Government’s Request for Preliminary Injunction Denied in United States v. Zerjav

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Lathrop Gage obtained a favorable ruling in U.S. District Court for the Eastern District of Missouri when Federal Judge E. Richard Webber denied the government's request for preliminary injunction in a case where the IRS claimed that the United States Treasury lost millions in tax revenue because of tax strategies recommended by firm client Frank "Tiger" Zerjav, Jr. St. Louis attorneys Scott Dickenson and Matt Jacober have served as lead attorneys for Tiger Zerjav in this matter. *United States v. Frank L. Zerjav, et al.*

In a high profile tax prosecution filed in anticipation of the April 15, 2008 tax filing deadline, the Department of Justice last February brought the injunction action against Frank Zerjav, his son and their accounting firm. The IRS alleged the Zerjavs advised clients to reduce their tax burden in ways that the IRS disputes. The Zerjavs vigorously disputed the allegations, and the Lathrop Gage legal team represented the Zerjavs in a number of hearings before federal Judge Webber.

In denying the DOJ's request for preliminary injunction, Judge Webber harshly criticized the IRS and the federal government’s prosecution of the Zerjavs. Judge Webber issued a lengthy 62-page opinion. "Based on the evidence presented, it becomes increasingly obvious that many witnesses [the IRS] presented against the Defendants have grudges to settle, have incomplete information, have personal interests to protect, or have other factors in their background which make them unreliable," the opinion said.

Judge Webber suggested that the IRS’ case against the Zerjavs was an abuse of the Federal Government’s power and that the "extensive investigation has been misdirected." The order went on: "When the power of the United States Government is brought against a citizen, the Courts were fashioned by the Founding Fathers to assure that the rights of the people would be protected from unrestrained intrusions into the lives of the people, the Government was instituted to serve. Here, there is mounting evidence that that awesome power may have been abused."

Judge Webber’s order goes on to outline substantial evidence which called into question the government’s motives and the legitimacy of the IRS’ investigation of the Zerjavs. For one, the order questions the credibility of the Internal Revenue Service Agents called to testify. Revenue Agent Rebecca Palm testified at trial that she had not been told, prior to conducting audits, that the IRS intended to put the Zerjavs out of business. This testimony was directly contradicted by her prior deposition testimony. Revenue Agent Voss

confessed that she did not comply in her audits with standard procedures and based her conclusions, at least in part, on taxpayers and representatives who pointed the finger at the Zerjavs "to gain a personal favorable resolution with the Internal Revenue Service." The Court singled out its harshest criticism for IRS Lead Agent Mark Stone whose conduct, Judge Webber said, "appears to be a violation of due process that should be further explored."

"We are gratified that the Court agreed that the IRS' evidence as presented was misleading, and that it was insufficient to demonstrate that the IRS was likely to prevail on the merits," said Scott Dickenson, who represents Frank "Tiger" Zerjav, Jr., while Frank L. Zerjav, Sr. is represented by Paula Junghans of the law firm Zuckerman Spaeder and Neil Bruntrager of the law firm of Bruntrager & Billings, P.C.

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