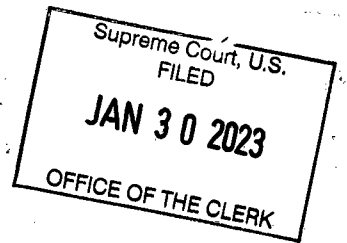


22-6797
No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Dominick Galluzzo — PETITIONER
(Your Name)

vs.

Internal Revenue Service — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of appeals for the 3rd Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dominick Galluzzo
(Your Name)

145 Nedellec Drive
(Address)

Saddle Brook NJ 07663
(City, State, Zip Code)

917-709-0206
(Phone Number)

QUESTION(S) PRESENTED

Was I mis represented at bankruptcy by my attorney not asking for attachments to PROOF OF CLAIM according to rule 3001 and B10 (exhibits H & I)

At 2008 bankruptcy confirmation was the IRS confirmed or as stated at confirmation hearing " there are on going negotiations and when the actual amount is determined then payment method will be determined"

Why did the IRS choose thier venue in Tax Court in may 2013 and lose then appeal to 3rd Circuit in April 2014 which agreed with tax courts decision on June 16, 2014

While my attorney went against my wishes by not fighting the re-opening of my bankruptcy, why was the case even heard. The law states once you choose your venue that's it. Judge Miesel stated this at the hearing on May 31, 2017. It took 2 years for her decision a 50 page decision, was all the evidence reviewed? On page 7 of her opinion Judge Miesel stated on February 25, 2008 was the stipulation hearing when it was actually held on March 15 2008. On page 9 Judge Miesel states on March 28, 2008 just one month after the entry of stipulation Judge Steckroth held a confirmation hearing. This did not occur. It is because of these errors and many others in her 50 page opinion that I question Judge Miesel's opinion.

Judge Salas affirmed Judge Miesel's opinion because of these errors. In the light of these errors the opinion's of Judge Miesel and Judge Salas must come into question.

In 2005 I hired a forensic accountant that was 1 year before bankruptcy. Mr. Bob Lax dealt with Mr. McDaniels the same Mr. McDaniels that signed the proof of claim in 2006. Mr. McDaniels strung Mr. Lax around for 3 1/2 years then sent him a letter that there are no documents on the audit to be found. Mr. Lax then informed me to hire an tax attorney because the law reads if they can not produce the documents then the tax has to be abated. Why was this law not followed.

If the IRS's claim was confirmed in 2008 why did they not act on it, why keep ignoring us to negotiate and keep fighting us in the courts

According to the bankruptcy code, taxes for 1999, 2000, 2001 would be dischargeable if not assessed within 180 days of bankruptcy filing. The proof of claim reads November 7, 2005 which over 7 months

The audit took place in 2002 they came 3 times because thier supervisor said they did not dig deep enough, the supervisor himself was the 3rd auditor. All together they sat in my accountants office for 8 weeks. My question is if this was such a high priority why can't they produce any documentation at all.

Why in Dember 2015 was I sent a credit of \$714,000.00 I did not even make that much for the 3 years they claim I owe them for.

When my attorney found out about Judge Salas home invasion why did he not ask for my case to be moved to another Judge as I requested.

Why does the IRS keep asserting that I did not pay taxes for said years. I am sending my tax returns for 1999, 2000 & 2001 proving I sent the returns in and paid my taxes. Appendix E

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Galluzzo v. United States, No. 11-1607

Galluzzo v. Commissioner of Internal Revenue Service T.C. MEMO. 2013-136

Galluzzo v. Commissioner Appeal from United States Tax Court 12-12914

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APPENDIX D	Third Circuit Court of appeals up holding Tax court Decision
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STATUTES AND RULES

Rule 3001. Proof Of Claim and documents to support the claim

B10 Instructions for Proof of Claim form

Rule 60. Relief from a judgement or order

Rule 6015

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix D to the petition and is

☒ reported at Not sure; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix H to the petition and is

☐ reported at Not Sure; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 14 2022.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 28, 2022, and a copy of the order denying rehearing appears at Appendix L.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

11 U.S.C.:

502(a)

502(a)(1)

507(a)(8)

523

547

1141

STATEMENT OF THE CASE

In 2002 an audit was done at the office of my account at that time Henry Fitchen (whom has passed) for the year 1999. Two weeks Later another auditor came and told Henry his supervisor wanted to dig deeper so he audited 1999 & 2000. After this audit the supervisor came himself and stayed in Henry's office for 6 weeks auditing the years 1999, 2000 & 2001. It was obvious this was no run of the mill audit. In each instance they were given ALL documents requested. Bank statements, canceled checks, cash receipts etc. The reason why I am telling you this is to show that an audit of this importance took place yet to this day the Commissioner has not produced one document to us which we started to ask for in 2005 when a Marlene Sweeney contacted me to meet with her to discuss how I was going to pay 1,256,211.34. This was the first time we had heard anything from the IRS since the audit took place. I informed Ms. Sweeney I remembered the audit but never got any response since then, Her answer was my time for fighting was over and I should have responded to the NOTICE OF DEFICENCY that was sent to me after they accessed the tax in November 2005. I never received such a notice and if they accessed in 2005 why did they start keeping my refunds in 2004. (see appendix J). I told Henry about the meeting, and he instructed me to hire a forensic accountant which I did, Mr. Bob Lax from Paramus NJ. Mr. Lax was told through correspondence to get in touch with William McDaniel's which he did and requested a copy of the audit and all associated documents. This correspondence went back and forth for over 3 years until Mr. Lax received a letter from Mr. McDaniel's dated 2009 that the Commissioner cannot produce any documents whatsoever (see appendix B) Mr. Lax then informed me to hire an attorney because the law reads if the documents cannot be produced then the tax must be abated. I hired Mr. Kenneth Cohen (referred as Ken here on) and the battle began. In the interim in 2006 I claimed bankruptcy due to a creditor (Lumberman's mutual insurance) trying to sell my ocean county property, my attorney for this was Bruce Levitt who then filed chapter 11. At this time he put a list of all creditors secured and unsecured. The IRS put a proof of claim in without any supporting documents. (see appendix I & rule 3001©(1)(3)) This case went on for 2 years and was heard for confirmation on March 15, 2008 (appendix A transcript) at the stipulation & confirmation the IRS was not confirmed as to the amount (appendix A page 7 lines 23-25 and page 8 lines 1-7). Mr. Cohen started

STATEMENT OF THE CASE

correspondence with the IRS about the letter of not producing the audit and proof of sending out the Notice of Deficiency and they had no records at all. Ken then commenced correspondence to have the tax abated and the liens lifted but they refused. At this time Dominick Galluzzo put in a complaint with the district court (see Galluzzo v. United states, No. 11-1607) the court did not think they had jurisdiction to lift liens. On May 21, 2012, Dominick filed a petition in the United States Tax Court. (Galluzzo v. Commissioner Of Internal Revenue Service, T.C. MEMO. 2013-136) Judge Vazquez ruled in Galluzzo favor. The IRS appealed to the 3rd Circuit Court and was argued on April 8, 2014, in which 3rd circuit agreed with the tax court's decision on April 24, 2014. (See Galluzzo v. commissioner appeal from United States Tax Court 12-12914). My counsel then started correspondence with the IRS's appellant counsel, then the Taxpayer Advocate and so on. In all the brief's and filing the IRS keeps stating I did not pay taxes for the 3 years in question, so I am sending copies of my tax returns for 1999, 2000 & 2001. (appendix E) The IRS was stalling and stone walling us. In April 2016 the United States made a motion to re-open Galluzzo Bankruptcy. Against my wishes my counsel did not oppose the re-opening telling me this was the fastest way to end the case because the IRS had chosen their venue in tax court and 3rd circuit and did not want the judge to think they were being unreasonable. This is not in my best interest, but still opposed the amount and legally we did not owe any money at this time because of the Tax Court & 3rd Circuit Court decisions. The hearing was held on May 31 2017 (see transcript appendix f) if you look at pages 5,6 & 7 Judge Meisel even scolded the IRS for not coming to her and fighting us in other venues. At the hearing she also made mis statements as to see a \$1,500.00 credit while she was holding the credit of \$ 714,000.00 in her hand. (Page 10) on page 11 Judge Meisel acknowledges that the plan from 2008 the IRS's claim was not fixed. What happened from the time of the hearing to her decision 2 YEARS later. Judge Meisel handed a 50 page decision (appendix G). I did not understand most of it with all the legal wording and cases she cited but Judge Meisel does acknowledge that the order states there are ongoing negotiations, that the IRS chose to fight in other venues, that no NOTICE OF DEFICENCY was sent out and many other rules and laws in which the IRS ignored. I believe her decision to be erroneous even as far as to state that I waited 6 months before the claim was due

STATEMENT OF THE CASE

and decided to challenge the IRS in other courts, the challenge and arguments started in 2005 a year before the bankruptcy. So even though I did not understand all the wording what did Judge Meisel decide? She upheld the bankruptcy order & stipulation which states "there are ongoing negotiations that we expect to wrap up in a couple months". The IRS ignored us after the bankruptcy so negotiations were not continued and then we received the letter stating they cannot produce any documents. As to Judge Salas's decision that took 4 years which 2 years after receiving the case had a life altering experience and I requested to my attorney to have the case moved to another judge but again the answer was not to be unreasonable, Her decision was based on Judge Meisel's decision if she was in the right state of mind. The decision of the 3rd Circuit court again is misread on page 2 of the opinion they state " The bankruptcy Stipulation reads the IRS's secured claim was confirmed and the debt shall be paid within 6 years of the assessment, or by November 2011".(see appendix D). Now we already proved that the assessment was late, and they started keeping my refunds in 2004 a year before they claim they assessed the tax. As I stated already if you look at the transcript of March 2008 on page 7 lines 23-25 & 8 lines 1-7 the stipulation reads " There are on going negotiations and when we come up with the actual amount owed then it would be decided how the IRS would be paid" either the shore property will be sold or an equity loan be taken. I do not understand how else this could be any clearer.

REASONS FOR GRANTING THE PETITION

1. I can not find an attorney to take this case nor can I afford one if I had found an attorney.
2. there has been a grave injustice done in this case and needs to be heard in the Supreme court to right the wrong that has taken place.
3. The wrongs of which I speak of are Judge's not reading the evidence, or mis reading the actual confirmation as well as not abiding by the laws as far as when we won in tax court and was affirmed in 3rd Circuit
4. The IRS started keeping my refunds in 2004 1 year before they claim they assessed the tax and held all my refunds until 2013 when we won in tax court which again they have no record of but I found 2 notices for 2004 & 2008. I could not locate the other notices but this is also documented evidence of wrong doings. They keep claiming I was dodging them yet they kept my refunds even after the confirmation but claim I still owe the same amount and all the while did not follow the confirmation order to meet with us to come to a actual amount.
5. I do not mean to disrespect any of the courts or Judges but they are not seeing the evidence or not looking at the documents I am suppling.
6. In the IRS's post hearing brief to the United States District Court they conclude that I agreed to this claim when it is perfectly clear in the 2008 confirmation that I did not agree to thier claim which is why it reads THERE ARE ON GOING NEGOTIATIONS.
7. A confirmation order of the Bankruptcy Court which does not address the merits of the Commissioners' claim is not a final judgement on the merits.

CONCLUSION

For the reasons I have stated and the evidence I have produced and lack of documentation the IRS has not and can not produce I feel the only way to solve this 18 year battle can only be done by this court hearing the case and true facts.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "R. L. Smith", written over a horizontal line.

Date: January 26, 2023