

UNITED STATES TAX COURT  
 WASHINGTON, DC 20217

KENNETH BAILEY, )  
 )  
 Petitioner, )  
 )  
 v. ) Docket No. 21003-16 L.  
 )  
 COMMISSIONER OF INTERNAL REVENUE, )  
 )  
 Respondent )

**ORDER GRANTING SUMMARY JUDGMENT AND  
 ORDER TO SHOW CAUSE**

Petitioner Kenneth Bailey, invoking our jurisdiction under I.R.C. section 6330(d), has appealed a determination by the Office of Appeals (“Appeals”) of the Internal Revenue Service (“IRS”) that sustains a notice of intent to levy in order to collect petitioner’s unpaid income taxes for 2012, 2013 and section 6672 “trust fund recovery” penalties for the quarters ending March 31, 2012, June 30, 2012, September 30, 2012, and December 31, 2012. Now before the Court is a motion for summary judgment filed March 7, 2017. By order of that same day, the Court directed petitioner to file a response to the motion by April 6, 2017. As of this date, the Court has received from petitioner no response. We will grant respondent’s motion.

Respondent’s motion for summary judgment is factually supported, and its factual assertions are not disputed by petitioner. The motion’s legal arguments are sound, and petitioner offers no contrary authorities or argument. Summary judgment is therefore warranted both on the merits and, under Rule 121(d), as a consequence of petitioner’s failure to respond to the motion despite our order. Further in the alternative, we would dismiss the case pursuant to Rule 123(b).

We will grant the Commissioner’s motion for summary judgment, but we will not yet enter decision. Instead, we will order petitioner’s counsel to appear at the calendar call on June 12, 2017, and show cause why sanctions should not be

entered under section 6672(a)(2) and why counsel should not be referred to the Court's Committee on Admissions, Ethics, and Discipline. This case is one of six "collection due process" cases on this trial calendar--

No. 9208-16L, Davidson  
No. 13876-16L, Benard  
No. 16644-16L, Benard Construction Co.  
No. 21003-16L, Bailey  
No. 23277-16L, Smith  
No. 23972-16L, Gouras

--in which the same attorney represents the petitioners, the Commissioner moved for summary judgment, the Court ordered petitioners to file responses, and no filings have been made. Counsel's non-responses have required the Commissioner to file status reports and have required the Court to determine in each case without petitioners' counsel's input whether a grant of summary judgment is "appropriate", Rule 121(d). We cannot tell whether this indicates that counsel is unaware of or is ignoring the Court's orders. We cannot tell whether counsel knew the cases had no merit but filed petitions to collude in an attempt to use the CDP proceedings to delay collection. We cannot tell whether counsel determined after filing the petition that the cases have no merit and therefore did not bother to comply with the Court's order. We cannot tell the extent to which counsel's non-compliance with the Court's orders prejudices his own clients and/or the Commissioner. It is therefore

ORDERED that respondent's motion for summary judgment is granted, both on its merits and, in the alternative, on the ground that petitioner failed to comply with the Court's order that they respond to the motion (see Rule 121(d); see also Rule 123(b)). It is further

ORDERED that petitioner's counsel shall appear at the calendar call on June 12, 2017, and show cause why sanctions should not be entered under section 6672(a)(2) and why counsel should not be referred to the Court's Committee on Admissions, Ethics, and Discipline.

**(Signed) David Gustafson**  
**Judge**

Dated: Washington, D.C.  
April 17, 2017