 2060

2/17/06, 2006

FACSIMILE COVER SHEET

Number of pages including cover sheet: 11

To: TOMAS M. NEWMAN

Attention: _____

Fax number: 202 514 6770

Sender: GEORGE HARP

In Re: US v Kotman & SAP, WMN OS CV 1297
DC Maryland

Tom - attached is copy of interrogatories
and mailing documents.
Thanks,
George

The documents accompanying this facsimile transmission may contain confidential information which is legally privileged. The information is intended only for the use of the individual or entity to which it is addressed. If you are not the intended recipient, you are hereby notified that any review disclosure/redisclosure, copying, distribution or taking action in reliance on the contents of this information is strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone, and destroy this information.

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May 10, 2006

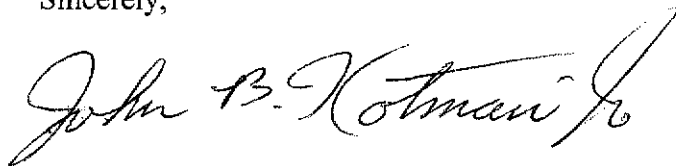
Mr. Thomas M. Newman
Trial Attorney
United States Department of Justice
Post Office Box 7238 Ben Franklin Station
Washington, D.C. 20044

Dear Mr. Newman:

On March 16, 2006 retired Internal Revenue Service Revenue Agent Metcalfe admitted that he made an official referral to prosecute for alleged violations 26 USC 6700 and 6701 to his superiors, page 10 of the deposition transcript. After the deposition was over I asked you, as I had done several times before during the course of this action, for a copy of that referral. You replied, as you had previously, that you would forward it as soon as you located it. That was fifty-five days ago.

It would seem that the document initiating this prosecution would be at the beginning of the government's case file, and therefore easy to find. Have you made a diligent search? Did you find it? If so, when might Mr. George Harp and I expect to receive the promised copies? Please respond to this request.

Sincerely,

A handwritten signature in cursive script that reads "John B. Kotmair, Jr." The signature is written in black ink and is positioned above the printed name and title.

John B. Kotmair, Jr.
Defendant

Copy to:

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

Exhibit 9

Post Office Box 91
Westminster, Maryland 21158

June 7, 2006

Certified Mail Receipt No.: 7006 0100 0005 6272 7584

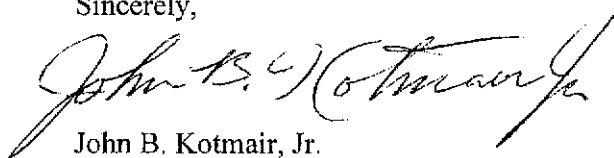
Mr. Thomas M. Newman
Trial Attorney, Tax Division
U.S. Department of Justice
P. O. Box 7238
Washington, D.C. 20044

Dear Mr. Newman:

On May 10, 2006, I wrote you about your promise to forward a copy of Mr. Gary Metcalfe's official referral. As of this date, twenty-eight days later, I have not received any response from you. Does your non-response mean that you have no intention of forwarding that discovery document?

If I do not receive any response within ten days, it will be presumed that you are not going to forward the official referral.

Sincerely,



John B. Kotmair, Jr.

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



U.S. Department of Justice

Tax Division

Facsimile No. (202) 514-6770
Trial Attorney: Thomas M. Newman
Attorney's Direct Line: (202) 616-9926
Attorney's e-mail address: thomas.m.newman@usdoj.gov

Please reply to: Civil Trial Section, Central Region
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

DJ5-35-10644
CMN 2004106494

June 13, 2006

VIA FIRST CLASS MAIL

John Baptist Kotmair, Jr.
P.O. Box 91
Westminster, MD 21158

VIA FIRST CLASS MAIL

George E. Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Messrs. Kotmair and Harp:

I am writing in response to your June 7, 2006 letter regarding the Revenue Agent's referral of this case. First, I did not "promise" to provide any referral letter as you state in your letters. In addition, I fully responded to this request during Mr. Metcalfe's deposition when I told you that a request of this report was never made during discovery.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

Post Office Box 91
Westminster, Maryland 21158

June 15, 2006

Certified Mail Receipt No.: 7006 0100 0005 6272 7577

Mr. Thomas M. Newman
Trial Attorney, Tax Division
U.S. Department of Justice
P. O. Box 7238
Washington, D.C. 20044

Dear Mr. Newman:

I received your letter, dated June 13, 2006, regarding my request for Mr. Metcalfe's referral. Your denial of having promised to provide that document does not alter the fact that it is among those requested by Save-A-Patriot Fellowship in January 2006, to wit:

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3

Please provide copies of all of the documents listed in Answer to Interrogatory No. 9.

INTERROGATORY NO. 9

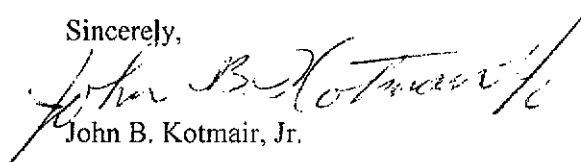
Please list and identify all documents reviewed by or relied upon by persons in No. 6 above who participated in the decision making process to prosecute this lawsuit.

INTERROGATORY NO. 6

Please identify all persons who investigated defendants, including their names, addresses, job titles and descriptions.

Please forward the requested referral without delay. If I do not receive any response within ten days, I must presume that you are not going to forward the official referral.

Sincerely,



John B. Kotmair, Jr.

Copy to:

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

To file.



U.S. Department of Justice

Tax Division

Facsimile No. (202) 514-6770
Trial Attorney: Thomas M. Newman
Attorney's Direct Line: (202) 616-9926
Attorney's e-mail address: thomas.m.newman@usdoj.gov

Please reply to: Civil Trial Section, Central Region
P.O. Box 7238
Ben Franklin Station
Washington, D.C. 20044

DJ5-35-10644
CMN 2004106494

May 16, 2006

VIA FACSIMILE & FIRST CLASS MAIL

John Baptist Kotmair, Jr.
P.O. Box 91
Westminster, MD 21158
Fax: (410) 857-5249

VIA FACSIMILE & FED EX

George E. Harp, Esq.
610 Marshall St., Ste. 619
Shreveport, LA 71101
Fax: (318) 424-2060

Re: *United States v. John Baptist Kotmair, Jr., et al.*, WMN 05 CV 1297 (D. Md.)

Dear Messrs. Kotmair and Harp:

I have enclosed a copy of the Court's Order and opinion regarding the United States' Motion to Compel. The Court ordered that (1) Mr. Kotmair fully respond to the United States' interrogatories nos. 3, 7(a), 9, 10, and 12, and production requests no. 7, and (2) SAPF fully respond to interrogatories nos. 6, 9(a), 9(b), 10, 11, 21, 22, and 24, and production requests nos. 7, 10, and 16. I will move for appropriate sanctions if by close of business on May 24, 2006, I do not receive responses to the discovery requests referenced in the Court's Order.

Sincerely yours,

THOMAS M. NEWMAN
Trial Attorney
Civil Trial Section, Central Region

Enclosure