

UNITED STATES TAX COURT
 WASHINGTON, DC 20217

JAMES L. MCCARTHY,)
)
 Petitioner(s),)
)
 v.) Docket No. 21940-15 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

This collection due process case requires that we decide whether respondent's Appeals office (Appeals) abused its discretion in rejecting petitioner's proposed offer-in-compromise and a partial payment installment agreement. On December 10, 2018, we ordered petitioner to provide a written explanation, accompanied by supporting affidavit(s), for his failure to provide respondent's settlement officer (SO), Renee Meskill, with updated financial information after our remand of the case. We directed that that explanation include descriptions of any communications received from SO Meskill or other Appeals representatives indicating that the provision of updated financial information would have been futile.

On January 2, 2019, we filed petitioner's reply to our December 12, 2018, order and an accompanying affidavit. In the reply, Robert Alter, petitioner's counsel, claims that his "decision not to supply additional financial information was justified as not being necessary and futile".

In support of his claim, Mr. Alter refers us to SO Meskill's case activity report (Report). According to the Report, after our remand of the case, SO Meskill requested an updated analysis from respondent's Area Counsel on the issue of whether a trust created by petitioner's accountant held specified properties on petitioner's behalf as his nominee. In her initial communication with Mr. Alter after remand, SO Meskill advised him that it "would be best to wait for * * * [the updated Area Counsel opinion] before potentially requesting any additional

financial information or further discussing the issues." SO Meskill had another call with Mr. Alter after Area Counsel advised her that it was adhering to its position that the trust was petitioner's nominee. In that call, according to SO Meskill: "I explained that upon my review of the trial transcript, I did not change my determination * * * [regarding the nominee issue]. I said that I followed up with a request for a second opinion and that the Counsel attorney said the same thing." She continued: "I stated that * * * [petitioner] could provide updated financial information and requested the information within 45 days. Mr. Alter pointed out that as long as Appeals is going to maintain its position with regard to the nominee situation, there is no point in providing updated financial information."

Thus, the Report tends to confirm Mr. Alter's claim. It shows that SO Meskill discouraged Mr. Alter from providing updated financial information before she had received an updated analysis from Area Counsel and that, after she had received that analysis, she advised Mr. Alter of her intention to adhere to her determination that the trust was petitioner's nominee. Although she went on to invite Mr. Alter to submit updated financial information, she did not tell him that the failure to do so would provide independent grounds for rejecting petitioner's proposed collection alternatives.

Our December 10, 2018, order stated that, if appropriate, after our receipt from petitioner of his explanation for his failure to provide updated financial information, we would give respondent an opportunity to respond to that explanation.

On the premises stated, it is

ORDERED that respondent shall, on or before February 12, 2019, advise the Court in writing whether he views petitioner's failure to provide updated financial information as an independent ground for Appeals' rejection of petitioner's proposed collection alternatives and, if so, why that failure should not be excused on the basis that SO Meskill gave Mr. Alter reason to believe that the provision of updated financial information would be futile.

**(Signed) James S. Halpern
Judge**

Dated: Washington, D.C.
January 29, 2019