

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

FREDERICK CHARLES HARRIS, II,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2019-2150

Appeal from the United States Court of Federal Claims
in No. 1:18-cv-01551-EGB, Senior Judge Eric G. Bruggink.

ON PETITION FOR PANEL REHEARING

PER CURIAM.

ORDER

Appellant Frederick Charles Harris, II filed a petition
for panel rehearing.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

APPENDIX A

The mandate of the court will issue on December 4, 2019.

FOR THE COURT

November 27, 2019
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

APPENDIX A

**United States Court of Appeals
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JUDGMENT

THIS CAUSE having been considered, it is

ORDERED AND ADJUDGED:

AFFIRMED

ENTERED BY ORDER OF THE COURT

October 10, 2019

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

APPENDIX B

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**United States Court of Appeals
for the Federal Circuit**

FREDERICK CHARLES HARRIS, II,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2019-2150

Appeal from the United States Court of Federal Claims
in No. 1:18-cv-01551-EGB, Senior Judge Eric G. Bruggink.

ON MOTION

PER CURIAM.

ORDER

The United States moves to summarily affirm the judgment of the United States Court of Federal Claims dismissing Frederick Charles Harris II's complaint. Mr. Harris opposes the motion.

In September 2018, Mr. Harris filed a complaint at the Claims Court alleging that the Internal Revenue Service illegally took \$40,000 from him. On April 15, 2019, the

APPENDIX C

United States moved to dismiss the complaint. A response was due no later than May 13, 2019. Having received no response, the Claims Court directed Mr. Harris to respond to the motion by June 25, 2019 "or the complaint will be dismissed for failure to prosecute and failure to comply with a court order." After Mr. Harris failed to file any response by that deadline, the Claims Court dismissed the complaint on July 9, 2019. This appeal followed.

Rule 41(b) of the Rules of the Claims Court provides that "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order," the Claims Court "may dismiss on its own motion." We review the Claims Court's dismissal under Rule 41(b) for an abuse of discretion. *Kadin Corp. v. United States*, 782 F.2d 175, 176 (Fed. Cir. 1986) (citations omitted). Summary affirmance is appropriate when "the position of one party is so clearly correct" that "no substantial question regarding the outcome of the appeal exists." *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994) (citations omitted).

In his informal brief and his response, Mr. Harris does not explain his failure to respond to the Claims Court's order requiring him to respond to the motion to dismiss, and he does not otherwise contend that the Claims Court abused its discretion in dismissing his case. Rather, he only argues that the government had no authority to take \$40,000 of his assets. The only issue we may consider on appeal is whether the Claims Court abused its discretion in dismissing his complaint for failure to comply. We conclude that it did not. That conclusion is so clearly correct that summary affirmance here is appropriate.

Accordingly,

IT IS ORDERED THAT:

- (1) The stay is lifted.
- (2) The motion is granted. The judgment of the United States Court of Federal Claims is affirmed.

APPENDIX C

(3) Each side shall bear its own costs.

FOR THE COURT

October 10, 2019

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

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APPENDIX C