

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
OFFICE OF PROFESSIONAL RESPONSIBILITY  
WASHINGTON, DC

DIRECTOR, OFFICE OF  
PROFESSIONAL RESPONSIBILITY,

Complainant,

v.

Complaint No. 2007-08

PETER DELIBERTY,

Respondent.

DECISION ON MOTION FOR SUMMARY JUDGMENT

On February 26, 2007, a Complaint was issued on behalf of the Director, Office of Professional Responsibility (OPR), Internal Revenue Service, pursuant to 31 C.F.R. §10.60, issued under the authority of 31 U.S.C. §330, alleging the Respondent Peter A. DeLiberty, an attorney who has practiced before the Internal Revenue Service, engaged in disreputable conduct within the meaning of 30 C.F.R. § 10.51 and is subject to suspension or disbarment from such practice. Specifically, it is alleged that the Respondent failed to timely file required federal income tax returns for the years 2000, 2001, 2002, 2003, and 2004. On March 31, 2007, the Respondent served its timely answer to the complaint. The Respondent admitted that he did not timely file the tax returns in question, but denied that his failure to file was willful.

On July 18, 2007, counsel for the Complainant filed a motion for summary judgment asserting that there are no material issues of fact in dispute in this matter and that an evidentiary hearing is unnecessary. On August 13, 2007, the Respondent responded to the motion by conceding that the material facts, set forth at paragraphs 3 through 12 of the motion, are not in dispute.

Having carefully reviewed the pleadings and the account transcripts relating to Respondent's federal tax returns for the years in question, which are attached as exhibits to the Complainant's motion, I find that there are no material issues of fact to be resolved and that summary judgment is the appropriate way to dispose of this matter.

The following material facts are not in dispute. The Respondent was aware of his responsibility to timely file Federal individual income tax returns (tax returns) for tax years 2000-2004. The Respondent filed for extensions of time to file his tax returns for tax years 2002, 2003 and 2004. The Respondent did not timely file his tax returns for tax years 2000-2004. On or about March 10, 2006, OPR informed him of his failure to file said tax returns and requested to contact OPR to resolve the matter. The Respondent did not contact OPR until February 8, 2007. This was after OPR referred the matter to its Office of Chief Counsel for litigation. On or about December 1, 2006, the Office of Chief Counsel informed the Respondent that his failure to file his tax returns could result in a proceeding to disbar him from practice before the Internal Revenue Service. On or about December 15, 2006, the Respondent contacted the Office of

Chief Counsel and explained that his failure to file could be attributed to his affliction with diabetes mellitus over the past 9 years. On or about February 8, 2007, the Respondent informed OPR and the Office of Chief Counsel that he filed his 2000-2004 tax returns on January 29, 2007. On February 26, 2007, OPR filed a complaint alleging the Respondent's failure to timely file his 2000-2004 tax returns constituted disreputable conduct under 31 C.F.R. §10.51.

As an attorney who has engaged in practice before the Internal Revenue Service, the Respondent is subject to the disciplinary authority of the Secretary of the Treasury and the OPR Director. Pursuant to 31 C.F.R. §10.50, the Respondent's eligibility to practice before the Internal Revenue Service is subject to suspension or disbarment by reason of engaging in disreputable conduct. Willfully failing to make a federal tax return in violation of the revenue laws of the United States constitutes disreputable conduct within the meaning of 31 C.F.R. §10.51(f). While not defined in the regulations, the term "willful" as used in the Treasury laws has consistently been held to mean, in both civil and criminal contexts, the "voluntary, intentional violation of a known legal duty." E.g., *United States v. Pomponio*, 429 U.S. 10, 12 (1976); *Thibodeau v. United States*, 828 F. 2d 1499, 1505 (11th Cir. 1987). The Director does not have to make a showing of malicious intent or bad purpose on the Respondent's part, only that he purposefully disregarded or was indifferent to his obligation. As an attorney representing taxpayers before the Internal Revenue Service, the Respondent was aware of his responsibility to timely file his own federal income tax returns. I find that his repeated willful failure to do so for five years constitutes disreputable conduct within the meaning of the regulations.

The Complainant seeks to have the Respondent disbarred from practice before the Internal Revenue Service. Attached to his motion for summary judgment is the declaration of Don F. Svendsen, Jr., Deputy Director of OPR, the office with responsibility for regulating the conduct of practitioners before the Internal Revenue Service. In his declaration, Svendsen lists the factors which OPR considers in making its recommendation of an appropriate penalty when disreputable conduct has been established. Those factors are the nature and severity of the offenses, the repetitiveness of the conduct, any aggravating or mitigating circumstances, and the impact on tax administration of not adequately disciplining the practitioner. He asserts that practitioners such as the Respondent, who prepare tax returns for other taxpayers, are necessarily aware of their responsibility to timely file returns. Those who willfully fail to do so should not be in the business of representing others before the Internal Revenue Service. He asserts that the repeated failure of the Respondent to timely file his returns has established a pattern of misconduct. He also considered the Respondent's contention that such failures were due to alleged health problems stemming from diabetes mellitus, but noted that he only raised this issue when threatened with litigation. Moreover, Svendsen submits that the Respondent submitted no evidence to demonstrate how such a health condition rendered him incapable of timely filing his 2000-2004 tax returns. Indeed, after being confronted with litigation, the Respondent was able to file his 2000-2004 tax returns in a little over one month.

The Respondent's answer to the Complaint and response to the motion for summary judgment fail to counter OPR's basis as to the appropriate penalty in this matter. There is no objective evidence in the record to support the Respondent's assertion that his diabetic condition played a role in his repeated failure to timely file his federal tax returns. Considering all of the circumstances, I do not find the additional assertion, that disbarment from practice before the Internal Revenue Service could result in disbarment to practice as an attorney in the State of Pennsylvania, constitutes a mitigating factor.

I find that the recommendation of OPR concerning the appropriate penalty is entitled to some deference. Considering all factors, including my knowledge of sanctions OPR has sought

in similar cases, I find that the disbarment of the Respondent from practice before the Internal Revenue Service is warranted in this case.<sup>1</sup> Accordingly, it is

ORDERED that the Respondent Peter A. DeLiberty is hereby disbarred from practice before the Internal Revenue Service.<sup>2</sup>

Dated Washington, DC September 11, 2007

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Michael A. Rosas  
Administrative Law Judge

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<sup>1</sup> Pursuant to 31 C.F.R. §10.76(a), I find that the Complaint's factual allegations of disreputable conduct by Respondent have been proven by clear and convincing evidence.

<sup>2</sup> Pursuant to 31 C.F.R. §10.77, either party may appeal this Decision to the Secretary of the Treasury within thirty (30) days of issuance.

CERTIFICATION OF RECORD

I, Michael A. Rosas, Administrative Law Judge, certify that the following documents;

Complaint No. 2007-08, *Director, Office of Professional Responsibility v. Peter A. DeLiberty*, dated February 26, 2007;

Answer to the Complaint, dated March 31, 2007,

Motion for Summary Judgment, dated July 13, 2007, with attached exhibits;

Respondent's Answer to the Motion for Summary Judgment, dated August 4, 2007; and

Decision on Motion for Summary Judgment, dated September 11, 2007;

constitute the complete administrative record in the matter of *Director, Office of Professional Responsibility v Peter A. DeLiberty*, Complaint 2007-08.

Dated at Washington, DC September 11, 2007

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Michael A. Rosas  
Administrative Law Judge