

United States
Department of the Treasury

Director, Office of Professional Responsibility,
Complainant-Appellee

v.

Complaint No. 2013-00004

Charles M. Edgar,
Respondent-Appellant

Decision on Appeal

Pursuant to General Counsel Order No. 9 (January 19, 2001) and Office of Chief Counsel Notice CC-2011-007 (March 2, 2011), I decide disciplinary appeals to the Secretary of the Treasury filed under 31 C.F.R. Part 10 (Practice Before the Internal Revenue Service (IRS), hereinafter referred to as Circular 230 - all references are to Circular 230 as in effect for the periods at issue). This is such an appeal from an Initial Decision and Order (Initial Decision) entered into this proceeding by U.S. Coast Guard Chief Administrative Law Judge Walter J. Brudzinski (the ALJ) on November 8, 2013.

Background

This proceeding was commenced in February 2013, when the Complainant-Appellee, Director of the Office of Professional Responsibility (OPR) filed a Complaint against Respondent-Appellant, Charles M. Edgar ("Mr. Edgar"). The Complaint contains three Counts: (1) that in December 2010, Mr. Edgar's license to practice as a CPA was revoked by the Massachusetts Board of Registration in Public Accountancy, constituting incompetence and disreputable conduct in violation of §10.51(a)(10) of Circular 230; (2) that in May 2011, Mr. Edgar submitted a false power of attorney (Form 2848) to the IRS on behalf of a taxpayer constituting incompetence and disreputable conduct in violation of §10.51(a)(4) of Circular 230; and (3) that in May 2011, Mr. Edgar submitted a false power of attorney (Form 2848) to the IRS on behalf of a second taxpayer constituting incompetence and disreputable conduct in violation of §10.51(a)(4) of Circular 230. The Complaint requested that Mr. Edgar be disbarred from practice before the IRS.

Mr. Edgar responded to the Complaint, and in response to motions by OPR and Mr. Edgar, the ALJ granted OPR's motion for summary adjudication as to Count 1. On November 8, 2013, following an in-person hearing, the ALJ entered the Initial Decision sustaining Counts 2 and 3 and determining that the proper sanction was disbarment.

Mr. Edgar appealed and OPR responded. Mr. Edgar's grounds for appeal include that the above hearing did not provide him with sufficient opportunity to prove his case with

regard to the two power of attorney Counts, and that, with regard to the sanction, the revocation Count is based on a conviction more than 18 years ago that the IRS knew of 10 years ago.

Findings of Fact and Discussion

The Appellate Authority reviews the ALJ's findings of fact under a clearly erroneous standard of review. Section 10.78 of Circular 230.

Section 10.51(a)(10) of Circular 230 provides that incompetence and disreputable conduct includes disbarment as a CPA by any duly constituted authority of any state. With regard to Count 1, the findings of fact and the record as a whole well establish that Mr. Edgar's license to practice as a CPA was revoked in December 2010 based in part on a 1995 felony conviction for knowingly making false statements to the government in violation of 18 U.S.C. §1001 and mail fraud in violation of 18 U.S.C. §1341. Thus, the ALJ's finding of fact as to Count 1 is not clearly erroneous. Further, where the basis for disbarment from federal practice is disbarment in a reciprocal proceeding, the act of disbarment in the other jurisdiction, not the conduct that resulted in the disbarment, sets the statute of limitations running. See *Sheinbein v. Dudas*, 465 F.3d 493, 496 (Fed. Cir. 2006). Thus, this violation of Circular 230 occurred in December 2010 and the five year limitations period imposed by 28 U.S.C. §2462 has not expired.

Section 10.51(a)(4) of Circular 230 provides, in part, that incompetence and disreputable conduct includes “[g]iving false or misleading information, or participating in any way in the giving of false or misleading information” to a Treasury employee. With regard to Counts 2 and 3, the findings of fact and the record as a whole well establish that Mr. Edgar submitted Forms 2848 claiming that he was a duly authorized CPA in Massachusetts when in fact he was not, and thus are not clearly erroneous. Further, the record makes clear that that Mr. Edgar was evasive and misleading as to his CPA status in his dealings with the IRS during the examinations in question. Mr. Edgar's assertion that he was not given a fair opportunity to present his rebuttal case as to the Forms 2848 at the in-person hearing is also without merit.

Appropriate Sanction

The Appellate Authority reviews the sanction sought by OPR and imposed by the ALJ *de novo*. See, e.g., *Director, OPR v. Kilduff*, Complaint No. 2008-12 (January 20, 2010) at p. 6; *Director, OPR v. Hurwitz*, Complaint No. 2007-12 (April 21, 2009) at p. 3. Mr. Edgar has emphasized that the underlying facts and conviction leading to the revocation of his CPA license occurred at least 18 years ago. However, it has been less than four years since Mr. Edgar's CPA license has been revoked. Further, the two violations for submitting false powers of attorney occurred recently, and occurred while Mr. Edgar was representing taxpayers before the IRS. These are serious violations that warrant a severe sanction. Accordingly, I concur with the disbarment imposed by the ALJ.

I have considered all of the arguments made by OPR and Mr. Edgar and to the extent not mentioned herein, I find them to be irrelevant or without merit.

Conclusion

For the reasons stated, I hereby determine that Charles M. Edgar is disbarred from practice before the IRS. This constitutes FINAL AGENCY ACTION in this proceeding.

/s/ Bernard H. Weberman

Bernard H. Weberman
Appellate Authority
Office of Chief Counsel, IRS
April 18, 2014
Lanham, MD