

## United States v. Neumann

United States District Court for the Southern District of New York

August 29, 2022, Decided; August 29, 2022, Filed

19 Civ. 9868 (ER)

### Reporter

2022 U.S. Dist. LEXIS 196847 \*

UNITED STATES OF AMERICA, Plaintiff, -v- THERESA NEUMANN, Defendant.

**Counsel:** 2022 U.S. Dist. LEXIS 196847 at 1 For United States of America, Plaintiff: Samuel Hilliard Dolinger, LEAD ATTORNEY, U.S. Attorney's Office SDNY, New York, NY.

**Judges:** HON. EDGARDO RAMOS, United States District Judge.

**Opinion by:** EDGARDO RAMOS

### Opinion

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#### PROPOSED] STIPULATION AND ORDER OF SETTLEMENT.

WHEREAS, this Stipulation and Order of Settlement (the "Stipulation") is entered into by and among plaintiff the United States of America (the "United States"), by its attorney, Damian Williams, United States Attorney for the Southern District of New York, and defendant Theresa Neumann ("Defendant") (together with the United States, the "parties");

WHEREAS, Defendant is a U.S. citizen and asserts that she has resided in Germany since 1962;

WHEREAS, on October 25, 2019, the United States filed its complaint in the above-captioned action, alleging that Defendant failed to report her financial interest in one foreign financial account at UBS AG ("UBS"); one foreign financial account at UBS Deutschland AG ("UBS Deutschland"); one foreign financial account at Deutsche Bank AG ("Deutsche Bank"); and two foreign financial accounts at Bank Julius Baer & Co. ("Julius Baer"), in calendar years 2004, 2005, 2006, 2007, 2008, and 2010 (the "Relevant

Years"), by filing 2022 U.S. Dist. LEXIS 196847 at 2 the Report of Foreign Bank and Financial Accounts (known as the "MAR"), as required by 31 U.S.C. § 5314 and its implementing regulations;

WHEREAS, Defendant avers that, while she has not filed an answer in this matter, if she had done so she would have asserted defenses including that she is not subject to Liability arising from not filing FBARs for the Relevant Years because (1) she did not act with willful neglect when she did not timely file FBARs to disclose her financial interest in the Foreign Accounts, as set forth specifically above, for the Relevant Years; and (2) she had reasonable cause when she did not timely file FBARs to disclose her financial interest in the Foreign Accounts, as set forth specifically above, for the Relevant Years;

WHEREAS, on October 31, 2017, the Internal Revenue Service ("IRS") assessed a total of \$150,000 in penalties against Defendant, comprising the following: for calendar year 2004, the IRS assessed penalties of \$20,000 (\$10,000 each) for Defendant's non-willful failure to file FBARs for two accounts: an account at UBS in Zurich bearing number XXXX-XXXX9651

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Pursuant to Federal Rule of Civil Procedure 5.2(a)(4), all but the last four digits of financial account numbers referenced herein are redacted.

(the "9651 Account") and an account at Deutsche Bank bearing number XXXXXX3100 (the "3100 Account"); for 2022 U.S. Dist. LEXIS 196847 at 3 calendar years 2005, 2006, and 2007, the IRS assessed penalties totaling \$90,000 (\$30,000 for each year, \$10,000 for each account) for Defendant's non-willful failure to file FBARs for three accounts: the 9651 Account, the 3100 Account, and an account at UBS Deutschland bearing number XXXXX8210 (the "8210 Account"); for calendar year 2008, the IRS assessed penalties totaling \$30,000 for Defendant's non-willful failure to file FBARs for three accounts: the 8210 Account, the 3100 Account, and an

account at Julius Baer bearing number XXXXXXXX0201 (the "First Julius Baer Account"); and for calendar year 2010, the IRS assessed a penalty in the amount of \$10,000 for Defendant's non-willful failure to file an FBAR for a second account at Julius Baer bearing number XXXXXXXX02.01 (the "Second Julius Baer Account");

WHEREAS, the United States' complaint seeks to collect the above-described FBAR assessments against Defendant under 31 U.S.C. § 5321 totaling \$150,000 (collectively, the "FBAR Liabilities"), plus penalties and interest permitted by law; and

WHEREAS, the parties have, through this Stipulation and the attached Judgment, reached a mutually agreeable resolution of this matter, subject to Court approval;**2022 U.S. Dist. LEXIS 196847 at 4**

NOW, THEREFORE, with the consent of the parties, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. For purposes of effecting a resolution of her alleged liability for the FBAR Liabilities, Defendant agrees that this Court has subject matter jurisdiction over these actions and consents to this Court's exercise of personal jurisdiction over her.

2. Defendant admits, acknowledges, and accepts responsibility for the following facts:

a. During the Relevant Years: (i) Defendant was a U.S. person; (ii) Defendant was the beneficial owner of the 9651 Account, the 3100 Account, the 8210 Account, the First Julius Baer Account, and the Second Julius Baer Account (collectively, the "Foreign Accounts"); and (iii) the Foreign Accounts were financial accounts in a foreign country that held more than \$10,000 during each of the relevant calendar years.

b. Defendant did not timely file FBAR.s to disclose her financial interest in the Foreign Accounts, as set forth specifically above, for the Relevant Years.

3. A consent judgment (the "Judgment") reflecting the FBAR Liabilities submitted concurrently with this Stipulation shall be entered against Defendant and in favor of the United States in a total**2022 U.S. Dist. LEXIS 196847 at 5** amount of \$150,000, plus interest accruing under 31 U.S.C. § 3717(a)(1) from November 1, 2017, until the date of entry of the Judgment, and interest accruing under 28 U.S.C. § 1961 after the date of entry of the Judgment, plus penalties under 31 U.S.C. § 3717(e)(2) and 31 C.F.R. §§ 5.5(a) and 901.9 from

November 1, 2017, until the Judgment is paid in full.

4. Execution of the Judgment shall be stayed so long as Defendant abides by the terms, conditions, and provisions of this Stipulation, and subject to the provisions in paragraphs 8 to 10 of this Stipulation.

5. The United States agrees to accept a total amount of \$110,000 (the "Settlement Amount") in full satisfaction of the Judgment, as long as Defendant pays the Settlement Amount in full and it is received by the United States on or before September 15, 2022.

6. All payments shall be made by electronic fund transfer pursuant to instructions provided by the United States Attorney's Office for the Southern District of New York. Should Defendant make an electronic fund transfer on or before September 15, 2022, where such fund transfer is returned or refused for insufficient funds, the United States Attorney's Office must promptly notify the Defendant's counsel of such rejection and give her an opportunity to successfully**2022 U.S. Dist. LEXIS 196847 at 6** transfer the entire Settlement Amount to the United States, either on or before September 15, 2022, or within the time permitted to cure any default pursuant to paragraph 9, whichever date is later.

7. Should Defendant comply fully with paragraph 5 (that is, should Defendant pay the United States \$110,000 in full on or before September 15, 2022), the Judgment will be deemed satisfied in full, and upon request of the Defendant or her counsel, the United States shall file with the Clerk of the Court and deliver to Defendant's counsel a full satisfaction of judgment.

8. Should Defendant fail to timely pay the Settlement Amount in full, or should any wire or draft presented by Defendant as payment in compliance with this Stipulation be returned or refused for insufficient funds, except if it is cured consistent with paragraph 6, Defendant shall be in default, and the United States shall have the right, at its sole option and discretion, to declare the stay of execution of the Judgment no longer in effect. In the event that the United States declares the stay of execution of the Judgment to be no longer in effect, the full amount of the Judgment, less any amounts paid, shall be due and owing.**2022 U.S. Dist. LEXIS 196847 at 7**

9. Before declaring Defendant in default pursuant to paragraph 8 and the stay of execution of the Judgment no longer in effect, the United States shall first afford Defendant's counsel notice of such default in writing and shall afford ten calendar days from the date of such

notice to cure the default.

10. In the event of an uncured default pursuant to paragraphs 8 and 9, the United States shall be permitted to file the Judgment in any location and seek to enforce it, less any amounts paid, including but not limited to in any and all jurisdictions in which Defendant resides or owns any real or personal property, and such filing shall be a lien on such property.

11. Conditioned on Defendant's full payment of the Settlement Amount, or, in the event of an uncured default pursuant to paragraphs 8, 8, and 9, full payment of the Judgment, the United States releases Defendant from any civil or administrative claim it has under 31 U.S.C. §§ 5314 and 5321 arising from Defendant's failure to disclose the Foreign Accounts in the Relevant Years by filing FBARs, specifically: (1) in 2004, for the 9651 Account and the 3100 Account; (2) in 2005, 2006, and 2007, for the 9651 Account, the 8210 Account, and the 3100 Account;**2022 U.S. Dist. LEXIS 196847 at 8** (3) in 2008, for the 8210 Account, the 3100 Account, and the First Julius Baer Account; and (4) in 2010, for the Second Julius Baer Account, as required under 31 U.S.C. § 5314 and its implementing regulations (the "Covered Conduct").

12. Notwithstanding the release in paragraph 11 above, or any other term of this Stipulation, the following claims of the United States are specifically reserved and are not released by this Stipulation:

- a. any liability arising under the Internal Revenue Code, Title 26 of the United States Code;
- b. except as explicitly stated in this Stipulation, any civil or administrative liability;
- c. any criminal liability;
- d. any liability to the United States and its agencies for any conduct other than the Covered Conduct; and
- e. any liability based upon obligations created by this Stipulation.

13. Any failure by the United States to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and the United States, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

14. Defendant waives**2022 U.S. Dist. LEXIS 196847 at 9** and shall not assert any defenses she may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or

in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment of the Constitution, or under the Excessive Fines Clause of the Eighth Amendment of the Constitution, this Stipulation bars a remedy sought in a criminal prosecution or other administrative action. Nothing in this paragraph or any other provision of this Stipulation constitutes an agreement by the United States concerning the characterization of the Judgment or the Settlement Amount for purposes of the Internal Revenue Code, Title 26 of the United States Code, or the Bankruptcy Code, Title 11 of the United States Code.

15. Defendant fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that she has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, or servants, related to the Covered Conduct and the United States' investigation, prosecution, and settlement of the Covered Conduct.

16. This Stipulation is binding on Defendant's successors, transferees,**2022 U.S. Dist. LEXIS 196847 at 10** heirs, assigns, executors, administrators, and estates.

17. This Stipulation is intended to be for the benefit of the parties only. The parties do not release any claims against any other person or entity except as otherwise provided herein.

18. The undersigned counsel and any other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of persons and the entities indicated below.

19. This Stipulation constitutes the complete agreement between the parties with respect to the subject matter hereof, and any statements, representations, promises, agreements, or negotiations, oral or otherwise, that are not included herein shall be of no force or effect. This Stipulation may not be amended except by written consent of the parties.

20. The terms of this Stipulation shall become effective upon entry of the Stipulation and the Judgment by the Court. If the Stipulation and the Judgment are not approved and entered by the Court, this Stipulation shall be null and void, with no force or effect.

21. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which

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constitute one and the same Stipulation. Signatures 2022 U.S. Dist. LEXIS 196847 at 11 in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

22. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. For purposes of construing this Stipulation, it shall be deemed to have been drafted by all parties to the Stipulation and shall not, therefore, be construed against any party in any subsequent dispute.

23. Upon the entry of the Judgment and the Stipulation, the above-captioned action shall be considered resolved and the case shall be closed. Each party shall bear its own costs, expenses, and attorney's fees incurred in connection with the above-captioned actions.

24. The Court shall retain jurisdiction over all matters concerning this Stipulation.

Dated: August 29, 2022

**For the United States of America:**

DAMIAN WILLIAMS

United States Attorney for the

Southern District of New York

By: /s/ Samuel Dolinger

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Dated: 2022 U.S. Dist. LEXIS 196847 at 12 August 29, 2022

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Dated: August 29, 2022

/s/ Theresa Neumann

THERESA NEUMANN

SO ORDERED:

/s/ Edgardo Ramos

HON. EDGARDO RAMOS

United States District Judge

Dated: August 29, 2022

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