

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas
FILED

OCT 03 2017

HOUSTON DIVISION

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO. 17-mc-1557
)	
JOHN PARKS TROWBRIDGE,)	
)	
Respondent.)	

RESPONDENT'S NOTICE OF READINESS TO COMPLY WITH THE ORDERS OF THE COURT (DOCUMENTS 11 AND 13) AND REQUEST FOR GRANT OF IMMUNITY AGAINST POTENTIAL SELF-INCRIMINATION

Respondent at 10:00 A.M., October 2, 2017, appeared as ordered by the Court at 12941 North Freeway, 3rd Floor, Houston, TX 77060 before Revenue Agent Kendria Bruno to produce the records and testimony requested in the summons.

Because Revenue Agent Kendria Bruno prior to commencing the examination declined to entertain respondent's request for a grant of immunity against potential self-incrimination, Respondent submitted to questioning and provided answers to certain questions, but elected not to waive respondent's Fifth Amendment right with regard to other questions or requests for certain documents, whereupon Revenue Agent Kendria Bruno concluded the meeting.

Respondent has no intention to frustrate any legitimate governmental function; only to exercise respondent's right to the protection of the Fifth Amendment in respect of compulsory revelations of a testimonial or communicative character that could be used against respondent in a criminal proceeding.

Respondent is concerned that by respondent's act of cooperating without a grant of immunity, respondent would waive constitutional safeguards intended to preserve respondent's right to be secure in respondent's private papers, house, and testimony. Respondent invoked his right to decline to provide the government with testimony and papers that respondent believes might later be used to initiate a criminal case against respondent. As shown herein, respondent's concerns are not without merit.

CASES

Respondent is familiar with *United States v. Roundtree*, 420 F.2d 845 (5th Cir. 1969); *United States v. Prudden*, 424 F.2d 1021 (5th Cir. 1970); and *United States v. Riente*, 31 A.F.T.R. 2d 73-701 (W.D. La. 1973), *aff'd*, 33 A.F.T.R. 2d 74-332 (5th Cir. 1973).

Notwithstanding the findings in *Roundtree*, *Prudden*, and *Riente*, however, the right against self-incrimination is *always* available to prevent compulsion of potentially incriminating evidence regardless of the nature of the proceeding in which evidence is sought—and applies to the books and records and oral testimony compelled by the Orders (Documents 11 and 13); to wit:

The privilege is not ordinarily dependent upon the nature of the proceedings in which the testimony is sought or is to be used. It applies alike to civil and criminal proceedings wherever the answer might tend to subject to criminal responsibility him who gives it. *McCarthy v. Ardnstein*, 266 U.S. 3440 (1924)

Further, the Supreme Court in *Lefkowitz v. Turley*, 410 U.S. 924 (1973) recognized *McCarthy* as “the settled view in this Court.” *See Guy v. Abdulla*, 58 F.R.D. 1, 2 (N.D. Ohio 1973) (“[S]cope of protection afforded by the Fifth Amendment is sufficiently broad to encompass civil pre-trial discovery.”) In short, at enforcement proceedings a respondent has the right to withhold what he believes might amount to self-incrimination, and the courts must liberally favor and respect invocation of the Fifth Amendment. It makes no difference what type

proceeding: Should the court require a respondent either to succumb to the Court's order to comply with an Internal Revenue Service summons without reservation or suffer contempt sanctions, any evidence obtained or tainted thereby is inadmissible in a subsequent criminal proceeding. Also of concern is that inadmissible evidence might be used to assemble other information in furtherance of a criminal investigation.

Since *Boyd v. United States*, 116 U.S. 616 (1886), one's private books and papers have been protected by the privilege against compulsory self-incrimination and unreasonable searches and seizures. Thus, an order compelling compliance with an Internal Revenue Service summons requesting production of records and documents in one's possession can be resisted on Fifth Amendment grounds; to wit (Underline emphasis added.):

We have already noticed the intimate relation between the two Amendments [Fourth and Fifth Articles of Amendment]. They throw great light on each other. For the 'unreasonable searches and seizures' condemned in the Fourth Amendment are almost always made for the purpose of compelling a man to give evidence against himself, which in criminal cases is condemned in the Fifth Amendment; and compelling a man 'in a criminal case to be a witness against himself', which is condemned in the Fifth Amendment, throws light on the question as to what is an 'unreasonable search and seizure' within the meaning of the Fourth Amendment. And we have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself . . . *Boyd v. United States*, 116 U.S. 616, 633 (1886).

PRIOR SUMMONS

As the Court may be aware, Respondent in 1999 was subjected to an audit by a Revenue Agent. Respondent inquired as to whether a Miranda warning was appropriate and was advised that the proceeding is only civil, but that information could be used against him in a criminal proceeding. In order to proceed with collecting documents and testimony, the agent agreed that respondent could consider himself "Mirandized." Respondent objected to several data analyses and conclusions in the examiner's report and filed for review with an appeals officer. Two such

request letters were ignored and no review was ever conducted. Sometime thereafter respondent discovered that he was the subject of a criminal investigation—one that lasted for approximately seven years. Respondent sent monthly letters to the supervising Assistant United States Attorney outlining various concerns respondent desired to present as written and oral testimony to the grand jury; literally dozens of requests were ignored. No prosecution was authorized.

In all these years, respondent's repeated questions regarding what might be the taxing statutes that would establish respondent's liability for "federal income taxes" were ignored. Consequently, respondent never understood what data might be relevant to complete and file a specific return – or what data possibly could be considered incriminating by a government agent or officer. Not knowing the basis for a possible statutory violation, respondent prefers not to subject himself to another such arduous marathon without invoking the right against self-incrimination afforded by the Fifth Amendment.

Respondent also objected to an earlier summons, perhaps in 2000, where respondent was represented by an attorney during the court hearing. Judge Rosenthal agreed to the attorney's request for immunity and the summonsed records were provided promptly.

COUNSEL FOR PETITIONER CONFIRMS RESPONDENT'S CONCERNS

The following recorded statements made by counsel for petitioner Lewis A. Booth, II at the 10:00 A.M. October 3, 2017, examination with Kendria Bruno can be verified by the Official Court Reporter's transcript as soon as it is made available (likely October 16, 2017):

Well as Ms. Bruno said, this is, the information that we gather is based, will be shared on a need-to-know basis. So if there is no need for criminal investigation division to retain or obtain a copy of this information then they will not have it. . . .

However, I can't give you a complete blank check, again, because if you tell us I am not filing tax returns because whatever your reason and it rises to a level of something that's obviously criminal, we can't give you a, I would hate to tell you no, and then we are under some obligation to then refer you but that would be an extraordinary circumstance.

So the documents that you give Ms. Bruno are solely for her to determine your civil tax liability. If someone from criminal investigation division would like to contact you, they will.

So, again, I can't give you for example, if you were to tell me, if you were to go down when Ms. Bruno asks you certain questions and you were to go down the list of things that are obviously criminal in nature, obviously, there is still no guarantee that even if we made a referral, that the criminal investigation division would take that case. . . .

I can't say never [that the files obtained in the instant examination could never end up being reviewed in a criminal investigation].

But, you know, it's [a criminal referral is] I assume it's like everything else where you can call the police, right, for a anonymous tip, like hey I think that Lewis **** to stealing donuts and then, right and then the police have to still, right, 'cause we're talking about building things and the important things, so then the police would still have to say, one, they'd have to believe me or you, saying that about me and then, two, they have to do something about it and then if they did something about it they'd have to be able to have enough evidence to go to the next step and then the next step, I mean we're talking about several concurrent steps in a process that I am not familiar with.

CONCLUSION

As shown hereinabove, respondent has good reason to be concerned that without a grant of immunity from the Court, it is entirely possible that any testimony or documents provided to Kendria Bruno in respect of the summons could be used to subject respondent to a criminal investigation.

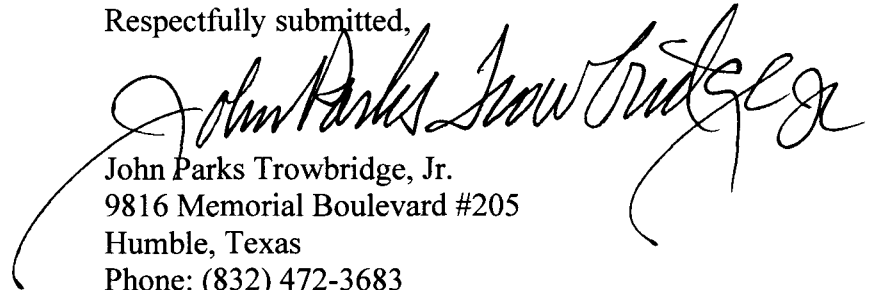
Further, the Supreme Court in *McCarthy*, *Lefkowitz*, and *Boyd* are definitive in respect of respondent's right against self-incrimination in respect of compulsory testimony.

Respondent is ready and willing to provide all requested testimony and books and records responsive to the summons under the protection of an order of immunity, since throughout all of respondent's experiences respondent has never been informed of any applicable statute that establishes a duty for respondent to file a particular return or pay a certain tax liability.

Wherefore, in respect of the foregoing, respondent respectfully moves the Court that the Court enter an order granting respondent immunity in respect of the summons, whereupon respondent immediately shall reply responsively to every request made by Kendria Bruno.

Date: October 3, 2017

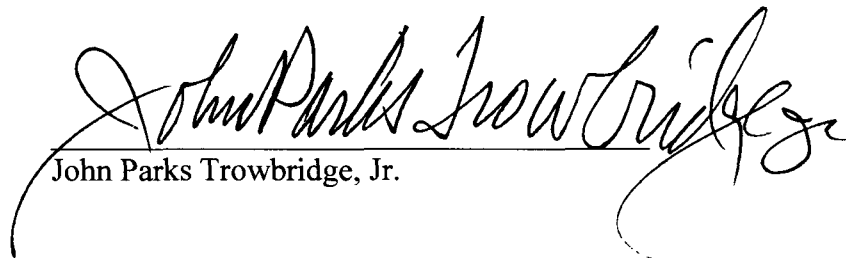
Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2017, I served a complete copy of RESPONDENT'S NOTICE OF READINESS TO COMPLY WITH THE ORDERS OF THE COURT (DOCUMENTS 11 AND 13) AND REQUEST FOR GRANT OF IMMUNITY AGAINST POTENTIAL SELF-INCRIMINATION by First Class mail on the following parties:

LEWIS A. BOOTH
Special Assistant
United States Attorney
8701 S. Gessner, Ste. 710
Houston, Texas 77074


John Parks Trowbridge, Jr.