

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-60663

United States Court of Appeals
Fifth Circuit

FILED

July 7, 2020

Lyle W. Cayce
Clerk

EDWARD F. SADJADI; CYNTHIA M. SADJADI,

Petitioners – Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent – Appellee.

Appeal from a Decision of the
United States Tax Court
Tax Court No. 6351-18L

Before JONES, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:*

This case arises from an offer-in-compromise agreement between the petitioners, Edward and Cynthia Sadjadi, and the IRS for the 2008 and 2009 tax years. According to the offer-in-compromise agreement, the petitioners had to comply with their tax filing and payment obligations for the next five years. The petitioners, however, did not remain current on their tax payment obligations. The IRS therefore issued a Notice of Intent to Levy and a Notice

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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of Your Right to a Hearing to the petitioners for the 2008, 2009, 2010, 2011, and 2015 tax years. The petitioners timely filed for a collection due process (CDP) hearing. At the CDP hearing, the settlement officer determined that the IRS had recovered the right to collect the uncompromised balances due on the petitioners' 2008 and 2009 liabilities. The officer reasoned that even though the petitioners had paid the agreed amount under the offer-in-compromise, they failed to comply with the compromise's payment requirements for the next five years. The petitioners then offered to pay \$350 per month as part of an installment agreement. The settlement officer declined the petitioners' proposal and imposed the levy. The Tax Court sustained that determination, and the petitioners now appeal the Tax Court's judgment. We affirm.

I.

The petitioners timely filed their tax returns for tax years 2008, 2009, 2010, 2011, and 2015. Although they reported tax owed of \$3,251 on their 2008 tax return and \$1,047 on their 2009 tax return, the petitioners failed to enclose the attendant payments. The IRS then examined the petitioners' tax returns for 2008, 2009, 2010, and 2011 and determined that they had underreported the taxes that they owed. Subsequently, the petitioners agreed to the assessment of additional unpaid tax liability and accompanying penalties for the 2008 and 2009 tax years. For the 2008 tax year, the petitioners agreed to an additional tax assessment of \$10,953 and a penalty of \$2,190.60. For the 2009 tax year, they agreed to an additional tax assessment of \$18,393 and a penalty of \$3,759.

The petitioners then entered into installment payment agreements with the IRS for the 2008 and 2009 tax years. In 2010 and 2011, the petitioners paid more than \$8,000 toward their 2008 tax liability, and on February 9, 2011, they made a \$100 payment toward their 2009 tax liability. On April 18, 2013, the petitioners and the IRS entered into an offer-in-compromise for the 2008 and

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2009 tax years. Under this arrangement, the IRS agreed to accept \$21,515 in full satisfaction of the petitioners' 2008 and 2009 tax liabilities, provided that the petitioners complied with their tax filing and payment obligations for the next five years.

The parties used the standard offer-in-compromise form. The left-hand column of the form contained the following statement: "I must comply with my future tax obligations and understand I remain liable for the full amount of my tax debt until all terms and conditions of this offer have been met." On the opposite side of that statement, the form states, "I will file tax returns and pay required taxes for the five[-]year period beginning with the date of acceptance of this offer." The left-hand column also contains the following statement: "I understand what will happen if I fail to meet the terms of my offer (e.g., default)." On the opposite side of this statement, the form states, "If I fail to meet any of the terms of this offer, the IRS may levy or sue me to collect any amount ranging from the unpaid balance of the offer to the original amount of the tax debt without further notice of any kind."

Between December 17, 2012, and October 1, 2016, the petitioners made payments toward their offer-in-compromise that totaled \$10,650. On October 19, 2016, the petitioners filed their 2015 tax return, but they did not pay their taxes for 2015 that were reported as due. Therefore, the petitioners failed to remain current on their tax payment obligations, which the IRS construed as a default on the offer-in-compromise.

On June 19, 2017, the IRS issued a Notice of Intent to Levy and a Notice of Your Right to a Hearing to the petitioners for the 2008, 2009, 2010, 2011, and 2015 tax years. The petitioners timely filed for a CDP hearing. On October 3, 2017, the settlement officer held the CDP hearing by telephone. At the hearing, she explained that although the petitioners "may have paid the agreed amount of the offer, [they] did not remain in compliance with the paying

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requirement for the next 5 years meaning the IRS would bring back all of the liabilities.” The petitioners thereafter offered to pay \$350 per month as part of an installment agreement. The settlement officer declined their proposal and imposed the levy after determining that the petitioners had a monthly disposable income of \$6,466.33.

The petitioners appealed to the Tax Court, arguing that the settlement officer failed to consider that they had already paid more than the agreed amount in the offer-in-compromise and that the agreement did not state that compliance is required after the balance is completely paid. The Tax Court sustained the settlement officer’s determination. The petitioners now appeal the Tax Court’s judgment, claiming that they complied with all the terms and conditions of the offer-in-compromise because they paid the agreed amount. They also argue that they would have arranged to pay the balance owed for 2015 if the offer-in-compromise form properly informed them of the consequences of failing to do so. The IRS does not dispute that the petitioners paid the agreed amount, but it argues that the offer-in-compromise form expressly required the petitioners to remain in compliance for five years regardless of whether the petitioners paid the agreed amount.

II.

The Tax Court reviews the Commissioner’s administrative determinations for abuse of discretion where the validity of the underlying tax liability is not at issue.¹ *Sego v. Comm’r*, 114 T.C. 604, 610 (2000). And this court reviews decisions of the Tax Court using the same standards it uses to review the decisions of district courts—findings of fact for clear error and legal questions *de novo*. *Estate of Duncan v. Comm’r*, 890 F.3d 192, 197 (5th Cir.

¹ The petitioners here do not challenge the underlying tax liability for the tax years subject to the offer-in-compromise.

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2018). Thus, when there is no challenge to the validity of the underlying tax liability at the CDP hearing, we also review the officer's decision under an abuse of discretion standard. *Christopher Cross, Inc v. United States*, 461 F.3d 610, 612 (5th Cir. 2006) (citing *Living Care Alternatives of Utica v. United States*, 411 F.3d 621, 626 (6th Cir. 2005)); see also *Marascalco v. Comm'r*, 420 F. App'x 423, 423 (5th Cir. 2011) ("Since the underlying tax liability is not at issue, the Tax Court and this court review the Commissioner's administrative determinations for an abuse of discretion."). Acting "arbitrarily, capriciously, or without sound basis in fact or law" constitutes an abuse of discretion. *Estate of Duncan*, 890 F.3d at 197 (quoting *Vinatieri v. Comm'r*, 133 T.C. 392, 400 (2009)).

III.

On appeal, we must determine whether the settlement officer abused her discretion when she determined that the petitioners defaulted on the offer-in-compromise and sustained the imposition of a levy. The petitioners argue that the aggregate amount of payments they made to the IRS exceed the amount agreed upon in the offer-in-compromise, although they do not argue that their payments exceed the original (i.e., uncompromised) amount owed. They further contend that the offer-in-compromise was not clear and unambiguous and did not properly inform them of their obligations under the agreement. Therefore, the petitioners claim that the offer-in-compromise was complete and that the settlement officer abused her discretion because the petitioners acted in good faith, satisfied all the terms and conditions of the agreement according to their understanding, and paid the agreed amount in the offer-in-compromise earlier than they needed to.

The IRS does not dispute that the petitioners paid the amount agreed upon in the offer-in-compromise. Rather, the IRS argues that the form the petitioners used was clear and unambiguous. The IRS asserts that the

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obligation to comply with filing and payment obligations for five years from the acceptance date is not contingent on the petitioners' payment of the amount in the compromise agreement. According to the IRS, the petitioners must comply with tax filing and payment obligations for five years regardless of when the agreed amount is paid, and if the petitioners do not do so, the offer-in-compromise is violated. Thus, the IRS argues that the settlement officer did not abuse her discretion.

Here, we conclude that the settlement officer did not abuse her discretion when she declared the offer-in-compromise had been violated and imposed the levy. An offer-in-compromise is a contract, and the rules applicable to contracts generally govern. *United States v. Lane*, 303 F.2d 1, 4 (5th Cir. 1962). In *Lane*, the form expressly provided that the Commissioner could proceed to collect the unpaid balance of the original tax liability upon the taxpayer's default. *Id.* This court determined that the language of the agreement was "so precise, and the intention which it manifests [was] so evident, as to leave no doubt that the [government's] course of action . . . was fully authorized by the . . . agreement." *Id.*

Similarly, the offer-in-compromise in this case contains clear and unambiguous language that explains the consequences of default. The form states that the petitioners would "file tax returns and pay required taxes for the five[-]year period beginning with the date of acceptance of this offer." The form further explains that the petitioners would "comply with [their] future tax obligations and . . . remain liable for the full amount of [their] tax debt until all terms and conditions of this offer have been met." Indeed, the petitioners conceded that they understood "the necessity of complying with future tax obligations" and "what would happen if they default[ed]." Specifically, if they defaulted, they understood that "the IRS may levy or sue [them] to collect any amount ranging from the unpaid balance of the offer to the original amount of

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the tax debt without further notice of any kind.” Hence, the offer-in-compromise is “so precise, and the intention which it manifests is so evident, as to leave no doubt that the [government’s] course of action . . . was fully authorized by the . . . agreement.” *See Lane*, 303 F.2d at 4.

The settlement officer did not abuse her discretion because the offer-in-compromise unambiguously explained that the IRS could levy the petitioners to collect any amount between the unpaid balance and the original amount of the debt and because the petitioners defaulted by failing to remain current on their tax payment obligations. Therefore, the Tax Court did not err in sustaining the settlement officer’s determination.

IV.

For the foregoing reasons, we AFFIRM the judgment of the Tax Court.

T.C. Memo. 2019-58

UNITED STATES TAX COURT

EDWARD F. SADJADI AND CYNTHIA M. SADJADI, Petitioners v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 6351-18L.

Filed May 29, 2019.

Edward F. Sadjadi and Cynthia M. Sadjadi, pro sese.

Donald Priver, Jeffrey D. Heiderscheit, and Brock E. Whalen, for
respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

COHEN, Judge: This case was commenced in response to a notice of determination concerning collection action under section 6330. The notice sustained a proposed levy for the balances of Federal income tax owed by petitioners for 2008, 2009, 2010, 2011, and 2015. The issue for decision is

SERVED May 29 2019

[*2] whether it was an abuse of discretion to uphold a levy to collect balances due from petitioners for 2008 and 2009 after they defaulted on an offer-in-compromise agreement for those years by failing to pay tax due for 2015. All section references are to the Internal Revenue Code in effect for the years in issue.

FINDINGS OF FACT

Most of the facts have been stipulated, and the stipulated facts are incorporated in our findings by this reference. Petitioners resided in Texas when they filed their petition.

Petitioners timely filed their tax return for each of the tax years 2008, 2009, 2010, 2011, and 2015. On their return for tax year 2008 they reported tax owed of \$3,251. On their return for tax year 2009 they reported tax owed of \$1,047. They did not enclose payments with their tax returns for tax years 2008 and 2009. Respondent examined petitioners' tax returns for tax years 2008, 2009, 2010, and 2011. During the examination for tax year 2008 petitioners agreed to an additional assessment of tax of \$10,953 and an accuracy-related penalty of \$2,190.60; those amounts were assessed on May 23, 2011. During the examination for tax year 2009 petitioners agreed to an additional assessment of tax of \$18,393 and an accuracy-related penalty of \$3,759; those amounts were assessed on May 23, 2011. Petitioners and respondent entered into an installment

[*3] agreement on November 13, 2010, for tax year 2009. On February 9, 2011, petitioners made a \$100 payment toward their installment agreement for tax year 2009. Petitioners and respondent entered into an offer-in-compromise on April 18, 2013, for tax years 2008 and 2009. The offer-in-compromise petitioners signed could not be found for trial, but the standard form for such offers was used.

The standard form for an offer-in-compromise, Form 656, Offer in Compromise, in effect on April 18, 2013, contained, among other things, "Offer Terms" in section 8. The left-hand column, in bold print, contains this statement: "I must comply with my future tax obligations and understand I remain liable for the full amount of my tax debt until all terms and conditions of this offer have been met." Opposite that text appear paragraphs as follows:

I will file tax returns and pay required taxes for the five year period beginning with the date of acceptance of this offer. If this is an offer being submitted for joint tax debt, and one of us does not comply with future obligations, only the non-compliant taxpayer will be in default of this agreement.

The IRS will not remove the original amount of my tax debt from its records until I have met all the terms and conditions of this offer. Penalty and interest will continue to accrue until all payment terms of the offer have been met. If I file for bankruptcy before the terms are fully met, any claim the IRS files in the bankruptcy proceedings will be a tax claim.

Once the IRS accepts my offer in writing, I have no right to contest, in court or otherwise, the amount of the tax debt.

[*4] Also in the left-hand column, in bold print, is this statement: “I understand what will happen if I fail to meet the terms of my offer (e.g., default).” Opposite that text appears the following paragraph:

If I fail to meet any of the terms of this offer, the IRS may levy or sue me to collect any amount ranging from the unpaid balance of the offer to the original amount of the tax debt without further notice of any kind. The IRS will continue to add interest, as Section 6601 of the Internal Revenue Code requires, on the amount the IRS determines is due after default. The IRS will add interest from the date I default until I completely satisfy the amount owed.

Between December 17, 2012, and October 1, 2016, petitioners made payments toward their offer-in-compromise for tax year 2008 totaling \$10,650. Petitioners filed their 2015 tax return on October 19, 2016, but did not pay the tax for 2015 reported as due. On June 19, 2017, respondent issued to petitioners a Notice of Intent to Levy and Notice of Your Right to a Hearing for tax years 2008, 2009, 2010, 2011, and 2015. Petitioners timely filed a request for a collection due process hearing. Settlement Officer Pugh (SO Pugh) held the collection due process hearing with petitioners by telephone on October 3, 2017. Petitioners proposed an installment agreement of \$350 per month. SO Pugh determined from petitioners’ Form 433-A, Collection Information for Wage Earners and Self-Employed Individuals, that they had disposable monthly income of \$6,466.33.

[*5]

OPINION

Section 6330 provides for notice and opportunity for a hearing before the Internal Revenue Service may levy upon the property of any person. Petitioners requested and were granted a hearing. Section 6330(c) specifies the matters to be considered at the hearing, including, for purposes of this case, verification that the requirements of any applicable law or administrative procedure have been met, challenges to the appropriateness of collection actions, and offers of collection alternatives. Under section 6330(c)(3), the determination to proceed with a collection action “shall take into consideration * * * whether any proposed collection action balances the need for the efficient collection of tax with the legitimate concern of the person that any collection action be no more intrusive than necessary.”

The parties have now agreed on the amounts owed for 2010, 2011, 2012, and 2015. The underlying liabilities were reported, assessed, or abated by agreement between the parties, so they are no longer in issue. Thus we analyze this case by applying an abuse of discretion standard. See Sego v. Commissioner, 114 T.C. 604, 609-610 (2000). Petitioners contend that the Appeals settlement officer failed to recognize that their liabilities for 2008 and 2009 were paid

[*6] pursuant to the offer-in-compromise for those years. Petitioners' contention, as stated by petitioner Edward Sadjadi during trial, is that Form 656

does not explicitly and clearly identify the taxpayers' obligations with reference to what happens after the amount of OIC that was agreed upon is paid in full. In this particular case, that amount was \$21,515, when agreed, through September of 2016, payments in excess of that amount were paid to the IRS. And at that point we considered the OIC complete--we being the petitioners. And when we filed the 2015 taxes in October of 2016, we asked for an installment agreement and did not pay the full amount at the time of filing, again, under the assumption that the OIC was paid in full, and therefore there were no other obligations remaining, based on the commonly practiced debt agreements that we know of as average people.

However, petitioners' contention is contradicted by the evidence.

Petitioners stipulated that the standard form was in use at the time they signed their offer-in-compromise and have not suggested that the agreement that they signed was any different. The standard form, as quoted in our findings, explicitly emphasizes, in bold print and by detailed provisions to which petitioners agreed, the necessity of complying with future tax obligations and "what will happen if I fail to meet the terms of my offer (e.g., default)". If they failed to read the agreement or forgot the explicit terms, they were still bound to "pay required tax for the five year period beginning with the date of acceptance of this offer", which was April 18, 2013. The settlement officer considered their argument and

[*7] documented their default, to wit, failure to pay the tax shown on their 2015 return filed October 19, 2016.

Abuse of discretion may be found if action is arbitrary, capricious, or without sound basis in fact or law. Giamelli v. Commissioner, 129 T.C. 107, 111 (2007); Woodral v. Commissioner, 112 T.C. 19, 23 (1999). None of those characteristics apply here.

Decision will be entered for
respondent.

UNITED STATES TAX COURT
WASHINGTON, DC 20217

EDWARD F. SADJADI & CYNTHIA M.)	
SADJADI,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 6351-18 L.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

Pursuant to the determination of the Court as set forth in its Memorandum Findings of Fact and Opinion (T.C. Memo 2019-58) filed May 29, 2019, it is hereby

ORDERED and DECIDED that collection may proceed as determined in the Notice of Determination Concerning Action Under Section 6320 and/or 6330 on which this case is based.

(Signed) Mary Ann Cohen
Judge

ENTERED: **MAY 29 2019**

SERVED May 29 2019

IN THE SUPREME COURT OF THE UNITED STATES

No. ___ - ___

EDWARD F. SADJADI and CYNTHIA M. SADJADI

Petitioners, Pro Se

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

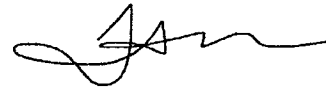
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served upon counsel for all parties to this proceeding as identified below by US Postal Service Priority Mail:

Julie C. Avetta
PO Box 502
Washington, DC 20044
Telephone: (202) 616-2743
Attorney for Respondent/Appellee

I further certify that all parties required to be served have been served.

Austin, Texas, this 5th day of October 2020.



EDWARD F. SADJADI
12407 Altamira Street
Austin, TX 78748

IN THE SUPREME COURT OF THE UNITED STATES

No. ___ - ___

EDWARD F. SADJADI and CYNTHIA M. SADJADI

Petitioners, Pro Se

vs.

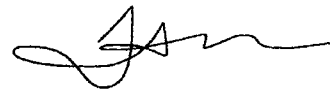
COMMISSIONER OF INTERNAL REVENUE,

Respondent.

CERTIFICATE OF COMPLIANCE WITH WORD LIMITS

This PETITION FOR A WRIT OF CERTIORARI contains 1,500 words.

Dated 5th of October 2020



EDWARD F. SADJADI

12407 Altamira Street

Austin, TX 78748