

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

ESTATE OF MICHAEL J. JACKSON,)
DECEASED, JOHN G. BRANCA, CO-)
EXECUTOR AND JOHN MCCLAIN, CO-)
EXECUTOR,)

Petitioner(s),)

v.)

Docket No. 17152-13.

COMMISSIONER OF INTERNAL REVENUE,)

Respondent)

ORDER

This case was tried at a special session beginning on February 6, 2017, and the posttrial briefing runs into later this year. The parties filed their first stipulation of facts before trial. In it they expressly objected to some exhibits on hearsay grounds. They also reserved the right to object to any exhibit on relevancy and materiality grounds.

At the beginning of trial the Court said that any stipulated exhibit to which either party objected had to be individually moved into evidence by its proponent, at which point the Court would rule on the objection. In light of the blanket reserved relevancy objections, there was some ambiguity left over about the admissibility of some of the exhibits. The parties have filed written motions that detail some specific relevancy and hearsay objections to some of them. In this order, we address the Commissioner’s hearsay motion to exclude some of the Estate’s exhibits.

The Commissioner asks that we order the parties not to cite or consider exhibits 36-P through 44-P and exhibits 209-P though 218-P for the truth of the matters asserted. Exhibits 36-P and 37-P are articles from the Los Angeles Times, exhibit 38-P is an article from the Washington Post, exhibits 39-P and 40-P are

articles from the New York Times, exhibit 41-P is an article from the Chicago Tribune, exhibits 42-P and 43-P are articles from Time, and exhibit 44-P is an article from Vanity Fair. Each of these exhibits appears to have been printed from the respective publications' websites.

Newspaper and magazine articles are out-of-court statements by their authors and are therefore inadmissible hearsay if offered for the truth of the matters asserted. *See* Fed. R. Evid. 801(c), 802; *Larez v. City of Los Angeles*, 946 F.2d 630, 642 (9th Cir. 1991); *Snyder v. Commissioner*, 93 T.C. 529, 532 (1989). This is of course also true of articles on the internet. *See Stewart v. Wachowski*, 574 F. Supp. 2d 1074, 1090 (C.D. Cal. 2005). Statements that articles quote are double hearsay; for them to be admissible, a hearsay exception must apply both to the quoted statement and to the article itself, which is a statement by its author. *Larez*, 946 F.2d at 642. The record here does not support any hearsay exceptions. We therefore grant the Commissioner's motion as to exhibits 36-P through 44-P.

Exhibits 209-P through 218-P are reports on the financial prospects of either the music industry as a whole or of certain companies within it. Exhibits 209-P, 211-P, and 216-P are by Enders Analysis; exhibit 210-P is by PricewaterhouseCoopers; exhibit 212-P is by S&P Global; exhibits 213-P and 214-P are by Maltby Capital; exhibits 215-P and 217-P are by Deutsche Bank; and exhibit 218-P is by UBS. With the exception of the Deutsche Bank reports, it's not clear who the actual human authors of the exhibits are. These reports are all out-of-court statements that are hearsay if offered for the truth of the matters asserted, and nothing in the record suggests that any hearsay exception applies. *See* Fed. R. Evid. 801(c), 802. We therefore grant the Commissioner's motion as to these exhibits as well.

It is therefore

ORDERED that respondent's January 12, 2018 motion for ruling on respondent's hearsay objections to exhibits in first stipulation of facts is granted. The parties shall not cite or consider exhibits 36-P, 37-P, 38-P, 39-P, 40-P, 41-P, 42-P, 43-P, 44-P, 209-P, 210-P, 211-P, 212-P, 213-P, 214-P, 215-P, 216-P, 217-P, or 218-P for the truth of the matters asserted therein.

**(Signed) Mark V. Holmes
Judge**

Dated: Washington, D.C.
March 12, 2018