

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PA

J. TIMOTHY KOHARI & TOMEKA KOHARI,	)	
ET AL.,	)	
	)	
Petitioners	)	
	)	
v.	)	Docket Nos. 11893-15,
	)	11911-15.
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

ORDER

Procedural History

On February 17, 2017, the respondent served on the petitioners the respondent's request for admissions as to J. Timothy Kohari and Tomeka Kohari.

On March 20, 2017, the petitioners filed their responses to the respondent's request for admissions.

On March 24, 2017, the respondent filed a motion to review the sufficiency of the petitioners' responses.

Rule 90(a) allows a party to serve on the other party a written request for the admission of the truth of any relevant matters. Rule 90(c) provides that each matter is deemed admitted unless the other party serves upon the requesting party either:

- a written answer
 - specifically admitting or denying the matter in whole or in part, or
 - asserting that the matter cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so. Or

SERVED Apr 05 2017

- an objection stating in detail the reasons therefore.

Additionally Rule 90(c) provides:

A denial shall fairly meet the substance of the requested admission, and, when good faith requires that a party qualify an answer or deny only a part of a matter, such party shall specify so much of it as is true and deny or qualify the remainder.

An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless such party states that such party has made reasonable inquiry and that the information known or readily obtainable by such party is insufficient to enable such party to admit or deny.

A party who considers that a matter, of which an admission has been requested, presents a genuine issue for trial may not, on that ground alone, object to the request; such party may, subject to the provisions of paragraph (g) of this Rule, deny the matter or set forth reasons why such party cannot admit or deny it.

An objection on the ground of relevance may be noted by any party but it is not to be regarded as just cause for refusal to admit or deny.

For purposes of Rule 90, an evasive or incomplete answer or response is treated as a failure to answer or respond. Rule 104(d).

The party who has requested the admissions may move to determine the sufficiency of the answer or objections. Rule 90(e). Unless the Court determines that an objection is justified, it shall order that an answer be served. Rule 90(e). If the Court determines that an answer does not comply with the requirements of Rule 90, then it may order either that the matter is admitted or that an amended answer be served. In lieu of such an order, the Court may determine that final disposition of the request will be made at some later time which may be more appropriate for disposing of the question involved.

In its March 24, 2017 motion to review responses, the respondent contends that many of the petitioners' responses to the requests for admissions fail to meet the requirements of Rule 90(c). In particular the respondent identifies the following requests for admission: 5, 10, 11, 12, 17, 18, 19, 26, 31, 32, 33, 34, 35, 36, 39, 41, 42, 43, 44, 45, 46, 47, 109, 110, 111, 112, 113, 114, 115, 116, 119, 120, 132, 133, 134, 135, 136, 137, 138, 139, 140, 153, 154, 155, 156, 157, 158, and 159.

Discussion

Our conclusions regarding these responses are as follows:

¶ 5. The petitioners deny the requested admission because of its purported vagueness about the word "documents". This response is in effect a vagueness objection to the requested admission. The objection is overruled. The requested admission does not ask which documents were reviewed, only whether any documents were reviewed. An amended answer must be served.

¶ 10. The petitioners deny the requested admission because of its purported vagueness about the word "documents". This response is in effect a vagueness objection to the requested admission. The objection is overruled. The requested admission does not ask which documents were reviewed, only whether any documents were reviewed. An amended answer must be served.

¶ 11. The petitioners' response is effectively an objection based on the time period involved and the understandability of the requested admission. The objection is sustained because the requested admission is not understandable.

¶ 12. The petitioners' response is effectively an objection based on time frame. The objection is sustained. It is unclear whether the requested admission about instructing Ms. Gooslin relates to an instruction made at any time or an instruction made during the tax years at issue or effective during the tax years at issue.

¶ 17. The petitioners' response in part denies that the "K" and "F" markings on cash receipts were done by PCA staff. It appears that this response rests upon lack of knowledge of the practices of PCA staff. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. An amended

answer must be served (explaining whether or not it was its staff that labeled cash payments receipts with a “K” or “F”).

¶ 18. The petitioners’ response in part denies that the “K” written on cash receipts indicated that the payment was received for the services rendered by J. Timony Kohari. It appears that this response rests upon lack of knowledge of the practices of PCA staff. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. An amended answer must be served.

¶ 19. This response is similar to the one discussed in ¶ 15 above. An amended answer must be served.

¶ 26. The response “[c]annot admit or deny and therefore denies” appears to be a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. An amended answer must be served.

¶ 31. The response is evasive. An amended answer must be served.

¶ 32. The response is in effect an objection based on vagueness (as to which deposits). The requested admission is vague. The objection is sustained.

¶ 33. The response is in effect an objection based on vagueness (as to which checks). The requested admission is vague. The objection is sustained.

¶ 34. The response is in effect an objection based on vagueness (as to which deposits). The requested admission is vague. The objection is sustained.

¶ 35. The response is in effect an objection based on vagueness (as to which deposits). The requested admission is vague. The objection is sustained.

¶ 36. This response is a plea of lack of knowledge but asserts only that the petitioners have no immediate knowledge of the matter. It fails to indicate that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information readily obtainable. An amended answer must be served.

¶ 39. The response is an evasive answer. An amended answer must be served.

¶ 41. The response “[c]annot admit or deny and therefore denies” appears to be a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. An amended answer must be served.

¶ 42. For the reasons given in ¶ 38 above, an amended answer must be served.

¶ 43. The response “[c]annot admit or deny and therefore denies” appears to be a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. Further portions of the response consist of answers that are evasive and nonresponsive. An amended answer must be served.

¶ 44. The response refers to the (inadequate) response to requested admission ¶ 40. An amended answer must be served.

¶ 45. The response “[c]annot admit or deny and therefore denies” appears to be a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. Further portions of the response consist of answers that are evasive and nonresponsive. An amended answer must be served.

¶ 46. The response that the petitioners cannot admit or deny that the \$17,428.25 were business receipts of Primary Care Associates is a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. An amended answer must be served.

¶ 47. The response that the petitioners cannot admit or deny that the deposits to J. Timothy Kohari’s personal Vanguard account were not included in Primary Care Associates’s general ledger and therefore denies is a plea of lack of knowledge without the indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known

or readily obtainable. The further answer about whether all deposits were business receipts is not responsive to the question and if it constitutes an objection, is not well taken. An amended answer must be served.

¶ 109. The answer explains why the matter cannot be admitted or denied.

¶ 110. The Court agrees with the respondent's reasons why an amended answer must be served. An amended answer must be served.

¶ 111. The answer explains why the matter cannot be admitted or denied.

¶ 112. The Court agrees with the respondent's reasons why an amended answer must be served. An amended answer must be served.

¶ 113. The answer explains why the matter cannot be admitted or denied.

¶ 114. The Court agrees with the respondent's reasons why an amended answer must be served. An amended answer must be served.

¶ 115. The answer explains why the matter cannot be admitted or denied.

¶ 116. The Court agrees with the respondent's reasons why an amended answer must be served. An amended answer must be served.

¶ 119. The answer satisfies Rule 90(c).

¶ 120. The answer satisfies Rule 90(c).

¶ 132. The response "[c]annot admit or deny and therefore denies" appears to be a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. The further answer that Shawn Cool told the petitioners he could not locate "many of the records" is vague and nonresponsive. The petitioners did not explain why it could not examine the copies of the documents that were given to the IRS and determine whether any of them fell into the categories of documents described in the requested admission. An amended answer must be served.

¶ 133. The response "[c]annot admit or deny and therefore denies" appears to be a plea of lack of knowledge. However, there is no indication that the

petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. The further answer that Shawn Cool told the petitioners he could not locate “many of the records” is vague and nonresponsive. The petitioners did not explain why it could not examine the copies of the documents that were given to the IRS and determine whether any of them fell into the categories of documents described in the requested admission. An amended answer must be served.

¶ 134. The response “[c]annot admit or deny and therefore denies” appears to be a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. The further answer that Shawn Cool told the petitioners he could not locate “many of the records” is vague and nonresponsive. The petitioners did not explain why it could not examine the copies of the documents that were given to the IRS and determine whether any of them fell into the categories of documents described in the requested admission. An amended answer must be served.

¶ 135. The response “[c]annot admit or deny and therefore denies” appears to be a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. The further answer that Shawn Cool told the petitioners he could not locate “many of the records” is vague and nonresponsive. The petitioners did not explain why it could not examine the copies of the documents that were given to the IRS and determine whether any of them fell into the categories of documents described in the requested admission. An amended answer must be served.

¶ 136. The response “[c]annot admit or deny and therefore denies” appears to be a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. The further answer that Shawn Cool told the petitioners he could not locate “many of the records” is vague and nonresponsive. The petitioners did not explain why it could not examine the copies of the documents that were given to the IRS and determine whether any of them fell into the categories of documents described in the requested admission. An amended answer must be served.

¶ 137. The response “[c]annot admit or deny and therefore denies” appears to be a plea of lack of knowledge. However, there is no indication that the

petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. The further answer that Shawn Cool told the petitioners he could not locate “many of the records” is vague and nonresponsive. The petitioners did not explain why it could not examine the copies of the documents that were given to the IRS and determine whether any of them fell into the categories of documents described in the requested admission. An amended answer must be served.

¶ 138. The response “[c]annot admit or deny and therefore denies” appears to be a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. The further answer that Shawn Cool told the petitioners he could not locate “many of the records” is vague and nonresponsive. The petitioners did not explain why it could not examine the copies of the documents that were given to the IRS and determine whether any of them fell into the categories of documents described in the requested admission. An amended answer must be served.

¶ 139. The response “[c]annot admit or deny and therefore denies” appears to be a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. The further answer that Shawn Cool told the petitioners he could not locate “many of the records” is vague and nonresponsive. The petitioners did not explain why it could not examine the copies of the documents that were given to the IRS and determine whether any of them fell into the categories of documents described in the requested admission. An amended answer must be served.

¶ 140. The response “[c]annot admit or deny and therefore denies” appears to be a plea of lack of knowledge. However, there is no indication that the petitioners made a reasonable inquiry about the matter or could not have answered the question from information known or readily obtainable. The further answer that Shawn Cool told the petitioners he could not locate “many of the records” is vague and nonresponsive. The petitioners did not explain why it could not examine the copies of the documents that were given to the IRS and determine whether any of them fell into the categories of documents described in the requested admission. An amended answer must be served.

¶ 153. The answer is evasive because it appears to attempt to reserve the question of whether the exhibit is an authentic copy of the deposition. An amended answer must be served.

¶ 154. The answer is evasive because it appears to attempt to reserve the question of whether the exhibit is an authentic copy of the deposition. An amended answer must be served.

¶ 155. The answer is evasive because it appears to attempt to reserve the question of whether the exhibit is an authentic copy of the deposition. An amended answer must be served.

¶ 156. The answer is evasive because it appears to attempt to reserve the question of whether the exhibit is an authentic copy of the deposition. An amended answer must be served.

¶ 157. The answer is evasive because it appears to attempt to reserve the question of whether the exhibit is an authentic copy of the deposition. An amended answer must be served.

¶ 158. The answer is evasive because it appears to attempt to reserve the question of whether the exhibit is an authentic copy of the deposition. An amended answer must be served.

¶ 159. The answer is evasive because it appears to attempt to reserve the question of whether the exhibit is an authentic copy of the deposition. An amended answer must be served.

Conclusion

Upon due consideration and given the foregoing, it is

ORDERED that the petitioners shall, on or before April 17, 2017, file amended answers to the following paragraphs of respondent's request for admissions: 5, 10, 11, 12, 17, 18, 19, 26, 31, 32, 33, 34, 35, 36, 39, 41, 42, 43, 44, 45, 46, 47, 109, 110, 111, 112, 113, 114, 115, 116, 119, 120, 132, 133, 134, 135, 136, 137, 138, 139, 140, 153, 154, 155, 156, 157, 158, and 159.

(Signed) Richard T. Morrison
Judge

Dated: Washington, D.C.
April 4, 2017