

IRS Liens Removed by Florida Courts

Statutes and State Constitution Bar Federal Intervention

Over the past few decades various victims of IRS abuse have mounted their white horses and ridden blissfully into the valley of the shadow of death, only to find that their weapons were loaded with blanks instead of the silver bullets they believed they were firing. The number of these victims who have been sold these worthless ideas by these "Patriots for Profit" is far beyond calculation. In more recent years renowned researchers of the law now scoff at the "Silver Bullet" theory, claiming no such thing exists and that each case is different. Because the federal judiciary is notorious for rigging these cases in its favor, this observation may be accurate.

On the other hand, it could be said that John Jennings is the Chief Gunnery Sergeant in charge of distribution of silver bullets to the Florida Brigade at war with the IRS. He makes no such claims and gives away this information to anyone who needs it, selling only his research and "How To" packet.

"We'll tell you how we do it," he says, "and if you can follow on your own, go for it. Otherwise, buy our \$600 packet and follow each step as explained, because we don't have time to do it for everyone."

That seems fair enough, but "Uh-oh," say the skeptics. "Here comes another one."

Maybe not. A half dozen federal liens in recent months have been lawfully eradicated from county records in central Florida. But the constructed packet only applies to Florida. If someone wants to do it in his home state, Jennings is delighted to tell what is needed and how to find it. He is far more interested in killing the monster than getting rich at it, and the fact that he has placed sample motions on his website (www.skyhawkbbs.com) is

indicative of that.

The Florida Constitution says that the Circuit Court has exclusive and original jurisdiction over all property matters. When a federal Notice of Lien is placed against one's bank account, house, land, etc., in the county public records, the IRS has admitted and submitted to this state jurisdiction. There are no federal property laws, as no property is registered with the federal government. (Even federal acquisitions of property are registered with the state.) A Notice of Lien is not a lien but merely a notice that a lien exists somewhere. The Florida statutes allow any lien in Chapter 13 to be challenged by any one of four methods. Method Four, chosen by Jennings, allows one to file a petition in state court demanding that the lienor come forward to show why his lien is valid.

In every case, the IRS agent has failed to respond to the Show Cause Complaint, losing by default. Standing on this legal basic, John Jennings has gotten a state judge to agree that the federal IRS lien on his property was not legally placed. Over the past six months state judges have issued a court order in each of the challenged cases removing the property liens.

The latest such case is that of Dewey Tobias, 52, of Longwood, Fla., an Amway distributor for 25 years and a member of its exclusive Diamond Club. With a photographic mind, he is a walking tape recorder who can recite the applicable codes and statutes as readily as his home address.

A few years ago, Amway's legal department continued its longtime habit of honoring IRS liens, which are now approaching nearly a half-million dollars in the Tobias case. His solid arguments, presented in several hearings in front of the company's Board of

Directors, have convinced many of the Board members but not the attorneys. At least not yet. Now that the court has reversed the action (see court order), Tobias is contemplating legal action against Amway Corporation in order to "teach these lawyers the law."

Meanwhile, he has been informed by the Department of Justice Tax Division in Washington that they intend to remove the case to Federal Court. Not an unusual ploy. The federal government has a habit of removing a case from state to Federal Court before dismissing it for lack of subject matter jurisdiction. But then, Tobias says, the seldom asked question becomes, "If you didn't have subject matter jurisdiction, how could you remove the case to Federal Court in the first place? This should have been an established fact before it was removed [from State Court.]"

He has filed a "Notice of Non-Acceptance and No Agreement" and provided them with a plethora of state and federal decisions and law, showing that their removal was imprudently done.

"Where is their authority?" Tobias asks. "They must show their scope of office and authority to commit the act, and they must certify that they were within that scope when they prepared and filed the lien, and they simply cannot do it."

"The U.S. Attorney must have an affidavit swearing to all this from the agent and from his superior stating that he was within his scope of authority when he committed the act. This is procedural due process from the Administrative Procedures Act, something they must do in every instance. In addition to that, the U.S. attorney must be a member of the Florida Bar before he can file paper-

work in this case, and none of these federal participants are."

Further research added even more legal icing to the cake. It is the rubber-stamped signature of former Revenue Officer Van E. O'Neal that appears on these Notices of Levy, a man who has apparently retired. Furthermore, the diligent research of Jennings, Tobias, et. al. within the Administrative Procedures Act turned up the fact that O'Neal could not have had any delegation of authority since 1990 because that is when the statutes underpinning that authority were repealed by Congress. Therefore, say Jennings and Tobias, Mr. O'Neal could not possibly justify any scope of authority or certify his behavior because no delegation of authority had existed for more than ten years!

So are they saying that everything the IRS had done in the State of Florida since 1990 has been illegal?

"I am saying," says Tobias, "that everything they have done in all fifty states since 1990 has been illegal, because we have found that nowhere does this delegation of authority exist. It was Section 6361 through 6365 of the Internal Revenue Code that was repealed in 1990. On top of all that, the Florida Constitution in Article Five, Section 20, Paragraph C-3 gives the State Circuit Court exclusive jurisdiction over all property matters. Now if you read the federal lien law, 6321, you will see that it says that their liens are against property and rights to property."

Tobias is waiting to see if Judge Gene R. Stephenson will have the temerity to uphold his own order. This will carry with it some very interesting ramifications. Florida Statute 713.31 says that if someone files a lien and the lien proves to be fraudulent, that party now owes the wronged party the difference between the claimed amount and the actual amount. Since the actual amount is now zero, the IRS may have in effect placed a lien on itself for the fraudulent amount, which is now owed to Tobias and others.

With his rapid-fire recitation, Tobias cites from memory another deception. "You will hear the IRS lawyers say, 'No, that's for a construction lien.' Well, when you look in the Florida Construction Lien Manual, in Volume 3, page 17, it says that all IRS liens are construction liens." He adds, "The rights of the citizen of a State are the rights of the citizens of the several States," as a

**IN THE EIGHTEENTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR SEMINOLE COUNTY
SANFORD, FLORIDA**

Case No. 00-CA-1491-16-G

Charles Dewey Tobias, Jr.
Plaintiff,

vs.

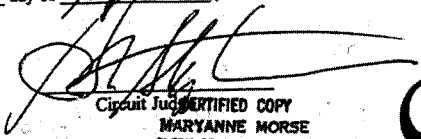
Van E. O'Neal,
Respondent/Lienor.

ORDER OF CANCELLATION

This complaint having come before this court for an Order to show cause why the "liens" located in the Seminole County Official Records: Book 2798, page 1952; Book 2798, page 1953; Book 2801, page 1635 should not be canceled, and after being duly advised and an examination of the records, and it being made to show that no foundation exists for said "liens" not to be canceled for failure of the Respondents to show cause for such, it is this court's finding that good and sufficient cause exists for said "liens" to be canceled without delay.

IT IS HEREBY ORDERED, therefore, that judgment be GRANTED in favor of the Plaintiff and that the "liens" in the Seminole County Official Records: Book 2798, page 1952; Book 2798, page 1953; Book 2801, page 1635 are hereby CANCELED and the Clerk of this court is instructed to record the CANCELLATION of said "liens" forthwith.

DONE AND ORDERED on this 1 day of Sept, 2000.


 Circuit Judge
MARYANNE MORSE
 CLERK OF CIRCUIT COURT
 SEMINOLE COUNTY, FLORIDA
 BY Deborah Conant
 DEPUTY CLERK

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 MARYANNE MORSE
 CLERK OF CIRCUIT COURT
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 BY SEMINOLE CO. P.A.
 D.C.

Judge Gene R. Stephenson's court order cancelling the Tobias lien. Meanwhile, the U.S. Attorney's office is attempting to remove it to Federal Court.

reminder that this would not be exclusive to Florida.

"We placed a certified copy of Judge Stephenson's oath of office into this case," Tobias said. "You know, just as a reminder. We also gave him 55 pages in a Memorandum of the law, not a Memorandum of Law, which usually amounts to codes and court decisions, but a Memorandum of the Law. This included the Statutes at Large from the Florida Legislature that gives him the authority to do what he did and which gives him the authority to uphold it. The State Court, which has original and exclusive jurisdiction in this matter is being trespassed upon [by the attempt-

ed removal to Federal Court] and intimidated into changing its ruling."

Tobias is outraged that the case has been removed by no more than a clerk of the court. "No judge has ordered this. There is no decree. Just a clerk who wilts when the U.S. attorney requests something. Well, we want them to follow the law first and foremost. How does a court clerk get off making legal decisions and interfering in this case?"

Tobias appears to have his adversary in check. Whether or not it amounts to "checkmate" may be known before the release of our next publication, and we will keep the reader up to date on the matter.