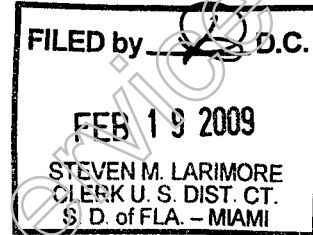


IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. **09-20423** **AM-GOLD**

UNITED STATES OF AMERICA,)
)
Petitioner,)
)
v.)
)
UBS AG,)
)
Respondent.)

McALILEY



PETITION TO ENFORCE JOHN DOE SUMMONS

The United States of America petitions this Court for an order enforcing the IRS "John Doe" summons served on the respondent, UBS. In support, the United States alleges as follows:

1. The Court has jurisdiction over this case under 26 U.S.C. §§ 7402 and 7604(a) and 28 U.S.C. §§ 1340 and 1345.
2. UBS is an international bank that is also found within this district.
3. Daniel Reeves is a duly commissioned Internal Revenue Agent and Offshore Compliance Technical Advisor employed in the Small Business/Self Employed Division of the Internal Revenue Service. He is assigned to the Internal Revenue Service's Offshore Compliance Initiative.
4. Revenue Agent Reeves is conducting an investigation to determine the identity of US taxpayers who have violated the Internal Revenue Code by failing to report the existence of, and income earned in, undeclared Swiss accounts with UBS.

5. On February 18, 2009, this Court approved a “Deferred Prosecution Agreement” (DPA) between UBS and the United States, in which UBS admitted that it had engaged in certain specified criminal activities in violation of U.S. law. United States v. UBS AG, 09-60033-CR-COHN (S.D. Fl.) Those activities relate to the matters discussed in the Declaration of Daniel Reeves, filed in support of this petition. The Court should take judicial notice of the DPA and the Court’s files in that case. United States v. Rey, 811 F.2d 1453, 1457 n. 5 (11th Cir. 1987).

6. Attached to the DPA is a Statement of Facts that UBS admits are true. In the Statement of Facts, UBS admitted the following, among other things:

- a. “Beginning in 2000 and continuing until 2007, UBS . . . participated in a scheme to defraud the United States and . . . the IRS, by actively assisting or otherwise facilitating a number of U.S. individual taxpayers in establishing accounts at UBS in a manner designed to conceal the U.S. taxpayers’ ownership or beneficial interest in such accounts.” ¶ 4.A.
- b. UBS “private bankers and managers would actively assist or otherwise facilitate certain undeclared U.S. taxpayers, who such private bankers and managers knew or should have known were evading United States taxes, by meeting with such clients in the United States and communicating with them via U.S. jurisdictional means in a regular and recurring basis with respect to the their UBS undeclared accounts. This enabled the U.S. clients to conceal from the IRS the active trading of securities held in such accounts and/or the making of payments and/or asset transfers to or from such accounts. Certain UBS executives and managers who knew of the conduct described in this paragraph continued to operate and expand the U.S. cross-border business because of its profitability.” ¶ 4.C.
- c. “In or about 2004, the UBS Wealth Management International business changed its compensation approach . . . Thereafter, the managers of the U.S. cross-border business implemented this new compensation structure in a way that provided incentives for U.S. cross-border private bankers to expand the size of the U.S. cross-border business. This encouraged those private bankers to have increased contacts in the United States with U.S.-resident clients via travel to the United States and contact with U.S. clients via telephone, fax, mail and/or e-mail.” ¶ 5.

- d. “During the relevant period [2001 through 2007], Swiss-based UBS private bankers also traveled to the United States to meet with certain of their U.S. private clients, . . . These [45 to 60 Swiss-based] private bankers traveled to the United States an average of two to three times per year, in trips that generally varied in duration from one to three weeks, and generally tried to meet with three to five clients per day. An internal UBS document estimated that U.S. cross-border business private bankers had made approximately 3,800 visits with clients in the United States during 2004. In addition, while in Switzerland, these private bankers would communicate via telephone, fax, mail and/or e-mail with certain of their private clients in the United States about their account relationships, including on occasion to take securities transaction orders in respect of offshore company accounts. Private bankers in the U.S. cross-border business typically traveled to the United States with encrypted laptop computers to maintain client confidentiality and received training on how to avoid detection by U.S. authorities while traveling to the United States.” ¶ 6.
- e. “The U.S. cross border business generated approximately \$120 million - \$140 million in annual revenues for UBS. . .”. ¶ 8. This conflicts with the estimate of two other sources that UBS’s cross-border business generated \$200 million in annual profits. See, Reeves Decl., ¶ 43.

7. On July 1, 2008, this Court issued an order granting the United States leave to serve a “John Doe” summons on UBS AG. Case No. 08-21864-MC-LENARD/GARBER.

8. Internal Revenue Agent Arthur S. Brake is authorized to issue “John Doe” summonses pursuant to 26 U.S.C. § 7602, 26 C.F.R. § 301.7602-1, 26 C.F.R. § 301.7602-1T, and Internal Revenue Service Delegation Order No. 4 (as revised).

9. In furtherance of the investigation described in ¶ 4 above, on July 21, 2008 Revenue Agent Brake issued a “John Doe” summons to UBS. That summons directed UBS to appear before Revenue Agent Reeves or his designee on August 8, 2008 at 10:00 a.m., at the place identified in the summons, to give testimony and produce for examination certain books, papers, or other data as described in the summons.

10. Revenue Agent Brake served an attested copy of the summons on July 21, 2008 by delivering it in person to James Dow, Director & Head of Compliance for UBS.

11. UBS failed to appear on August 8, 2008. To date, UBS has failed to comply in full with the summons.

12. Except for the items specifically identified in Revenue Agent Reeves's Declaration filed with this Petition, the testimony and documents described in the summons are not already in the possession of the IRS.

13. All administrative steps required by the Internal Revenue Code for the issuance of the summons have been followed.

14. The testimony, books, records, papers, and/or other data sought by the summons may be relevant to the IRS's investigation.

15. The identities of the "John Does" are unknown. Accordingly, the IRS does not know whether there is any "Justice Department referral," as that term is defined by 26 U.S.C. § 7602(d)(2), in effect with respect to any unknown "John Doe" for the years under investigation.

16. The Declarations of Daniel Reeves and Barry B. Shott filed with this Petition establish the four elements necessary to prove a *prima facie* case to enforce the summons:

- a. The investigation will be conducted pursuant to a legitimate purpose.
- b. The information sought may be relevant to that purpose.
- c. The information sought is not already in the possession of the IRS.
- d. All administrative steps required by the Internal Revenue Code have been followed.

United States v. Powell, 379 U.S. 48, 57-58 (1964). Accordingly, the burden now shifts to the respondent to show why the summons should not be enforced. United States v. Medlin, 986 F.2d 463, 466 (11th Cir. 1993).

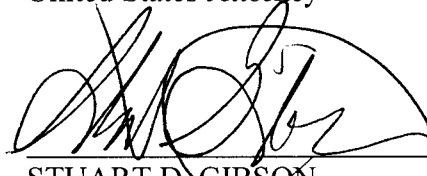
WHEREFORE, the United States respectfully prays that the Court:

A. Enter an order directing the respondent to show cause, if any it has, why it should not comply with summons in all respects; and,

B. Enter an order directing the respondent to comply in full with the summons, by ordering the respondent to appear, testify and produce documents demanded in the summons, before Revenue Agent Daniel Reeves, or such other officer or employee of the IRS that it may designate, within 10 days of entry of the Order, or at such later time and place as may be set by Revenue Agent Reeves or such other officer or employee of the IRS.

R. ALEXANDER ACOSTA
United States Attorney

By:



2/18/2009

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Stuart.D.Gibson@usdoj.gov

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS
United States of America
(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
Stuart D. Gibson, U.S. Department of Justice
Tax Division, P.O. Box 403
Washington, DC 20044 (202) 307-6586

DEFENDANTS
UBS AG
County of Residence of First Listed Defendant Dade
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.
Attorneys (If Known)

FILED by [Signature] D.C.
FEB 19 2009
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. FLA. - MIAMI

(a) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
[X] 1 U.S. Government Plaintiff
[] 2 U.S. Government Defendant
[] 3 Federal Question (U.S. Government Not a Party)
[] 4 Diversity (Indicate Citizenship of Parties in Item III)
Dade Opmc 20423 - Gold/McNulty

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
Citizen of This State [] PTF [] DEF
Citizen of Another State [] PTF [] DEF
Foreign Nation [] PTF [] DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like 110 Insurance, 310 Airplane, 610 Agriculture, etc.

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding [] 2 Removed from State Court [] 3 Re-filed (see VI below) [] 4 Reinstated or Reopened [] 5 Transferred from another district (specify) [] 6 Multidistrict Litigation [] 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S).
a) Re-filed Case [] YES [X] NO b) Related Cases [X] YES [] NO
JUDGE Lenard DOCKET NUMBER 08-mc-21864-JAL

VII. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):
26 U.S.C. Section 7604, Petition to Enforce "John Doe" Summons
LENGTH OF TRIAL via _____ days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:
[] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: [] Yes [X] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
SIGNATURE OF ATTORNEY OF RECORD DATE 2/18/2009

FOR OFFICE USE ONLY
AMOUNT NFR RECEIPT # IFP

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Civil No. **09-20423**  **- GOLD**

McALILEY

UNITED STATES OF AMERICA,)
)
Petitioner,)
)
v.)
)
UBS AG,)
)
Respondent.)

ORDER TO SHOW CAUSE

Upon the petition of the United States, and the Declarations of Barry B. Shott and Daniel Reeves, and the summons attached to the Reeves Declaration, it is hereby

ORDERED that the respondent, UBS AG, appear before the United States District Court for the Southern District of Florida, before the Honorable _____, in that Judge's courtroom in the United States Courthouse at 400 North Miami Avenue in Miami, FL 33128 on the _____ day of _____, 2009, at _____ .m., to show cause why UBS AG should not be compelled to comply in full with the Internal Revenue Service summons served on it on July 21, 2008. It is further

ORDERED that a copy of this Order, together with the Petition and Declarations, be personally served on UBS AG by an official of the Internal Revenue Service within eleven (11) days of the date of this Order. It is further

ORDERED that within eleven (11) days of service of copies of this Order and the Petition and the Declarations upon it, the respondent shall file and serve written responses to the Petition supported by appropriate affidavit(s), as well as any motions it desires to make. It is further

ORDERED that all motions and issues raised by respondent will be considered upon the return date of this Order, that only those issues raised by motion or brought into controversy by the responsive pleadings and supported by affidavit(s) will be considered at the return of this Order, and that any allegations in the Petition not contested by affidavit(s) will be considered as admitted for the purpose of this enforcement proceeding. Affidavits in opposition to the Petition or in support of any motion shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Any affidavit failing to comply with this standard shall not be considered by this Court. It is further

ORDERED that if respondent files an objection to the entry of an order granting the relief sought in the Petition filed in this case, the petitioner shall have eleven (11) days from the date the respondent files its opposition in which to file a Reply which may be supported by additional affidavit(s), which shall be subject to the same requirements as the affidavit(s) which the respondent may offer. It is further

ORDERED that if respondent has no objection to entry of an order directing compliance with the summons issued to it, it will not be required to respond or appear as ordered above if the Clerk of the Court receives written notification thereof (with copies to counsel for petitioner) at least five (5) business days prior to the hearing scheduled above.

Entered this ____ day of _____, 2009.

UNITED STATES DISTRICT JUDGE

COPY TO:

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Department of Justice
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Ben Franklin Station
Washington, D.C. 20044
Stuart.D.Gibson@usdoj.gov

COUNSEL FOR PETITIONER