

**UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.**

**KAREN L. HAWKINS
DIRECTOR,
OFFICE OF PROFESSIONAL
RESPONSIBILITY,
Complainant**

v.

**RAY LEWIS *[sic]*
Respondent.**

**Complaint Number: 2013-00010
Docket Number: 13-IRS-0004**

**HON. PARLEN L. McKENNA
Administrative Law Judge**

ORDER GRANTING COMPLAINANT'S MOTION FOR DEFAULT DECISION

On September 6, 2013, the Director, Office of Professional Responsibility (OPR or Complainant), Internal Revenue Service (IRS), Department of the Treasury issued a Complaint pursuant to 31 C.F.R. Part 10 and 31 U.S.C. § 330. Respondent Ray Lewis has engaged in practice before the IRS as an Enrolled Agent.

The Complaint sought Respondent's disbarment from practice before the IRS because of Respondent's alleged incompetence and disreputable conduct as defined by 31 C.F.R. § 10.51. The Complaint alleged 10 separate Counts of Disreputable Conduct as follows: 1) failure to make a U.S. individual income tax return for the tax year 2007; 2) failure to make a U.S. individual income tax return for the tax year 2008; 3) failure to make a U.S. individual income tax return for the tax year 2009; 4) failure to make a U.S. individual income tax return for the tax year 2010; 5) failure to make a U.S. individual income tax return for the tax year 2011; 6) preparing 2012 tax returns without a Preparer Tax Identification Number (PTIN); 7) preparing 2013 tax returns without a PTIN; 8) failure to respond to a June 23, 2010 Request for Information; 9) failure to respond to an

October 14, 2010 Request for Information; and 10) failure to respond to a June 27, 2012 Request for Information.

The Complaint also listed a number of alleged aggravating factors reflecting on Respondent's fitness to practice before the IRS, including Respondent's failure to file tax returns for the years 2000 through 2002 and for tax year 2006. As a result, Complainant sought disbarment of Respondent from practice before the IRS.

The disbarment would prevent Respondent from practicing before the IRS without the explicit approval of OPR. In order to obtain reinstatement, the practitioner needs to demonstrate (at a minimum) that he is likely to conduct himself in accordance with the requirements of 31 C.F.R. Part 10 and that his reinstatement would not be contrary to the public interest. Any such reinstatement would be at the sole discretion of OPR.

On February 7, 2013, counsel for Complainant filed a Motion for a Decision by Default (Motion for Default). This Motion was served upon Respondent by regular mail addressed to Respondent at his last known mailing address on file with the IRS. To date, Respondent has not filed a response to Complainant's Motion or otherwise participated in these proceedings. For the reasons provided below, Complainant's Motion for Default is **GRANTED** and Respondent is disbarred from practice before the IRS.

PRINCIPLES OF LAW

OPR's Ability to Discipline IRS Practitioners

Under 31 U.S.C. § 330(a), the Secretary of the Treasury holds authority to "regulate the practice of representatives of persons before the Department of the Treasury," including the power to suspend or disbar an individual from practice for a

number of reasons as long as the individual is first provided with “notice and opportunity” for hearing before an administrative law judge. Id. at § 330(b).

Circular 230 and Delegation Order No. 25-16 (2012) delegates to the Director of OPR, the authority to bring proceedings to suspend or disbar practitioners before the IRS. See 31 C.F.R. § 10.50(a). Under 31 C.F.R. § 10.50(e), any sanctions imposed “shall take into account all relevant facts and circumstances.”

Consequences for Respondent’s Failure to Respond

The Complaint and the Motion for Default were both properly served in accordance with the service rules found at 31 C.F.R. § 10.63. Respondent has not filed an opposition or an answer to the Complaint, nor has he replied to the Motion for Default. IRS regulations at 31 C.F.R. § 10.64(d) provide that:

Failure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under §10.76.

No extension of time has been granted by the undersigned for Respondent to file an Answer and so the provisions of Section 10.64(d) apply. Respondent’s failure to respond will therefore be deemed an admission of all the allegations in the Complaint by Default and a waiver of a hearing.

Evidentiary Standard and Standard of Proof

The applicable evidentiary standard provides that the rules of evidence prevailing in a court of law and equity are not controlling, but the judge may exclude evidence that is irrelevant, immaterial, or unduly repetitious. See 31 C.F.R. § 10.73(a).

The standard of proof differs depending on the nature of the sanction. If the sanction is censure or a suspension of less than six months' duration, the judge applies the preponderance of the evidence standard. See 31 C.F.R. § 10.76(b). In contrast, for a monetary penalty, disbarment or suspension of six months' or longer, the judge applies the clear and convincing standard. Id. The clear and convincing standard has been defined "as evidence of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established, and, as well, as evidence that proves the facts at issue to be highly probable." Jimenez v. Daimler Chrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001) (internal quotation marks, citations omitted); see also Addington v. Texas, 441 U.S. 418 (1979) (explaining that clear and convincing evidence is an intermediate standard somewhere between proof by a preponderance of the evidence and proof beyond a reasonable doubt).

Given that Complainant seeks to disbar Respondent, the clear and convincing standard applies. If Respondent is disbarred, he will not be permitted to practice before the IRS until authorized to do so pursuant to 31 C.F.R. § 10.81.

FINDINGS OF FACT¹

1. At all material times, Respondent has been an enrolled agent engaged in practice before the IRS as defined by 31 C.F.R. § 10.2(a)(4).
2. Respondents' last known address with the IRS is *[Redacted]*, San Francisco, California *[Redacted]*.
3. In accordance with 31 C.F.R. § 10.60(c), on June 27, 2012, Respondent was advised in writing of the law and facts warranting the issuance of this Complaint, and has been accorded the opportunity to dispute facts, assert additional facts, and make argument to OPR regarding his conduct.

¹ The Findings of Fact that follow come from the factual allegations in the Complaint –deemed admitted by Respondent due to his failure to file an Answer.

Count 1

4. Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to make a U.S. Individual Tax Return (Form 1040) for tax year 2007, on or before October 15, 2008.
5. Pursuant to 26 U.S.C. § 6081, Respondent timely filed an application (Form 4868) for an automatic extension of time to file his federal income tax return for tax year 2007, extending his time to make his U.S. Individual Income Tax Return for tax year on or before October 15, 2008.
6. Respondent failed to make his U.S. Individual Income Tax Return for tax year 2007 on or before October 15, 2008.

Count 2

7. Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to make a U.S. Individual Tax Return (Form 1040) for tax year 2008, on or before October 15, 2009.
8. Pursuant to 26 U.S.C. § 6081, Respondent timely filed an application (Form 4868) for an automatic extension of time to file his federal income tax return for tax year 2008, extending his time to make his U.S. Individual Income Tax Return for tax year on or before October 15, 2009.
9. Respondent failed to make his U.S. Individual Income Tax Return for tax year 2008 on or before October 15, 2009.

Count 3

10. Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to make a U.S. Individual Tax Return (Form 1040) for tax year 2009, on or before October 15, 2010.
11. Pursuant to 26 U.S.C. § 6081, Respondent timely filed an application (Form 4868) for an automatic extension of time to file his federal income tax return for tax year 2009, extending his time to make his U.S. Individual Income Tax Return for tax year on or before October 15, 2010.
12. Respondent failed to make his U.S. Individual Income Tax Return for tax year 2009 on or before October 15, 2010.

Count 4

13. Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to make a U.S. Individual Tax Return (Form 1040) for tax year 2010, on or before October 15, 2011.
14. Pursuant to 26 U.S.C. § 6081, Respondent timely filed an application (Form 4868) for an automatic extension of time to file his federal income tax return for tax year 2010, extending his time to make his U.S. Individual Income Tax Return for tax year on or before October 15, 2011.

15. Respondent failed to make his U.S. Individual Income Tax Return for tax year 2010 on or before October 15, 2011.

Count 5

16. Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to make a U.S. Individual Tax Return (Form 1040) for tax year 2011, on or before October 15, 2012.
17. Pursuant to 26 U.S.C. § 6081, Respondent timely filed an application (Form 4868) for an automatic extension of time to file his federal income tax return for tax year 2011, extending his time to make his U.S. Individual Income Tax Return for tax year on or before October 15, 2012.
18. Respondent failed to make his U.S. Individual Income Tax Return for tax year 2010 on or before October 15, 2012.

Count 6

19. Respondent was required by 26 U.S.C. § 6109 and Treasury Regulations thereunder to use a PTIN on the return or claim for refund when preparing substantially all of a tax return or claim for refund.
20. During 2012, Respondent did not have a valid, current PTIN.
21. Respondent prepared or signed twenty-one individual tax returns and four business tax returns during the 2012 calendar year without possessing a current, valid PTIN.

Count 7

22. Respondent was required by 26 U.S.C. § 6109 and Treasury Regulations thereunder to use a PTIN on the return or claim for refund when preparing substantially all of a tax return or claim for refund.
23. To date, Respondent does not have a valid, current PTIN for 2013.
24. As of June 2, 2013, Respondent had prepared or signed five individual tax returns and one business tax return during the 2013 calendar year without possessing a current, valid PTIN.

Count 8

25. On June 23, 2010, OPR mailed a tax compliance letter for Respondent. That letter requested Respondent to provide proof of filing past due tax returns to OPR.
26. Respondent failed to respond to this June 23, 2010 letter, as required by 31 C.F.R. § 10.20(b) (Rev. 4-2008).

Count 9

27. On October 14, 2010, OPR mailed an allegation letter to Respondent. That letter requested Respondent respond to OPR and notified Respondent that he should respond to the allegation letter and that a failure to respond to the allegation letter would be a violation of section 10.20(b) of Circular 230 (Rev. 4-2008).
28. Respondent failed to respond to this October 14, 2010 letter, as required by 31 C.F.R. § 10.20(b) (Rev. 4-2008).

Count 10

29. On June 27, 2012, OPR mailed an allegation letter to Respondent. That letter set out allegations of tax non-compliance against Respondent, along with additional information OPR required and notified Respondent that he should respond to the allegation letter and that a failure to respond to the allegation letter would be a violation of section 10.20(a)(3) of Circular 230 (Rev. 8-2011).
30. Respondent failed to respond to this October 14, 2010 letter, as required by 31 C.F.R. § 10.20(a)(3) (Rev. 8-2011).

Aggravating Factors

31. Respondent failed to timely make his Federal individual income tax return (Form 1040) for tax year 2000. Respondent made his Form 1040 on December 9, 2002. The Form 1040 was due by extension on August 15, 2001.
32. Respondent failed to timely make his Federal individual income tax return (Form 1040) for tax year 2001. Respondent made his Form 1040 on August 4, 2003. The Form 1040 was due by extension on August 15, 2002.
33. Respondent failed to timely make his Federal individual income tax return (Form 1040) for tax year 2002. Respondent made his Form 1040 on September 22, 2003. The Form 1040 was due by extension on August 15, 2003.
34. Respondent failed to make his Federal individual income tax return (Form 1040) for tax year 2006.

ANALYSIS

Here, Respondent had the opportunity to contest the allegations in the Complaint but failed to do so. Title 31 C.F.R. § 10.68(b) prescribes “if a non-moving party does not respond within 30 days to a filing of a motion for decision by default for failure to file a timely answer . . . the nonmoving party is deemed not to oppose the motion.” Here,

Respondent has not filed a response. Therefore, in accordance with 31 C.F.R. §§ 10.64(d) and § 10.76, the allegations in the Complaint are hereby deemed **ADMITTED** by default. See also 31 C.F.R. § 10.64(c) (“Every allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing”).

Respondent’s admitted actions as set forth in the Complaint unquestionably constitute disreputable conduct pursuant to 31 C.F.R. § 10.51, and reflect adversely on Respondent’s fitness to practice before the IRS and represent others before that agency.

Furthermore, upon review of the facts presented in the record as a whole, the undersigned finds Complainant’s proposed penalty of disbarment is appropriate given the egregiousness of Respondent’s overall conduct associated with the 10 proven Counts against him and the aggravating factors Complainant articulated. Respondent: 1) has serially failed to file his required tax returns (both for the years charged and for years prior); 2) has prepared tax returns for others without obtaining the proper authorization to do so; and 3) has failed to respond to OPR’s efforts to request information explaining his alleged misconduct. See Owrutsky v. Brady, 1991 WL 18156 (4th Cir. 1991); OPR v. Coston, Complaint No. 2010-19 (Decision and Order on Default, Feb. 4, 2011) (finding that willful failure to respond to lawful requests for information shows disregard for the requirements established for the benefit of the IRS and the public).² Such actions render Respondent unfit for practice before the IRS, and disbarment is the only appropriate sanction under these circumstances. See OPR v. Hurwitz, Complaint No. 2007-12 (Decision on Appeal, April 21, 2009) (repeated failure to file personal tax returns

² Final IRS Decisions are publically [*sic*] available at www.irs.gov/Tax-Professionals/Enrolled-Actuaries/Final-Agency-Decisions.

inconsistent with right to practice before IRS); OPR v. Blum, Complaint No. 2006-24 (Decision on Appeal, February 21, 2008) (affirming disbarment of practitioner who failed to file tax returns for five tax years).

CONCLUSIONS OF LAW

1. At all relevant times, Respondent engaged in practice before the IRS and is subject to the disciplinary authority of the OPR Director under the rules and regulations contained in 31 C.F.R. Part 10. .
2. Respondent's failure to make a U.S. Individual Income Tax Return for tax year 2007 was willful and constitutes incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51 (Rev. 4-2008) generally and a willful violation of § 10.51(a)(6) (Rev. 4-2008) more particularly, for which Respondent may be censured, suspended or disbarred from practice before the IRS.
3. Respondent's failure to make a U.S. Individual Income Tax Return for tax year 2008 was willful and constitutes incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51 (Rev. 4-2008) generally and a willful violation of § 10.51(a)(6) (Rev. 4-2008) more particularly, for which Respondent may be censured, suspended or disbarred from practice before the IRS.
4. Respondent's failure to make a U.S. Individual Income Tax Return for tax year 2009 was willful and constitutes incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51 (Rev. 4-2008) generally and a willful violation of § 10.51(a)(6) (Rev. 4-2008) more particularly, for which Respondent may be censured, suspended or disbarred from practice before the IRS.
5. Respondent's failure to make a U.S. Individual Income Tax Return for tax year 2010 was willful and constitutes incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51 (Rev. 8-2011) generally and a willful violation of § 10.51(a)(6) (Rev. 8-2011) more particularly, for which Respondent may be censured, suspended or disbarred from practice before the IRS.
6. Respondent's failure to make a U.S. Individual Income Tax Return for tax year 2011 was willful and constitutes incompetence and disreputable conduct pursuant to 31 C.F.R. § 10.51 (Rev. 8-2011) generally and a willful violation of § 10.51(a)(6) (Rev. 8-2011) more particularly, for which Respondent may be censured, suspended or disbarred from practice before the IRS.
7. Respondent's preparation of tax returns during 2012 without possessing a current or otherwise valid PTIN was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally and a willful violation of 31 C.F.R. § 10.51(a)(17) (Rev. 8-2011) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

8. Respondent's preparation of tax returns during 2013 without possessing a current or otherwise valid PTIN was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally and a willful violation of 31 C.F.R. § 10.51(a)(17) (Rev. 8-2011) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.
9. Respondent's failure to respond to OPR's June 23, 2010 letter was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally and a willful violation of 31 C.F.R. § 10.20(b) (Rev. 4-2008) more specifically, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.
10. Respondent's failure to respond to OPR's October 14, 2010 letter was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally and a willful violation of 31 C.F.R. § 10.20(b) (Rev. 4-2008) more specifically, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.
11. Respondent's failure to respond to OPR's June 27, 2012 letter was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally and a willful violation of 31 C.F.R. § 10.20(a) (3) (Rev. 8-2011) more specifically, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.
12. Each of the 10 Counts alleged in the Complaint are therefore found **PROVED**.
13. Complainant has proven by clear and convincing evidence Respondent's above-described conduct warrants Respondent's disbarment from practice before the IRS.

WHEREFORE:

ORDER

IT IS HEREBY ORDERED that Complainant's Motion for a Decision by Default is **GRANTED** and that Ray Lewis is **DISBARRED** from practice before the Internal Revenue Service from the date of this decision and order, reinstatement thereafter being pursuant to the provisions contained in 31 C.F.R. Part 10, section 10.81 and at minimum requiring the practitioner to demonstrate that he is likely to conduct himself in accordance with the requirements of 31 C.F.R. Part 10 and that his reinstatement would not be contrary to the public interest.

IT IS SO ORDERED.

Done and Dated January 30, 2014 at
Alameda, California

/s/ Parlen L. McKenna
HON. PARLEN L. McKENNA
Administrative Law Judge
U.S. Coast Guard

Pursuant to 31 C.F.R. § 10.77, this Decision may be appealed to the Secretary of the Treasury within thirty (30) days from the date of service of this Decision on the parties. The Notice of Appeal must be filed in duplicate with the Director, Office of Professional Responsibility, 1111 Constitution Ave. NW, SE:OPR 7238IR, Washington D.C. 20224, and shall include a brief that states the party's exceptions to this Decision and supporting reasons for any exceptions.

CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing ***Order Granting Complaint's [sic]*** ***Motion for Default Decision*** (13-IRS-0004) upon the following parties and entities in this proceeding as indicated in the manner described below:

ALJ Docketing Center
United States Coast Guard
[Redacted]
Baltimore, Maryland [Redacted]
[Redacted]
[Redacted]
(Via Facsimile)

Mikel C. Deimler, Attorney
Office of Chief Counsel (IRS)
General Legal Services
[Redacted]
San Francisco, CA [Redacted]
[Redacted]
[Redacted]
[Redacted]
(Via Facsimile)

[Redacted]
Internal Revenue Service, Room 7238/IR
1111 Constitution Avenue, NW
Washington, C.D., [sic] 20224
(Via First Class Mail)

Ray Lewis
[Redacted]
San Francisco, CA [Redacted]
(Via First Class Mail)

Done and dated on February 6, 2014, at
Alameda, California.

/s/ Cindy June Melendres
Cindy June Melendres
Paralegal Specialist to the
Hon. Parlen L. McKenna