

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

MAGISTRATE JUDGE
SIMONTON

UNITED STATES OF AMERICA)

Plaintiff,)

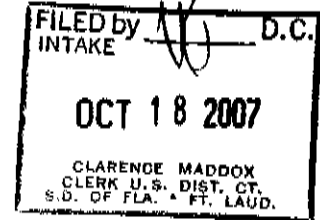
v.)

HEBREW ACADEMY COMMUNITY)
SCHOOL, INC. and)
JOSEPH DENBERG,)

Defendants.)

CIV - HUCK

07-61498
Civil No.



COMPLAINT FOR PERMANENT INJUNCTION

The United States of America, by and through its attorney, R. Alexander Acosta, United States Attorney for the Southern District of Florida, alleges as follows:

1. This action is brought by the United States of America to enjoin Hebrew Academy Community School, Inc. ("Hebrew Academy") and Joseph Denberg ("Denberg") from violating and interfering with the administration of the internal revenue laws.
2. This action has been authorized and requested by a duly designated delegate of the Secretary of the Treasury of the United States, and directed to be commenced by the Attorney General of the United States, pursuant to 26 U.S.C. § 7401.
3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1340, 1345 and 26 U.S.C. § 7402(a).
4. Venue is appropriate in the Southern District of Florida pursuant to 28 U.S.C. §§ 1391 and 1396.
5. Defendant Hebrew Academy conducts business in Margate, Florida, and is subject

to the jurisdiction of this Court.

6. Defendant Denberg resides in Coral Springs, Florida, within the jurisdiction of this Court.

Background

7. Hebrew Academy is a Florida Corporation that operates a religious school.

8. As an employer, Hebrew Academy is obligated to withhold from its employees' wages federal income and Federal Insurance Contributions Act (FICA) taxes, and to pay over those withholdings to the IRS, along with its own employer's share of FICA taxes and Federal Unemployment Tax Act (FUTA) taxes.

9. Hebrew Academy is obligated to deposit withheld taxes in an authorized financial institution bimonthly.

10. Taxes withheld from employees' wages do not belong to Hebrew Academy. Hebrew Academy holds them in trust for the United States until it deposits them as described in paragraph 9 above.

11. Hebrew Academy is also obligated to file quarterly 941 returns, reporting the withheld taxes plus the employer's share of employment taxes, and annual returns for FUTA taxes on IRS Form 940.

12. Defendant Denberg is President and Director of Hebrew Academy. Denberg controls all financial decisions of Hebrew Academy. Denberg signs all Forms 941 filed with the IRS. Denberg is the only person who signs checks on the corporate account of Hebrew Academy.

13. At all times relevant hereto, Denberg was a person required to collect, truthfully

account for, and pay over the federal employment taxes of Hebrew Academy.

14. At all times relevant hereto, Denberg was responsible for ensuring that Hebrew Academy fulfilled its withholding, depositing, and reporting obligations as described in paragraphs 8, 9 and 11 above.

15. On February 8, 2005, Denberg was personally served IRS Letter 903 and Notice 931, explaining the employment tax deposit process and requirements and the potential for civil and criminal penalties for continued non-compliance.

16. Since 1997, Hebrew Academy, formerly known as Hebrew Academy Lubavitch, has routinely failed to meet its withholding and reporting obligations.

17. Since 1997, Hebrew Academy, formerly known as Hebrew Academy Lubavitch, has deliberately failed to make current employment tax deposits and has, instead, used these trust funds as working capital, a practice referred to as "pyramiding."

18. As a result of this unlawful pyramiding, Hebrew Academy is currently indebted to the United States for unpaid employment taxes exclusive of penalties and interest as follows:

| Type | Tax Period | Unpaid Balance of Assessment |
|----------|------------|------------------------------|
| Form 941 | 06/30/1997 | \$ 13,432.24 |
| Form 941 | 09/30/1997 | \$17,622.94 |
| Form 941 | 12/31/1997 | \$ 58,470.05 |
| Form 941 | 03/31/1998 | \$105,629.27 |
| Form 941 | 06/30/1998 | \$ 60,391.34 |
| Form 941 | 09/30/1998 | \$ 22,112.52 |
| Form 941 | 12/31/1998 | \$82,438.14 |

| | | |
|------------|------------|--------------|
| Form 941 | 03/31/1999 | \$ 51,708.03 |
| Form 941 | 06/30/1999 | \$ 70,569.23 |
| Form 941 | 12/31/1999 | \$ 35,943.59 |
| Form 941 | 03/31/2000 | \$ 74,245.51 |
| Form 941 | 06/30/2000 | \$ 73,731.31 |
| Misc. Pen. | 12/31/1998 | \$ 2,468.99 |
| Form 941 | 03/31/2001 | \$ 7,646.66 |
| Form 941 | 06/30/2001 | \$ 1,084.83 |
| Form 941 | 09/30/2001 | \$ 40,172.62 |
| Form 941 | 12/31/2001 | \$ 88,968.99 |
| Form 941 | 03/31/2002 | \$ 80,387.77 |
| Form 941 | 06/30/2002 | \$ 67,268.62 |
| Form 941 | 09/30/2002 | \$ 18,851.05 |
| Form 941 | 06/30/2003 | \$ 56,917.00 |
| Form 941 | 09/30/2003 | \$ 55,883.11 |
| Form 941 | 12/31/2003 | \$ 53,967.37 |
| Form 941 | 03/31/2004 | \$ 84,910.91 |
| Form 941 | 06/30/2004 | \$ 71,428.02 |
| Form 941 | 09/30/2004 | \$ 51,937.20 |
| Form 941 | 12/31/2004 | \$ 96,632.42 |
| Form 941 | 03/31/2005 | \$ 35,527.34 |
| Form 941 | 06/30/2005 | \$ 73,167.63 |
| Form 941 | 09/30/2005 | \$ 23,434.53 |
| Form 941 | 12/31/2005 | \$ 14,089.67 |
| Form 941 | 03/31/2006 | \$ 91,997.70 |
| Form 941 | 06/30/2006 | \$ 4,196.87 |

| | | |
|----------|------------|--------------|
| Form 941 | 09/30/2006 | \$ 36,445.43 |
| Form 941 | 12/31/2006 | \$ 80,577.75 |
| Form 940 | 12/31/2000 | \$ 32,291.80 |
| Form 940 | 12/31/2001 | \$ 35,754.70 |
| Form 940 | 12/31/2002 | \$ 34,813.50 |

19. In addition, Hebrew Academy has not deposited any taxes or filed Forms 941 for the quarters ending March 31, 2007 and June 30, 2007. The estimated liabilities from these periods is approximately \$164,000.

20. In an attempt to compel Hebrew Academy and Denberg to comply with their withholding and reporting obligations, the IRS has taken numerous collection actions, including but not limited to the following:

- a. Filing Notices of Federal Tax Liens
- b. Levying Bank Accounts
- c. Levying Third Parties
- d. Issuing Summonses

21. Despite the efforts noted above, defendants have continued to pyramid employment taxes, and, absent injunctive relief, are likely to continue to do so in the future.

Offer in Compromise

22. Hebrew Academy, during the period of time it operated under the name of Hebrew Academy Lubavitch, entered into an offer in compromise agreement with the IRS to pay its past due liabilities. The agreement required Hebrew Academy to timely comply with its withholding and reporting obligations for all future quarters. In return, the IRS suspended all

collection efforts on the past due amounts.

23. Despite this agreement, Hebrew Academy continued to pyramid employment taxes.

24. Hebrew Academy is in default of the terms of the offer in compromise agreement.

Monthly Filing

25. On June 17, 2005, the IRS notified Denberg that he was now required to submit employment tax reports on a monthly basis, pursuant to 26 C.F.R. § 31.6011(a)-5.

26. Although the imposition of the monthly reporting requirement resulted in a brief period of partial compliance, Hebrew Academy continued to incur sizeable tax liabilities. Moreover, Hebrew Academy failed to make any deposits in the first and second quarters of 2007.

Levy Action

27. Collection procedures are ineffective at recovering pyramided employment taxes because the taxes from current periods accrue before the IRS has time to determine the amount of the liability, assess the tax, make demand for payment, and collect.

28. Defendants' practice of failing to timely report Hebrew Academy's employment taxes hinders the government's collection efforts.

29. Hebrew Academy owns no significant assets.

30. Hebrew Academy has continued to accrue new employment taxes at a rate greater than the IRS can collect on past due liabilities.

31. For the year 2007, Hebrew Academy has made none of the required federal tax deposits.

32. For the first six months of 2007, Hebrew Academy has filed no returns.

33. Administrative remedies to bring Hebrew Academy into compliance, including efforts undertaken in 2007, have been exhausted.

34. Based on prior conduct, Denberg and Hebrew Academy will likely continue to pyramid additional employment taxes at the rate of \$82,000 per quarter. Hebrew Academy's assets are insufficient to satisfy the current obligation in excess of 2.3 million dollars.

Injunction Standard

35. I.R.C. § 7402(a) authorizes a court to issue injunctions as may be necessary or appropriate for the enforcement of the internal revenue laws.

36. Denberg and Hebrew Academy substantially interfere with the internal revenue laws by continually failing to pay Hebrew Academy's employment tax obligations required by 26 U.S.C. §§ 3102, 3111, 3301, and 3402, and failing to file returns as required by 26 U.S.C. § 6011 and Treasury Regulation (26 C.F.R.) § 31.6071(a)-1. An injunction is appropriate and necessary to prevent continued violations.

37. Defendant Denberg has made a conscious decision to set tuition at Hebrew Academy at a rate that is insufficient to pay federal payroll taxes in addition to other creditors. Defendant Denberg is responsible for the claims of other creditors being paid ahead of the federal payroll taxes, including federal payroll tax payments being made by Hebrew Academy's employees which Hebrew Academy is supposed to hold in trust for, and then pay over to, the United States.

38. The United States lacks an adequate legal remedy to prevent additional pyramiding and will suffer irreparable harm as a result.

39. The harm suffered by the United States as a result of continuing pyramiding

outweighs any harm to be suffered by Denberg and Hebrew Academy as a result of being required to comply with the tax law.

40. An injunction in this case would serve the public good. As the efficacy of the federal income tax relies on employers to collect and remit income and FICA taxes paid by its employees, Hebrew Academy's pyramiding undermines our voluntary system of tax collection. Additionally, by using the tax money for their own business and operating expenses, Hebrew Academy exacts an involuntary subsidy on the taxpayers of the United States and obtains an unfair competitive advantage over similar entities which comply with the internal revenue laws.

41. In the absence of an injunction backed by the Court's contempt powers, Denberg and Hebrew Academy are likely to continue to obstruct and interfere with the enforcement of the internal revenue laws by pyramiding employment taxes to the detriment of the United States.

WHEREFORE, plaintiff, the United States of America, respectfully prays for the following:

A. That the Court find that Denberg and Hebrew Academy have engaged in and are engaging in conduct interfering with the enforcement of the internal revenue laws and that injunctive relief under I.R.C. § 7402(a) is necessary and appropriate;

B. That this Court, pursuant to I.R.C. § 7402(a), enter a permanent injunction prohibiting Denberg, Hebrew Academy, and their representatives, agents, servants, employees, attorneys, and anyone in active concert or participation with them, from failing to withhold and pay over to the IRS all employment taxes, including federal income, FICA, and FUTA taxes, required by law;

C. That this Court, pursuant to IRC § 7402(a), enter a permanent injunction requiring Denberg and Hebrew Academy, for a period of five years, to deposit withheld FICA taxes, as well as Hebrew Academy's share of FICA taxes, in an appropriate federal depository bank in accordance with federal deposit regulations;

D. That this Court, pursuant to IRC § 7402(a), enter a permanent injunction requiring Denberg and Hebrew Academy, for a period of five years, to deposit FUTA taxes in an appropriate federal depository bank in accordance with federal deposit regulations;

E. That this Court, pursuant to IRC § 7402(a), enter a permanent injunction requiring Denberg, for a period of five years, to sign and deliver an affidavit to the revenue officer assigned to the case, currently Kaye Morris, or to such other location as the IRS may deem appropriate, within two days of each deposit, stating that the requisite withheld income, FICA, and unemployment tax deposits were timely made;

F. That this Court, pursuant to IRC § 7402(a), enter a permanent injunction requiring Denberg and Hebrew Academy, for a period of five years, to timely file all employment tax returns with the IRS and Revenue Officer Kaye Morris or her designee or at such other location as the IRS may deem appropriate;

G. That this Court, pursuant to IRC § 7402(a), enter a permanent injunction requiring Denberg and Hebrew Academy, for a period of five years, to timely pay all taxes due on each return require to be filed;

H. That this Court, pursuant to IRC § 7402(a), enter a permanent injunction requiring Denberg and Hebrew Academy, for a period of five years, to refrain from assigning any property or making any payroll disbursements or non-payroll disbursements over the amount of \$500 after

the date of this injunction until amounts required to be withheld from wages after the date of this injunction are, in fact, paid to the IRS;

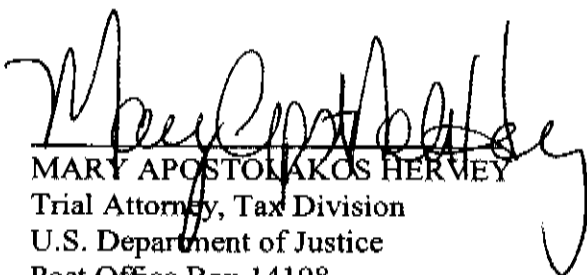
I. That this Court, pursuant to IRC § 7402(a), enter a permanent injunction requiring Denberg and Hebrew Academy to report to the IRS their future employment tax conduct with respect to any new or presently unknown company with which they are associated, including the imposition of an affirmative duty upon the principal officer, Denberg, to notify the revenue officer in the future of any new company that he may come to own, manage, or work for during the five years after the date of the injunction;

J. That this Court retain jurisdiction over this case to ensure compliance with this injunction; and

K. That this Court grant the United States such other and further relief, including costs, as the court deems just and proper.

R. Alexander Acosta
United States Attorney

By:



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