

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**MARTIN CARDONA & BRISA
CASTILLO,**

Defendants.

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EP-12-CA-366-FM

AMENDED FINAL JUDGMENT

On this day, the court considered the parties’ “Motion for Entry of Agreed Judgment” (“Joint Motion”) [ECF No. 21], filed October 7, 2013; the “United States of America’s Motion to Alter or Amend Final Judgment” (“Motion”) [ECF No. 23], filed October 30, 2013; and this court’s “Order Granting in Part and Denying in Part the United States of America’s Motion to Alter or Amend Final Judgment” [ECF No. 24], filed November 19, 2013.

The parties jointly request the court to sign the “Final Agreed Judgment” [ECF No. 21-1], which has been executed by the parties and is attached to the parties’ Joint Motion. The parties’ counsel in this action having duly signed the Joint Motion indicating their agreement, the court is of the opinion that their Joint Motion [ECF No. 21] should be, and hereby is, **GRANTED**. Accordingly, the court now enters this Order as follows:

IT IS ORDERED that the “Final Agreed Judgment” [ECF No. 21-1] executed by the parties be incorporated into this Order.

IT IS FURTHER ORDERED that judgment in the amount of \$49,573.01 is entered against Defendant Martin Cardona in favor of the United States for the following federal tax liabilities.

TYPE OF TAX	TAX PERIOD	DATE OF ASSESSMENT	AMOUNT DUE THROUGH September 1, 2013

1040	2003	03/30/2009	\$ 763.66
1040	2004	03/30/2009	\$ 8,698.33
1040	2007	08/23/2010	\$40,111.02

Interest and statutory additions will continue to accrue on these liabilities until paid.

IT IS FURTHER ORDERED that the United States has a valid tax lien for these taxes that encumbers the real property located at 12275 El Greco, El Paso, Texas and further described as follows:

Lot 63, Block 514, VISTA DEL SOL UNIT ONE HUNDRED TWENTY THREE, an addition to the City of El Paso, El Paso County, Texas according to the plat thereof on file in volume 67, Pages 65 and 65A, Real Property Records, El Paso County, Texas.

Moreover, consistent with 26 U.S.C. § 7403, the United States is entitled to foreclose its federal tax liens against this property.

Specifically, the Internal Revenue Service ("IRS") is authorized and directed under 28 U.S.C. §§ 2001, 2002 and 2004, to offer for public sale and to sell the real property described above, together with any improvements, buildings and appurtenances thereon.

IT IS FURTHER ORDERED that the Internal Revenue Service Property Appraisal & Liquidation Specialist ("PALS") is authorized and directed under 28 U.S.C. §§ 2001, 2002 and 2004, to offer for public sale and to sell the real property described above, together with any improvements, buildings and appurtenances thereon. The PALS are authorized to have free access to the real property and to take all actions appropriate to preserve the real property, including, without limitation, retaining a locksmith or other person, if necessary, to change or install locks or other security devices on the real property, until the deed thereto is delivered to the successful purchaser.

IT IS FURTHER ORDERED that the terms and conditions of the sale are as follows:

a. The sale of the property shall be free and clear of all liens or other claims of any party to this proceeding;

b. The sale shall be subject to building lines, if established, all laws, ordinances, and governmental regulations (including building and zoning ordinances) affecting the property and

easements and restrictions of record, if any;

c. The sale of the property by public auction, shall be held on the front steps of the El Paso County Courthouse, Texas, or on the above foreclosed property, in accordance with the provisions of 28 U.S.C. §§ 2001, 2002 and 2004;

d. The date and time for sale is to be announced by the PALS;

e. After the PALS has determined the date and time for sale, he/she shall insert the same in the Notice of Sale and shall promptly mail a copy of the Notice of Sale, by regular mail and by certified mail, return receipt requested, to each of the following:

Thomas M. Herrin
Trial Attorney, Tax Division
U.S. Department of Justice
717 N. Harwood, Suite 400
Dallas, Texas 75201
Attorney for the United States

Mr. Martin Cardona
12275 El Greco
El Paso, Texas 79936
Fax: (303) 955-7535

Ms. Brisa Castillo
c/o Polly Bone, Esq.
Texas Riogrande Legal Aid, Inc.
1111 N. Main Ave.
San Antonio, Texas 78212

f. The date and time of such public auction sale shall also be announced by the PALS by advertising the Notice of Sale, once each week for four consecutive weeks before the sale in at least one newspaper regularly issued and of general circulation in El Paso County, Texas, and at the discretion the PALS by any other notice that the PALS deems appropriate. The Notice of Sale will contain a description of the property and the terms and conditions of the sale in this order of foreclosure of sale and to vacate;

g. The minimum bid will be determined by the PALS and shall be inserted into the Notice of Sale. If the minimum bid is not met or exceeded, the PALS may, without further permission of this

Court, and under the terms and conditions in this order of sale, hold a new public sale, if necessary, and reduce the minimum bid;

h. Each successful bidder shall be required to deposit at the time of the sale with the PALS a minimum of ten percent (10%) of the bid, with the deposit to be made by certified check or cashier's check, payable to United States District Court, immediately upon the real property being struck off and awarded to the highest and best bidder. Before being permitted to bid at the sale, bidders shall display to the PALS proof that they are able to comply with this requirement. No bids will be received from anyone who has not presented that proof;

i. The balance of the purchase price for the property shall be paid to the PALS within thirty (30) days after the date the bid is accepted, by a certified or cashier's check, payable to the United States District Court. If the bidder fails to fulfill this requirement, the deposit shall be forfeited and shall be applied to cover the expenses of the sale, with any amount remaining to be applied to the federal tax liabilities of defendant, Martin Cardona, at issue herein. The Clerk shall distribute the deposit as directed by the PALS, by check made payable to the "United States Treasury." The realty shall be again offered for sale under the terms and conditions of the order of sale or, in the alternative, sold to the second highest bidder. The United States may bid as a credit against its judgment without tender of cash;

j. The Clerk of the Court shall receive and deposit all funds collected as a result of the Foreclosure Sale and to Vacate of this property, into the Registry of the Court. Such funds shall then be deposited by the Clerk of the Court into an interest bearing account for later distribution.

k. The sale of the property will conform itself within thirty-five (35) days from the date of sale, unless someone objects to the sale. Upon this confirmation of the sale, the IRS will execute and deliver a deed conveying the property to the purchaser. On confirmation of the sale, all interests in, liens against, or claims to, the property that are held or asserted by any parties to this action are discharged and extinguished.

IT IS FURTHER ORDERED that the sale is ordered under 28 U.S.C. §§ 2001, 2002 and 2004

and is made without right of redemption.

IT IS FURTHER ORDERED that until the real property is sold, Defendants Martin Cardona and Brisa Castillo, will take reasonable steps necessary to preserve the real property (including any and all buildings, improvements, fixtures and appurtenances on the real property) in its current condition including without limitation, maintaining fire and casualty insurance policies on the real property until they vacate the property. They will not commit waste against the real property, nor shall they cause or permit anyone else to do so. They will not do anything that tends to reduce the value or marketability of the real property, nor will they cause or permit anyone else to do so. They will not record any instruments or liens against the real property, publish any notice, or engage in any other action (such as running newspaper advertisements) that may directly or indirectly tend to adversely affect the value of the real property or that may tend to discourage potential bidders from participating in the public auction, nor will they cause or permit anyone else to do so.

IT IS FURTHER ORDERED that all persons, including Defendants Martin Cardona and Brisa Castillo, occupying the property in any manner will leave and vacate the property permanently no later than thirty (30) days after the date this Judgment is entered, each taking with him his or her personal property (but leaving all improvements, possible buildings, fixtures, and appurtenances to the property). If any person fails or refuses to leave and vacate the property by the time specified in this Judgment, the U.S. Marshals are authorized and directed to take all actions that are reasonably necessary to bring about the ejection of those persons. The IRS hereby authorized and directed to make payment to the U.S. Marshals for the costs associated with any ejection of those persons and this expenditure will be included in the administrative costs of sale. If any person fails or refuses to remove his or her personal property from the property by the time specified herein, the personal property remaining on the property thereafter are deemed forfeited and abandoned, and the IRS and its employees are authorized to remove it and to dispose of it in any manner the IRS sees fit, including sale, in which case the proceeds of the sale are to be applied first to the expenses of sale and the balance to be paid into the court for further

distribution.

IT IS FURTHER ORDERED that any attempt to reenter the property after it is vacated, could subject that person to being found in contempt of the court, and that such contempt could be punishable by a fine, incarceration, or both.

IT IS FURTHER ORDERED that no later than two (2) business days after vacating the property pursuant to the deadline set forth above, Defendants shall notify counsel for the United States of a forwarding address where they can be reached. Notification shall be made by contacting the attorney for the United States, Thomas Herrin, at (214) 880-9745.

IT IS FURTHER ORDERED that after the sale is confirmed, the Clerk shall distribute the proceeds of the sale(s), as far as they shall be sufficient, to the following items, in the order specified:

- a. first, to the IRS for the costs of the sale;
- b. second, to any ad valorem taxes due and owing on the property;
- c. third, 34% of the remaining sales proceeds shall be paid to Brisa Castillo in compensation for her homestead interest in the property;
- d. fourth, to the extent needed to satisfy this judgment, to the United States of America to be applied to the federal tax liabilities of Defendant Martin Cardona, as set forth above.

Any balance remaining after the above payments, shall be paid over to, and divided equally among, Defendants Martin Cardona and Brisa Castillo.

IT IS FURTHER ORDERED that as agreed to by their signatures, or those of their representative, in the Agreed Final Judgment submitted by the parties, the parties have reached a settlement which may obviate the need to sell the El Greco property referenced above. To effectuate the settlement, the requirement that Defendants Martin Cardona and Brisa Castillo vacate the El Greco property within thirty (30) days is suspended. Should Defendants Martin Cardona and Brisa Castillo default on the settlement reached by the parties, the United States may reinstate this court's order that defendants vacate the El Greco property by notifying defendants, in writing, that they have thirty (30) days to vacate the property.

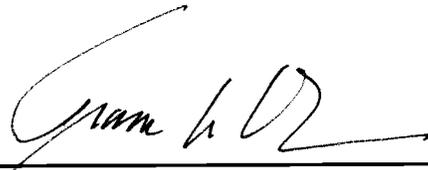
IT IS FURTHER ORDERED that all costs and attorneys' fees associated with obtaining this default judgment shall be borne by the party incurring them.

The Clerk of the Court is instructed to **STRIKE** this matter from the docket, and, there being no just cause for delay, this is a **FINAL** and **APPEALABLE** Judgment.

IT IS FINALLY ORDERED that all other pending motions in this case, if any, are **DENIED AS MOOT**. The Clerk of the Court is instructed to **CLOSE** this case.

SO ORDERED.

SIGNED this ¹⁹~~15~~th day of November, 2013.



FRANK MONTALVO
UNITED STATES DISTRICT JUDGE