

**UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY**

DIRECTOR OF PROFESSIONAL)
RESPONSIBILITY,)

Complainant,)

v.)

Complaint No. 2003-2

JOSEPH R. BANISTER,)

Respondent.)

**RESPONDENT'S STATEMENT OF FACTS, ANSWER,
AND AFFIRMATIVE DEFENSES**

Joseph R. Banister, the respondent in the above-captioned matter ("Banister"), by and through counsel of record Robert G. Bernhoft, Esquire, hereby answers the Complainant's Complaint, as follows:

STATEMENT OF FACTS

1. Mr. Banister is a skilled tax practitioner with outstanding academic and professional credentials, including:

a. Graduate, Bachelor of Science Degree in Business

Administration (Concentration in Accounting), San Jose State University.

August of 1986;

b. Tax Specialist, KPGM, February 1987 through February 1990;

c. Certified Public Accountant since January of 1991:

d. Elected President of both the Federal Law Enforcement Training Center Criminal Investigator Training Class (January, 1994), and the Federal Law Enforcement Training Center Special Agent Basic Training Class (March, 1994);

e. Received IRS Special Agent Expert Award for Firearms Marksmanship, Special Act Award (June, 1995), Certificate of Recognition (March of 1996), Performance Award (September, 1996), Sustained Superior Performance Award (August, 1997), and Top Athlete Award (December, 1997);

f. Promoted to Grade 13 Special Agent before 5th year Employment Anniversary;

g. IRS Asset Forfeiture Coordinator, IRS Central California District (1997); and

h. IRS Organized Crime Drug Enforcement Task Force Coordinator, IRS Central California District (1998).

2. Mr. Banister commenced an independent investigation of the scope and nature of federal income tax on or around January of 1997, in an effort to prove, to himself and others, the falsity of claims made by so-called "tax protestors." Mr. Banister was a duly-commissioned Special Agent of the Department of the Treasury Internal Revenue Service, Criminal Investigation Division, during the pendency of his investigation. During the course of his investigation, on off-duty hours, Mr.

Banister spent hundreds of hours researching the Internal Revenue Code, Treasury Regulations, court cases, IRS official publications, and the like.

3. Mr. Banister concluded from his exhaustive investigation that the IRS was routinely misapplying the clear language of the statutes and regulations relating to federal income taxation.

4. Upon reaching this conclusion, Mr. Banister drafted and submitted a detailed 95-page report to his superiors at IRS Criminal Investigation Division. On information and belief, his report was forwarded on up the chain of command at least to the Assistant Commissioner, Criminal Investigation.

5. Several days after first submitting his investigative report, Mr. Banister was handed a written communication from Criminal Investigation Chief Paul Varville, advising Banister that the IRS would not be responding to anything contained in his report, and that he was immediately placed on administrative leave.

6. After contemplating the IRS' refusal to address his investigative report, Mr. Banister felt compelled to resign his Special Agent commission due to his concern that he would be violating his oath to uphold the Constitution of the United States by continuing to serve in a Special Agent capacity.

7. Subsequent to resigning as an IRS Special Agent as a matter of conscience and duty, Mr. Banister continued his research into the scope and nature of federal income taxation. In particular, Mr. Banister performed exhaustive

research on the meaning and proper application of 26 U.S.C. §§ 861-865 and those sections' corresponding Treasury Regulations. In addition, Mr. Banister personally investigated public claims that the 16th Amendment ratification process was fraudulent. In this last regard, Mr. Banister viewed certified copies of various states' 16th Amendment ratification proceedings, and concluded that indeed, evidence of fraud was present.

8. At the time Mr. Banister prepared the amended returns for Walter A. Thompson, (*see* Compl., Exhibits 8 and 9 attached thereto), no published authority held that income of the type received by Mr. Thompson was not excluded from federal income taxation by the operation of 26 U.S.C. §§ 861-865 and corresponding Treasury Regulations. The position taken by Mr. Banister on behalf of Mr. Thompson was not frivolous.

9. Mr. Banister represented Frank W. Coleman in a Collection Due Process Hearing before the IRS. The arguments regarding doubt as to liability were predicated largely on 26 U.S.C. §§ 861-865 and corresponding Treasury Regulations operating to exclude income of the type received by Mr. Coleman from federal income taxation. In his written submissions, Mr. Banister did state that he had researched the 16th Amendment ratification process and found it to be fraudulent. He included that observation in support of the doubt as to liability argument, based on his belief that the actual evidence of fraud he had personally seen had never

been sufficiently reviewed, much less decided by any authority. The position taken on behalf of Mr. Coleman was not frivolous.

10. Mr. Banister advised and fully disclosed to both Mr. Thompson and Mr. Coleman that the arguments they instructed him to make on their behalf were contrary to IRS custom and policy, and could precipitate adverse IRS action against them.

11. Mr. Banister fully disclosed to IRS the basis of the amended return tax treatment with respect to Mr. Thompson, and the basis of the doubt as to liability argument with respect to Mr. Coleman, in detailed position statements tendered directly to IRS.

ANSWER

12. The paragraphs above numbered 1 through 11 constitute facts in support of the Respondent's defense, and are specifically incorporated by reference as to each and every part of the answer and affirmative and special defenses set out below.

13. Answering ¶ I(A), this answering Respondent admits the allegations contained therein.

14. Answering ¶ I(B), this answering Respondent states that, to the extent the allegations are legal conclusions and/or narrative, no response is required. To the extent a response is required, Respondent admits that he has engaged in federal tax practice before the Internal Revenue Service, but denies each and every other

allegation contained therein, putting the Complainant specifically to his proof thereon.

15. Answering ¶ II, this answering Respondent admits the allegations contained therein.

16. Answering ¶ III, this answering Respondent states that, to the extent the allegations contained therein are unsupported legal conclusions, no response is required. To the extent a response is required, the Respondent denies each and every allegation contained therein, putting the Complainant specifically to his proof thereon.

17. Answering ¶ III(A)(1), this answering Respondent denies that he engaged in disreputable conduct in violation of 31 C.F.R. §§ 10.51, 10.51(d), 10.51(j), 10.22(b), and 10.22(c), but admits the remaining allegations contained therein.

18. Answering ¶ III(A)(2), this answering Respondent denies that he engaged in disreputable conduct in violation of 31 C.F.R. §§ 10.51, 10.51(d), 10.51(j), 10.22(b), and 10.22(c), but admits the remaining allegations contained therein.

19. Answering ¶ III(A)(3), this answering Respondent denies that he engaged in disreputable conduct in violation of 31 C.F.R. §§ 10.51, 10.51(d), 10.51(j), 10.22(b), and 10.22(c), but admits the remaining allegations contained therein.

20. Answering ¶ III(B), this answering Respondent denies that he engaged in disreputable conduct in violation of 31 C.F.R. §§ 10.34, but admits the remaining allegations contained therein.

21. Answering ¶ IV(A), this answering Respondent denies each and every allegation contained therein, putting the Complainant specifically to his proof thereon.

22. Answering ¶ IV(B), this answering Respondent denies each and every allegation contained therein, putting the Complainant specifically to his proof thereon.

23. Answering ¶ IV(C), this answering Respondent denies each and every allegation contained therein, putting the Complainant specifically to his proof thereon.

24. Answering ¶ IV(D), this answering Respondent denies each and every allegation contained therein, putting the Complainant specifically to his proof thereon.

25. Answering ¶ IV(E), this answering Respondent denies each and every allegation contained therein, putting the Complainant specifically to his proof thereon.

AFFIRMATIVE AND SPECIAL DEFENSES

26. As and for affirmative and special defenses to the Complaint, this answering Respondent submits the following:

- a. The Secretary of the Treasury is estopped from attempting to suspend or disbar the Respondent by the legal effect of his own acts

and/or omissions, or the acts and/or omissions of officers, employees, or agents under his control:

b. Prosecution of the instant Complaint violates both Respondent's right against self-incrimination and right to due process of law secured him by the Fifth Amendment to the Constitution of the United States;

c. Prosecution of the instant Complaint violates rights secured to the Respondent by the First Amendment to the Constitution of the United States;

d. The Complaint contains claims which fail to state a claim upon which relief can be granted as against this answering Respondent;

e. The Complaint and any prosecution of same is barred as impermissible retaliation; and

f. Prosecution of the Complaint violates principles of sound public policy, fundamental fairness, and equity.

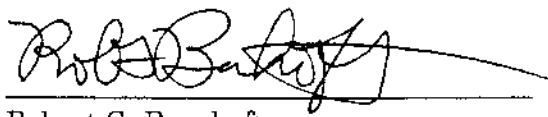
WHEREFORE, Respondent Joseph R. Banister respectfully prays for judgment as follows:

- A. For a dismissal of the Complaint, with prejudice;
- B. For his attorney's fees and costs and disbursements of this action; and
- C. For such other and further relief as the Court deems just and equitable.

Respectfully submitted this 30th day of April, 2003.

THE LAW OFFICE OF ROBERT G. BERNHOFT
Attorneys for the Respondent

Note: The statements made in this answer are true and correct and knowing
and willful false statement may be punishable under 18 U.S.C. § 1001.

By: 
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U.S. Tax Court Bar No. BR1412

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