APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1583

ARTHUR BEDROSIAN,
Appellant

v.

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-15-cv-05853)
District Judge: Honorable Michael M. Baylson

Argued on March 2, 2022

Before: McKEE, AMBRO, and SMITH, Circuit Judges

(Opinion filed: July 22, 2022)

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OPINION OF THE COURT

AMBRO, Circuit Judge

The Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.*, and its implementing regulations require certain individuals with foreign financial interests to file annual disclosures with the U.S. Treasury Department. Those failing to file or filing inaccurate reports are subject to hefty penalties. Take Appellant Arthur Bedrosian's experience. In 2008, he filed an inaccurate Report of Foreign Bank and Financial Accounts (FBAR) with the Government, omitting from the report the larger of his two Swiss bank accounts. If this omission was accidental, the IRS could fine Bedrosian up to $10,000. But

if he willfully filed an inaccurate FBAR, the penalty skyrockets: the greater of $100,000 or half the balance of the undisclosed account at the time of the Bank Secrecy Act violation. Believing Bedrosian's omission was willful, the IRS took the latter option and imposed a $975,789.17 penalty—by its calculation, half the balance of Bedrosian's undisclosed account.

Following Bedrosian's refusal to pay the full assessed penalty, the IRS filed a claim in federal court to collect. A bench trial, appeal, and remand ended with the District Court finding Bedrosian's omission willful and ordering him to pay the IRS penalty in full. Now on appeal again, Bedrosian claims the Court erred by finding his conduct willful and in calculating the penalty amount. We affirm the Court's willfulness finding. And while we agree the Government failed to provide sufficient evidence at trial showing its $975,789.17 penalty was no greater than half his account balance, Bedrosian admitted this fact during opening statements and thus relieved the Government of its burden of proof. We therefore affirm the District Court's judgment.

I. Background

Arthur Bedrosian held two bank accounts with the Union Bank of Switzerland (UBS). The first he opened while a young pharmaceutical sales executive so he could have easy access to cash when traveling overseas. The second he acquired decades later after accepting a loan and investment proposal from the bank.

He disclosed neither to the Federal Government until 2008, despite his accountant telling him years earlier that he was breaking the law by failing to note a foreign account on his personal tax returns.

When Bedrosian finally disclosed his foreign holdings in the required FBAR, he left out a key piece of information. The filed form listed just one Swiss bank account with a balance of less than $1 million, even though he later admitted knowing his holdings at UBS were "over a million dollars." Appx. at 12, 137. The form also failed to reflect Bedrosian's ownership of a second Swiss bank account.

These omissions eventually surfaced, and the IRS assessed the maximum penalty against Bedrosian for willfully filing an inaccurate FBAR: 50% of the balance of the undisclosed account at the time of the violation, which it calculated to be a $975,789.17 penalty. He refused to pay. The dispute thus arrived at federal court when the IRS filed a claim to collect its civil penalty.[1] *See* 31 U.S.C. § 5321(b)(2).

At first, Bedrosian prevailed. After a one-day bench trial, the District Court found the Government failed to prove he willfully filed an inaccurate FBAR. The evidence, it said, did not reflect "conduct meant to conceal or mislead or a conscious effort to avoid

[1] Bedrosian also brought his own suit for unlawful exaction. *Bedrosian v. United States*, 912 F.3d 144, 149 (3d Cir. 2018). Yet we expressed skepticism about our jurisdiction over that claim. *Id.* Instead, we focused on the Government's counterclaim. *Id.* at 150.

learning about the reporting requirements." Appx. at 598 (internal quotation marks omitted). So the omission of the second Swiss account was, if anything, negligent.

Bedrosian's victory was short-lived. On appeal, we remanded after explaining "willfulness" for an FBAR violation was more expansive (and less forgiving) than the District Court may have allowed. *Bedrosian v. United States*, 912 F.3d 144, 153 (3d Cir. 2018). At bottom, willfulness includes not only knowing, but reckless, conduct. *Id.* at 152. And, we said, courts should use an objective standard to determine whether a person knew or should have known about an "unjustifiably high risk of harm." *Id.* at 152–53 (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 68 (2007)). In layman's language, if the Government could show Bedrosian (1) "clearly ought to have known" (2) "there was a grave risk" the FBAR filing requirement "was not being met," and if (3) he "was in a position to find out for certain very easily," it would satisfy the willfulness element. *Id.* at 153 (quoting *United States v. Carrigan*, 31 F.3d 130, 134 (3d Cir. 1994)). Because we were unsure whether the Court applied this test, we remanded "for further proceedings consistent with our opinion" and for the Court to "render a new judgment." *Id.* at 147, 153.

The IRS prevailed on remand. The District Court said its earlier decision focused too heavily on Bedrosian's subjective intent. But after reevaluating the trial record from an objective viewpoint, it determined Bedrosian acted willfully because he "recklessly

disregarded the risk that his FBAR was inaccurate." Appx. at 11. The Court also ordered him to pay the penalty in the amount the IRS calculated (plus interest) because the agency had "not abused its discretion in the amount of the penalty imposed." *Id.* at 17. He now appeals.

II. Analysis[2]

The amount of a civil penalty for a violation of the Bank Secrecy Act depends on three things: (1) whether the violation was willful, (2) the calculation of the maximum penalty permitted by law, and (3) the IRS's discretionary decision whether to assess a penalty at or below the statutory maximum. 31 U.S.C. § 5321(a)(5). This appeal focuses on the first two components. Bedrosian argues, first, that the District Court clearly erred in finding his conduct willful, and second, that the Court incorrectly affirmed a penalty beyond what the IRS proved was permitted by law. We address each in turn.

A. Willfulness

So far, Bedrosian's case has turned mainly on the meaning of "willfulness" in the penalty provisions for violations of the Bank Secrecy Act. As already explained, we set out the definition of "willfulness" in

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[2] As we explained in *Bedrosian*, the District Court had jurisdiction under 28 U.S.C. § 1345. 912 F.3d at 150. And we have appellate jurisdiction under 28 U.S.C. § 1291 to review the Court's final judgment. *Id.*

Bedrosian and left it to the District Court to apply that definition as it reconsidered the trial evidence. 912 F.3d at 153–54. The Court did so—making supplemental factual findings where needed—and concluded Bedrosian's conduct was indeed willful. Bedrosian now challenges that finding on two fronts: (1) the Court exceeded the scope of the remand by making supplemental findings that led to its conclusion he acted willfully, and (2) his conduct was not willful. We disagree on both.

It is unremarkable to say that, on remand, a district court must comply with the "letter and spirit of the mandate" issued by the court of appeals. *Bankers Tr. Co. v. Bethlehem Steel Corp.*, 761 F.2d 943, 949 (3d Cir. 1985). So what was the scope of our *Bedrosian* mandate? Bedrosian insists we remanded only "to confirm that the District Court's result would be the same under the now-settled standard," *not* for it to reopen the evidentiary record and make or reconsider factual findings. Bedrosian Br. at 26. But we read our opinion differently.

Bedrosian imposed few remand restraints on the District Court. After stating our willfulness rule, because we were "unsure whether the District Court evaluated Bedrosian's conduct under this objective standard," we decided it was best to give the trial court the opportunity to reassess the evidence. 912 F.3d at 153–54. So we "remand[ed] the case for further proceedings consistent with [our] opinion." *Id.* at 154. We placed no limitation on these proceedings. Instead, our opinion actually anticipated that the Court would

reconsider its factual findings and its judgment. For example, after answering the legal question in the appeal, we declined to address potential factual errors raised by the Government, choosing instead to "leave it to the District Court if it needs to [correct these issues] on remand." *Id.* at 151 n.3. We then "remand[ed] for further consideration" and for the Court "to render a new judgment" (allowing it to change its mind on its ultimate holding). *Id.* at 153. Though our opinion did not explicitly state the Court could review the full record and make supplemental factual findings, doing so was well within the "spirit of the mandate." *Bankers Tr. Co.*, 761 F.2d at 949.

We also are not convinced the District Court erred in finding Bedrosian's conduct willful. We review this factual determination for clear error. *Bedrosian*, 912 F.3d at 152. It "exists only if a finding is completely devoid of a credible evidentiary basis or bears no rational relationship to the supporting data." *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 399 F.3d 248, 254 (3d Cir. 2005) (internal quotation marks omitted) (alterations adopted).

Here the Court's rational decision was grounded in credible evidence. Its thorough and well-reasoned opinion reconsidered whether—based on the evidence presented at the bench trial—Bedrosian "clearly ought to have known that . . . there was a grave risk that an accurate FBAR was not being filed and if . . . he was in a position to find out for certain very easily." *Bedrosian*, 912 F.3d at 153 (internal quotation marks omitted)

(alterations adopted). To aid this analysis, the Court made five supplemental findings:

1. "Bedrosian's cooperation with the Government . . . began only after he was exposed as having hidden foreign accounts." Appx. at 5.

2. "Shortly after filing the 2007 FBAR, Bedrosian sent two letters to his Swiss bank directing closure of two accounts, but only one of these accounts had been disclosed on his FBAR." *Id.* at 5; *see also id.* at 139.

3. "Bedrosian does not dispute he saw an article in The Wall Street Journal about the federal government tracing mail coming into the United States and was therefore alerted to the possibility of the United States finding out about his foreign bank accounts if the bank sent information through the mail." *Id.*; *see also id.* at 96.

4. "Bedrosian's Swiss accounts were subject to a 'mail hold.' He does not dispute the existence of the mail hold or that he signed a form and paid a fee to the bank for this benefit." *Id.* at 6; *see also id.* at 135.

5. "Bedrosian also acknowledged that he was aware of the significant amount of money held in his foreign bank accounts." *Id.* at 6; *see also id.* at 137.

The trial record supported each finding.

Relying on these facts, the Court found Bedrosian acted recklessly (and therefore willfully under our test) because he "knew or should have known the form which he signed was inaccurate." *Id.* at 13. He checked a box on the FBAR reflecting there was less than $1 million in his account. Yet at trial he said he knew his main account had "over a million dollars in it." *Id.* at 12, 137. So even if he did not know he had two accounts, the FBAR stating the account held less than a million dollars "should have prompted him to investigate further, which he could have done easily by contacting the bank." *Id.* at 12. Indeed, had he "looked at the forms he signed," Bedrosian "should have noticed the amount stated for the accounts was not accurate." *Id.* Further, he was warned by his accountant that he was breaking the law by not disclosing his accounts to the Government, yet he made no change. *Id.* at 12, 98.

Applying the *Bedrosian* definition of willfulness to these facts, the District Court properly determined Bedrosian acted willfully by failing to disclose his second Swiss bank account on the FBAR.[3] We certainly cannot conclude it clearly erred.

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[3] Bedrosian also criticizes the District Court for the analogies it drew between his case and the Fourth Circuit's decision in *United States v. Horowitz*, 978 F.3d 80 (4th Cir. 2020), where that Court found the defendant's FBAR violation willful. Even if he is correct that the District Court incorrectly likened his case to *Horowitz*, this makes no difference. *Horowitz* is an out-of-circuit, non-binding precedent, so the similarity or dissimilarity of his case is irrelevant. All that matters here is that the District Court found Bedrosian's conduct satisfied our test for willfulness.

One further note. Bedrosian invites us to revisit our *Bedrosian* test for willfulness, but we decline to do so under the law-of-the-case doctrine. That doctrine prevents reconsideration of legal issues already decided in earlier stages of a case. *Pub. Int. Rsch. Grp. v. Magnesium Elektron*, 123 F.3d 111, 116 (3d Cir. 1997). Though Bedrosian correctly notes an exception when the earlier decision was "clearly erroneous," *id.* at 117, he identifies no on-point binding precedent with which *Bedrosian* conflicts,[4] *see Pardini v. Allegheny Intermediate Unit*, 524 F.3d 419, 426–27 (3d Cir. 2008) (noting we would not have to follow the law-of-the-case doctrine if a prior opinion clearly erred by disregarding binding precedent). Our earlier decision thus stands.

B. Maximum Penalty

Willfulness, though, is just the first hurdle the Government must overcome to collect the penalty it assessed against Bedrosian. The statute also limits the IRS's authority in other ways, particularly by setting a maximum penalty. Once a violation of the Bank Secrecy Act is found to be willful, the IRS has two options: impose up to the greater of a $100,000 penalty or assess a penalty of up to "50 percent of the amount . . . [of] the balance in the account at the time of the

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[4] Even had he shown our decision was wrong, it likely would be up to our Court *en banc*, not our panel, to modify that decision. *See* 3d Cir. I.O.P. 9.1. This is especially true now that another of our Court's precedential opinions has adopted and applied the test we set out in *Bedrosian*. *See United States v. Collins*, 36 F.4th 487, 491 (3d Cir. 2022).

violation." 31 U.S.C. § 5321(a)(5)(C), (D). The Government has discretion to assess a penalty up to the statutory maximum.

The maximum penalty amount—like willfulness—is an element of the cause of action to collect the penalty. *See* 31 U.S.C. § 5321(a)(5)(C). So, also like a determination of willfulness, it is a factual finding the District Court must make based on the evidence presented at trial. Once that statutory maximum is properly calculated, the Court may only set aside the IRS's discretionary determination of whether to impose the maximum or some lesser amount "if it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *United States v. Collins*, 36 F.4th 487, 493 (3d Cir. 2022) (*Collins II*)[5]; *see also Frisby v. U.S. Dep't of Hous. & Urb. Dev.*, 755 F.2d 1052, 1055 (3d Cir. 1985) ("Where Congress has granted an agency discretion, the resulting decisions are subject to judicial review only to determine

[5] In *United States v. Collins*, the statutory maximum penalty was not at issue (as it is here) because the District Court found the defendant admitted to his account balances. *See* No. 18-cv-1069, 2021 WL 456962, at *1–2 (W.D. Pa. Feb. 8, 2021) (*Collins I*); *see Collins II*, 36 F.4th at 494 ("Collins's penalty is well below the amount permitted by law."). Indeed, the IRS imposed a penalty 75% below the maximum penalty in that case, so there was no argument that the IRS exceeded its statutory authority. *Collins II*, 36 F.4th at 494; *see also Kimble v. United States*, 991 F.3d 1238, 1242, 1243–44 (Fed. Cir. 2021) (reviewing for abuse of discretion the IRS's decision to impose the maximum civil FBAR penalty and not lessen the penalty due to mitigating factors).

whether the Secretary has exceeded statutory authority or has acted arbitrarily.").

Facts underlying the calculation of the maximum civil penalty—in this instance, the account balance—must be proven by a preponderance of the evidence. *See*, *e.g.*, *Herman & MacLean v. Huddleston*, 459 U.S. 375, 389–90 (1983) (noting the burden of proof in civil cases is preponderance of the evidence and "imposition of even severe civil sanctions . . . has been permitted after proof by a preponderance of the evidence"). And because the Government brought this civil action under 31 U.S.C. § 5321(b)(2) "to recover a civil penalty," it bore the burden of proving the account balance at trial—again, in the same way it did the element of willfulness.[6]

The Government contends Bedrosian's undisclosed bank account held $1,951,578.34, making its $975,789.17 penalty lawful. But Bedrosian claims it failed to prove this fact, particularly because it pulls this figure from arguably inadmissible evidence. And, he says, the District Court abused its discretion by admitting and ultimately relying on this evidence to uphold the IRS's imposition of the civil penalty.

[6] The Government must prove the account balance only because it chose the option under the statute to penalize Bedrosian at 50% of the balance of his undisclosed account. Had the Government chosen the other maximum penalty option—$100,000 for each violation—the account balance would be irrelevant. Instead, it would only need to prove a willful violation of the Bank Secrecy Act.

1. Admissibility of Evidence

At trial, the Government presented no live testimony discussing Bedrosian's bank accounts.[7] Instead, at the close of its case and without a witness, it tried to introduce a series of documents, including Exhibit R (the record the Government claims establishes the balance in Bedrosian's Swiss account), Exhibit S (showing the Swiss Franc to U.S. Dollar exchange rates for 2006 through 2011), and Exhibit T (converting the account balances in Exhibit R into U.S. Dollars using the Exhibit S exchange rates). Bedrosian objected, claiming there was a lack of foundation to introduce these exhibits. And the Court reserved its ruling on the admissibility of the documents until the parties provided more briefing. Ultimately, it only resolved this issue after our remand, when it appears to have admitted the documents and relied on them to uphold the IRS's penalty.

The legitimacy of the IRS's penalty centers on the admissibility and the contents of Exhibit R. This exhibit consists of a single page and appears to be a record of some account. *See* Appx. at 528. The heading reads "monthly balances" and below it is a monthly breakdown of numbers from 2001 to 2008. On the left

[7] The Government offered only one witness: an IRS employee who prepared the letter assessing the penalty against Bedrosian. She explained that she had no role in calculating the penalty amount and no idea how the penalty was calculated. She simply received a sheet of paper from an IRS agent stating the penalty amount and entered it into the system to generate the official penalty certificate.

side of the page is a string of numbers, "D3.US.642/174-D1540_2_00001," which looks like a Bates stamp identifier from discovery.

2.1 Monthly Balances

2.1 Monthly Balances

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2001	1,446,454.00	1,373,024.00	1,307,812.00	1,393,881.00	1,412,060.00	1,378,699.00	1,314,901.00	1,232,616.00	1,122,1[illegible]	[illegible]157,523.00	1,227,736.00	1,265,905.00
2002	1,240,074.00	1,221,371.00	1,244,965.00	1,159,365.00	1,120,832.00	1,012,621.00	912,262.00	918,701.00	[illegible]	[illegible]71,132.00	914,852.00	806,136.00
2003	773,170.00	732,871.00	729,028.00	807,114.00	819,499.00	1,197,672.00	1,242,051.59	1,270,096.50	[illegible]	1,281,035.95	1,277,862.07	1,302,181.96
2004	1,346,063.42	1,368,332.00	1,321,197.85	1,341,306.40	1,300,587.35	1,304,300.71	1,290,341.15	1,274,522.4[illegible]	[illegible]	1,264,116.46	1,264,849.49	1,317,215.77
2005	1,334,077.70	1,357,456.16	1,360,776.85	1,330,734.10	1,410,629.91	1,450,700.77	1,516,366.86	1,478,16[illegible]	[illegible]293,219.21	2,248,969.97	2,349,561.79	2,400,831.80
2006	2,450,859.31	2,497,813.17	2,632,362.13	2,524,626.94	2,419,137.41	2,414,011.31	2,471,801.37	2,530,[illegible]	2,577,640.51	2,648,333.24	2,652,014.74	2,726,472.73
2007	2,794,305.73	2,743,544.14	2,769,947.13	2,891,114.18	2,940,629.36	2,889,996.18	2,774,376.21	[illegible]	2,780,685.04	2,814,611.76	2,689,803.26	2,644,092.26
2008	2,373,081.53	2,349,253.56	2,224,994.77	2,371,627.47	2,387,779.55	2,197,477.21	2,201,277.69	[illegible]	1,977,416.95	1,642,779.83	1,575,183.12	983.73

TREATY INFORMATION

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D3.US.64.2/174-01540_2_00001

See id.

Exhibit R is admissible only if relevant. *See* Fed. R. Evid. 402. And here the relevance of this document hinges on whether it reflects the balance of Bedrosian's undisclosed Swiss bank account, as the Government claims it does. After all, the random account statement of some other person banking with UBS or any other bank would have no bearing on what civil penalty Bedrosian owes the IRS. The Government, though, offered no foundation tying Bedrosian or his UBS account to this exhibit.[8]

[8] The Government explains that Exhibit R was a self-authenticating business record that could be submitted into evidence

Take a closer look at the exhibit. There is no name on the page. No account number. Not even a bank mentioned. There are numbers on the page, but no listed currency. Presumably because it is a "monthly statement," it is showing an account balance (though it could even be a balance for an unpaid bill). And are the stated balances in Swiss Francs? U.S. Dollars? Euros? We simply don't know. There is a Bates number on the side of the page stating, "D3.US.642/174-D1540_2_00001," but nothing in the record explains what that number means.[9] Indeed, because the Government tried to enter Exhibit R into evidence without a witness laying a foundation, the Court had no help identifying or explaining its contents.

All we know from the record is Exhibit R shows someone's "monthly balance" for something somewhere. The Government's attorneys in briefing now tell

without a live witness under Federal Rule of Evidence 902(12) because it was accompanied by a custodian certification (Exhibit U). Perhaps so. But authenticity and relevance are "two separate matters." *United States v. Southard*, 700 F.2d 1, 23 (1st Cir. 1983). A business record may be self-authenticating, but there must still be "testimony linking the [defendant] with the documents" to establish relevance. *Id.*; *see also United States v. Browne*, 834 F.3d 403, 410 (3d Cir. 2016).

[9] For the first time on appeal, the Government points to the Bates stamp numbers to tie this document to Bedrosian. It claims other exhibits with similar Bates numbers "confirm that this Bates range concerns Bedrosian." IRS Br. at 62. The problem, though, is it failed to lay this foundation through testimony at trial. This is simply a hypothesis; there is no evidence explaining the Bates number ranges or tying these Bates numbers to Bedrosian. The Government cannot rectify this lack of foundation now on appeal.

us it is a UBS "statement showing monthly account balances for Bedrosian's 6137 account stated in Swiss francs," IRS Br. at 60-61, but nothing in evidence at trial supports that claim. And without the Government laying the foundation to show Exhibit R states the monthly balances for Bedrosian's unreported bank account, it is just a slip of paper with no relevance to this case. We therefore conclude the District Court should not have admitted Exhibit R without further foundation. And, consequently, this document cannot confirm that the IRS's $975,789.17 penalty was 50% of Bedrosian's account balance.

2. Judicial Admissions

Exhibit R was the only evidence the Government submitted that purportedly showed the balance of Bedrosian's undisclosed account. But it isn't the only indication in the record of the account balance. The Government also argues Bedrosian's counsel admitted that the account contained $1,951,578.34, and that this was a binding judicial admission.

Judicial admissions are "admissions in pleadings, stipulations or the like which do not have to be proven in the same litigation." *Anderson v. Commissioner*, 698 F.3d 160, 167 (3d Cir. 2012) (internal quotation marks omitted) (alterations adopted). They must be "unequivocal," *id.*, or as other Circuits have said, "intentional, clear, and unambiguous," *In re Motors Liquidation Co.*, 957 F.3d 357, 361 (2d Cir. 2020) (collecting cases).

Here the Government identifies four statements Bedrosian made through his counsel in briefing or at trial that it believes constituted judicial admissions:

1. Bedrosian's Response to the Government's Statement of Undisputed Material Facts in Support of Summary Judgment: "Admit[ting]" that "the penalty was calculated as 50% of Bedrosian's account balance for the account ending in 6167, or fifty percent of $1,951,578.34, which equals $975,789.17." Doc. 22-3 ¶ 51; Doc. 26-1 ¶ 51.

2. Bedrosian's Statement of Undisputed Material Facts in Support of Summary Judgment: "On or about July 18, 2013 the IRS imposed upon the plaintiff a willful penalty for failure to file[ ] [an FBAR]. . . . The maximum value of the account was $1,951,578.34 and the amount of the penalty was $975,789.19—half the value of the account and the highest penalty that could be imposed." Doc. 25-1 ¶ 35-36.

3. Bedrosian's Trial Brief: "On or about July 18, 2013 the IRS imposed upon the plaintiff a willful penalty for failure to file[ ] [an FBAR]. . . . The maximum value of the account was $1,951,578.34 and the amount of the penalty was $975,789.19—half the value of the account and the highest penalty that could be imposed." Doc. 49 at 5.

4. Bedrosian's Opening Statement: "Now, the government states and we concede that at the time there was about 2 million U.S. dollars in that account give or take, you know, you have the exchange rate and all, it's like 2.6 Swiss francs and they'll have a witness that gets up and does the math, but it works out to about around 2 million dollars." Appx. at 66.

The District Court has discretion to treat a party's statement as a judicial admission and to bind the party to that admission. *See Cooper v. Carl A. Nelson & Co.*, 211 F.3d 1008, 1014 (7th Cir. 2000); *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997). But here the Court did not decide whether these were judicial admissions, finding instead that the Government's evidence (which we have now held inadmissible) was sufficient.

Still, even though the District Court did not address this argument, we "may affirm on any basis supported by the record, even if it departs from the District Court's rationale." *TD Bank N.A. v. Hill*, 928 F.3d 259, 270 (3d Cir. 2019). And while arguably some of the statements Bedrosian made in the District Court proceedings are not judicial admissions, the statement made in opening argument acknowledged the true state of the facts. *See, e.g.*, *Glick v. White Motor Co.*, 458 F.2d 1287, 1291 (3d Cir. 1972) ("[A]n admission of counsel during the course of trial is binding on his client."); *United States v. McKeon*, 738 F.2d 26, 30 (2d Cir. 1984) ("The binding effect on a party of a clear and

unambiguous admission of fact made by his or her attorney in an opening statement was acknowledged by the Supreme Court . . . and has been frequently recognized in subsequent lower court decisions involving civil cases."). The concession that "there was about 2 million U.S. dollars" in the undisclosed account, Appx. at 66, makes the IRS's $975,789.17 penalty below the statutory maximum (50% of the account balance). We therefore affirm the District Court's judgment on this alternative ground.

* * *

Arthur Bedrosian willfully filed an inaccurate FBAR. So the Government could validly penalize him under the penalty provisions for willful violations of the Bank Secrecy Act. What the Government could not do, though, is penalize him beyond the maximum statutory limits. The Government's evidence at trial failed to prove by a preponderance that Bedrosian's undisclosed bank account held $1,951,578.34. But acknowledging at trial an account balance of at least that much saves the need for a remand to make a finding of the obvious. We thus affirm.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-1583

ARTHUR BEDROSIAN,
Appellant

v.

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE

(District Court Civil No.: 2-15-cv-05853)

SUR PETITION FOR REHEARING

(Filed Sep. 27, 2022)

Present: CHAGARES, Chief Judge,
McKEE, AMBRO, JORDAN, HARDIMAN,
GREENAWAY, JR., SHWARTZ, KRAUSE, BIBAS,
PORTER, MATEY, PHIPPS, Circuit Judges,
and SMITH*, Senior Circuit Judge

The petition for rehearing filed by **appellant** in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who

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* Pursuant to Third Circuit I.O.P. 9.5.3, the vote of Judge Smith is limited to panel rehearing only.

concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is **denied**.

BY THE COURT,

s/ THOMAS L. AMBRO
Circuit Judge

Dated: September 27, 2022
Sb/cc: All Counsel of Record

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARTHUR BEDROSIAN	**CIVIL ACTION**
v.	**NO. 15-5853**
THE UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE	(Filed Jan. 29, 2021)

MEMORANDUM AND ORDER RE PENALTY AMOUNT

Following this Court's Judgment filed September 20, 2017, and an appeal by the United States, the Third Circuit ordered a remand. Bedrosian v. United States, Dep't of Treasury, IRS, 912 F.3d 144 (3d Cir. 2018). After additional briefing by the parties, the Court found that Plaintiff Arthur Bedrosian acted willfully in failing to file a FBAR. Bedrosian v. United States, 15-5853, 2020 WL 7129303 (E.D. Pa. Dec. 4, 2020). The Court then ordered the parties to confer and file joint or separate statements regarding the amount of the penalty to be imposed. (ECF 87.) The parties have filed separate statements (ECF 90, 91), and responses (ECF 92, 93).

Bedrosian argues that no penalty should be imposed because the government has failed to meet its burden to prove the amount of the penalty. The

government argues that Bedrosian has admitted to the amount on multiple occasions, and in the alternative that the government's submissions prove the amount. Further, the government explains that the relevant statutes and Internal Revenue Service ("IRS") guidance dictate the imposition of the maximum penalty amount in this case.

The maximum penalty for a willful violation of the FBAR reporting requirement is the greater of $100,000 or 50% of the bank account balance at the time of the violation. 31 U.S.C. § 5321(a)(5)(C), (D). Interest accrues from the date the "notice of the amount due is first mailed to the debtor." 31 U.S.C. § 3717(b)(2). In addition, a late-payment penalty must be assessed for the portion of the debt that remains unpaid after 90 days. 31 U.S.C. § 3717(e)(2).

In this case, the IRS assessed the maximum penalty of 50% of the bank account balance which was $975,789. For purposes of calculating interest, notice of the amount due was mailed to Bedrosian on January 30, 2015. Bedrosian made a payment of $9,757 on August 26, 2015. According to the government, the unpaid amount as of January 4, 2020, taking into account interest, late fees, and the amount already paid is $1,371,371.

The documents submitted by the government for purposes of proving the penalty amount are as follows:

- **Exhibit R**: A spreadsheet created by UBS which shows the monthly balances (in Swiss Francs) of a bank account for the years 2001

through 2008. The government submits that it is Bedrosian's UBS account ending in 6167.

- **Exhibit U**: A statement by UBS's legal counsel that documents attached to Exhibit U are documents maintained by UB S which:

  - "1. were made at or near the time of the occurrence of the matters set forth therein, by (or from information transmitted by) a person with knowledge of those matters;
  - 2. were kept in the course of regularly conducted business activity;
  - 3. were made by the said business activity as a regular practice; and,
  - 4. if not original records, are duplicates of original records."

  Exhibit R is listed as one of the documents attached to Exhibit U.

- **Exhibit S**: Swiss Franc to U.S. Dollar exchange rates for the years 2006 through 2011
- **Exhibit T**: The account balances in Exhibit R converted to U.S. Dollars using the exchange rates from Exhibit S

In United States v. Williams, the District Court faced a similar situation as here. Originally, the District Court found that Williams' actions in failing to file an FBAR were not willful, and the Fourth Circuit, finding that Williams did act willfully, reversed and remanded to the District Court for imposition of the

penalty. United States v. Williams, 489 Fed. App'x. 655, 660 (4th Cir. 2012). On remand, the Court noted that the issue of liability had been resolved and the Court's task was to "review the penalty amount for abuse of discretion under the 'arbitrary and capricious' standard of the Administrative Procedure Act." United States v. Williams, No. 09-437, 2014 WL 3746497, *1 (E.D. Va. June 26, 2014) (citing 5 U.S.C. § 706). The Court described this standard as "narrow and deferential" and stated the it "must not substitute [the Court's] judgment for the agency's, and must only review the record to ensure that the agency engaged in reasoned decision-making and that there was a 'rational connection between the facts found and the choice made.'" Id. (quoting Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983)).

After reviewing the parties' submissions, the Court finds that the government has not abused its discretion in the amount of the penalty imposed. At no point does Bedrosian argue that the stated amount in his account is incorrect, he only argues that the documents presented by the government are not admissible. Although the government asserts that the doctrine of judicial admission requires this result, the Court relies on the documents identified by the government in reaching its decision. However, the Court notes that the admissions pointed to by the government at least demonstrate that the penalty amount sought by the government was not a surprise to Bedrosian or his counsel. Therefore, based on the Exhibits described above the Court finds that the government has not

abused its discretion in imposing the maximum penalty against Bedrosian.

AND NOW, upon consideration of the parties' statements regarding the penalty amount (ECF 90, 91) and the responses (ECF 92, 93), it is hereby **ORDERED** that judgment is entered in favor of the United States and against Arthur Bedrosian in the amount of $1,371,371.43 as of January 4, 2021, consisting of:

1. The penalty assessed against him under 31 U.S.C. § 5321(a)(5) in the amount of $975,789.17,
2. Bedrosian's payment of $9,757.89 on August 26, 2015, and
3. interest and penalties accruing on the unpaid portion of the original assessment, in accordance with 31 U.S.C. § 3717, at the rates of 1% and 6% per annum, respectively.

Further interest and penalties will accrue as follows:

Interest will continue to accrue under 31 U.S.C § 3717(a)(1) from January 4, 2021 until the date of entry of this judgment. Interest will then accrue under 28 U.S.C § 1961 from the date of entry of this judgment until the judgment is paid. Penalties will continue to accrue in accordance with 31 U.S.C § 3717(e)(2) from January 4, 2021 until judgment is paid.

The clerk shall close this case.

BY THE COURT:

s/ Michael M. Baylson
MICHAEL M. BAYLSON, U.S.D.J.

DATED: 1/29/2021

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARTHUR BEDROSIAN	CIVIL ACTION
v.	NO. 15-5853
THE UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE	(Filed Dec. 4, 2020)

MEMORANDUM ON REMAND FROM THIRD CIRCUIT

Baylson, J. **December 4, 2020**

Following this Court's Findings of Fact, Conclusions of Law, and Judgment filed September 20, 2017, and an appeal filed by the United States, the Third Circuit ordered a remand. Bedrosian v. United States, Dep't of Treasury, IRS, 912 F.3d 144 (3d Cir. 2018) ("Bedrosian II"). Following additional briefing by the parties, and review of the entire record, this Court will vacate the prior judgment, supplement the prior findings and conclusions, and enter judgment for the United States.

I. Introduction

This case is not novel, but deals with the relatively arcane topic of tax litigation, arising out of a taxpayer being assessed a penalty for failure to file an IRS form,

the Report of Foreign Bank & Financial Accounts, commonly referred to as a "FBAR."[1] The obligation to file a FBAR arises out of the taxpayer having maintained control over foreign bank accounts. The full details and factual history of the case will not be repeated here.

II. Procedural History

Taxpayer Arthur Bedrosian, filed this action on October 27, 2015 seeking to obtain a refund of $9,757.99 that he paid to the IRS for his allegedly "willful" violation of the FBAR filing requirement. The government counter-claimed for the full amount of the penalty it had assessed, arguing that Bedrosian owed $1,007,345.48. After denying cross-motions for summary judgment, the Court held a non-jury trial and entered Findings of Fact and Conclusions of Law. See Bedrosian v. United States, No. 15-5853, 2017 WL 4946433 (E.D. Pa. Sept. 20, 2017) ("Bedrosian I").

III. The Third Circuit's Opinion

On appeal, the Third Circuit concluded that this Court had jurisdiction and agreed that the willfulness standard in the FBAR context was the same as in other civil contexts, but it held that the Court's findings and conclusions did not contain a sufficiently clear consideration of all the relevant facts in making a conclusion

[1] REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS (FBAR), https://www.irs.gov/businesses/small-businesses-self-employed/report-of-foreign-bank-and-financial-accounts-fbar (last visited Dec. 2, 2020).

that Bedrosian's conduct was not "willful." In its original findings, this Court compared Bedrosian's conduct with conduct that other courts reviewed in finding FBAR violations, on which the Government had heavily relied. This Court found that Bedrosian's conduct, although it would allow a finding that he was "negligent," did not justify a conclusion of "willfulness."

The Third Circuit noted that "a person commits a reckless violation of the FBAR statute by engaging in conduct that violates an objective standard: action entailing an unjustifiably high risk of harm that is either known or so obvious that it should be known." Bedrosian II, 912 F.3d at 153 (quotations omitted). It then referenced the test for recklessness in other tax contexts as the test that should be applied here:

> With respect to IRS filings in particular, a person "recklessly" fails to comply with an IRS filing requirement when he or she "(1) clearly ought to have known that (2) there was a grave risk that [the filing requirement was not being met] and if (3) he [or she] was in a position to find out for certain very easily." United States v. Carrigan, 31 F.3d 130, 134 (3d Cir. 1994) (quoting United States v. Vespe, 868 F.2d 1328, 1335 (3d Cir. 1989)) (alterations in original).

Bedrosian II, 912 F.3d at 153. As this quotation shows, the Third Circuit did not rely on any FBAR precedents. The Third Circuit directed this Court to consider other cases in the taxation realm, which had found that certain taxpayer conduct was "willful" because it satisfied

an objective standard of recklessness, as well as cases from other circuits which have applied this test in the FBAR context.

IV. Supplemental Findings of Fact

This opinion will not review the entire record but will supplement the prior findings of fact after considering the precedents on which the Third Circuit relied, and further review of the evidence from the standpoint of whether, viewed objectively, Bedrosian's conduct was reckless and therefore willful. The Government's reply brief on remand (ECF 77), notes several items of evidence which the Court agrees support a finding that Bedrosian's conduct was reckless:

> 1. Bedrosian's cooperation with the Government, which this Court emphasized as negating willfulness, began only after he was exposed as having hidden foreign accounts.
>
> 2. Shortly after filing the 2007 FBAR, Bedrosian sent two letters to his Swiss bank directing closure of two accounts, but only one of these accounts had been disclosed on his FBAR. The second account was moved to a different Swiss bank and the funds were not repatriated to the United States.
>
> 3. Bedrosian does not dispute he saw an article in The Wall Street Journal about the federal government tracing mail coming into the United States and was therefore alerted to the possibility of the United States finding out

> about his foreign bank accounts if the bank sent information through the mail.
>
> 4. Bedrosian's Swiss accounts were subject to a "mail hold." He does not dispute the existence of the mail hold or that he signed a form and paid a fee to the bank for this benefit. The Government relies on this point of evidence for the fact that Bedrosian paid a fee for a service, the purpose of which was to prevent correspondence from the foreign bank being tracked by the IRS.
>
> 5. Bedrosian also acknowledged that he was aware of the significant amount of money held in his foreign bank accounts.

These findings supplement the findings from this Court's earlier opinion that:

> the only evidence supporting a finding that Bedrosian willfully violated Section 5314 is: (1) the inaccurate form itself, lacking reference to the account ending in 6167, (2) the fact that he may have learned of the existence of the second account at one of his meetings with a UBS representative, which is supported by his having sent two separate letters closing the accounts, (3) Bedrosian's sophistication as a businessman, and (4) Handelman's having told Bedrosian in the mid-1990s that he was breaking the law by not reporting the UBS accounts.

Bedrosian I, 2017 WL 4946433, at *6.

In summary, this Court's prior analysis was focused almost entirely on Bedrosian's subjective intent and did not adequately consider whether the evidence warranted a conclusion, from an objective point of view, whether Bedrosian acted either "knowingly or recklessly" in failing to file a FBAR.

V. Discussion of Law

In the civil context, willfulness "cover[s] not only knowing violations of a standard, but reckless ones as well." Fuges v. Southwest Fin. Servs., Ltd., 707 F.3d 241, 248 (3d Cir. 2012). Recklessness is defined as "conduct violating an objective standard: action entailing 'an unjustifiably high risk of harm that is either known or so obvious that it should be known.'" Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 68 (2007) (quoting Farmer v. Brennan, 511 U.S. 825, 836 (1994)).

Both Third Circuit cases cited by the Third Circuit in Bedrosian apply the willfulness standard in the context of failure to pay employment taxes. In Vespe, the Court stated that acting willfully includes "pay[ing] other creditors in preference to the IRS when he knows taxes are due" as well as paying "other creditors with reckless disregard for whether taxes have been paid." 868 F.2d at 1335. The taxpayer argued that his actions could not meet the definition of willful because he did not have control of the funds used to pay taxes and that he was hospitalized and subsequently incarcerated during the relevant time period. Id. at 1331. In finding that the defendant at least acted recklessly with

respect to his tax obligation, the Court noted that he paid other creditors and therefore "should have strongly suspected that [his company] might have also neglected to pay its taxes." Id. at 1335. Furthermore, "[h]e presented no evidence that he took any steps to determine whether or not [his taxes] had been paid, or that such an inquiry would have been difficult or unavailing." Id.

In Carrigan, the Third Circuit found that the District Court erred by granting summary judgment in favor of the United States on the issue of willfulness. 31 F.3d at 135. The defendant was a company executive who was aware the company was behind on its taxes and loaned the company money in order to pay its debts. Id. at 132. The Third Circuit found there was a genuine dispute of material fact regarding whether the defendant's actions were willful because the record was not clear as to how the defendant directed creditors should be paid. Id. The record demonstrates that he "lent the company $ 20,000.00 to pay its creditors, including the IRS, but took no other steps to direct that the tax liability be paid." Id. at 134. However, "the record also establishes that the one check that [the defendant] did sign . . . was paid to the IRS." Id. The record was also "not clear concerning whether the check to the IRS came from the funds lent by [the defendant] or from some other source" and "about how much tax was due when [the defendant] signed the check to the IRS." Id. The court noted "his admittedly limited access to the company's tax and other financial records" in finding that he "may not have acted with

reckless disregard of whether the taxes were being paid when he took no steps to direct that the $20,000.00 be applied exclusively to" paying the IRS. Id.

There are also two Fourth Circuit cases relevant here. The Third Circuit in Bedrosian cited to United States v. Williams, 489 F. App'x. 655 (4th Cir. 2012), a case applying the willfulness standard in the context of a FBAR penalty. The government also filed supplemental authority in this case regarding United States v. Horowitz, 978 F.3d 80 (4th Cir. 2020), a more recent Fourth Circuit decision concerning willful failure to file a FBAR.

This Court discussed Williams in its original opinion in this case:

> In Williams . . . the defendant deposited over $7 million into two Swiss bank accounts and failed to report the income from those accounts to the IRS from 1993 to 2000. Williams, 489 F. App'x at 656. In the fall of 2000, government authorities became aware of the accounts, the defendant retained counsel, and Swiss authorities froze both accounts. Even after facing significant government scrutiny regarding his compliance with federal reporting requirements, the defendant nevertheless filed an FBAR for tax year 2000 in which he did not disclose his interest in either Swiss account. The defendant also allocuted, in connection with a simultaneous criminal investigation, to having unlawfully failed to report the existence of the Swiss accounts on

> his 2000 FBAR. On these facts, the Fourth Circuit overturned the district court's finding that the defendant's violation of Section 5314 had not been willful, reasoning that the above-recited facts at least established reckless conduct. Id. at 660.

Bedrosian I, 2017 WL 4946433, at *5. On further review of the record in light of the Third Circuit's opinion, there are very few differences between the conduct in Williams and Bedrosian. This Court erred when it concluded, as stated in the above discussion, that Bedrosian fully cooperated with the IRS and did not make false statements.

In Horowitz, the Court found several circumstances which warranted a finding of willfulness. First, the Court explained that the defendants knew their interest income from domestic bank accounts was taxable and that their foreign income was taxable, and it would make no sense to conclude that foreign interest was not taxable. 978 F.3d at 89-90. Next the Court found that the foreign account was set up with "'hold mail' service, which the bank knew would and did assist U.S. clients in concealing assets and income from the IRS." Id. at 90. Even though defendants denied requesting this service, the Court noted they would have become aware of it. Id. The Court also noted that the amounts in the account were significant and thus not "susceptible to being overlooked." Id. Lastly, the Court noted that they answered "no" to a question on their tax returns asking whether they had a foreign bank account. Id. Even if they did not review the returns,

they signed them "representing to the IRS, under the penalties of perjury, that the returns were accurate." Id.

There are a few other District Court cases which apply the objective recklessness test in the context of a willful violation of the FBAR reporting requirement. In Brounstein v. United States, the Court found that Brounstein's actions demonstrated a reckless disregard for whether taxes were being paid. No. 90-6393, 1992 WL 10478, at *3 (E.D. Pa. Jan. 16, 1992) (Dalzell, J.), aff'd, 979 F.2d 952 (3d Cir. 1992). The Court's finding was based on the following facts:

> Brounstein signed every quarterly employment tax return showing the amount of tax due. No check was ever remitted with the returns. Since Brounstein signed nearly every check [the company] issued, he knew there were no checks in favor of the Internal Revenue Service for payroll taxes withheld.

Id. In Abel v. United States, the Court specifically contrasted Brounstein finding that "the debtor signed only a few checks to creditors, and did not sign or prepare tax returns." 200 B.R. 816, 824 (E.D. Pa. 1996) (DuBois, J.). The Court noted that

> [t]hese differences are important because the greater control and responsibility one has over the taxes and finances of company, and over the payment of creditors, the sooner one 'clearly ought to have known' of the risk that withholding taxes were not paid. In some situations where the taxpayer had greater

> immediate control over and responsibility for a company's finances, bookkeeping or check writing, knowledge that the company has financial difficulties could be sufficient to establish recklessness with respect to nonpayment of taxes, but that is not true in this case.

Id.

Most recently, in Samango v. United States, Judge Tucker found that Samango acted willfully in failing to pay taxes because he "ought to have known that there was a grave risk that withholding taxes were not being paid and he was in a position, if not the best position, to find out for certain very easily." No. 17-2484, 2019 WL 2525741, at *8 (E.D. Pa. June 18, 2019), aff'd, No. 19-2682, 2020 WL 6336021 (3d Cir. Oct. 29, 2020). The Court based this finding on five facts: (1) Samango "had, at a minimum, some level of knowledge about [the] business," (2) he was a part owner of the business, (3) he later became President of the business and signed "state tax returns and other documents submitted to state authorities communicating detailed information about [the] business," (4) he knew that the business "was not paying state unemployment compensation taxes and failed to make payments to the State Workers' Insurance Fund," and (5) he knew that the business "had 'little experience' in business and subcontracting." Id. at *13.

VI. Analysis

The specific question on remand from the Third Circuit is whether Bedrosian acted willfully when he failed to list one of his two Swiss bank accounts on his 2007 FBAR. Based on the legal standard and supplemental findings of fact laid out above, this Court finds that Bedrosian's actions were willful because he recklessly disregarded the risk that his FBAR was inaccurate. The Court notes that the concept of willfulness encompasses both knowing and reckless conduct. As the Third Circuit emphasized, in the law of taxation, reckless conduct can be violative of IRS statutes and/or rules, from an objective point of view, even if not "willful" from a subjective point of view.

Previously this Court did not consider whether, when his 2007 FBAR filing came due, Bedrosian "(1) clearly ought to have known that (2) there was a grave risk that [an accurate FBAR was not being filed] and if (3) he was in a position to find out for certain very easily." Carrigan, 31 F.3d at 134 (quoting Vespe, 868 F.2d at 1335 (internal quotation omitted)). The Court thus left the impression it did not consider whether Bedrosian's conduct satisfies the objective recklessness standard articulated in similar contexts.

The most factually similar case to this one is Horowitz. In Horowitz, the Fourth Circuit found that even if the Horowitzes were not aware of the FBAR reporting requirement, based on their knowledge of taxes on interest income, it did not make sense for them to conclude that their foreign accounts would not be taxed.

Here, Bedrosian knew about the FBAR requirement because his prior accountant told him about it. The Fourth Circuit also noted that the Horowitzes used "hold mail" service, as did Bedrosian. The Horowitzes had a significant amount of money in their accounts, which the Court found meant the accounts were not easily overlooked. The amount in their account was comparable to the amount in Bedrosian's accounts (around $1.6 million compared to around $1.9 million). Lastly, the Fourth Circuit found that even if the Horowitzes did not review their taxes, they signed them and were thus representing their answers to the government under penalty of perjury. Bedrosian also claims to not have reviewed his FBAR closely, but he like the Horowitzes signed the form.

While the majority of cases applying the recklessness test do not concern FBAR filings, they emphasize the importance of how an individual's general awareness of a business's operations can impact the analysis of willfulness when it comes to evaluating their actions. These cases generally suggest that when a taxpayer is responsible for reviewing tax forms and signing checks, the taxpayer is responsible for errors that would have been apparent had they reviewed such forms and checks closely. In this instance, if Bedrosian had looked at the forms he signed, it is reasonable to conclude that he should have noticed the amount stated for the accounts was not accurate. On the 2007 FBAR, the box indicating that there is less than one million dollars in his account is checked. During trial, the following exchange occurred:

> Q. Your UBS accounts had more than $10,000 in them in 2007?
>
> A. Oh, absolutely. Yes.
>
> Q. In fact, you knew that your 6167 account had over 1 million dollars in it?
>
> A. I'm sorry, you keep confusing me with the account number, but a 236.167, yes, had over a million dollars in it. That was the main account.

Even if Bedrosian did not know that there were two accounts, the stated amount should have prompted him to investigate further, which he could have done easily by contacting the bank. Further, based on Third and Fourth Circuit precedent, claiming to not have reviewed the form does not negate recklessness. Thus, the Court can infer that Bedrosian had reason to know of his second overseas account and that he did not disclose it.

Of importance here as well are the undisputed facts that Bedrosian received advice from his tax preparer that he was breaking the law by not reporting his overseas bank accounts and that he was a sophisticated and successful businessman. Bedrosian knew or should have known the form which he signed was inaccurate.

VII. Conclusion

This Court, after review of the evidence, concludes that it must use a more expansive concept of

willfulness that includes reckless conduct considered from an objective point of view. Accordingly, this Court concludes that Bedrosian's conduct was willful under settled case law. An appropriate Order follows.

APPENDIX E

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3525

ARTHUR BEDROSIAN,

v.

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE

Appellant

Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2:15-cv-05853)
District Judge: Honorable Michael M. Baylson

Argued September 25, 2018

Before: AMBRO, CHAGARES, and
GREENAWAY, JR., Circuit Judges

(Opinion filed: December 21, 2018)

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Travis A. Greaves
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OPINION OF THE COURT

AMBRO, Circuit Judge

This appeal presents two issues of first impression in our Court concerning the Internal Revenue Service's assessment of civil penalties for violation of 31 U.S.C. § 5314 and its implementing regulations, which require certain persons annually to file a Report of Foreign Bank and Financial Accounts (colloquially called a "FBAR" or simply "Report"). First, we examine federal court jurisdiction over actions challenging the IRS's assessment of civil FBAR penalties. We conclude that jurisdiction exists here but reserve the question whether it is established in the District Court when a taxpayer files suit to challenge a FBAR penalty before fully paying it. Second, we clarify that, to prove a "willful" FBAR violation, the Government must satisfy the civil willfulness standard, which includes both

knowing and reckless conduct. To ensure this action accords with that standard, we remand for further proceedings consistent with our opinion.

I. Background

A. Legal Background

Congress passed the Bank Secrecy Act of 1970 to require certain reports and records that may be useful in "criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities. . . ." 31 U.S.C. § 5311. One provision of the Act, 31 U.S.C. § 5314, instructs the Secretary of the Treasury to prescribe rules that require persons to file an annual report identifying certain transactions or relations with foreign financial agencies. The Secretary has implemented this statute through various regulations, including 31 C.F.R. § 1010.350, which specifies that certain United States persons must annually file a Report with the IRS. Covered persons must file it by June 30 each year for foreign accounts exceeding $10,000 in the prior calendar year. 31 C.F.R. § 1010.306(c). The authority to enforce the FBAR requirement has been delegated to the Commissioner of Internal Revenue. *Id.* § 1010.810(g); *see also* Internal Revenue Manual § 4.26.1, Ex. 4.26.1-3 (U.S. Dep't of Treasury Memorandum of Agreement and Delegation of Authority for Enforcement of FBAR Requirements).

The civil penalties for a FBAR violation are in 31 U.S.C. § 5321(a)(5). The maximum penalty for a

non-willful violation is $10,000. *Id.* § 5321(a)(5)(B)(i). By contrast, the maximum penalty for a willful violation is the greater of $100,000 or 50% of the balance in the unreported foreign account at the time of the violation. *Id.* § 5321(a)(5)(C)(i).

B. Facts and Procedural History

Plaintiff-appellee Arthur Bedrosian is a successful businessman who has worked in the pharmaceutical industry since the late 1960s. By 1973 he had opened a savings account in Switzerland so that he could make purchases while traveling abroad for work without relying solely on traveler's checks to do so. Bedrosian initially used the account for convenient access to funds while traveling abroad, but in later years he began to use it more as a savings account. Union Bank of Switzerland ("UBS") thereafter acquired the bank where Bedrosian had opened his account, which caused the account to become a UBS account.

From 1973 until 2007 Bedrosian used the services of accountant Seymour Handelman to prepare his income tax returns. Sometime in the 1990s according to Bedrosian, he informed Handelman for the first time that he maintained a bank account in Switzerland. Handelman told Bedrosian that he had been breaking the law every year he did not report the Swiss account to the IRS. Handelman also told him that his estate could deal with the consequences after he was dead. With this advice, Bedrosian continued not to report his UBS account when he filed his annual tax returns.

In 2005 UBS approached Bedrosian and proposed that it loan him 750,000 Swiss Francs and convert his savings account into an investment account. Bedrosian accepted the proposal, and the loan transaction that followed resulted in the creation of a second account under Bedrosian's control at UBS.

In 2007 Handelman died, and Bedrosian began filing his taxes through a new accountant, Sheldon Bransky. In preparation, Bedrosian authorized Bransky to obtain his records from Handelman's offices and gave Bransky the same materials that he was accustomed to giving Handelman in prior years. Bransky then prepared Bedrosian's 2007 tax return, on which he indicated that Bedrosian owned a foreign bank account. Bransky also prepared a FBAR for Bedrosian, which identified one of Bedrosian's two accounts at UBS. The account identified had assets totaling approximately $240,000; the account omitted had assets totaling approximately $2 million.

At trial Bedrosian testified that he had no recollection of discussing his Swiss bank accounts with Bransky. Bedrosian also testified that he did not know how Bransky knew to acknowledge the existence of a foreign bank account on the tax return or how Bransky knew to prepare the Report. Bedrosian also did not review the 2007 tax return and Report. He simply signed them.

After submitting these documents for tax year 2007, Bedrosian became more aware of the seriousness of not reporting foreign bank accounts to the IRS. After

seeking legal counsel, he began correcting the inaccuracies on his prior tax filings. Nonetheless, in April 2011 the IRS notified Bedrosian that it would audit his recent tax returns.

In January 2015 the IRS assessed against Bedrosian a penalty for "willful" failure to disclose the larger UBS account on his 2007 Report. The penalty assessed was equal to the statutory maximum of $975,789, *i.e.*, 50% of the undisclosed account. Bedrosian paid $9,757.89 (one percent of the penalty assessed) and then filed a complaint in the District Court seeking to recover his $9,757.89 payment as an unlawful exaction. The Government answered Bedrosian's complaint and filed a counterclaim for the allegedly full penalty amount of $1,007,345, which included interest and a late-payment penalty.

In the District Court, the only disputed issue on the merits was whether Bedrosian's failure to disclose his $2 million UBS account on his 2007 Report was "willful." The Court held a one-day bench trial to resolve the issue. After trial it issued findings of fact and conclusions of law, concluding that the Government had failed to establish Bedrosian's Report violation was willful. Accordingly, the Court entered judgment in favor of Bedrosian both on his claim against the Government and on its counterclaim against him. The Government appeals to us.

II. Jurisdiction

The parties contend we have jurisdiction under 28 U.S.C. § 1291 to review the District Court's entry of final judgment. But we have "an independent duty to satisfy ourselves of our appellate jurisdiction regardless of the parties' positions." *Papotto v. Hartford Life & Acc. Ins. Co.*, 731 F.3d 265, 269 (3d Cir. 2013) (quoting *Kreider Dairy Farms, Inc. v. Glickman*, 190 F.3d 113, 118 (3d Cir. 1999)).

The jurisdictional inquiry in this case is a matter of first impression. Unlike most cases involving the IRS's assessment of a civil FBAR penalty, in which the IRS files suit to recover the penalty, this case began when Bedrosian paid one percent of the assessed penalty and then filed a complaint in the District Court seeking to recover his partial payment. The Government did not challenge that Court's jurisdiction over Bedrosian's claim; as noted, it instead answered the complaint and filed a counterclaim seeking the full penalty amount.

The parties contend the District Court had jurisdiction over Bedrosian's claim under the so-called Little Tucker Act, 28 U.S.C. § 1346(a)(2), which provides district courts with original jurisdiction, concurrent with the U.S. Court of Federal Claims, over certain claims against the United States not exceeding $10,000 in amount, including certain claims "founded . . . upon the Constitution . . . or [an] Act of Congress." The parties contend Bedrosian's claim qualified for jurisdiction under the Little Tucker Act because it did

not exceed $10,000 in amount (Bedrosian's initial claim seeking to recover his partial payment of $9,757.89) and was founded on the FBAR statute, 31 U.S.C. §§ 5314 & 5321.

We decline to hold that Bedrosian's initial claim against the Government gains jurisdiction under the Little Tucker Act. A claim may qualify only if it does not fall within the scope of the so-called tax refund statute, 28 U.S.C. § 1346(a)(1). *See id.* § 1346(a)(2) (applying to claims "other" than those within 28 U.S.C. § 1346(a)(1)). The tax refund statute encompasses, among other things, claims to seek recovery of any "penalty" that is wrongfully collected "under the internal-revenue laws." *Id.* § 1346(a)(1). The parties concede that a civil penalty under the FBAR statute is a "penalty" under § 1346(a)(1), but they contend it was not assessed "under the internal-revenue laws" because the FBAR statute, 31 U.S.C. §§ 5314 & 5321, is in Title 31 of the U.S. Code, not Title 26 (the Internal Revenue Code). We are skeptical of this argument's elevation of form over substance, and, for reasons stated in the margin, we are inclined to believe that Bedrosian's initial claim did not qualify for district court jurisdiction at all.[1]

[1] The parties' argument that Bedrosian's claim is not within the tax refund statute is premised on the notion that the phrase "internal-revenue laws" in 28 U.S.C. § 1346(a)(1) refers only to laws codified in Title 26 of the U.S. Code. But that argument does not follow the statutory history of the tax refund statute, which suggests that "internal-revenue laws" are defined by their function and not their placement in the U.S. Code. *See Wyodak Res. Dev. Corp. v. United States*, 637 F.3d 1127, 1134 (10th Cir. 2011).

Nonetheless, even if Bedrosian's initial claim was not within the Court's original jurisdiction for Bedrosian's complaint, it had the authority to act by virtue of the Government's counterclaim, which supplied jurisdiction under 28 U.S.C. § 1345. *See Rengo Co. v. Molins Mach. Co.*, 657 F.2d 535, 539 (3d Cir. 1981) ("[A] jurisdictional defect in the complaint will not preclude adjudication of a counterclaim over which the court has an independent basis of jurisdiction."). We therefore have jurisdiction under 28 U.S.C. § 1291 to review

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The argument also ignores the Tax Court's rejection of the proposition that "internal revenue laws are limited to laws codified in [T]itle 26." *See Whistleblower 21276–13W v. Comm'r*, 147 T.C. 121, 130 & n.13 (2016) (noting that "the IRS itself acknowledges that tax laws may be found outside title 26"). We also observe, by analogy, that claims brought by taxpayers to recover penalties assessed under 26 U.S.C. § 6038(b) for failing to report holdings of foreign companies—a statute nearly identical to the FBAR statute, except addressing foreign business holdings rather than foreign bank accounts—are brought under the tax refund statute, 28 U.S.C. § 1346(a)(1). *See Dewees v. United States*, 2017 WL 8185850, at *1 (Fed. Cir. Nov. 3, 2017). Also, allowing a taxpayer to seek recovery of a FBAR penalty under the Little Tucker Act permits that person to seek a ruling on that penalty in federal district court without first paying the entire penalty, as Bedrosian did here by paying just under the $10,000 Little Tucker Act threshold. This violates a first principle of tax litigation in federal district court—"pay first and litigate later." *Flora v. United States*, 362 U.S. 145, 164 (1960). We are inclined to believe the initial claim of Bedrosian was within the scope of 28 U.S.C. § 1346(a)(1) and thus did not supply the District Court with jurisdiction at all because he did not pay the full penalty before filing suit, as would be required to establish jurisdiction under subsection (a)(1). *See Flora*, 362 U.S. at 176–77. But given the procedural posture of this case, we leave a definitive holding on this issue for another day.

the District Court's final judgment, unless another statute takes away our jurisdiction.

Given the potential implication of the Little Tucker Act, we consider whether our jurisdiction is removed in this case by the statute governing the exclusive jurisdiction of the U.S. Court of Appeals for the Federal Circuit. *See Chabal v. Reagan*, 822 F.2d 349, 355 (3d Cir. 1987). We are satisfied that it is not. Under 28 U.S.C. § 1295(a)(2), the Federal Circuit generally has exclusive jurisdiction over appeals from cases in which a district court's jurisdiction was based, in whole or in part, on the Little Tucker Act, 28 U.S.C. § 1346(a)(2), unless the claim stemmed from "an Act of Congress or a regulation of an executive department providing for internal revenue." 28 U.S.C. § 1295(a)(2). Although the statute does not define "providing for internal revenue," we take guidance from courts that have construed this same phrase in 28 U.S.C. § 1340, the only other federal statute that employs the same language.[2] In keeping with those courts, we construe the phrase "providing for internal revenue" broadly to encompass all federal statutes and regulations that

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[2] 28 U.S.C. § 1340 provides: "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade." As Judge Posner has observed, "the elimination of the minimum amount in controversy from [28 U.S.C. § 1331] made [28 U.S.C. § 1340] . . . [one of] so many beached whales, yet no one thought to repeal those now-redundant statutes." *Winstead v. J.C. Penney Co.*, 933 F.2d 576, 580 (7th Cir. 1991).

are "part of the machinery for the collection of federal taxes." *United States v. Coson*, 286 F.2d 453, 455–56 (9th Cir. 1961) (quotation omitted); *see also Aqua Bar & Lounge, Inc. v. United States*, 539 F.2d 935, 937 (3d Cir. 1976) (citing *Coson*). (For those who might ask about legislative history, there is no meaningful guidance on the meaning of "providing for internal revenue" under § 1295(a)(2).)

Under this construction, we conclude that the FBAR statute "provid[es] for internal revenue" within the meaning of 28 U.S.C. § 1295(a)(2). The statute was enacted initially as part of the Bank Secrecy Act of 1970, which was intended to promote, among other things, the collection of federal taxes. *See* 31 U.S.C. § 5311; *see also United States v. Chabot*, 793 F.3d 338, 344 (3d Cir. 2015) (describing the purpose of the Bank Secrecy Act: "for tax collection, development of monetary policy, and conducting intelligence activities"). In passing that Act, Congress was particularly concerned with "[s]ecret foreign financial facilities, particularly in Switzerland," that offered the wealthy a "grossly unfair" but "convenient avenue of tax evasion." H.R. Rep. No. 91-975 at 13 (1970), *reprinted in* 1971-1 C.B. 559, 561. The IRS has by delegation the authority to enforce the FBAR statute and implementing regulations, 31 C.F.R. § 1010.810(g), and it has developed a comprehensive scheme for enforcing and assessing the FBAR penalty. *See* Internal Revenue Manual §§ 4.26 & 8.11.6. Congress further emphasized the tax-related nature of the statute by amending its penalty provisions as part of the American Jobs Creation Act of

2004, a piece of tax legislation. Pub. L. No. 108-357, § 821(a), Title VIII, Subtitle B, Part I, 118 Stat. 1418, 1586.

Our take is the FBAR statute is part of the IRS's machinery for the collection of federal taxes; thus it is an act "providing for internal revenue" within the meaning of 28 U.S.C. § 1295(a)(2). Accordingly we conclude the Federal Circuit would not have exclusive jurisdiction over this appeal even if the District Court's jurisdiction were based in part on the Little Tucker Act.

Although we leave open whether Bedrosian's initial claim created original jurisdiction in the District Court, we are satisfied it had jurisdiction to render the judgment under review and we have appellate jurisdiction under 28 U.S.C. § 1291.

III. Discussion

The District Court's judgment for Bedrosian was based on its ruling that the Government did not prove Bedrosian's failure to file an accurate Report in 2007 was "willful." The Government raises three distinct claims of error, but we need address only one to resolve this appeal—namely, whether the District Court evaluated Bedrosian's conduct under the correct legal standard for willfulness.[3]

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[3] The Government's other two claims of error are that (1) the District Court unduly weighed Bedrosian's subjective motivations when assessing willfulness, and (2) it clearly erred in finding that

A. Standard of Review

There is little on which the parties agree. This includes the applicable standard of review. Bedrosian contends we should review the District Court's determination of non-willfulness for clear error because it was an essentially factual determination. The Government counters that we should review *de novo* the legal analysis underlying the District Court's determination because the analysis is a purely legal question. Par for the course is that the parties speak past one another in their analyses, yet the issue is nuanced.

We have not directly addressed what standard of review applies to a district court's willfulness determination under the FBAR statute. In the context of other civil penalties, we have held that a district court's determination of willfulness is a primarily factual determination that is reviewed for clear error. *See Pignataro v. Port Auth. of N.Y. & N.J.*, 593 F.3d 265, 273 (3d Cir. 2010) ("Whether a violation of the FLSA is willful is a question of fact that is reviewed for clear error."). Similarly, we have held that the Tax Court's determination of willfulness in tax matters is reviewed for clear error. *See Estate of Spear v. Comm'r*, 41 F.3d 103, 114 (3d Cir. 1994). And the Supreme Court has held that clear error review applies to a trial court's determination of "willful neglect" in the context of civil penalties for failure to pay federal taxes. *See United States v. Boyle*, 469

Bedrosian did not know he owned a second foreign bank account in Switzerland. Given our disposition of the appeal, we need not directly address either of these claims and leave it to the District Court if it needs to do so on remand.

U.S. 241, 249 n.8 (1985); *accord E. Wind Indus., Inc. v. United States*, 196 F.3d 499, 504 (3d Cir. 1999).

We follow suit and hold that a district court's determination in a bench trial as to willfulness under the FBAR statute is reviewed for clear error. Moreover, this aligns with a broader line of case law in our Circuit extending clear error review to similar factual determinations. *See*, *e.g.*, *United States v. Brown*, 631 F.3d 638, 642 (3d Cir. 2011) (applying "clear error" review to district court's determination as to police officer's "reckless disregard for the truth"); *United States v. Richards*, 674 F.3d 215, 223 (3d Cir. 2012) (whether public official held "high-level decision-making" or "sensitive" position reviewed for clear error); *In re Frescati Shipping Co., Ltd.*, 718 F.3d 184, 211 (3d Cir. 2013) (as "factual issues predominate" in determining negligence, clear error review applies).

On the surface, this should settle the issue. But not quite. Even when we review a trial court's primarily factual determination under a deferential standard of review, we nonetheless have a duty to "correct any legal error infecting [the] decision." *U.S. Bank Nat'l Assoc. ex rel. CWCapital Asset Mgmt., LLC v. Vill. at Lakeridge, LLC*, 138 S.Ct. 960, 968 n.7 (2018). For example, if the record suggests a district court "somehow misunderstood the nature" of the operative inquiry, *id.*, we then decide whether to remand the case to that court for clarification of the basis of its determination or, alternatively, whether to decide the primarily factual issue ourselves. *See Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 381, 387 & n.3 (2008). In general,

the proper course will be remand unless "the record permits only one resolution of the factual issue." *Id.* at 387 n.3 (quoting *Pullman–Standard v. Swint*, 456 U.S. 273, 292 (1982)).

B. "Willfulness" under the FBAR Statute

In assessing the inquiry performed by the District Court, we first consider its holding that the proper standard for willfulness is "the one used in other civil contexts—that is, a defendant has willfully violated [31 U.S.C. § 5314] when he either knowingly or recklessly fails to file [a] FBAR." (Op. at 149.) We agree. Though "willfulness" may have many meanings, general consensus among courts is that, in the civil context, the term "often denotes that which is intentional, or knowing, or voluntary, as distinguished from accidental, and that it is employed to characterize conduct marked by careless disregard whether or not one has the right so to act." *Wehr v. Burroughs Corp.*, 619 F.2d 276, 281 (3d Cir. 1980) (quoting *United States v. Illinois Central R.R.*, 303 U.S. 239, 242–43 (1938)) (internal quotation marks omitted). In particular, where "willfulness" is an element of civil liability, "we have generally taken it to cover not only knowing violations of a standard, but reckless ones as well." *Fuges v. Sw. Fin. Servs., Ltd.*, 707 F.3d 241, 248 (3d Cir. 2012) (quoting *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 57 (2007)). We thus join our District Court colleague in holding that the usual civil standard of willfulness applies for civil penalties under the FBAR statute.

This holds true as well for recklessness in the context of a civil FBAR penalty. That is, a person commits a reckless violation of the FBAR statute by engaging in conduct that violates "an objective standard: action entailing 'an unjustifiably high risk of harm that is either known or so obvious that it should be known.'" *Safeco*, 551 U.S. at 68 (quoting *Farmer v. Brennan*, 511 U.S. 825, 836 (1994)). This holding is in line with other courts that have addressed civil FBAR penalties, *see, e.g.*, *United States v. Williams*, 489 F. App'x 655, 658 (4th Cir. 2012), as well as our prior cases addressing civil penalties assessed by the IRS under the tax laws, *see, e.g.*, *United States v. Carrigan*, 31 F.3d 130, 134 (3d Cir. 1994). With respect to IRS filings in particular, a person "recklessly" fails to comply with an IRS filing requirement when he or she "(1) clearly ought to have known that (2) there was a grave risk that [the filing requirement was not being met] and if (3) he [or she] was in a position to find out for certain very easily." *Id.* (quoting *United States v. Vespe*, 868 F.2d 1328, 1335 (3d Cir. 1989) (internal quotation omitted)).

C. The District Court's evaluation of Bedrosian's willfulness

So did the District Court use the proper standard to evaluate Bedrosian's conduct? It first compared his conduct to the conduct of other individuals in recent cases who have been the subject of civil FBAR penalties. Based primarily on those comparisons, it concluded that Bedrosian did not act willfully. In doing so, the Court's discussion and distinction of prior FBAR

cases imply the ultimate determination of non-willfulness was based on findings related to Bedrosian's subjective motivations and the overall "egregiousness" of his conduct, which are not required to establish willfulness in this context.

The remainder of the District Court's opinion does not dispel our concern. Although it discusses whether Bedrosian acted knowingly, it did not consider whether, when his 2007 FBAR filing came due, he "(1) clearly ought to have known that (2) there was a grave risk that [an accurate FBAR was not being filed] and if (3) he was in a position to find out for certain very easily." *Carrigan*, 31 F.3d at 134 (quoting *Vespe*, 868 F.2d at 1335 (internal quotation omitted)). The Court thus leaves the impression it did not consider whether Bedrosian's conduct satisfies the objective recklessness standard articulated in similar contexts.

Although we would afford clear error review to an ultimate determination as to recklessness, we cannot defer to a determination we are not sure the District Court made based on our view of the correct legal standard. We therefore remand for further consideration and to render a new judgment. *See Mendelsohn*, 552 U.S. at 381, 387 & n.3.

* * *

The Federal Circuit does not have exclusive jurisdiction under 28 U.S.C. § 1295(a)(2) to review appeals from a district court's final judgment on a claim against the Government for recovery of a civil FBAR penalty. We leave open the question whether such a

claim, standing alone, would be within the original jurisdiction of the district courts, at least where the taxpayer has not paid the full penalty before filing suit. We further hold the standard of willfulness under the FBAR statute refers to the civil willfulness standard, which includes both knowing and reckless conduct. Because we are unsure whether the District Court evaluated Bedrosian's conduct under this objective standard, we remand the case for further proceedings consistent with this opinion.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARTHUR BEDROSIAN v. THE UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE	CIVIL ACTION NO. 15-5853

Baylson, J. **September 20, 2017**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff Arthur Bedrosian initiated this case in order to obtain a refund of the $9,757.89 that he has paid to Defendant, the United States, for his allegedly "willful" violation of an Internal Revenue Service ("IRS") reporting requirement. The government counterclaimed for the full amount of the penalty, arguing that it was owed $1,007,345.48. After denying summary judgment for both parties, the undersigned presided over a one day bench trial at which Bedrosian defended his actions and the government attempted to frame them as satisfying the requisite "willful" standard. Both parties then filed post-trial briefs in which they proposed findings of fact and conclusions of law, and responded to two questions posed by the Court: (1) does any precedent exist for finding

willfulness based on conduct similar to that of Bedrosian, and (2) did the government sustain its burden of proof regarding the calculation of the penalty amount. (ECF 62, 63.) Having considered the trial record and the post-trial briefing, we outline here our findings of fact and conclusions of law.

I. Findings of Fact

Bedrosian is a successful businessman who has spent his career in the pharmaceutical industry, rising in the ranks to the position he now holds—Chief Executive Officer at Lannett Company, Inc., a manufacturer and distributor of generic medications. (ECF 60, Trial Tr. at 26, 79-80.) In the early 1970s, when he was just getting started in the industry, Bedrosian held a position with Zenith Labs that required a significant amount of international travel. (Id. at 27.) Rather than rely solely on traveler's checks to make purchases abroad, in or about 1973 he decided to open a savings account with Swiss Credit Corporation in Switzerland. (Id. at 28-31.) At some point, Union Bank of Switzerland ("UBS") acquired Swiss Credit Corporation and Bedrosian's account was switched to UBS. (Id. at 31.) Bedrosian initially used the account in order to have access to funds while traveling abroad but, as the years went on, he began to use it more as a savings account. (Id. at 30-31.) He did not take a particularly active role in managing the account, but was kept abreast of its activities via certain information UBS would mail him and through annual meetings he would have with a UBS representative. (Id. at 40-41.) In 2005, UBS

approached Bedrosian with a loan proposal that he accepted whereby it would lend him 750,000 Swiss Francs and convert his savings account into an investment account. (Id. at 42-43; Pl.'s Ex. 6.) That transaction resulted in a second account being created for Bedrosian at UBS, although he claims that he always considered them one account. (Trial Tr. at 57-58.) In 2008, UBS informed him that he had sixty days within which to repay the loan, close his accounts, and transfer all assets therein to another bank. (Id. at 44-45.) Bedrosian moved the funds to a different Swiss bank called Hyposwiss. (Id. at 44.)

Throughout this thirty five year period, from 1972 until 2007, Bedrosian used the services of an accountant named Seymour Handelman to prepare his income tax returns. (Id. at 47.) Bedrosian did not tell Handelman about his Swiss account until some point in the mid-1990s, at which time Handelman advised him that he had been breaking the law every year that he did not report the account on his tax return. (Id. at 49-50.) Bedrosian asked Handleman what he recommended doing about it, and Handelman stated that he could not "unbreak the law," and should therefore take no action. (Id. at 50-51.) Handelman assured Bedrosian that his estate could deal with it upon his death, when his money was repatriated. Heeding Handleman's advice, Bedrosian continued to not report either Swiss account on his tax returns.

In 2007, Handelman died and Bedrosian began working with a new accountant, Sheldon Bransky. (Id. at 52-53.) The return that Bransky filed for Bedrosian

in 2008, for tax year 2007, included, for the first time, an affirmative answer to the question asking whether "[a]t any time during 2007, [he had] an interest in or signature or other authority over a financial account in a foreign country." (Id. at 53-54; P9.) Switzerland is listed as the country in which the account was located. (Pl.'s Ex. 9.) Bedrosian also filed a Report of Foreign Bank and Financial Accounts ("FBAR") for the first time in which he reported the existence of one of his two UBS accounts. (Govt. Ex. L.) The FBAR only listed his UBS account ending in 5316, which had assets totaling approximately $240,000, and did not report the account ending in 6167, which had assets totaling approximately $2 million. (Trial Tr. at 19, 56-67.) The 2007 FBAR was signed on October 14, 2008. (Pl.'s Ex. 10.) Bedrosian testified that he has no recollection of discussing the Swiss accounts with Bransky and that he is not sure how Bransky knew to check the "yes" box or file the FBAR. (Trial Tr. at 54-55.) Rather, Bedrosian stated that he simply gave Bransky the same materials that he gave Handleman year after year—a compilation of all the tax-related documents he received over the course of the year—and then signed the return that Bransky prepared. (Id.)

Around this time, following Handelman's death, Bedrosian became more aware of the seriousness of reporting foreign bank accounts and less comfortable with continuing the non-reporting practice Handelman had condoned. (Id. at 60-61.) He went to his personal lawyer, Steven Davis, in late 2008 and told him the history of what had happened with the UBS

account and Handelman's advice. (Id. at 61-63.) Notably, at the time Bedrosian took these steps to rectify the issue, the government had not begun its investigation of him and he did not know that UBS had turned his information over to the IRS. (Id. at 64-65.) Davis brought a tax attorney colleague, Paul Ambrose, into the discussion and Ambrose advised Bedrosian to engage an accounting firm to go back and amend his returns from 2004 to the present. (Id. at 62.) From that point forward, Bedrosian heeded the advice of counsel, amended his returns, and paid taxes on the gains from his Swiss accounts. (Id. at 67-68.) The IRS alerted him in April 2011 that it would be auditing his returns, and thus began the process that culminated in this lawsuit. (Id. at 73.) Bedrosian was cooperative and forthcoming in his dealings with the IRS agents charged with investigating him. (Id. at 73-76.)

Much of the testimony at trial concerned whether Bedrosian knew that he had two accounts at UBS or was under the impression that he just had one. It is undisputed that he elected to stop receiving written communication from UBS regarding his accounts in 1993 and again in 2004 and that he got most, if not all, information about the accounts from an annual meeting that he had with a UBS representative in New York. (Govt. Ex. F.) It is also clear that he closed each account via separate letter to UBS, one dated November 5, 2008 and the other dated December 2, 2008. (Govt. Exs. J, K.) Having established the factual record, we turn to the legal implications of Bedrosian's conduct.

II. Conclusions of Law

In our memoranda on summary judgment and on the government's motion in limine to exclude evidence from the IRS investigation, we summarized the legal framework governing the key question of whether Bedrosian's violation of Section 5314 was "willful". See Bedrosian v. United States, No. 15-5853, 2017 WL 1361535 (E.D. Pa. Apr. 13, 2017); Bedrosian v. United States, No. 15-5853, 2017 WL 3887520 (E.D. Pa. Sept. 5, 2017). We reiterate, and expand on, that discussion for the parties and future litigants on the issue.

A. Standard of Review

Although the Third Circuit has not yet ruled on what standard of review applies to a determination of the validity of an IRS penalty under 31 U.S.C. § 5321, those courts that have considered the question have found the correct standard to be *de novo.* See United States v. Williams, No. 09-437, 2010 WL 3473311, at *1 (E.D. Va. Sept. 1, 2010), rev'd on other grounds, United States v. Williams, 489 F. App'x 655 (4th Cir. 2012) (looking to enforcement actions brought by the government in other contexts which require a *de novo* review, as well as the fact that Section 5321 provides for no adjudicatory hearing before an FBAR penalty is assessed, to conclude that *de novo* review is appropriate); United States v. McBride, 908 F. Supp. 2d 1186, 1201 (D. Utah 2012) (applying *de novo* standard to whether underlying penalty was valid).

B. Burden of Proof

The government bears the burden of proving each element of its claim for a civil FBAR penalty by a preponderance of the evidence, including the key question here of whether an individual's failure to report was "willful." Williams, 2010 WL 3473311, at *1; McBride, 908 F. Supp. 2d at 1201-02 (explaining that "[a]s with [g]overnment penalty enforcement and collection cases generally, absent a statute that prescribes the burden of proof, imposition of a higher burden of proof is warranted only where 'particularly important individual interests or rights,' are at stake") (quoting Herman & MacLean v. Huddleston, 459 U.S. 375, 389 (1983)); United States v. Bohanec, No. 15-4347, ___ F. Supp. 3d. ___, 2016 WL 7167860, at *6 (C.D. Cal. Dec. 8, 2016) (holding that because "[t]he monetary sanctions at issue [in an FBAR civil penalty action] do not rise to the level of 'particularly important individual interest or rights,' . . . the preponderance of the evidence standard applies").

C. Analysis

i. Willfulness

Congress passed the Bank Secrecy Act ("BSA" or "Act") in 1970 in order to target the problem of the "unavailability of foreign and domestic bank records of customers thought to be engaged in activities entailing criminal or civil liability." California Bankers Ass'n v. Schultz, 416 U.S. 21, 26 (1974). The Act was intended to "require the maintenance of records, and the making

of certain reports, which 'have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.'" Id. (quoting 31 U.S.C. § 5311). To that end, it granted the Secretary of the Treasury authorization to promulgate regulations prescribing certain recordkeeping and reporting requirements for domestic banks as well as individuals. Id. One such reporting requirement is the FBAR, which arises out of the mandate of Section 5314(a) and its corresponding regulations that all United States citizens must report on an annual basis to the IRS any "financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country." 31 C.F.R. § 1010.350(a); 31 U.S.C. § 5314(a). Failure to timely file an FBAR for each foreign financial account in which a taxpayer has an interest of over $10,000 results in exposure to a civil money penalty that varies depending on the taxpayer's level of culpability. 31 C.F.R. § 1010.306(c); 31 U.S.C. § 5321(a)(5). Specifically, non-willful violations of the FBAR reporting requirement result in a penalty not to exceed $10,000, whereas willful violations can lead to a penalty that is the greater of $100,000 or fifty percent of the balance in the account at the time of the violation. 31 U.S.C. § 5321(a)(5)(B)(i), (a)(5)(C). A "reasonable cause" exception exists for non-willful violations, but not for willful ones. 31 U.S.C. § 5321(a)(5)(C)(ii).

The parties have never disputed that Bedrosian meets all requirements of the relevant reporting laws—he is a U.S. citizen with a financial interest in a bank account in a foreign country that contained more

than $10,000 during 2007. Where they disagree, and the only issue explored at trial, is whether Bedrosian's failure to file his 2007 FBAR was done with the requisite "willful" mental state. We discussed in our summary judgment memorandum that the precise definition of that term as used in Section 5321, the civil penalty provision, has not been clearly established by statute or precedent. But, we also noted that every federal court to have considered the issue has found the correct standard to be the one used in other civil contexts—that is, a defendant has willfully violated Section 5314 when he either knowingly or recklessly fails to file an FBAR. See, e.g., Williams, 489 F. App'x at 658; Bohanec, 2016 WL 7167860, at *5; McBride, 908 F. Supp. 2d at 1204. That definition contrasts with the one proposed by Bedrosian, which is that in order for the government to sustain a willful FBAR penalty, it must meet the standard used in the criminal context and show that his actions amounted to a voluntary, intentional violation of a known legal duty. See Cheek v. United States, 498 U.S. 192, 201 (1991). Although on summary judgment we declined to hold what the appropriate standard of willfulness was, we indicated that the civil standard stood on far stronger precedential footing. Consistent with those dicta, we now hold that Section 5321's requisite willful intent is satisfied by a finding that the defendant knowingly or recklessly violated the statute. The government need not prove improper motive or bad purpose.

To further elucidate the definition of "willfulness" in this context, we note that acting with "willful

blindness" to the obvious or known consequences of one's actions will satisfy the standard. See McBride, 908 F. Supp. 2d at 1205 (citing Global-Tech Appliances, Inc. v. SEB S.A., ___ U.S. ___, 131 S.Ct. 2060, 2068-69 (2011)). Willful blindness is established when an individual "takes deliberate actions to avoid confirming a high probability of wrongdoing and [when he] can almost be said to have actually known the critical facts." Global-Tech Appliances, Inc., 131 S.Ct. at 2070-71. In the tax reporting context, the government can show willful blindness by evidence that the taxpayer made a "conscious effort to avoid learning about reporting requirements." Williams, 489 F. App'x at 659-60.

In order for an individual to act "willfully" in a situation "involving a requirement to report or disclose certain information to the IRS," he must engage in "conduct which is voluntary, rather than accidental or unconscious." McBride, 908 F. Supp. 2d at 1205; see Brounstein v. United States, 979 F.2d 952, 955-56 (3d Cir. 1992) (in case involving willful failure to pay taxes, holding that "willfulness is 'a voluntary, conscious and intentional decision to prefer other creditors over the Government'"). Further, reckless disregard satisfies the willfulness standard. McBride, 908 F. Supp. 2d at 1204. "While 'the term recklessness is not self-defining,' the common law has generally understood it in the sphere of civil liability as conduct violating an objective standard: action entailing 'an unjustifiably high risk of harm that is either known or so obvious that it should be known.'" Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 68 (2007) (quoting Farmer v. Brennan, 511 U.S.

825, 836 (1994)). Finally, in terms of the type of evidence capable of establishing willfulness, the government can meet its burden "through inference from conduct meant to conceal or mislead sources of income or other financial information," and may use "circumstantial evidence and reasonable inferences drawn from the facts because direct proof of the taxpayer's intent is rarely available." McBride, 908 F. Supp. 2d at 1205 (quoting United States v. Sturman, 951 F.2d 1466, 1476-77 (6th Cir. 1991)).

At trial and in his trial brief Bedrosian acknowledged that we were likely to conclude that the civil standard of willfulness applied, and he focused his advocacy on the argument that his actions were far less egregious than those of defendants found liable in other cases for willfully violating the FBAR requirement. He summarized the facts of three cases in which the willful penalty was imposed and compared them to his own conduct, contending that the record did not support a finding that he had acted with the requisite intent. The government countered with evidence intended to show that Bedrosian was well aware that his 2007 FBAR was inadequate, such as his business acumen, the fact that Handelman had told him in the mid-1990s that his failure to report his Swiss accounts was illegal, and various indicia that he knew that he had two accounts at UBS rather than just the one that he reported. The government additionally argued that even if it was true that Bedrosian did not know he had two accounts at the time he filed his 2007 FBAR, he

easily could have gotten that information by reaching out to UBS.

We start from the premise that the question of "[w]hether a person has willfully failed to comply with a tax reporting requirement is a question of fact." Williams, 489 F. App'x at 658; see United States v. House, 524 F.2d 1035, 1045 (3d Cir. 1975) ("The question of willfulness is uniquely for the trier of fact."). Indeed, the Third Circuit has held that determinations of willfulness depend on consideration of the defendant's "state of mind, knowledge, intent and belief regarding the propriety of their actions." E.E.O.C. v. Westinghouse Elec. Corp., 725 F.2d 211, 218 (3d Cir. 1983). Therefore, it is not enough to simply read the black letter definition of the term—knowing or reckless violation of a statutory duty—in a vacuum; rather, disposition of this case requires a fact-and context-specific inquiry into Bedrosian's actions.

Here, the narrative developed at trial, largely via the credible testimony of Bedrosian, is that of an educated and highly financially literate businessman who took a calculated risk for several years by not complying with his tax reporting obligations. He admitted as much—that Handelman told him he had been breaking the law every year he did not report his Swiss accounts, and that he nevertheless continued to fail to report them, relying on Handelman's questionable advice. Nevertheless, Bedrosian is not before this Court for any of those violations of the tax law; rather, he is here solely for the determination of whether his failure to file an accurate FBAR for tax year 2007 was willful.

After a careful review of the record, the trial transcript, and the parties' post-trial briefing, we cannot conclude, based on a comparison of the facts of this case compared with those of cases in which a willful FBAR penalty was imposed, that the government has proved, by a preponderance of the evidence, that Bedrosian's violation of Section 5314 was willful.

As stated above, this inquiry requires a probing of the factual circumstances of this case to determine whether Bedrosian had the requisite mental state. Having done so, it is simply not sufficiently clear from the record developed that he was willful in submitting his inaccurate 2007 FBAR. Rather, his actions were at most negligent, which does not satisfy the willfulness standard. There is no question that Bedrosian could have easily discovered that what had previously been one UBS account was now two, via the statements he occasionally received from the bank and the meetings he had annually with a UBS representative. In addition, the fact that he signed his 2007 FBAR two weeks prior to sending two separate letters to UBS to close his accounts sways in favor of an inference that he was aware of the existence of the second account at the time he filed the FBAR. Nevertheless, as discussed below, even if he did know that he had a second account yet failed to disclose it on the FBAR, there is no indication that he did so with the requisite voluntary or intentional state of mind; rather, all evidence points to an unintentional oversight or a negligent act.

The government contends that we should not concern ourselves with "whether [Bedrosian's] conduct

was as egregious as the few other cases that have been litigated involving the FBAR penalty," and that we should instead take a broader view including other civil cases where willfulness was at issue. (ECF 63, Govt. Post-Trial Brief at 6.) We agree that willfulness findings in the larger civil context may be useful comparators, but consider the other FBAR penalty cases as the most on point precedent. To that end, perhaps most important to this decision are the crucial differences between this case and those in which a civil FBAR penalty has been sustained. In Williams, for example, the defendant deposited over $7 million into two Swiss bank accounts and failed to report the income from those accounts to the IRS from 1993 to 2000. Williams, 489 F. App'x at 656. In the fall of 2000, government authorities became aware of the accounts, the defendant retained counsel, and Swiss authorities froze both accounts. Even after facing significant government scrutiny regarding his compliance with federal reporting requirements, the defendant nevertheless filed an FBAR for tax year 2000 in which he did not disclose his interest in either Swiss account. The defendant also allocuted, in connection with a simultaneous criminal investigation, to having unlawfully failed to report the existence of the Swiss accounts on his 2000 FBAR. On these facts, the Fourth Circuit overturned the district court's finding that the defendant's violation of Section 5314 had not been willful, reasoning that the above-recited facts at least established reckless conduct. Id. at 660.

The defendant's actions in Williams stand in contrast to Bedrosian's in 2007 and 2008. Crucially, in Williams the defendant "acknowledged that he willfully failed to report the existence of the [Swiss] accounts to the IRS or Department of the Treasury as part of his larger scheme of tax evasion," via his guilty plea allocution. Id. Here, there obviously has been no such acknowledgement. In addition, where the defendant in Williams submitted the inaccurate FBAR at issue after he was already the target of a government investigation regarding his noncompliance with federal tax law, showing a continued interest in misleading the authorities, Bedrosian was fully cooperative and honest with the IRS from the moment it began investigating him.

Another of the few cases to have considered this issue is McBride, in which the defendant, cognizant of an imminent sizable increase in his company's revenue, "sought a way to reduce or defer the income taxes that would normally be paid on [the] revenue," and hired a financial management firm to help him do so. McBride, 908 F. Supp. 2d at 1189. The firm proposed a plan, which the defendant accepted, to move profits of his company to offshore entities, thereby resulting in approximately $2.7 million in otherwise taxable profits of the company to be routed directly to the defendant. Importantly, when faced with the IRS' investigation, the defendant repeatedly lied and refused to produce requested documents. Id. at 1200. Again, the willful finding in McBride is hard to map onto the instant facts, which are significantly less egregious and show nothing close to the carefully planned and complex tax

evasion scheme perpetrated by the defendant in that case.

United States v. Bussell, No. 15-2034, 2015 WL 9957826 (C.D. Cal. Dec. 8, 2015), a case not briefed by the parties but one in which the court granted summary judgment for the government on an individual's willful violation of the FBAR requirement, is similarly distinguishable from this case. In Bussell, the court found that the defendant had "clearly acted with reckless disregard [of the statutory duty]" because she had been convicted of bankruptcy fraud and tax fraud for failing to disclosing offshore accounts, was subjected to civil penalties for her failures to disclose the accounts, was aware of the duty to report them on her FBAR and nevertheless did not. Id. at *5. Again, here there is nothing close to that level of evidence showing Bedrosian's willful violation of the FBAR requirement.

The government urges us to consider other civil cases, outside of the FBAR context, in which there were findings of willfulness. It cites to Greenberg v. United States, 46 F.3d 239 (3d Cir. 1994), in which the court considered whether an individual had willfully failed to pay certain employer withholding taxes, which determination depended on the individual's knowledge that his company had not paid the taxes at the time he disbursed company funds to employees and other creditors. Id. at 244. The defendant was indisputably aware that the company was delinquent in remitting withholding taxes when he decided that he "must pay more urgent bills right away in order to keep the business going and would pay the taxes later." Id. at 241. In

contrast, here, Bedrosian's knowledge that his 2007 FBAR was inaccurate is far less clear—he undoubtedly did not give the form the requisite attention, but it is not apparent that he submitted it knowing that it omitted the second UBS account. The government's evidence going to that point relies on inferential leaps on which we are unwilling to hang a finding that Bedrosian was willful. Furthermore, while the court's analysis of willfulness in the context of Section 6672 of the Internal Revenue Code is surely relevant to the instant determination, as it arises in the civil tax penalty context, we find the specific FBAR penalty cases more persuasive because they deal with the same unique reporting requirement at issue here.

In summary, the only evidence supporting a finding that Bedrosian willfully violated Section 5314 is: (1) the inaccurate form itself, lacking reference to the account ending in 6167, (2) the fact that he may have learned of the existence of the second account at one of his meetings with a UBS representative, which is supported by his having sent two separate letters closing the accounts, (3) Bedrosian's sophistication as a businessman, and (4) Handelman's having told Bedrosian in the mid-1990s that he was breaking the law by not reporting the UBS accounts. None of these indicate "conduct meant to conceal or mislead" or a "conscious effort to avoid learning about reporting requirements," even if they may show negligence. Williams, 489 F. App'x at 658.

It is obvious that Bedrosian should have handled the situation differently and, in 2007-2008, should

have been more careful about reviewing the 2007 FBAR and in being aware of the fact that he had not one but two accounts at UBS. Nevertheless, the facts show that he did check the box indicating he had a foreign account on his 2007 tax return, he did identify Switzerland as the country in which the account as located, and he did file an FBAR for 2007 stating he had assets in a foreign account. His error was in failing to list the second account. Furthermore, he approached his personal lawyer and retained an accounting firm to file amended returns and rectify the issue prior to learning that the government was investigating him and prior to learning that UBS was turning his information over to the IRS. Although we apply the lower, civil standard of willfulness here, we nevertheless do not see Bedrosian's as the sort of conduct intended by Congress or the IRS to constitute a willful violation. This is especially so in light of the dearth of precedent finding a willful violation on comparable facts. Because we find that the government failed to meet its burden as to the willfulness requirement, we decline to engage in an analysis concerning the calculation of the penalty amount.

ii. Illegal Exaction

Having concluded that the government has not established that Bedrosian was "willful" in his violation of Section 5314, we must determine whether Bedrosian has made out a claim for illegal exaction. An illegal exaction claim "involves money that was 'improperly paid, exacted, or taken from the claimant in

contravention of the Constitution, a statute, or a regulation.'" Norman v. United States, 429 F.3d 1081, 1095 (Fed. Cir. 2005) (quoting Eastport S.S. Corp. v. United States, 178 Ct. Cl. 599, 605 (1967)). Where a taxpayer is able to establish that he paid taxes that were improperly collected by the government, he succeeds on such a claim. Id. Here, we found that the government failed to meet its burden to show that Bedrosian willfully violated Section 5314; therefore, we conclude that any money penalty exacted from Bedrosian under Section 5321(a)(5)(C), which permits the Secretary of the Treasury to, "[i]n the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314," impose a penalty in the amount of the greater of $100,000 or 50% of the balance in the non-reported account, was illegally exacted. See 31 U.S.C. § 5321(a)(5)(C), (D); Kipple v. United States, 102 Fed. Cl. 773, 777 (2012) (holding that "a necessary implication of 31 U.S.C. § 3720(A) [pertaining to the amount by which a person's tax refund may be reduced where that person owes a debt to a federal agency] is that an illegal exaction would arise if there was no legally enforceable debt"). The remedy must be a return of the money Bedrosian has paid. See Kipple, 102 Fed. Cl. at 777.

III. Conclusion

For the reasons explained above, the government has not met its burden to establish that Bedrosian willfully violated Section 5314. Consequently, the amount that Bedrosian paid in partial satisfaction of his

allegedly willful violation of that section—$9,757.89—was illegally exacted from him and the Government owes him that sum.

IN THE UNITED STATES
DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

ARTHUR BEDROSIAN v. THE UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE	CIVIL ACTION NO. 15-5853

ORDER

AND NOW, this 19th day of September, 2017, for the reasons stated in the foregoing memorandum, it is hereby ORDERED that judgment is entered in favor of Plaintiff Arthur Bedrosian in the amount of $9,757.89 due to Defendant the United States' illegal exaction of that sum from him. Judgment is further entered in favor of Bedrosian on the United States' counterclaim for his allegedly willful violation of 31 U.S.C. § 5314.

BY THE COURT:

/s/ Michael M. Baylson
MICHAEL M. BAYLSON, U.S.D.J.