

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

ESTATE OF BLANCHE L. HOWARD,)	
DECEASED, MARY L. HOWARD,)	
EXECUTOR,)	
)	
Petitioner,)	
)	
v.)	Docket No. 30306-13.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER

After having been once continued, this case is scheduled to be tried at the Court’s Chicago session beginning October 19, 2015. Petitioner filed a motion for a continuance on September 18, 2015; respondent filed an objection; and the Court issued an order dated September 23, 2015, and held a telephone conference with counsel for the parties on September 15, 2015. The Court invited the parties to correct and amplify the facts stated in the Court’s order. The date given in the third bulleted paragraph on page 2 should be September 11, 2015; petitioner’s counsel in the fourth paragraph is not Mr. Kaye but his partner Mr. Silverman; and as to the last bulleted paragraph, it appears that CLA signaled its coming withdrawal in late August 2015 but did not explicitly withdraw until September 8, 2015. Petitioners’ counsel stresses that the speed of their actions was affected by the fact that, to at least some of the attorneys as they responded to CLA’s withdrawal, this case and CLA’s giving of expert testimony in this proceeding was not the most conspicuous aspect of CLA’s representation of Nu-Way and Ms. Howard.

Nonetheless, the Court is confirmed in its conclusions that the executor (petitioner’s spokesperson here) was the one person with access to (if not command of) all of the relevant facts about the parallel proceedings, but if she did

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not positively manipulate the proceeds then at best she unaccountably left each of her two sets of representatives completely in the dark about the case handled by the other set, to the detriment of good order. Among the results was the fact that her current counsel had not filed their notice of appearance at the time of our previous telephone conference, and her then-counsel (employed by CLA) indicated CLA's readiness to provide expert testimony. Current counsel say CLA is unwilling to testify, but with our own ears we have heard CLA itself (through Mr. Rappis) indicate otherwise. We have no reason to assume that petitioner is not in a position to insist that CLA fulfill its undertakings and provide expert testimony at the trial in this case.

Petitioners' new counsel stated on September 25, 2015, that they have spotted a possible conflict of interest that might prevent them from representing petitioner at the upcoming trial. If that is true, then it is one more indication that the real issue behind the motion for a continuance is "employment of new counsel"—a circumstance that Rule 133 explicitly states "ordinarily will not be regarded as ground for continuance." If they think the conflict issue serious, then current counsel should immediately identify successors who can take over the case on the current schedule.

For the reasons we stated in our order of September 23, 2015, we continue to doubt that the executor's testimony will be important to any issue in this case. The parties will undertake to stipulate the case thoroughly to prevent the need for invocations of the Fifth Amendment. It is therefore

ORDERED that petitioner's motion for a continuance is denied for the reasons stated herein, in our order of September 23, 2015, and in respondent's objection. However, without objection from respondent, it is further

ORDERED that petitioner may serve and submit its expert witness report as late as October 9, 2015.

(Signed) David Gustafson
Judge

Dated: Washington, D.C.
September 25, 2015