

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

DAVID A. COHEN, et. al.)
)
 Petitioners,)
)
 v.) Civil No. 03-cv-3234
)
 UNITED STATES OF AMERICA)
)
 Respondent.)

DECLARATION OF CATHERINE JOHNS

Catherine Johns, pursuant to 28 U.S.C. § 1746, declares:

1. I am an Internal Revenue Agent employed with the Internal Revenue Service, with post of duty at 3300 SW 34th Avenue, Suite 152, Ocala, Florida 34474. I have been a Revenue Agent since October 1982.

2. In my capacity as a Revenue Agent, I am conducting an examination into the federal income tax liabilities of David A. and Margaret L. Cohen, and the wholly-owned professional corporation of David A. Cohen, David Andrew Cohen, DMD, MS, PA, (the Cohens) for 1998, 1999, 2000 and 2001. The purpose of the examination is to determine the Cohens' correct federal income tax liabilities for the years 1998 through 2001.

3. In furtherance of my examination and under the authority of 26 U.S.C. §7602, on March 31, 2003, I issued two administrative summonses that directed Kristen Nolan, Vice President of SEI Private Trust Company, to appear before me on April 30, 2003 to give testimony and to produce records, papers or other data as stated in the

summonses. Copies of those summonses – one issued in the matter of David Andrew Cohen and Margaret L. Cohen, and the other in the matter of David Andrew Cohen, DMD, MS, PA, are attached to as Exhibits A and B, respectively, to the Petition to Quash Summonses filed in Case No. 03cv3234.

4. I did not send copies of the summonses issued on March 31, 2003 to all the persons entitled to receive notice of the issuance of those summonses, as required by 26 U.S.C. §7609(a). Upon learning that I had not complied with §7609(a) when I issued the March 31, 2003 summonses, I wrote to the summonsed party and advised her that the IRS had withdrawn those summonses, and that she need not comply with them.

5. In furtherance of my examination and under the authority of 26 U.S.C. §7602, on April 17, 2003, with the approval of IRS Group Manager Richard Bartholomew, I issued two administrative summonses that directed Kristen Nolan, Vice President, SEI Private Trust Company, to appear before me on June 4, 2003 to give testimony and to produce records, papers or other data as stated in the summonses. Copies of those summonses – one issued in the matter of David A. Cohen and Margaret L. Cohen, and the other in the matter of David Andrew Cohen, DMD, MS, PA, are attached to this Declaration as Exhibits A and B, respectively.

6. On April 21, 2003, Internal Revenue Agent Gregory A. Valenti served on Kristen Nolan attested copies of the summonses, as shown by the attestation of service on the reverse side of the retained copies of the summonses. On April 23, 2003, copies of each summons were sent, by certified or registered mail, to David Andrew Cohen;

Margaret Cohen; the Cohens' Attorney, Michael Suverkrubbe; Jaye & Junck Consulting, Inc.; Richard Jaye; Michael Junck; xélan, Inc.; xélan, The Economic Association of Health Professionals, Inc.; xélan Insurance Services, Inc.; xélan Administrative Services, Inc.; xélan Investment Services, Inc.; xélan; Pyramidal Funding Systems, Inc.; Royal Bank of Canada; Euro-American Trust Company; xélan Insurance Company; xélan Insurance Company (Barbados); xélan Annuity Co.; xélan Annuity Company, Ltd.; xélan Foundation; and Ameripath, Inc.

7. None of the information sought from SEI in the summonses is in the possession of the Internal Revenue Service. Although the IRS does possess copies of some documents that purport to pertain to the Cohens and SEI, it has no way of knowing whether those documents are true and accurate copies of the documents in the possession of SEI that pertain to the Cohens. The IRS does not know whether SEI possesses documents about the Cohens that I have not obtained from other sources in this audit. The IRS does not possess any documents from SEI about other participants in the xélan disability insurance trust program, as sought in the summonses. The IRS does not possess any oral statements from SEI about its role in the xélan disability insurance trust program, the xélan Foundation, or any other xélan programs in which the Cohens participated.

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

9. Based on my experience, and on the experience of John L. Marien as set forth in detail in his Declaration filed in this case, the testimony, books, records, papers and other data sought by the summonses may shed light on the correct federal income tax liabilities of David A. and Margaret L. Cohen, and the wholly-owned professional corporation of David A. Cohen, David Andrew Cohen, DMD, MS, PA, for 1998, 1999, 2000, and 2001.

10. As of the date I issued these summonses, no "Justice Department referral" was in effect with respect to David A. Cohen, Margaret L. Cohen, or David Andrew Cohen, DMD, MS, PA. More specifically, the Internal Revenue Service has not made a recommendation to the Department of Justice for a grand jury investigation or criminal prosecution of any of the Cohens, for the tax years under examination. The Internal Revenue Service also is not delaying a recommendation to the Department of Justice in order to collect additional information. Moreover, the Department of Justice has not made any request under 26 U.S.C. § 6103(h)(3)(B) for the disclosure of any return or return information (as those terms are defined in 26 U.S.C. § 6103(b)) relating to any person about whom the summonses seek information.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: August 1, 2003

/s/ Catherine Johns
CATHERINE JOHNS
Ocala, Florida