UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:	)	
	)	
TRACY RIDGWAY,	)	CASE NO. 02-30358 (ASD)
	)	
Debtor.	)	CHAPTER 7
TRACY RIDGWAY,	)	
	)	
Plaintiff,	)	
vs.	)	ADV. PRO. NO. 02-3092
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	Re: DOC. I.D. NO. 32

MEMORANDUM ORDER
ON DEFENDANT'S MOTION FOR RELIEF FROM STIPULATION

Before the Court is the above-captioned *United States of America's Motion for Relief from Stipulation of Facts* (hereafter, the "Motion") (Doc. I.D. No. 32) and the Plaintiff's response thereto (Doc. I.D. No. 36). This contested matter within an adversary proceeding was considered at a hearing, at which the parties, through counsel, offered oral argument but no evidence.

Through the Motion the Defendant seeks relief from certain facts previously stipulated to by it in a certain *Joint Stipulation of Facts* (Doc. I.D. No. 15) (hereafter, the "Stipulation"). That Stipulation formed a substantial part of the record which resulted in a Memorandum of Decision (Doc. I.D. No. 19)[1] and Order (Doc. I.D. No. 20) (hereafter, the "Order") denying the Defendant's *. . . Motion for Summary Judgment* (Doc. I.D. No. 13).

The Defendant seeks relief from the Stipulation "to the extent it stipulates that a

[1] Familiarity with the Memorandum of Decision is assumed.

substitute for return was prepared by the Secretary of the Treasury pursuant to 26 U.S.C. Sec. 6020(b)." The stated basis for such relief is the Defendant's averment that "[i]n fact, no substitute for return was ever prepared, made, subscribed, executed or filed by the Secretary."

The Defendant asserts that this Court's failure to grant the requested relief from the Stipulation will "effect a manifest injustice to the United States", and that the Debtor "will not suffer any prejudice by the Court permitting the United States relief from the [S]tipulation . . . ."

The Defendant attaches to the Motion the Declaration of Revenue Agent, John Bohan (hereafter, the "Declaration"), which declares, *inter alia*, that –

> . . . the examining revenue agent, pursuant to Internal Revenue Manual Section 4.4.9, Delinquent and Substitute for Return Processing (in effect at the time), prepared a "dummy/SFR" by placing Mr. Ridgways [sic] name, address, social security number, filing status and one exemption on a copy of the front page of a Form 1040. No other information was filled out on the Form 1040, and no second page (which includes the jurat and signature line) was ever either filled out or attached.
>
> * * * *
>
> At no time was any return prepared, made, subscribed, executed or filed by the Secretary or any IRS employee with regard to Mr. Ridgway's 1991 and 1992 tax liabilities.

The Declaration establishes, at most, that the IRS's dummy return/deficiency procedure for income taxes (hereafter, the "Dummy Return Procedure") is considered *by the IRS* not to constitute the filing of a "return". That legal opinion, however, does not negate the clear implications of federal law. By its explicit language, Internal Revenue Code (hereafter, "IRC") § 6020(b) requires the Treasury Secretary to "make" a substitute "return" for "any person" who fails to make a required return under "any internal revenue

law or regulation." Given the Secretary's obligation under 6020(b);[2] and given that the Dummy Return Procedure utilizes a Form (1040) titled "U.S. Individual Income Tax Return"; and given that the term "return" is not descriptively defined under the Internal Revenue Code or the United States Bankruptcy Code; this Court concludes that the document prepared under the Dummy Return Procedure is a "return" for purposes of this adversary proceeding, consistent with the Stipulation.

This Court's refusal to grant relief does not create a "manifest injustice" to the Defendant because, *inter alia*, the Stipulation is consonant with the Defendant's long-standing litigation stance and strategy in cases of this type. To the Court's knowledge this adversary proceeding is the first, and likely the last,[3] context in which the Defendant has

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[2] IRC § 6020(b)(1) provides in relevant part as follows –

> If *any* person fails to make any return required by *any* internal revenue law or regulation made thereunder at the time prescribed therefor . . . the Secretary *shall* make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(emphasis supplied).

This Court is not unmindful of the fact that despite the plain language of 6020(b)(1), certain courts, including the Second Circuit Court of Appeals, have published opinions containing language which, when read in isolation, may appear to negate the mandatory nature of 6020(b)(1). *E.g., Schiff v. U.S*, 919 F.2d 830, 832 (2d Cir. 1990); *Roat v. C.I.R.*, 847 F.2d 1379, 1381 (9th Cir. 1988). However, it is important to note that the subject language of these decisions is addressed to the mandatory vs. permissive nature of a substitute return *for the purposes of tax deficiency determination and criminal prosecution*; they have not explicitly held that the Secretary is relieved of an obligation to make a substitute return for *all* purposes, including the narrow purpose(s) which are implicated in the instant adversary proceeding.

[3] Newly-amended Section 523(b) provides a seemingly conclusive standard for the subject issue for all bankruptcy cases filed after October 17, 2005. That section now provides that "the term 'return' . . . does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986 . . . ."

not prevailed under Bankruptcy Code Section 523(a)(1) under similar facts. Simply put, the Defendant drafted and agreed to the Stipulation with its eyes open, fully appreciating the risks, however narrowly perceived, of its litigation strategy. Under these circumstances, holding the Defendant to the consequences of its agreement is not "unjust", much less "manifestly" so.

The disposition of the instant motion is also driven by notions of fair-play among litigants. While the Plaintiff possesses credible claims of prejudice due to his needless incurrence of attorneys fees, the true prejudice in this case is visited upon the litigation process itself, and the judicial system as a whole. The parties here *agreed* to limit their dispute to a *legal* issue which they *both* deemed dispositive. With the benefit of hindsight the Defendant is now seeking to walk away from a position which it knowingly and intentionally endorsed until it became apparent that such position contributed directly to the denial of its summary judgment motion. Consistently over the years, in dischargeability cases of this nature, the Defendant has endorsed the notion that the Treasury Secretary makes "returns" under IRC § 6020(b) in individual income tax cases. The parties here intended to narrow the bounds of their dispute to the question of whether the Treasury Secretary's return under IRC § 6020(b) was a sufficient "return" under Bankruptcy Code 523(a)(1). For the Court now to countenance the Defendant's "Monday morning quarterbacking" and "moving target" litigation strategy would send the wrong message to these parties and, more importantly, the bar in general. If sometimes hard-fought stipulations are not honored by the parties and the Court in all but the most extraordinary circumstances, parties in the future will be less inclined to enter into them, and more inclined to seek relief from them, with the result being a waste of litigants' funds and

needless consumption of scarce judicial resources.

Accordingly, in light of the foregoing,

IT IS HEREBY ORDERED that the United States of America's Motion for Relief from Stipulation of Facts (Doc. I.D. No. 32) is **DENIED**.

Dated: March 31, 2006 BY THE COURT

Albert S. Dabrowski
Chief United States Bankruptcy Judge