

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

JOHN EDWARD BARRINGTON & DEANNA)	
BARRIE BARRINGTON,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 1781-14.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	

ORDER

On February 22, 2019, respondent filed a Motion For Partial Summary Judgment pursuant to Rule 121.¹ Respondent indicates that petitioners object to this motion.

In an Order dated June 19, 2015, the Court granted in part and denied in part respondent’s motion for Partial Summary Judgment, filed April 13, 2015. In that Order the Court held that respondent was entitled to summary judgment insofar as petitioners fraudulently failed to file federal income tax returns. In this connection, petitioner John Edward Barrington was convicted of tax evasion for taxable year 2005 pursuant to section 7201 based on a guilty plea and petitioner Deanna Barrie Barrington was convicted of tax evasion for taxable years 2003, 2004 and 2005 pursuant to section 7201 based on a guilty plea. In the June 19, 2015 Order the Court denied respondent’s request for partial summary judgment to the extent that respondent sought to (1) collaterally estop petitioners from contesting that they failed to report certain amounts of income for the years in issue and further (2) collaterally estop petitioner John Edward Barrington from contesting that he fraudulently failed to file income-tax returns for taxable years 2003 and 2004.

In his motion respondent reiterates some of the same arguments and presents some of the same assertions of fact previously considered by the Court. The Court’s June 19, 2015 Order squarely dealt with these arguments. Respondent now presents additional reason for the Court to grant an otherwise identical motion for partial summary judgment. Respondent asserts that petitioner John Edward Barrington made “judicial admissions” at a hearing held on December 17, 2018 and that such admissions eliminate the need for trial. Respondent further cites legal support suggesting that “Judicial admissions must be clear, deliberate, and unequivocal factual

¹All Rule references are to the Tax Court Rules of Practice and Procedure. All section references are to the Internal Revenue Code of 1986, as amended.

assertions--whether made in pleadings, stipulations, responses to discovery, or orally in trial or court proceedings.”

In support of his position respondent quotes language from the transcript of the Calendar Call proceeding on December 17, 2018 wherein at pages 10 and 21 petitioner stated: “... I’m not arguing the fraud amount” “....cannot argue the fraud on it, which we’re not.”

The Court may grant summary judgment only if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. See Rule 121(b); Naftel v. Commissioner, 85 T.C. 527, 529 (1985). Among other matters, questions are raised as to whether petitioner John Edward Barrington fraudulently failed to file returns for taxable years 2003 and 2004. Secs. 6651(f); 7456(a); Rule 142(b); see Clayton v. Commissioner, 102 T.C. 632, 652-653 (1994); Reedy v. Commissioner, T.C. Memo. 2008-100, at *5. A complete reading of the 28 page transcript does not lead the Court to a conclusion that petitioner John Edward Barrington made a clear, deliberate and unequivocal factual assertion relating to the issue of fraudulently failing to file federal income tax returns for taxable years 2003 and 2004.

Drawing, as we must, all factual inferences against respondent as the moving party, the Court concludes that he has not established, by clear and convincing evidence, (1) that there is no genuine dispute as to any material fact and (2) that a decision may be entered in his favor as a matter of law. Under these circumstances summary judgment is not appropriate. See sec. 7456(a); Rules 121(b), 142(b). Accordingly, the Court will deny respondent’s motion.

Premises considered, it is

ORDERED that respondent’s Motion for Partial Summary Judgment, filed February 22, 2019, is denied.

(Signed) Peter J. Panuthos
Special Trial Judge

Dated: Washington, D.C.
April 15, 2019