IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MARYLAND

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. **WMN05CV1297**
	)	
JOHN BAPTIST KOTMAIR, JR., et al.,	)	
	)	
	)	
Defendants.	)	

DEFENDANT KOTMAIR'S REPLY TO UNITED STATES' MOTION FOR SUMMARY JUDGMENT

COMES NOW Defenant John Baptist Kotmair, Jr. ("Kotmair"), and replies to Plaintiff's United States of America Opposition to Kotmair's Motion for Summary Judgment; and for this, states as follows:

Background

Plaintiff's complaint, filed May 13, 2005, begins with the following:

> *"Plaintiff, the United States of America, complains as follows against **defendants John Baptist Kotmair, Jr., doing business as Save-A-Patriot Fellowship (SAPF) and National Workers Rights Committee (NWRC)**, and SAPF, an unincorporated association:"* [Emphasis added]

Thus, Plaintiff's suit for injunction names John Baptist Kotmair, Jr. as a defendant only insofar as he is "doing business as" SAPF and NWRC. Kotmair filed a Motion for Summary Judgment raising the issue of *res judicata*, because this court said, in *Save-A-Patriot Fellowship v. United States of America*, 962 F.Supp. 695 (1996):

> *The Government contends, at the threshold, that the SAP Fellowship is not an organization at all, but is **solely a name used by Kotmair for his own "sole***

> ***proprietorship" operation.*** *The Court does not agree, even though it is readily apparent that Kotmair is the major figure in the Fellowship. * * * [SAPF's] assets, at least some of which had more than nominal value, were simply (and correctly) assumed to be Fellowship property, as distinct from Kotmair's personal property.* * * In sum,* ***the Court finds as a fact: that the SAP Fellowship is an unincorporated association (not just an alter ego or sole proprietorship of Kotmair),*** *has members, and does things through persons in addition to Kotmair.* [Emphasis added]

Clearly, this court found that Save-A-Patriot ("SAPF") was an unincorporated association, and that it was not a sole proprietorship of John B. Kotmair, Jr. ("Kotmair").

Plaintiff, in opposing Kotmair's motion, raises only one argument in rebuttal:

> *"The United States acknowledges the result of this decision by seeking to separately enjoin both Kotmair and SAPF. Thus, Kotmair's argument is clearly without merit, as the United States' complaint defines "doing business as" Kotmair's actions as the "fiduciary" of SAPF and "director" of the National Worker's Rights Committee. Since the United States is not alleging that SAPF is an alter ego of Kotmair, and seeks to enjoin his conduct separately, his argument is without merit."*

Argument.

Plaintiff's contention that its complaint "defines doing business as Kotmair's actions as fiduciary" is, of course ridiculous. Plaintiff's complaint did not, and indeed, cannot redefine legal terms to suit its whim, any more than they can re-write laws. Plaintiff here, the government of the United States, surely knows the rules concerning the identification of parties in legal proceedings. In fact, plaintiff attached to its summary judgment memorandum a declaration of Evan Davis, a Trial Attorney with the Department of Justice. In his declaration, Mr. Davis refers to the injunction suit against "***Thurston Bell, individually, and doing business as the National Institute for Taxpayer Education.***" This is also confirmed by the actual complaint against Mr. Bell, a copy of the first page of which is attached as Exhibit 1.

Having established that SAPS is not an alter ego, or sole proprietorship, we may look to Black's Law Dictionary (7th ed.) to define sole proprietorship:

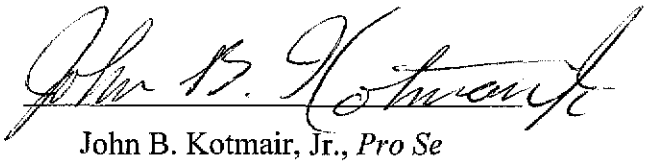
> *Sole proprietorship. 1. A business in which one person owns all the assets, owes all the liabilities, and operates in his or her personal capacity. 2. Ownership of such a business. Also termed individual proprietorship.*

A d/b/a, or "doing business as" is a situation in which a business owner operates a company under a name different from his or her real name. The owner must file a fictitious name statement or similar document with the appropriate agency – for example, the county clerk. This enables consumers to discover the names of the business owners, which is important if a consumer needs to sue the business. Therefore, since there is no real difference between a d/b/a/ or a sole proprietorship, the ruling of this court in *Save-A-Patriot Fellowship v. United States of America*, invokes the doctrine of *res judicata* insofar as Kotmair being a party to this matter is concerned. Consequently, Kotmair is not properly a party to this action, as a matter of law. Therefore, Plaintiff's argument is completely without merit, and this court should grant summary judgment in favor of Kotmair.

WHEREFORE, Defendant John Baptist Kotmair, Jr. prays this court grant Summary Judgment on behalf of John B. Kotmair, Jr. d/b/a Save-A-Patriot Fellowship and National Workers Rights Committee, and remove him as a party from this action.

In the event that this court denies Kotmair's Motion for Summary Judgment, this court should also deny Plaintiff's Motion for Summary Judgment against Kotmair, since there would therefore be contested issues of material fact; and schedule this matter for trial.

Respectfully submitted this 7th day of July, 2006.



John B. Kotmair, Jr., *Pro Se*
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410-857-4441

CERTIFICATE OF SERVICE

It is hereby certified that the undersigned forwarded Defendant Kotmair's Reply—Motion For Summary Judgment and Certificate Of Service, via the U.S. Postal Service, postage having been paid in full, on the 7th day of July, 2006, to the parties indicated hereinafter.

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

George Harp, Esq.
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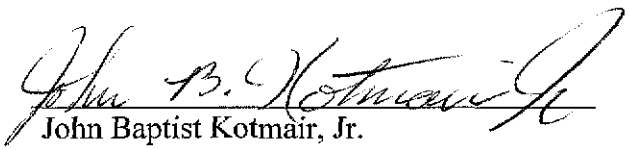

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ltr. encl. summons issued Steve / HBL. See Manual York Atty.

ORIGINAL

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, Plaintiff,	)	1:CV 01-2159
v.	)	CIVIL NO.
THURSTON PAUL BELL, individually and doing business as the NATIONAL INSTITUTE FOR TAXPAYER EDUCATION, Defendants.	)	

FILED
HARRISBURG
NOV 15 2001
MARY E. D'ANDREA, CLERK
Per _____ DEPUTY CLERK

Complaint for Permanent Injunction and Other Relief

Plaintiff, United States of America, for its complaint against defendant Thurston P. Bell, individually, and doing business as the National Institute for Taxpayer Education, states as follows:

Jurisdiction and Venue

1. Jurisdiction is conferred on this Court by 28 U.S.C. Sections 1340 and 1345 and Sections 7401, 7402(a), and 7408 of the Internal Revenue Code of 1986

Exhibit 1