

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

CECIL K. KYEI,)
)
Petitioner,)
)
v.) Docket No. 9118-12.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER

Now before us is respondent’s motion for entry of decision filed January 12, 2018 (ECF44). We will deny the motion without prejudice.

This case was filed in April 2012 and has been stayed multiple times by petitioner’s commencement of bankruptcy proceedings. On June 8, 2015, the parties filed a stipulation (ECF 20) reflecting a settlement of the case, and on June 25, 2015, the Court duly entered decision (ECF 23). However, on November 18, 2015, respondent filed a motion to vacate (ECF 24), advising the Court that petitioner had filed a bankruptcy petition on November 17, 2015 (i.e., before June 2015, when the parties filed their stipulation and the Court entered its decision). Because the automatic stay of 11 U.S.C. § 362(a)(8) had deprived this Court of jurisdiction to enter decision in this case, we vacated the decision by order of November 23, 2015 (ECF 25).

Petitioner’s latest bankruptcy petition was dismissed on April 4, 2017 (see ECF 40), and we set this case for trial at the Court’s Atlanta trial session beginning January 22, 2018. On January 12, 2018, respondent filed his motion for entry of decision (ECF 44). The motion as it appears on the Court’s electronic record is evidently missing multiple pages, because the motion consists of numbered paragraphs that skip from 2 to 17. The motion alleges that “respondent’s counsel has not received a reply [to an unspecified communication] from petitioner”, and

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that "Petitioner's telephone number remains out of service." The motion requests "that the Court enter a decision in this case pursuant to the agreement of the parties and in accordance with the attached decision document" (i.e., ECF 23). As far as we can tell, the motion relies solely on the alleged agreement of June 2015 and not on any default or lack of prosecution under Rule 123(a) or (b).

The undersigned judge did not notice the omission and issued an order dated January 16, 2018, which directed that "Mr. Kyei should immediately telephone his opponent ... and establish a routine and schedule for their future cooperating either in entering an agreed decision or in proceeding otherwise", and which ordered "that the Court will hear argument from the parties on the IRS's motion for entry of decision, at or soon after the calendar call at 10:00 a.m., in Atlanta, Georgia, on Monday, January 22, 2018".

Mr. Kyei failed to appear when his case was called on January 22, 2018, and respondent renewed his motion for entry of decision. The judge stated that he expected to grant the motion.

However, we now note the omission and the motion's reliance on an alleged agreement entered into during the automatic stay. It is therefore

ORDERED that respondent's motion for entry of decision is denied without prejudice to the filing of a motion that is complete and that explains how an agreement entered into in June 2015 would not have been void by virtue of the automatic stay. It is further

ORDERED that, no later than February 16, 2018, each of the parties shall make an appropriate filing, which shall include the party's recommendation as to further proceedings.

**(Signed) David Gustafson
Judge**

Dated: Washington, D.C.
January 26, 2018