

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Anthony I. Provitola & Kathleen A. Provitola,)		
)		
Petitioners,)		
)		CT
v.)	Docket No. 12357-16,	16168-17.
)		
COMMISSIONER OF INTERNAL REVENUE,)		
)		
Respondent)		

ORDER

This case is set for trial at the session of the Court scheduled to commence on December 16, 2019, in Jacksonville, Florida. On December 9, 2019, the Commissioner filed a motion in limine asking that we “exclude all facts, evidence, and testimony not related to the circular flow of funds between petitioners, their Schedule C entity, and petitioner Anthony I. Provitola’s law practice.”

According to the parties’ pretrial memoranda, the Provitolas attempted to develop and market something, what exactly is unclear. In connection with that something, the Provitolas, perhaps through entities controlled by them, purport to have made payments to a law firm run by Mr. Provitola.

The parties’ arguments are easily summarized: the Provitolas argue that they have a bona fide business; the Commissioner argues that this is all a sham and there is no real business. Based on prior testimony from Mr. Provitola, it appears that he intends to testify about development and marketing of the something underlying the Provitolas purported business.

One might recharacterize the Commissioner’s motion as asking the Court to prohibit testimony inconsistent with his theory of the case. We will issue no such order.

We further note that the Commissioner states in his motion: “The Court ordinarily declines to consider and rely on self-serving testimony.” The Commissioner goes on to cite to specific instances in which we have disregarded

self-serving testimony. In one of those cases, the self-serving testimony was contradicted by other evidence. See Tokarski v. Commissioner, 87 T.C. 74, 77 (1986). In the other, the petitioner described one loan with specificity and was vague when describing others. That contrast led the Court to give regard to the self-serving testimony that was specific (and credible) and disregard the self-serving testimony that was vague (and not credible). Barnes v. Commissioner, T.C. Memo. 2016-212, at *56.

The canard that Courts disregard self-serving testimony is simply false. We disregard self-serving testimony when there is some demonstrable flaw or when the witness does not appear credible. If we were to disregard testimony merely because it is self-serving, we would disregard the testimony of every petitioner who testifies in furtherance of their own case and of all the revenue agents or collections officers who testify that they do their jobs properly, because that testimony would also be self-serving.

If a witness's trial testimony strays from what is relevant to the case, the Commissioner is free to object. Until then, however, it is

ORDERED that respondent's motion in limine is denied.

(Signed) Ronald L. Buch
Judge

[Handwritten signature]

Dated: Washington, D.C.
December 11, 2019