UNITED STATES TAX COURT
WASHINGTON, DC 20217 **PA**

CHIDOZIE ONONUJU,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 22414-18.
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	
	)	

ORDER OF DISMISSAL AND DECISION

Petitioner founded and during 2014 was the president of American Medical Missionary Care, Inc. (AMMC), an organization tax-exempt under I.R.C. § 501(a) and (c)(3). The Internal Revenue Service (IRS or respondent) determined that petitioner during 2014 incurred liability for the excise tax imposed by I.R.C. § 4958 by engaging in "excess benefit transactions" with AMMC. The IRS examination disclosed that petitioner during 2014 had extracted from AMMC cash and personal benefits totaling $648,168, and AMMC's general ledger at year-end 2014 showed an "officer's receivable" from petitioner in the amount of $615,284.

In 2017 the State of Michigan revoked petitioner's medical license. Shortly thereafter he moved to Abuja, the capital of Nigeria. As far as the record reveals, he has not returned to the United States since then. His wife lives in Alpharetta, Georgia, with their children.

In August 2018 the IRS sent petitioner a notice of deficiency that determined a first-tier excise tax of $164,542 under I.R.C. § 4958(a)(1). That tax is imposed at a 25% rate. Because petitioner failed to correct the excess benefit transaction during the period allowed, the notice of deficiency also determined second-tier excise tax of $1,316,336 under I.R.C. § 4958(b). The second-tier tax is imposed at a 200% rate. The notice of deficiency also determined additions to tax totaling $64,994 under I.R.C. § 6651(a)(1) and (2). The notice explained that petitioner could eliminate the second-tier tax if he made the appropriate correction within 90 days of the notice's mailing. He did not do so.

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Petitioner timely petitioned this Court in January 2018. We consolidated his case with Docket No. 22401-18, involving excise taxes determined in lower amounts against his wife, an officer of AMMC with check-signing authority over some of its bank accounts. Both were represented by counsel until June 2019, when their attorney withdrew. Petitioner has provided no evidence that he made any serious effort to obtain legal representation since then.

Proceeding pro se, petitioner was initially responsive to respondent's efforts to prepare this case for trial. He spoke with respondent's counsel by telephone from Nigeria in July 2019. He maintained intermittent email correspondence with her, generally replying to messages the same day or during the ensuing week. Respondent's counsel mailed him a proposed stipulation of facts on December 18, 2019, and again on July 9, 2020. In both cases she sent these documents to him at the mailing address he had provided in Abuja, Nigeria, and at his address of record in Alpharetta, Georgia.

Petitioner has been unresponsive to communications from respondent's counsel since March 12, 2020. She sent him emails requesting responses on April 23, June 23, and July 1, but he did not reply to any of them. Nor did he or his wife respond to the proposed stipulation of facts.

On August 6, 2020, respondent filed a Motion for Order to Show Cause Why Proposed Facts and Evidence Should Not Be Accepted As Established Pursuant to Rule 91(f). By Order dated August 12, 2020, we directed petitioner to respond to the IRS motion by September 11, 2020. Our Order advised him that this Court's Rules require parties to stipulate, "to the fullest extent possible, to the truth of facts and the authenticity of documents as to which there should be no reasonable dispute. Failure to abide by this Rule may result in sanction, including deeming certain facts to be admitted or dismissal of the case and entry of judgment" against the offending party. We reminded petitioner of this obligation in a separate order issued September 4. Neither he nor his wife responded to either order by September 11 or subsequently.

The Court notified petitioner on July 1, 2020, that his case would be scheduled for trial during this Court's Atlanta, Georgia, trial session beginning on September 21, 2020, and that the trial would be conducted remotely via Zoomgov. In that notice we explained that he could access the proceedings either online or by

telephone, advising that "[y]our failure to cooperate may * * * result in dismissal of the case and entry of decision against you."

The Court scheduled a conference call for September 4, 2020, to discuss the upcoming trial. Petitioner's wife participated in the call, but petitioner did not. On September 8, 2020, we sent petitioner a notice setting his case for trial at a time and date certain of September 24, 2020, at 10:00 a.m. Eastern Time. We served this notice on him at his address of record and at the address in Abjua, Nigeria, that he had provided to respondent's counsel. We reminded him: "If you fail to appear the Court may dismiss your case for the failure to properly prosecute under Rule 149(a) of the Tax Court Rules of Practice and Procedure."

Anticipating that petitioner would not appear at trial, respondent on August 28, 2020, filed, in this docket number only, a Motion to Dismiss for Lack of Prosecution. On September 1, 2020, we directed petitioner to show cause in writing, by September 17, 2020, why his case should not be dismissed for lack of proper prosecution. We advised him that, if he failed to respond to our Order, we would "likely dismiss his case and enter a judgment against him." In a separate order issued September 4, 2020, we reminded petitioner of this impending deadline and directed him to file a notice of change of address confirming his correct address in Nigeria. He did not reply to either order by September 17 or subsequently.

The only communications that this Court or respondent's counsel have received from petitioner since March 2020 are two motions for continuance. On August 18, 2020, he filed his first motion for continuance, acknowledging the trial date and asking that we continue the case indefinitely. In that motion, mailed from Abuja, he stated that he could not get a return flight to the United States because of the COVID-19 pandemic. He asserted that he could not participate in a remote trial because of poor satellite service, lack of constant electricity, and unreliable telephone service in Nigeria, and because of the time zone difference between the two countries. We denied that motion on September 11, 2020.

On September 14, 2020, the Court received from petitioner a Request for Extension of Time, which we interpreted as a renewed motion for continuance. This document was mailed on September 9, 2020, from Alpharetta, Georgia. Petitioner again asserted that he could not participate in the trial remotely because of poor satellite service, lack of constant electricity, and unreliable telephone service. He stated that he was then "doing missionary work in the village that lack most basic Amenities like telephone and electric services." We denied that motion on September 18, 2020, advising him that he "must appear, by Zoomgov or telephone,

when this case is called for trial at 10:00 a.m. Eastern Time on Thursday, September 24, 2020."

The consolidated cases were called from the calendar for the trial session of the Court at Atlanta, Georgia, on September 24, 2020. Petitioner's wife appeared via Zoomgov but petitioner did not. Petitioner's wife told the Court that petitioner was in a rural area of Nigeria providing medical care to people in need and was without access to the technology necessary to participate in the trial. When asked which rural area he was in, she said that she did not know. We did not find her testimony credible.

Petitioner has provided no plausible excuse for failing to appear for trial. Because the trial was to be conducted remotely, his inability to return to the United States is irrelevant. We do not find his assertions about poor communication facilities in Nigeria credible. Abuja, the capital of Nigeria, is a modern planned city with a population exceeding three million. See Central Intelligence Agency, Nigeria, The World Factbook 2020, https://www.cia.gov/library/ publications/the-world-factbook/geos/ni.html (last updated Sept. 16, 2020). Petitioner has not explained why he was able to communicate regularly with respondent's counsel by telephone and email before March 2020 but cannot do so now. One of his motions included a phone number where he could be reached via WhatsApp. Assuming arguendo that he could not access the internet, he has not explained why he could not use that number to participate in the trial by phone.

The five-hour difference between the two time zones was not a plausible excuse either: The trial was estimated to take two hours and was to begin at 3:00 p.m. local time for petitioner, well within traditional business hours. In his second motion for continuance, he asserted that he was then in a rural area where communication facilities were poor. But he resides in Abuja, and he was obligated to plan his affairs so as to be available for trial. His professed concerns about unreliable internet and telephone service in Abuja simply do not justify refusing to appear at all. If he had appeared for trial as scheduled and experienced communication problems, the Court would have worked with him to address them.

Tax Court Rule 123(b) provides that, "[u]pon failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court * * *, the Court may dismiss a case at any time and enter a decision against the petitioner." We have entered judgments of default or dismissal where a taxpayer (among other things) failed to appear for trial. See Ritchie v. Commissioner, 72 T.C. 126 (1979); Bond v. Commissioner, T.C. Memo. 2012-313; Carlo v. Commissioner, T.C. Memo. 2005-165; Bixler v. Commissioner, T.C. Memo. 1996-329. Petitioner has

repeatedly ignored our orders and Rules, and he failed to appear for trial despite multiple warnings that his case would be dismissed if he did not appear. We accordingly informed the parties that the consolidation of Docket Nos. 22401-18 and 22414-18 would be severed and that respondent's motion to dismiss the instant case would be granted.

In consideration of the foregoing, it is

ORDERED that respondent's Motion to Dismiss for Lack of Prosecution, filed August 28, 2020, is granted. It is further

ORDERED that the Court's Order to Show Cause dated September 1, 2020, is hereby made absolute, and this case is dismissed by reason of petitioner's failure to appear for trial, failure to comply with the Court's orders and Rules, and failure properly to prosecute this case. It is further

ORDERED and DECIDED that there are deficiencies in tax and additions to tax due from petitioner as follows:

Year	Deficiency I.R.C. § 4958(a)(1)	Deficiency I.R.C. § 4958(b)	Addition to Tax I.R.C. § 6651(a)(1)	Addition to Tax I.R.C. §6651(a)(2)
2014	$164,542	$1,316,336	$37,022	$27,972

(Signed) Albert G. Lauber
Judge

ENTERED: **OCT 05 2020**