

**UNITED STATES TAX COURT
WASHINGTON, DC 20217**

MUSHFAQUZZAMAN KHAN &)	
BUSHRA KHAN,)	
)	
Petitioners,)	
)	
v.)	Docket No. 21360-16 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This collection review case is before the Court on respondent’s Motion for Summary Judgment and a supporting Declaration, filed pursuant to Rule 121 on April 3, 2017.¹ Respondent filed a Supplement to his motion for summary judgment on June 7, 2017. Respondent contends that the Court should affirm the determination of the IRS Office of Appeals (Appeals Office) sustaining a lien filed in support of efforts to collect petitioners’ unpaid taxes for 2014. Petitioners failed to file a response to respondent’s motion for summary judgment, as supplemented.²

Sections 6320 and 6330 provide procedures for administrative and judicial review of the Secretary’s collection actions. In rendering an administrative determination in a collection review proceeding under section 6330, the Appeals Office must verify that any applicable law or administrative procedure has been met in processing the case. Sec. 6330(c)(1). The Appeals Office also must consider any issues raised by the taxpayer, relating to the collection action, including offers of collection alternatives, appropriate spousal defenses, and

¹Rule references are to the Tax Court Rules of Practice and Procedure, and section references are to the Internal Revenue Code, as amended.

²By failing to file a response to respondent’s motion, petitioners have waived their right to contest it. Rule 121(d); Aguirre v. Commissioner, 117 T.C. 324, 327 (2001).

challenges to the appropriateness of the collection action. Sec. 6330(c)(2)(A). A taxpayer may challenge the existence or amount of his or her underlying tax liability if the taxpayer did not receive a notice of deficiency or did not otherwise have an opportunity to dispute such tax liability. Sec. 6330(c)(2)(B). Finally, the Appeals Office must consider whether the collection action balances the need for efficient collection against the taxpayer's concern that collection be no more intrusive than necessary. Sec. 6330(c)(3)(C).

This Court has jurisdiction to review the administrative determination made by the Appeals Office. Sec. 6330(d)(1). If the taxpayer's underlying tax liability is properly in dispute, we review the determination de novo. Goza v. Commissioner, 114 T.C. 176, 181-182 (2000). Otherwise, we review the determination for abuse of discretion. Id. at 182. An abuse of discretion occurs if the Appeals Office exercises its discretion "arbitrarily, capriciously, or without sound basis in fact or law." Woodral v. Commissioner, 112 T.C. 19, 23 (1999).

Summary judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(a) and (b). Respondent's motion for summary judgment, as supplemented, is well founded based on the averments therein and the declarations and related exhibits attached thereto. We conclude that there is no dispute as to a material fact and that respondent is entitled to judgment as a matter of law sustaining the notice of determination upon which this case is based.

The petition includes a vague statement which suggests that petitioners seek to challenge the amount of their underlying tax liability for 2014. As the Court explained in Giamelli v. Commissioner, 129 T.C. 107, 113-114 (2007), however, the Court is not authorized to review a taxpayer's underlying liability when that issue is raised for the first time on appeal of a notice of determination. A review of the record shows that neither petitioners nor their attorney-in-fact challenged the existence or amount of petitioners' underlying tax liability during the administrative review process. It follows that we cannot review petitioners' underlying liability in this case.

We likewise find that the Appeals Office correctly determined that petitioners were not eligible for withdrawal of the lien. In short, neither petitioners nor their attorney-in-fact provided the Appeals Office with any information that

would justify withdrawal of the lien. It is well settled that the Appeals Office is justified in rejecting a proposed collection alternative if the taxpayer fails to submit requested financial information. See, e.g., Pough v. Commissioner, 135 T.C. 344, 351 (2010).

The record shows that the Appeals Office properly verified that the requirements of all applicable laws and administrative procedures were met in the processing of petitioners' case and that the filing of the notice of Federal tax lien balances the Government's need for the efficient collection of taxes with petitioners' concerns that the collection action be no more intrusive than necessary. In sum, the Appeals Office did not abuse its discretion in this case.

Upon due consideration and for cause, it is

ORDERED that respondent's motion for summary judgment, as supplemented, is granted. It is further

ORDERED AND DECIDED that respondent's notice of determination concerning collection action(s) under section 6320 and/or 6330, dated August 31, 2016, upon which this case is based, is sustained.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

ENTERED: **AUG 07 2017**