

1 HENRY KIRK BOWRING
2 2950 WEST CENTRAL #15
3 SANTA ANA, CA 92704
4 (714) 549-3134

Plaintiff In Pro Per

ENTERED
JAN - 3 1997
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

FIL
JAN - 12 1997
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
Deputy Clerk

7
8 UNITED STATES BANKRUPTCY COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 In re:) CASE NO. SA 95-15802 JR
11 HENRY KIRK BOWRING,) Ch. 7
12 Debtor.) ADV. NO. SA ⁹⁵⁻~~95-~~1726 JR

13 HENRY KIRK BOWRING,)
14 Plaintiff,) JUDGEMENT FOR PLAINTIFF.
15 vs.)
16 MABOBEH MAHZARI,)
17 Defendant.)
18 DATE : NOV. 6, 1996
19 TIME : 4:00 P.M.
20 Room : 606

21 The motion for summary judgement came on hearing before the
22 bankruptcy court, the Honorable J. Ryan presiding. This Court
23 hereby adopts the findings of fact and conclusions of law made by
24 the Motion for Summary Judgment, and enters judgement for
25 plaintiff as follows:

26 Plaintiff is declared the owner of, and is entitled to the
27 quiet and peaceful possession of the following described
property:

Parcel 1: Unit No 17 of that certain condominium project in
the City of Santa Ana described in that certain Condominium

1 Plan recorded March 2, 1973 in Book 10579, Page 419 of
2 Official Records, in the office of the County Recorder of
3 said County, (Such plan being hereinafter referred to as
4 "Said Condominium Plan") and as defined in that certain
5 declaration entitled "Declaration of Restrictions, (Enabling
6 Declaration Establishing a Plan for Condominium Ownership of
7 Tract No. 7586)", recorded October 26, 1972 in Book 10393,
8 Pages 825 to 922 inclusive of Official Records of said
9 County and that certain Declaration of annexation (Tract No.
10 7585), recorded March 15, 1973 in Book 10596, Pages 553 and
11 556 inclusive of Official Records of said County, (Such
12 declaration being hereinafter referred to as "Said
13 Declaration").

8 Parcel 2: An undivided 1/101 interest in and to the common
9 area as defined in said Declaration, being Lot 2 and Lot 3
10 of Tract No. 7585, as per Map recorded in Book 317, Pages
11 42, 43 and 44 Miscellaneous Maps, in the Office of the
12 County Recorder of Said County (Except the Units as
13 described in said Condominium Plan).

12 Parcel 3: Exclusive easements appurtenant to said Unit No.
13 17 all as more specifically defined in said Condominium Plan
14 and said Declaration.

14 Commonly known as: 330 W. Carriage #B, Santa Ana,
15 California.

15 Plaintiff's ownership is free of any claims by defendant,
16 defendant's agents, successors, assigns, heirs, and any others
17 claiming under defendant from the deed that was issued by the
18 Internal Revenue Service on November 28, 1994. Said Internal
19 Revenue Service deed is null and void and is to be expunged from
20 the records of Orange County.
21

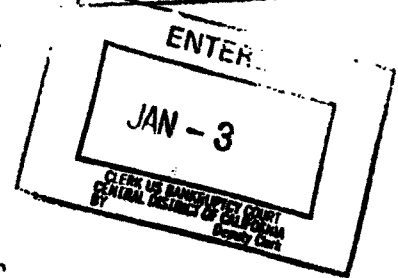
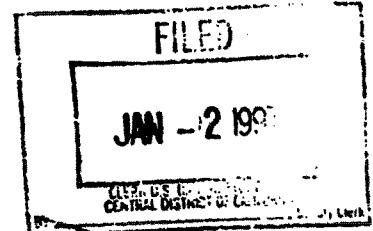
22 DATE:

23 JOHN E. RYAN

24 Honorable J. Ryan

1 HENRY KIRK BOWRING
2 2950 WEST CENTRAL #15
3 SANTA ANA, CA 92704
4 (714) 549-3134

5 Plaintiff In Pro Per



6
7 UNITED STATES BANKRUPTCY COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9

10 In re:

11 HENRY KIRK BOWRING,
12 Debtor.

CASE NO. SA 95-15802 JR

Ch. 7

ADV. NO. SA ⁹⁵⁻~~272~~1726 JR

13 HENRY KIRK BOWRING,
14 Plaintiff,

15 vs.

16 MABOBEH MAHZARI,
17 Defendant.

18
19 [PROPOSED]
20 FINDINGS OF FACT AND
21 CONCLUSIONS OF LAW.

22 DATE : Nov. 6, 1996
23 TIME : 4:00 P.M.
24 ROOM : 606

25 The Court proposes the following findings of fact and
26 conclusions of law for entry of judgement by the district court:

27 Findings of Fact

1. On March 31, 1994 an "M.K. Pittner" of the Internal Revenue Service (IRS) personally served on plaintiff a "Levy" notice and "Notice of Seizure" of the real estate which is the subject of this action for purported tax claims pertaining to plaintiff. (Declaration of Henry Kirk Bowring, ¶1)

2. The seizure and levy notices were served at the

1 location of said real estate, which was plaintiff's sole
2 residence since 1978. (Declaration of Henry Kirk Bowring, ¶1 and
3 2)

4 3. The seizure was for purported tax claims by the IRS
5 pertaining to the years 1984-1988, inclusive. The purported
6 assessment dates for all these years is June 7, 1993.

7 (Declaration of Henry Kirk Bowring, ¶1, Exh. B)

8 4. Prior to these notices, plaintiff never received from
9 the IRS any notice of assessment or demand for payment for any of
10 the years 1984-1988, inclusive. (Declaration of Henry Kirk
11 Bowring, ¶3)

12 5. On or about April 10, 1994 plaintiff received an IRS
13 "Sealed Bid Sale" notice by mail, with a date of April 27, 1994
14 set as the sale date. (Declaration of Henry Kirk Bowring, ¶4).

15 6. On April 11, 1994 the IRS published notice of the above
16 sale date in the Orange County Register. (Declaration of Henry
17 Kirk Bowring, ¶5).

18 7. No sale took place on that date, and there is no
19 evidence that the sale was advertised for any other date.

20 (Declaration of Henry Kirk Bowring, ¶5).

21 8. On or about March 29, 1994 plaintiff received in the
22 mail another IRS "Sealed Bid Sale" notice which was the same as
23 the first except for a handwritten note that the sale had been
24 "postponed" to May 18, 1994. (Declaration of Henry Kirk Bowring,
25 ¶6).

26 9. On November 28, 1994 a "D. Gimpelson" signed and issued
27 a "Deed of Real Property" "for" the "Chief Special Procedures

1 Branch" of the IRS to the defendant. (Declaration of Henry Kirk
2 Bowring, ¶7, Exh. F).

3 10. Contrary to the recitation in the above deed, defendant
4 did not surrender any "Certificate of Sale of Seized Property" in
5 consideration for it. (Declaration of Henry Kirk Bowring, ¶8,
6 Request For Admission No. 1).

7 11. Any conclusion of law deemed more appropriately to be a
8 finding of fact is incorporated herein.

9 Conclusions of Law

10 1. Internal Revenue Code (IRC) §6303(a) requires that
11 notices of assessment and demand for payment be made by the IRS
12 within 60 days of any assessment. The failure to comply with the
13 notice requirements of §6303(a) leaves no authority for any
14 administrative lien or levy collection powers. Blackston v.
15 U.S., 778 F.Supp. 244, 247 (D.Md. 1991); Martinez v. U.S., 669
16 F.2d 568, 569 (9th Cir 1981) (administrative levy not authorized
17 absent demand for payment and refusal/neglect to pay);
18 Commissioner v. Shapiro, 424 U.S. 614, 617-18 (1975) (notice and
19 demand required as prerequisite for levy under section §6331).
20 The IRS lacked authority to conduct any seizure (and sale) of
21 anything belonging to plaintiff, including the real estate
22 herein, due to its failure to follow this mandatory pre-
23 collection procedure.

24 2. IRC §6334 exempts certain property from levy/seizure by
25 the IRS. With two exceptions, one of those items is the
26 "principal residence" of an individual. The property involved
27 herein was plaintiff's sole (and therefore "principal") residence

1 at the time of the seizure/sale. The only way it would not be
2 exempt is if it came within one of the two exceptions. The
3 burden of proving an exception to a statute is on the one
4 claiming the exception. United States v. First City Nat'l Bank,
5 386 U.S. 361, 366 (1966) (general rule that one claiming
6 exception to prohibition in statute has burden of proof). Thus,
7 defendants have the burden of proving an exception to the
8 prohibition against levying on a taxpayer's principle residence.
9 Defendant has failed to show the property herein was not exempt
10 from levy/seizure by the IRS.

11 The IRS lacks all authority to levy on property exempt from
12 levy. Farr v. United States, 990 F.2d 451, 456 (9th Cir. 1993)
13 ("Section 6331(a) withholds from the IRS any power to levy upon
14 exempt property"). Since the property herein was exempt from
15 levy, there could be no lawful seizure or sale of it to
16 defendant. Consequently, the purported sale of plaintiff's
17 property herein is necessarily void, and defendant's deed from
18 said sale is equally void.

19 3. When the IRS fails to strictly comply with the notice
20 of sale provisions of IRC §6335(b), any sale it might
21 subsequently hold is void. Goodwin v. United States, 935 F.2d
22 1061, 1065 (9th Cir. 1991) ("absent literal compliance with
23 [these] provisions, the government sale of land cannot stand").
24 Here, just as in Goodwin, the IRS failed to personally deliver
25 any notice of sale to the plaintiff. Therefore, it failed to
26 comply with the notice requirements of the statute. Under the
27 court's ruling in Goodwin, the IRS purported sale of the property

1 to defendant was and is void. Martin v. Rubel Enterprises, CV
2 92-3184 DT (Tx), C.D. Cal. (1994).

3 4. IRC §6338(b) requires a purchaser of real property at
4 an IRS sale to surrender possession of the "Certificate of Sale"
5 to the IRS in order for the IRS to be authorized to issue any
6 deed to the property. In this case, defendant admits she did not
7 surrender any such certificate, but the IRS still issued her its
8 deed. Although there is no case authority on this particular
9 issue, the appellate decisions generally holding the IRS to
10 "strict compliance" with statutory requirements (e.g. Goodwin,
11 supra, also see Anderson v. United States, 44 F.3d 795 (9th Cir.
12 1995)) would indicate this statute is also subject to strict
13 compliance. Absent such compliance, the IRS action is void, and
14 defendant's deed would be void.

15 5. Defendant has no grounds for any equitable claim herein
16 against the property since a legal remedy exists for recovery of
17 the money she paid to the IRS. Courts have held that third-
18 parties may pursue refund actions for the recovery of taxes which
19 were, in any manner, illegally or erroneously collected. Brodey
20 v. United States, 788 F.Supp. 44 (D.Mass. 1991); Williams v.
21 United States, 24 F.3d 1143 (9th Cir. 1994), aff'd 514 U.S. ____;
22 131 L.Ed.2d 608 (1995). In fact, since defendant is the one who
23 actually paid the money, she is the only one with any standing to
24 pursue a refund. Bruce v. United States, 759 F.2d 755 (9th Cir.
25 1985). In this case, the tax the IRS collected was the result of
26 an illegal sale, and therefore was illegally or erroneously
27 collected from defendant. The refund remedy, combined with the

1 fact there is no evidence defendant has even attempted to pursue
2 it, bars any equity claims by defendant against the property.

3 6. Any finding of fact deemed more appropriately to be a
4 conclusion of law is incorporated herein.

5 DATE:

6 JOHN E. RYAN
7 Honorable J. Ryan

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27