

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re: FKAAHS, Inc. fka Aire Heating Services Inc.

Case No. 12-12110 K

Debtor

Chapter 7

**Wendy J. Christophersen, as Trustee in the Bankruptcy
of FKAAHS, Inc. fka Aire Heating Services Inc.**

Plaintiff

v.

A.P. No.

**Department of the Treasury
Internal Revenue Service
United States of America**

Defendant

COMPLAINT

Plaintiff, Wendy J. Christophersen, trustee in the estate of the above-named debtor,
complains of Defendant and shows the court as follows:

1. That on July 3, 2012 an involuntary petition on behalf of FKAAHS, Inc. fka Aire Heating Services Inc. (hereinafter referred to as “FKAAHS”) was filed by petitioning creditors IRR Supply Centers, Inc., ABR Wholesalers, Inc., and Contractors Credit/FMSI under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court, Western District of New York.

2. On August 22, 2012, Plaintiff, Wendy J. Christophersen, was appointed as interim trustee.

3. That the Defendant is the Department of the Treasury, Internal Revenue Service, United States of America.

4. That this is an action brought under, including but not limited to, 11 U.S.C. § 362 for

violation of the automatic stay and 26 U. S. Code § 7433(e)(1) to recover damages for the violation of the automatic stay, which constitutes a core proceeding under 28 U. S. Code §157

5. That the Plaintiff, in her capacity as trustee, did administer the bankruptcy estate recovering assets for the benefit of creditors.

6. That the Plaintiff, in her capacity as trustee and with the approval of the United States Bankruptcy Court on July 1, 2015, did employ the firm of Chiampou Travis Besaw & Kershner LLP (hereinafter referred to as “Accountant”) as accountant for the trustee for the purpose of preparing and filing tax returns on behalf of the estate.

7. At the time the Accountant was hired, the estate was required to file Form 1120S tax returns for years 2012, 2013, 2014, and 2015. Due to the involuntary nature of the bankruptcy, the Plaintiff had difficulty obtaining the records needed for the preparation of the tax returns, and did resort to serving subpoenas for all bank account statements and records in order to prepare and file the tax returns.

8. Said Form 1120S tax returns were prepared and filed electronically with the Defendant on or about January 18, 2017. The Plaintiff mailed hard copies of the returns to the Defendant with a written request for prompt determination on or about January 18, 2017. No taxes were due for any of said years.

9. That the Plaintiff received four letters, one for each tax period ending 2012, 2013, 2014 and 2015 and all dated February 14, 2017, from the Defendant, indicating that the return was accepted as filed “to the extent that the amount shown as tax incurred during the administration of the case for the taxable period indicated is zero.” There was no notification or indication that any penalty or fee was being assessed.

AS AND FOR A FIRST CAUSE OF ACTION

10. That Plaintiff repeats and re-alleges Paragraphs 5 through 9.

11. That Plaintiff received a letter from the Defendant dated March 6, 2017, asserting that a penalty of \$4,680.00 was being assessed for a late filed return for tax period ending December 31, 2014.

12. That Plaintiff received a letter from the Defendant dated March 13, 2017, asserting that a penalty of \$4,680.00 was being assessed for a late filed return for tax period ending December 31, 2013.

13. That Plaintiff received a letter from the Defendant dated March 13, 2017, asserting that a penalty of \$4,290.00 was being assessed for a late filed return for tax period ending December 31, 2015.

14. Said letters were provided to the Accountant for the Estate who undertook to contact the Defendant for an abatement of the penalties based on the fact that the corporation was in bankruptcy, and that the trustee had limited access to records needed for the preparation of the returns and that delays were unavoidable, and that no taxes were due for tax years 2012, 2013, 2014 and 2015.

15. Over the next year and a half, there were various contacts between the Accountant and the Defendant.

16. In a letter dated October 12, 2018, the Defendant informed the Plaintiff that no abatement of the penalty would be made and that the Plaintiff's only option was to file a formal suit with the U. S. District Court or the U. S. Court of Federal Claims.

17. That on November 5, 2018, the Plaintiff sent a letter to the Defendant notifying Defendant that it was in violation of the automatic stay for its attempt to collect penalties from the assets of the bankruptcy estate.

18. That the Plaintiff received a letter dated December 7, 2018 advising that the Defendant needed an additional 60 days to respond to Plaintiff's letter.

19. That the Plaintiff received a letter dated February 6, 2019 advising that the Defendant needed an additional 60 days to respond to Plaintiff's letter.

20. That the Plaintiff received a letter dated April 10, 2019 advising that the Defendant needed an additional 60 days to respond to Plaintiff's letter.

21. That the Plaintiff received a letter dated July 12, 2019 advising that the Plaintiff had exercised her right to appeal and that the case has been closed, and that the Plaintiff had two years from the date of the letter to appeal to the U. S. District Court.

22. That the Plaintiff has continued to receive periodic letters from Defendant seeking collection of the penalties plus interest charges.

AS AND FOR A SECOND CAUSE OF ACTION

23. That Plaintiff repeats and re-alleges Paragraphs 5 through 22.

24. That Plaintiff, on behalf of the bankruptcy estate, is entitled to damages due to the willful violation of the stay by the Defendant under 26 U.S. Code §7433.

25. That the Defendant knew or should have known that the corporation was in bankruptcy for the following reasons:

A. That all tax returns filed were signed by Plaintiff as trustee in bankruptcy.

B. That the Plaintiff's request for prompt determination clearly indicated that the corporation was in bankruptcy.

C. That the Defendant was notified in Plaintiff's letter dated November 5, 2018 that the corporation was in bankruptcy and that Defendant was in violation of the automatic stay.

26. That the Defendant ignored the fact that the corporation was in bankruptcy and assessed penalties for late filed returns which, if paid, would dissipate assets of the estate.

27. That the Defendant's willful violation of the stay has unreasonably delayed the distribution of assets to unsecured creditors.

WHEREFORE, Plaintiff, Wendy J. Christophersen, as Trustee in the Bankruptcy of FKA AHS prays this Court enter an order vacating the post-petition penalties by the Defendant IRS and for damages including but not limited to the reimbursement of attorney fees and costs for the bringing of this action, reimbursement of additional accountant fees incurred by the estate in response to Defendant's demands and such other and further relief as the court deems just and proper.

Dated: June 15, 2020
Buffalo, New York

/s/Wendy J. Christophersen
Wendy J. Christophersen
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Defendant

SUMMONS IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to file a motion or answer to the complaint which is attached to this summons with the clerk of the bankruptcy court within 30 days after the date of the issuance of this summons, except that the United States and its offices and agencies shall file a motion or answer to the complaint within 35 days.

ADDRESS OF THE CLERK:

United States Bankruptcy Court
Western District of New York
Robert H. Jackson U. S. Courthouse
Two Niagara Square, 2nd Floor
Buffalo, NY 14202

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

NAME AND ADDRESS OF PLAINTIFF'S ATTORNEY:

Wendy J. Christophersen, Esq.
P. O. Box 146
Buffalo, NY 14217
(716) 852-7373
wendyjclaw@gmail.com

If you make a motion, your time to answer is governed by Fed. R. Bankr. 7012.

**IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE
DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE
BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST
YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.**

Lisa B. Beazer, Clerk of the Bankruptcy Court

Date: _____

By: _____