

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

UNITED STATES OF AMERICA,)	
)	Case No. 16-2980
Plaintiff,)	
)	
v.)	
)	
MARIAN K. BARONI,)	
)	
Defendant.)	
_____)	

COMPLAINT

The United States of America brings this action to collect outstanding civil penalties assessed against defendant Marian K. Baroni for her willful failure to timely report her financial interest in a foreign bank account, as required by 31 U.S.C. § 5314 and its implementing regulations, accrued interest on such penalties, late payment penalties, and associated fees. The United States of America, through its undersigned counsel, complains and alleges as follows:

Jurisdiction and Venue

1. The United States brings this suit under 31 U.S.C. § 3711(g)(4)(C) at the direction of the Attorney General of the United States and at the request of, and with the authorization of, the Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States.

2. The Court has jurisdiction over this action under 28 U.S.C. § 1331 and § 1345 because it arises under a federal statute and the United States is the plaintiff.

3. Venue is proper in this district under 28 U.S.C. § 1391(c)(3) because defendant currently resides in Panama. When the liability accrued, Baroni resided in this district, in Metairie, Louisiana.

**Baroni's Failure to Timely Report
Her Financial Interest in Her Foreign Bank Account**

4. Section 5314 of Title 31 of the U.S. Code authorizes the Secretary of the Treasury to require United States citizens to report certain transactions with foreign financial agencies. Under the statute's implementing regulations, "[e]ach United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship" to the IRS for each year in which such relationship exists. 31 C.F.R. § 1010.350(a).

5. To fulfill this requirement, a person must file a Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts," commonly known as an "FBAR." *See id.* An FBAR is due by June 30 "of each calendar year with respect to foreign financial accounts exceeding \$10,000 maintained during the previous calendar year." 31 C.F.R. § 1010.306(c).

6. For 2007 and 2008, Baroni, a United States citizen, had a financial interest in, and signatory authority over, an account at UBS AG ("the UBS account").

7. During the years 2007 and 2008, the balance of the UBS account exceeded \$10,000.

8. On or before June 30 of 2008 and 2009, Baroni was required to file an FBAR reporting her financial interest in the UBS account for 2007 and 2008, respectively.

9. Baroni did not file FBARs for 2007 and 2008 by June 30, 2008, and June 30, 2009, respectively.

10. Baroni's assets in the UBS account generated income from investments in the foreign exchange market.

11. Baroni did not report her income from, or financial interest in, her UBS account on any of the federal income tax returns she filed for the years 2007 and 2008.

12. On Schedule B of Baroni's tax return for the 2007 tax year, Baroni falsely represented that she did not have an interest in a foreign financial account. Baroni did not include a Schedule B on her tax return for 2008.

13. Baroni inherited one or more foreign bank accounts totaling approximately \$3,000,000 when her father passed away in 1993. Using those funds, Baroni opened an account with Swiss Bank Corporation¹ on July 28, 1993 under the name Marian Knight Irving.²

14. Throughout her time as a UBS customer, Baroni made trips nearly every year to UBS in Switzerland to manage her account.

15. Baroni actively managed her investment portfolio by directing changes in strategy that included specific buy and sell instructions.

16. On July 20, 2000, Baroni executed documents proffered by UBS that stated "I would like to avoid disclosure of my identity to the US Internal Revenue Service under new tax regulations. To that end, I declare that I expressly agree that my account shall be frozen of all new investments in US securities as from 1 November 2000."

17. On July 1, 2008, the United States District Court for the Southern District of Florida issued an order granting the United States leave to serve a John Doe summons on UBS under I.R.C. § 7609. *See In the Matter of the Tax Liabilities of John Does*, Case No. 08-21864 (S.D. Fla.)

¹ Baroni opened the account in 1993 at Swiss Bank Corporation, which merged with UBS in 1998.

² Knight is Baroni's maiden name and Irving was her married name in 1993.

18. Thirteen days later, on July 16, 2008, Baroni signed a UBS document entitled “Waiver of the right to invest in US Securities” in which she stated she was “aware of the tax regulations.”

19. On July 15, 2008, Baroni ordered UBS to liquidate her account and transferred the funds to LB (Swiss) Private Bank Ltd.

20. On November 16, 2010, the Swiss finance ministry announced that the John Doe Summons against UBS had been withdrawn following delivery by the Swiss government of records concerning over 4,000 UBS client account holders.

21. Less than three months later, on January 28, 2011, Baroni transferred the family home at 3915 North Arnoult Road, Metarie, Louisiana (“the Arnoult property”) to Oblada International Group, Limited, a Belize corporation owned solely by Baroni. Baroni continued to reside at the Arnoult property but did not register the corporation with the Louisiana Secretary of State until the month she took up residency in Panama.

22. In May 2011, Baroni moved to Panama.

23. From 1993 to 2011, Baroni did not report amounts earned in her accounts on any tax returns.

24. Throughout her time as a UBS customer, Baroni maintained a “mail hold” to ensure a paper trail of her account did not enter the United States.

25. Baroni’s freezing of US securities in 2000 and closing her account in 2008 indicate willfulness in her failure to timely report her financial interest in the UBS account.

26. Baroni’s failure to timely report on FBARs her financial interest in the UBS account for 2006 and 2007 was willful. The following activities are some evidence of Baroni’s willfulness:

- a. Baroni failed to disclose her foreign accounts on Schedule B of her Forms 1040 she filed for 2007 and 2008, even though she signed those returns under penalty of perjury.
- b. Baroni failed to report amounts earned in her accounts on any tax returns from 1993 to 2011.
- c. Baroni instructed UBS to hold all mail from the account to make sure there was no paper trail entering the United States.
- d. Baroni filed a number of UBS documents that indicated she was aware of her filing obligations with the United States government.
- e. Baroni closed her UBS account less than two weeks after the John Doe summons to UBS issued.
- f. Shortly after there was a public notice of UBS providing client account information through the Swiss government to the United States, Baroni sold her home to a foreign corporation that she owned but did not at that time disclose the ownership interest to Louisiana.

Claim for Relief

27. 31 U.S.C. § 5321(a)(5) provides for the imposition of civil penalties for willful failure to comply with the reporting requirements of Section 5314 — *i.e.*, when the person maintaining a foreign account fails to timely file an FBAR reporting that account despite having an obligation to do so. For violations involving the willful failure to report the existence of an account, the maximum amount of the penalty that may be assessed is 50% of the balance of the account at the time of the violation or \$100,000, whichever is greater. 31 U.S.C. § 5321(a)(5)(C)(i).

28. Due to Baroni's willful failure to file FBARs reporting her financial interest in the UBS account during 2007 and 2008, on April 16, 2014, a delegate of the Secretary of the Treasury of the United States assessed penalties against her under 31 U.S.C. § 5321(a)(5), as follows:

- a. For 2007, the delegate assessed \$1,399,236.00,
- b. For 2008, the delegate assessed \$100,000.

29. For 2007, the amount assessed by the delegate of the Secretary of the Treasury are not greater than 50% of the UBS account balance at the time of the violation for the corresponding year. For 2008, the amount assessed is not greater than \$100,000.

30. A delegate of the Secretary of the Treasury of the United States gave notice of the penalty assessments for 2007 and 2008 to Baroni and made demand for payment thereof.

31. Despite the notice and demand for payment, Baroni has failed to pay the penalties assessed against her. As a result, interest and statutory additions continue to accrue.

32. As of November 3, 2015, Baroni owes the United States \$1,522,484.43 in penalties assessed under 31 U.S.C. § 5321, including interest and other additional amounts which accrued and continue to accrue as provided by law.

WHEREFORE, the United States of America requests that the Court:

A. Enter judgment against Marian K. Baroni and in favor of the United States in the amount of \$1,522,484.43 for the penalties assessed against her under 31 U.S.C. § 5321(a)(5), accrued interest on such penalties, plus further interest and statutory additions thereon as allowed by law from November 3, 2015, to the date of payment.

B. Award the United States its costs incurred in connection with this action, along with such other relief as justice requires.

Dated: April 12, 2016

Respectfully submitted,

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