

Beware of Verbal Agreements - Case Study

At 10.30AM on a Thursday morning in September my secretary let me know that there was a panicked caller on the line whose soon to be ex-husband's personal bank account had been levied by the IRS and she needed to know her options. When I got on the phone with her she explained her husband hadn't paid the previous year's tax liability and now, on the eve of her property settlement the IRS had decided to take their pound of flesh to the tune of \$36,000.

In order to get the levy lifted by the IRS she needed to justify why she or her ex needed the money. For example was it to be used to pay a mortgage or payroll? Were either of them on the brink of eviction or having their utilities cut? Unfortunately, she had no good reason by IRS standards for them to return the money—her outlook was bleak and my options were limited so I asked for only half my usual retainer and told her I would call the IRS and see what I could do.

Calling the IRS is sometimes more of an art rather than a science. You get on the phone with someone, hope they're feeling cooperative and see if you can come to any sort of compromise. After all the IRS is made up of people, it's not a machine despite all the rules, regulations and procedures. Whenever discretion is involved your client's outcome can turn on how much rapport you just built with a complete stranger on the other end of the line. I called IRS Automated Collections (ACH) to attempt to persuade them to release the money. The ACH is a national network of IRS collection centers located all over the country. Each time you call ACH you get a different center and different person depending on call volume. However each center is on the same network and (theoretically) has access to the same information.

The first time I called I asked the agent if there was anything that could be done about the levy—I heard an emphatic “no”. I hung up the phone, but instead of calling the client to break the bad news I decided to try again knowing I would get a different center and different person. Again, I explained my client's situation, the agent on the other end of the line appeared to be somewhat sympathetic, but the call resulted in the same “no” I heard from the first agent. However, she didn't mention having any record of my first call so I thought I would give it another try. This time I got what sounded like a trainee or a novice on the phone. Upon explaining my client's situation she asked me to agree to a brief hold while she discussed the matter with her supervisor. After keeping me on hold for more than a brief time, she returned to the phone and laid out her conditions—she claimed the client was not in compliance with filing the last year's tax return even though the client claimed to have filed an extension. However she claimed that if the client filed the return by the following Tuesday the IRS would return the \$36,000! This was a verbal representation and verbal agreement with no paperwork to support the agreement. Apparently, despite the network of information, there seemed to be a time lag in entering the notes from the last two calls or the agents simply didn't bother to put them in, so each call was treated as if it was my first call.

I called the client to tell her the great news, she assured me that she had a CPA currently working on her tax return and it wouldn't be an issue to file it by Tuesday. This was one of the rare cases I didn't insist on doing the return in house as it was a condition of release and there was a very narrow window in

which to complete it, but the client assured us that her CPA was almost done with it and it would be filed by the following Tuesday. I called the following Monday to assure myself of the status of the return only to hear the horrifying news that the return wasn't complete yet! My heart sank and my disappointment rapidly turned into an angry lecture on how she was going to lose this amazing deal that the IRS had on the table only to hear the surprising news that the IRS had already released the funds without waiting to see if she filed the return.

There are two morals to this story:

1. If you get a surprising offer that's dependent on your client filing a return or doing something else within your control, strongly discourage your client from having someone else do the work.
2. More importantly, understand that no outcome is impossible to attain. Part of your role in tax resolution is to look beyond the rules and regulations and understand the human aspect of the resolution process. Part of it is persistence, part of it is communicating effectively and then you have luck of the draw.