

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

RICHARD PYLE
6904 Sulky Lane
Rockville, Maryland 20852-4351

Plaintiff

v.

CENTRAL INTELLIGENCE AGENCY
Washington, D.C. 20505

and

GEORGE TENET
Director,
Central Intelligence Agency
Washington, D.C. 20505

and

UNITED STATES OF AMERICA

Defendants.

* * * * *

Civil Action No. DKC-03-2759

FIRST AMENDED COMPLAINT

Plaintiff Richard Pyle, a former employee of the Central Intelligence Agency (“CIA”), files this action against defendants CIA, George Tenet, Director, CIA, and the United States of America seeking temporary injunctive relief from the government’s illegal and unconstitutional seizure of funds, as well as to enjoin future attempts to do so without granting appropriate procedural and substantive due process. Additionally, the plaintiff seeks a declaratory judgment that the defendants’ actions violated the CIA’s own regulations and statutory requirements and were, therefore, illegal, unconstitutional and undertaken deliberately in bad faith.

Plaintiff seek this relief pursuant to the Administrative Procedures Act, 5 U.S.C. § 551 et. seq., the Debt Collection Act of 1982, 5 U.S.C. § 5514, the Federal Declaratory Judgment Act,

28 U.S.C. § 2201, the All Writs Act, 28 U.S.C. § 1651 and the Fifth Amendment to the United States Constitution.

PARTIES

1. Plaintiff Richard Pyle is a former employee of the CIA, and recently retired on July 31, 2003, after nearly 30 years of dedicated service.

2. Defendant CIA is an agency of the United States of America and the former employer of the plaintiff, and has taken the actions complained of in this Complaint.

3. Defendant George Tenet (“DCI Tenet”) is the Director of the defendant CIA, which has taken the actions complained of in this Complaint. He is named a defendant in his professional capacity.

4. Defendant United States of America is the former employer of the plaintiff, and has taken the actions complained of in this Complaint.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court under the Administrative Procedures Act, 5 U.S.C. § 702, and under 28 U.S.C. § 2201, which states that actions involving controversies with federal agencies may be pursued in any United States District Court, and under 28 U.S.C. §§ 1331 and 1346.

FACTUAL BACKGROUND

6. The plaintiff was employed by the CIA for nearly 30 years. He retired effective July 31, 2003.

7. In 2002, the plaintiff was accused by the CIA of time and attendance fraud. The CIA’s Office of Inspector General (“OIG”) investigated the allegations, and concluded that the plaintiff could not account for specified time outside of his office. The plaintiff, however, presented evidence of his whereabouts for certain times, including that spent with his psychiatrist and psychologist, and claimed that the remainder of his time was spent working on official – unclassified – business in his automobile in the CIA’s parking lot because of his medical condition. No evidence exists to refute the plaintiff’s claim. Upon information and belief, his

performance appraisals for the period in question were excellent. At no time did any of the plaintiff's supervisors ever complain he was excessively missing from his work station, or that he did not complete assignments on time.

8. There are no internal regulations, policies or statutes that prohibit a CIA employee from working outside of the CIA's physical facility on unclassified projects.

9. The CIA presented its case to the United States Attorney's Office for the Eastern District of Virginia, which declined interest.

10. In 2003, the CIA then initiated steps to terminate the plaintiff from his employment based on the OIG conclusions. In or around June 2003, the CIA and the plaintiff negotiated an amicable resolution wherein the plaintiff would retire as of July 31, 2003, and no unfavorable employment action would be taken against him. It was anticipated that this agreement resolved all CIA-plaintiff issues.

11. By internal e-mail dated July 7, 2003, the CIA advised the plaintiff that he owed the defendants \$20,752.35, and that pursuant to the Debt Collection Act of 1982, the defendants would impose periodic deductions on any payments that would be made to the plaintiff including under his retirement program. A \$25 administrative fee was assessed by the CIA.

12. The July 7, 2003, e-mail also advised the plaintiff that if he disputed the existence or the amount of the alleged debt, he could request a review of all the relevant documentation and a hearing, and that such request would stay the commencement of any deductions. The plaintiff timely requested a hearing and the opportunity to review the relevant documents.

13. No hearing has yet been scheduled by the CIA, despite the fact that the CIA was required to have issued a decision within 60 days of the request.

14. Notwithstanding the fact that the plaintiff timely challenged the deduction, the defendants immediately started withholding funds from the plaintiff. On or about July 10, 2003, the CIA withheld \$244.16 from the plaintiff. This withholding occurred while he was still employed by the CIA. When advised of this withholding, the plaintiff's counsel notified the CIA that it was

not entitled to any funds until all administrative due process had been completed, and the defendants were requested to refund the money and cease further withholdings.

15. In blatant disregard of its own policies and the governing statutes, on or about July 24, 2003, the CIA again withheld the sum of \$244.16 from the plaintiff's pay. Notwithstanding complaints, these funds have never been returned.

16. In blatant disregard of its own policies and the governing statutes, on or about August 7, 2003, the CIA again withheld the sum of \$244.16 from the plaintiff's pay. Notwithstanding complaints, these funds have never been returned.

17. In blatant disregard of its own policies and the governing statutes, on or about August 21, 2003, the CIA deducted an additional \$556.27 from the plaintiff during his Pay Period 200317 which resulted, due to other legitimate deductions (alimony, child support, etc), in a total net pay of \$0.00. Again, the plaintiff and his counsel complained to the defendants that the withholding was improper and illegal, and requested the money be refunded and further withholdings cease.

18. On September 4, 2003, the defendants deducted the amount of \$7,523.85 from the plaintiff during Pay Period 200318, which together with other legitimate deductions resulted in a net pay to the plaintiff of \$94.43.

19. As a result of the defendants' illegal actions, the plaintiff has been left virtually destitute. He has no funds to pay, among other things, his mortgage, his utilities, purchase food for his family or his medication to treat his depression. The defendants' actions have caused significant physical, financial and mental harm to the plaintiff.

FIRST CAUSE OF ACTION
(VIOLATION OF ADMINISTRATIVE PROCEDURE ACT)

20. Plaintiff realleges the facts in Paragraphs 1 through 19 as if fully set forth in this Count.

21. The defendants' actions to seize the plaintiff's funds without proper due process violates the Debt Collection Act of 1982, 5 U.S.C. § 5514, as well as the CIA's internal policies and regulations.

22. The Debt Collection Act specifically requires the defendants to provide the plaintiff an opportunity for a hearing on the determination of the agency concerning the existence or the amount of the debt. A hearing shall be provided if the individual, on or before the fifteenth day following receipt of notice, and in accordance with such procedures as the head of the agency may prescribe, files a petition requesting such a hearing. The timely filing of a petition for hearing shall stay the commencement of collection proceedings. The plaintiff timely filed a petition for a hearing, which should have prevented the CIA from withholding any funds belonging to the plaintiff.

23. Notwithstanding the plaintiff's timely filing of a petition for a hearing, the defendants have illegally seized funds lawfully belonging to him.

24. The defendant's failure to follow federal law and CIA regulations creates a legal wrong against the plaintiff. The plaintiff is entitled to seek review of the defendant's actions under the Administrative Procedure Act, 5 U.S.C. § 702.

SECOND CAUSE OF ACTION
(VIOLATION OF ADMINISTRATIVE PROCEDURE ACT)

25. Plaintiff realleges the facts in Paragraphs 1 through 19 as if fully set forth in this Count.

26. The defendants' have hired an independent contractor, who is a former employee of the CIA, to conduct a hearing concerning the plaintiff's challenge to the debt collection. This individual is under the supervision or control of DCI Tenet.

27. The Debt Collection Act states that a hearing may not be conducted by an individual under the supervision or control of the head of the agency.

28. The Debt Collection Act also requires that the hearing official shall issue a final decision at the earliest practicable date, but not later than sixty days after the filing of the petition requesting the hearing. The plaintiff filed his timely petition more than sixty days ago.

29. The defendant's failure to follow federal law and CIA regulations creates a legal wrong against the plaintiff. The plaintiff is entitled to seek review of the defendant's actions under the Administrative Procedure Act, 5 U.S.C. § 702.

THIRD CAUSE OF ACTION
(VIOLATION OF PROCEDURAL DUE PROCESS)

30. Plaintiff realleges the facts in Paragraphs 1 through 19 as if fully set forth in this Count.

31. The plaintiff had a property interest in the funds withheld by the defendants.

32. The internal regulations and policies of the CIA and the statutory provisions that govern debt collection required the CIA to provide procedural due process before any collection of the debt commenced.

33. The defendants have failed to afford the plaintiff sufficient or full procedural due process protections, despite his attempt to exercise those protections, and, therefore, have acted unconstitutionally.

34. The actions of the defendants have caused significant physical, financial and mental harm to the plaintiff, thereby entitling him to relief.

FOURTH CAUSE OF ACTION
(VIOLATION OF SUBSTANTIVE DUE PROCESS)

35. Plaintiff realleges the facts in Paragraphs 1 through 19 as if fully set forth in this Count.

36. The plaintiff had a property interest in the funds withheld by the defendants.

37. The internal regulations and policies of the CIA and the statutory provisions that govern debt collection required the CIA to provide substantive due process.

38. By failing to follow their own regulations, policies and statutory provisions, the defendants have failed to afford the plaintiff sufficient or full substantive due process protection and, therefore, have acted unconstitutionally.

39. The actions of the defendants have caused significant physical, financial and mental harm to the plaintiff, thereby entitling him to relief.

FIFTH CAUSE OF ACTION
(UNCONSTITUTIONAL TAKING UNDER FIFTH AMENDMENT)

40. Plaintiff realleges the facts in Paragraphs 1 through 19 as if fully set forth in this Count.

41. The defendants may not take private property for public use without just compensation.

42. The plaintiff had a property interest in the funds withheld by the defendants.

43. No formal adjudication in accordance with all lawful provisions and constitutional protections has been undertaken by the defendants to permit collection of any alleged debt.

44. The defendants' actions to collect an alleged debt in violation of its internal regulations and policies of the CIA and the statutory provisions that govern debt collection thereby convert its withholding of the plaintiff's funds into an unconstitutional taking of private property.

45. The actions of the defendants have caused significant physical, financial and mental harm to the plaintiff, thereby entitling him to relief.

WHEREFORE, Plaintiff respectfully asks this Court to:

A. Order the defendants to immediately refund all monies, with interest, taken to date from the plaintiff;

B. Enjoin the defendants from seizing any additional funds until such time the plaintiff is accorded all appropriate due process;

C. Find and declare that the appointment of a former CIA employee as the hearing examiner is prohibited by statute, and appoint an administrative law judge to hear the plaintiff's challenge to the debt collection;

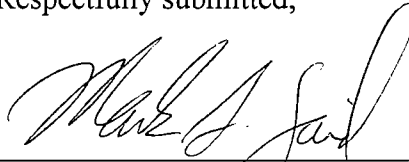
D. Find and declare that the defendants violated the plaintiff's procedural and substantive due process rights;

E. Find and declare that the defendants' actions constituted an illegal taking;

F. Award plaintiff his costs and attorneys' fees under the Equal Access to Justice Act, or any other applicable statute or regulation, as well as any other relief this Court may find appropriate.

Date: November 26, 2003

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark S. Zaid". The signature is fluid and cursive, with a large loop at the end.

Mark S. Zaid, Esq. (Federal Bar #023887)

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