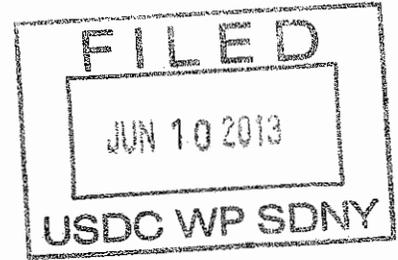


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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SELIM 'SAM' ZHERKA,

Plaintiff,

COMPLAINT

vs.

13 CV 3940

"AGENT" RYAN OF THE INTERNAL REVENUE
SERVICE, "AGENT" ASHCROFT OF THE FEDERAL
BUREAU OF INVESTIGATION,

Defendants.
-----x

By and through his counsel, Michael H. Sussman, plaintiff alleges as follows against defendants:

I. PARTIES

1. Plaintiff Selim "Sam" Zherka is a resident of the County of Westchester, State of New York, within this judicial district.

2. Defendant "agent" Ryan is employed by the Internal Revenue Service [IRS] and the person responsible for directing the IRS' investigation of plaintiff, including the assignment of investigative tasks to subordinates and the review of their work product. His actions and omissions, as alleged herein, were undertaken

under color of state law, using the powers and authorities associated with his governmental position.

3. Defendant “agent” Ashcroft is employed by the Federal Bureau of Investigation [FBI] and the person responsible for directing the FBI’s investigation of plaintiff, including the assignment of investigative tasks to subordinates and their review. His actions and omissions, as alleged herein, were undertaken under color of state law, using the powers and authorities associated with his governmental position.

II. JURISDICTION

4. As plaintiff alleges that both defendants have violated his constitutional rights as guaranteed by the First and Fourteenth Amendments, this Honorable Court has jurisdiction in this matter pursuant to 28 U.S.C. secs. 1331, 1343 (3) & (4), 28 U.S.C. secs. 1983 and 1988 and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

III. STATEMENT OF FACTS

a. PLAINTIFF’S PROTECTED POLITICAL ACTIVITIES

5. Between 2009 and 2011, plaintiff Zherka, a prominent newspaper publisher from the County of Westchester, repeatedly attacked and criticized

federal, state and local elected officials, including specifically the IRS and the FBI, in his newspaper and in public rallies.

6. Between 2009-2011, plaintiff Zherka organized and staged numerous rallies under the banner of the “Tea Party” - both to express his own opposition to corruption and misrepresentation by elected and appointed officials and to galvanize public support for the Tea Party’s agenda.

7. At the rallies in 2009-2011 which plaintiff organized, he regularly spoke out against high taxes, at the local, state and federal level, and the economic enslavement which he believed the government was creating through confiscatory taxation policies, as well as against political corruption at every level of government.

8. In 2009-11, plaintiff organized and supported efforts to form a new political party in New York State to champion the Tea Party platform.

9. These efforts entailed substantial time and personal expense.

10. Plaintiff and those working with him collected tens of thousands of signatures in support of the formation of a new political party.

11. For his efforts in organizing the Tea Party in New York State, including his substantial financial support for such activities, and his advocacy as set forth

above, plaintiff Zherka received extensive publicity and, upon information and belief, defendants, as agents of the IRS and FBI, learned of his protected speech acts.

12. As part of his effort, plaintiff sought tax exempt status for an organization which he and others intended to use primarily for educational purposes.

13. However, due to the excessive and extraordinary nature of inquiries by the IRS and its agents, plaintiff concluded that it was futile to pursue tax exempt status for this organization.

14. Said questions posed to him substantially exceeded those normally asked of those seeking tax-exempt status and were motivated by plaintiff's association with the Tea Party.

15. In May 2013, it became widely known that the unusual inquiries directed to plaintiff and those with whom he was associated, as well as the delays in processing their applications for tax exempt status, were part of a broader effort by the IRS to thwart the granting of tax exempt status to those associated with the Tea Party.

b. **PLAINTIFF'S BUSINESS ACTIVITIES**

16. For the last twenty years, Zherka has engaged in the commercial real estate business, buying and selling substantial commercial properties and filing all forms required with respect to such transactions.

17. In these dealings, Zherka has complied with the tax laws of the United States and never been accused of, nor committed, any criminal conduct or offense.

18. At all times before the commencement of the investigation discussed below, plaintiff Zherka enjoyed a strong business relationship with bankers at North Folk Bank [later acquired by Capital One] and, to plaintiff's knowledge, neither these bankers nor any party to the transactions in which plaintiff engaged complained to any federal authority concerning any transaction in which they participated with him.

19. Instead, these bankers financed Zherka's business transactions and have attested to his excellent record of fair dealings and timely re-payment of loans associated with his various business entities and ventures.

c. **DEFENDANTS' ACTIONS**

20. Between November 2011 and today, defendants have together caused to be served more than 75 subpoenas by and through which they have sought

information relating to plaintiff's business activities and those activities of numerous business entities and persons associated with the plaintiff.

21. These subpoenae have been served on almost all those who have done business with the plaintiff.

22. The consequence to plaintiff of this investigation has been dramatic – those who had done business with him became unwilling to engage in legitimate business dealings with him for fear of running asunder of federal agencies, namely the IRS and FBI.

23. Within the last thirteen months and ongoing, some former business associates and others with whom plaintiff has done business have contacted plaintiff and advised him that they have been contacted by defendants and those acting at their direction or in concert with them.

24. According to those approached by them, defendants and/or those working under their direction and control have demanded that these persons provide incriminating information against plaintiff, whether that information be true or not.

25. Defendants and/or their agents and assignees have threatened plaintiff's former business associates and others who have conducted business with plaintiff, indicating directly and/or intimating that, if they did not cooperate with the

government, they would find themselves associated with the plaintiff in a criminal indictment.

26. Said threats have been baseless because these alleged co-conspirators never indicated they had any information which could incriminate plaintiff in any criminal wrongdoing, have no such information and defendants and those acting under the defendants' direction and/or in concert with them lacked any basis to believe they did or, therefore, for the threats made to them.

27. On April 13, 2013, one of his former business associates, Pasquale Scarpa, told plaintiff that defendants and/or those acting at their direction or in concert with them queried him about his political affiliations and political activities he had engaged in with plaintiff and stated that everyone around plaintiff was a moving target.

28. During their interview with Scarpa, defendants and/or those acting at their direction or in concert with them, solicited him to try to get Kevin Sisti, a person who had previously done business with plaintiff, to participate in manufacturing lies about the plaintiff.

29. In December 2012, another one of plaintiff's former business associate, Tony Nikac, told plaintiff that defendants and/or those acting at their direction or in concert with them, or one of them, had inquired as to whether plaintiff had given

him cash under the table and, when he denied this, indicated they wanted him to so cooperate with them because they were building a case against plaintiff.

30. The “investigation” of the plaintiff has continued for more than eighteen [18] months.

d. **DEFENDANTS’ SELECTIVE TARGETING OF PLAINTIFF**

31. The pattern of targeting plaintiff is consistent with the findings of the recently released Department of Treasury Inspector General’s report which concluded that the IRS had subjected applicants for tax exempt status from avowedly Tea Party affiliates to delays and obstructions based solely upon their assumed political beliefs as well as the conduct of the IRS/FBI toward other prominent Tea Party supporters.

32. Defendants have not engaged in the same targeting of other business people similarly situated to plaintiff who have not engaged in speech acts severely critical of the United States Government.

33. Defendants lack any good faith basis for the investigation of the plaintiff and were solely motivated by malice and a desire to punish him for, and suppress, his political expression.

e. **DEFENDANTS' UNLAWFUL CONDUCT HAS INJURED PLAINTIFF**

34. During this time period, plaintiff's business has been significantly and detrimentally affected due to his prior bankers' unwillingness to consummate deals with him, drastically curtailing his ability to engage in business transactions.

35. As a consequence of the commencement of this investigation and believing that its initiation was caused by his political activism, plaintiff has curtailed his public advocacy both in support of the creation of the Tea Party in New York State and otherwise.

36. Any person of "reasonable firmness," faced with the baseless initiation and continuation of a broad-ranging investigation implemented in a manner intended to inform, involve and threaten many of that business person's associates and those doing business with him, would, likewise, have been chilled in his/her political expression.

37. Defendants' actions and those of persons subordinate to defendants acting at their direction have substantially injured plaintiff by: [a] causing him substantial emotional distress; [b] impeding him from engaging in the gainful pursuit of business opportunities from which he otherwise would have been able to profit; [c] impairing and tarnishing his personal and professional reputation and [d]

chilling him from engaging in speech acts intended to express his position on matters of public importance.

38. These injuries are likely to be ongoing in nature.

f. **DEFENDANTS ARE NOT ENTITLED TO QUALIFIED IMMUNITY**

39. The rights violated by the defendants were all clearly established at the time of their violation and no reasonable agent/officer in defendants' positions would have concluded that the actions they engaged in were lawful.

IV. **CAUSES OF ACTION**

AS AND FOR A FIRST CAUSE OF ACTION

40. Plaintiff incorporates paras. 1-39 as if fully repeated herein.

41. By commencing and continuing an investigation into plaintiff's affairs without any good faith basis and solely on the basis of his political expression and protected activity, defendants violated the First Amendment to the Constitution, as made actionable against them by Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

AS AND FOR A SECOND CAUSE OF ACTION

42. Plaintiff incorporates paras. 1-41 as if fully repeated herein.

43. By singling plaintiff out for investigation and persecution on the basis of an illegal criterion, namely his political beliefs and activities, defendants violated the equal protection component of the due process clause of the Fifth Amendment, as made actionable against them by Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

AS AND FOR A THIRD CAUSE OF ACTION

44. Plaintiff incorporates paras. 1-43 as if fully repeated herein.

45. By engaging in a pattern of conduct intended to single out and persecute plaintiff on account of his political expression, defendants have demonstrated conscience-shocking behavior which violates the substantive due process clause of the Fifth Amendment, as made actionable against them by Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

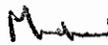
V. PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Honorable Court:

- 1) accept jurisdiction over this matter;
- 2) empanel a jury to hear and decide all issues within their jurisdiction;
- 3) award to plaintiff and against defendants, jointly and severally, compensatory damages, with pre-and post-judgment interest;

- 4) award to plaintiff and against defendants, individually, punitive damages;
- 5) award to plaintiff the reasonably incurred attorneys fees and costs deriving from the prosecution of this matter;
- 6) permanently enjoin the defendants and those acting at their direction and in concert with them to initiate, continue or otherwise engage in retaliatory investigations of the sort set out above and
- 7) enter any other Order necessary to secure justice and equity.

Respectfully submitted,



~~MICHAEL H. SUSSMAN~~ [3497]

COUNSEL FOR PLAINTIFF

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(845)-294-3991

Dated: June 10, 2013