UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	CIVIL NO. 1:CV-01-2159
	)	(Hon. Christopher C. Conner)
THURSTON PAUL BELL,	)	
	)	
Defendant.	)	

United States' Response to Defendant's Request for Stay

The defendant Thurston Bell has requested that the Court stay the January 10, 2003 preliminary injunction against him. This request should be denied. The civil rules and case law demonstrate that the Court should evaluate Bell's stay request by using the same equitable analysis that led the Court to enjoin Bell on January 10. Since Bell has offered no new arguments and no new evidence, the same analysis should yield the same conclusion, and the preliminary injunction should remain in force. The Government suggests that Bell's newly-raised Fifth-Amendment request for protection of his client list should be granted, pending the Court's resolution of Bell's discovery-related Fifth-Amendment claims. Bell should still be required to mail copies of the preliminary injunction to his clients, but he should provide copies under seal to the Court instead of to the Government.

Legal Standards

Fed. R. Civ. P. 62(c) permits the Court to exercise discretion and suspend an injunction pending appeal. Although Bell has not appealed the preliminary injunction, this rule provides the

only authority for Bell's requested relief, other than the Court's inherent equity powers. Assuming that Bell had appealed or will appeal, Bell must show that the Court should exercise its discretion under Rule 62(c) and that Bell has posted adequate security to protect the Government. Bell's failure to post adequate security should moot the remaining analysis, but we discuss the legal standards and Bell's failure to meet them in case Bell posts an adequate bond.

The Third Circuit requires a Court to undergo the same analysis for evaluating a rule 62(c) stay as for the original preliminary injunction motion. *See e.g.*, *Sentry v. Pearl*, 662 F. Supp 1171 (E.D. Pa. 1987), *aff'd without op*, 833 F.2d 307 (3d Cir. 1987). This Court primarily used the four-factor equitable test under § 7402 to analyze whether to enjoin Bell, so the Court should use the same four-factor test to analyze whether Bell is entitled to a stay. Further, Bell "will be required to show a great likelihood that he will prevail when his case finally comes to be heard on the merits and he must show irreparable injury from a denial of interim relief." *Merchant & Evans v. Roosevelt Bldg. Prod.*, 1991 WL 275651 (E.D. Pa. 1991) (quoting 8 C. Wright and A. Miller *Federal Practice and Procedure*, § 2904 at 321-22 (1973)). In essence, Bell must show the Court that its analysis was flawed and it should not have issued the preliminary injunction order.

Analysis of Bell's Arguments

Bell makes twelve arguments supporting his motion to stay, most of which can be disposed of summarily because they do not even arguably meet the four-factor test. The Court has already considered and rejected most of these arguments, so Bell's restatement adds nothing to his stay request. Bell's following assertions, referred to by Paragraph numbers in Bell's motion, warrant no further discussion: (1) the Government did not follow an Executive Order; (5) the Court used

the wrong free-speech standard, and should have used *Speiser v. Randall*; (6) the cited cases did not provide "an adequate determination"; (7) the Court failed to refute the US Sources argument in sufficient detail; (8) the Court erred in finding the US Sources argument is frivolous, given the alleged outcome of *U.S. v. Webb*; (9) the Court was not sufficiently specific about what tax advice Bell can offer regarding IRC § 861; (10) the Court failed to use the appropriate strict-scrutiny test, because Bell claims that his tax-scheme statements were true; and (11) the Court erroneously concluded that Bell's speech was commercial.

In Paragraphs 2, 3, and 4, Bell suggests that the preliminary injunction motion failed to show that Bell even asserted a § 861-based argument and that the preliminary injunction order is vague. Bell's vagueness argument rests on his frequently asserted, and clearly rejected, notion that his US Sources Argument differs from other § 861-based arguments contained in cited cases. But Bell fails to recognize the glaring similarity among the § 861-based arguments: they all rest on misconstruing the regulations promulgated under § 861 and they all falsely conclude that U.S. citizens' domestically earned income is tax-free. *Any* tax scam based on these two elements is covered by the preliminary injunction, along with any other tax scam as defined by IRC §§ 6700 and 6701 and enjoinable under §§ 7402 and 7408. Charging others for advice, inciting others to violate tax laws, and assisting others to evade taxes based on this frivolous conclusion—*no matter which absurd route Bell took to reach it*—is illegal and is false commercial speech. Bell needs no more guidance than what is provided in the preliminary injunction order.

Finally, Bell's Paragraph 12 raises the only arguably valid basis for modifying the preliminary injunction order. The preliminary injunction order requires Bell to send a copy of the order to all of Bell's clients and to provide a copy of the transmittal letters to the Government.

Bell now invokes his Fifth-Amendment right against self-incrimination and suggests that disclosing his clients' names to the Government could provide a link in the chain of evidence that could be used to convict him of a tax crime. *See e.g., Federal Trade Comm'n v. Singer*, 534 F.Supp. 24, 26 (N.D. Cal. 1981), *aff'd,* 668 F.2d 1107 (9th Cir. 1982).

The Court is already reviewing, *in camera*, Bell's client files because Bell claimed Fifth-Amendment protection from disclosing the files, which the Government requested in discovery. The Government's motion to compel brief showed that Bell has waived his Fifth Amendment rights as to much of the information contained in the files, including the names of some or perhaps all of his clients. But the previously undisclosed identity of some of Bell's clients may be protected if the act of producing their names could be incriminating to Bell. The Government's motion to compel brief showed that Bell likely has waived any act of production privilege, but the issue is debatable. Therefore, the Government suggests that the Court should consider issuing a modified preliminary injunction that requires Bell to send copies of the letters to the Court, under seal. The Court can thereby ensure compliance with its order without requiring Bell to arguably waive his Fifth Amendment self-incrimination right. If discovery continues and the Court is

required to finish its *in camera* review, then the Court can then decide whether to unseal the letters along with other documents contained in Bell's client files.

THOMAS A. MARINO
United States Attorney

ANNE FIORENZA
Assistant United States Attorney

EVAN J. DAVIS
DONALD N. DOWIE
Trial Attorneys, Tax Division
Civil Trial Section, Central Region
U.S. Department of Justice
Washington, DC 20530
Telephone: (202) 514-0079
Fax: (202) 514-6770

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing **United States' Response to Defendant's Request for Stay** has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 3rd day of February, 2003.

Thurston P. Bell
PMB 181, 1150 Carlisle St.
Hanover, PA 17331
Defendant *Pro Se*

EVAN J. DAVIS
Trial Attorney, Tax Division,
United States Department of Justice