

**THE DEPARTMENT OF THE TREASURY
OFFICE OF PROFESSIONAL RESPONSIBILITY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C.**

Director,)	
)	
Office of Professional Responsibility,)	
)	
Complainant,)	Complaint No. 2009-30
)	
v.)	
)	
Marjorie J. Hillerman,)	
)	
Respondent.)	
_____)	

DEFAULT DECISION AND ORDER

On October 27, 2009, Karen L. Hawkins, acting in her official capacity as Director of the Office of Professional Responsibility, Internal Revenue Service, Department of the Treasury (“Complainant”), filed a Complaint against Marjorie J. Hillerman (“Respondent”) pursuant to 31 U.S.C. § 330 and 31 C.F.R. § 10.60. The Complaint alleges that Respondent, an Enrolled Agent who has engaged in practice before the Internal Revenue Service (“IRS”), engaged in disreputable conduct as defined by 31 C.F.R. § 10.51, which reflects adversely on Respondent’s current fitness to practice. Specifically, the Complaint alleges that Respondent failed to file timely Federal individual income tax returns for six consecutive tax years. As a sanction for this alleged misconduct, Complainant seeks to have Respondent disbarred from practice before the IRS. The relief requested by Complainant would allow Respondent to be reinstated thereafter at the sole discretion of the Office of Professional Responsibility, and reinstatement at a minimum would require Respondent to have filed all Federal tax returns and paid all outstanding Federal tax liabilities for which she is responsible, or to have entered into an installment agreement or offer in compromise which the IRS has accepted and with which Respondent has remained in compliance.

Complainant served the Complaint and a cover letter, both dated October 27, 2009, on Respondent by certified mail, return receipt requested, addressed to Respondent at her last known mailing address on file with the IRS: Address 1. Pursuant to 31 C.F.R. §§ 10.5(a) and 10.6(c), an Enrolled Agent is required to provide and keep current with Complainant his or her address for all correspondence. The Complaint and cover letter were delivered to Respondent’s address on October 30, 2009, but the certified mail slip was signed by an individual other than Respondent. Complainant then served a second copy of the Complaint and cover letter, both dated November 10, 2009, on Respondent by first class mail addressed to Respondent at the foregoing address.

The Complainant notified Respondent of her obligation to file and serve an answer within thirty (30) calendar days from the date of service of the Complaint and that a failure to file an answer could result in a decision by default being rendered against Respondent.

To date, Respondent has not filed an answer, nor has Respondent requested an extension of time to file an answer. Prompted by Respondent's failure to file a timely answer, Complainant filed a Motion for a Decision by Default on December 22, 2009. the Motion was served on Respondent by regular mail and addressed to Respondent at her last known mailing address on file with the IRS: Address 1. To date, Respondent has not filed a response to the Motion.

FINDINGS OF FACT

On the basis of the Complaint, the Court makes the following Findings of Fact:

1. At all relevant times, Respondent has been an Enrolled Agent who engaged in practice before the IRS within the meaning of 31 C.F.R. § 10.2(a)(4).
2. Respondent is subject to the disciplinary authority of the Secretary of the Treasury and the Director of the Office of Professional Responsibility and to the rule and regulations contained in 31 C.F.R. Part 10.
3. On October 27, 2009, Complainant filed a Complaint alleging that Respondent engaged in disreputable conduct within the meaning of 31 C.F.R. § 10.51 as set forth in Counts 1-6 below. To date, Respondent has not filed an answer.
4. On December 22, 2009, Complainant filed a Motion for a Decision by Default, citing Respondent's failure to file an answer. To date, Respondent has not filed a response to this Motion.

COUNT 1

5. Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to timely file her Federal individual income tax return for tax year 2002.
6. Respondent failed to timely file her Federal individual income tax return for tax year 2002.
7. Such failure to timely file her Federal individual income tax return was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally, and a willful violation of § 10.51(f) (Rev. 2002) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

COUNT 2

8. Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to timely file her Federal individual income tax return for tax year 2003.
9. Respondent failed to timely file her Federal individual income tax return for tax year 2003.
10. Such failure to timely file her Federal individual income tax return was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally, and a willful violation of § 10.51(f) (Rev. 2002) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

COUNT 3

11. Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to timely file her Federal individual income tax return for tax year 2004.
12. Respondent failed to timely file her Federal individual income tax return for tax year 2004.
13. Such failure to timely file her Federal individual income tax return was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally, and a willful violation of § 10.51(f) (Rev. 2002) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

COUNT 4

14. Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to timely file her Federal individual income tax return for tax year 2005.
15. Respondent failed to timely file her Federal individual income tax return for tax year 2005.
16. Such failure to timely file her Federal individual income tax return was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally, and a willful violation of § 10.51(f) (Rev. 2005) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

COUNT 5

17. Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to timely file her Federal individual income tax return for tax year 2006.
18. Respondent failed to timely file her Federal individual income tax return for tax year 2006.
19. Such failure to timely file her Federal individual income tax return was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally, and a willful violation of § 10.51(f) (Rev. 2005) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

COUNT 6

20. Respondent was required by 26 U.S.C. §§ 6011, 6012 and 6072 to timely file her Federal individual income tax return for tax year 2007.
21. Respondent failed to timely file her Federal individual income tax return for tax year 2007.
22. Such failure to timely file her Federal individual income tax return was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51 generally, and a willful violation of § 10.51(f) (Rev. 2007) more particularly, for which Respondent may be censured, suspended, or disbarred from practice before the IRS.

CONCLUSIONS OF LAW

23. Pursuant to 31 C.F.R. § 10.64(d), a respondent's failure to file an answer within the time prescribed constitutes an admission of the allegations of the complaint and a waiver of hearing. Under such circumstances, the Administrative Law Judge may make a decision by default without a hearing or further procedure. Respondent's failure to file an answer by the established deadline in the instant proceeding, therefore, constitutes an admission of the allegations of the Complaint and waives Respondent's right to a hearing, and a decision by default is appropriate.
24. Pursuant to 31 C.F.R. § 10.68(b), if a respondent fails to respond within thirty (30) days of the filing of a motion for decision by default for failure to file a timely answer, the respondent is deemed not to oppose the motion. In the present proceeding, Respondent has failed to respond within thirty (30) days of the filing of a Complainant's Motion for a Decision by Default and, therefore, is deemed not to oppose the Motion.
25. Pursuant to 31 C.F.R. § 10.50(a), an Administrative Law Judge may censure, suspend, or disbar a practitioner from practice before the IRS as a sanction for incompetence or disreputable conduct as defined by 31 C.F.R. § 10.51. Under 31 C.F.R. § 10.51, disreputable conduct for which a practitioner may be sanctioned pursuant to 31 C.F.R. § 10.50(a) includes, but is not limited to, willfully failing to make a Federal tax return in violation of the revenue laws of the United States. Thus, Respondent's actions, as set forth in Counts 1-6 above, constitute disreputable conduct under 31 C.F.R. § 10.51 and reflect adversely on her current fitness to practice, for which Respondent may be censured, suspended, or disbarred from practice before the IRS pursuant to 31 C.F.R. § 10.50(a).
26. As a sanction for this misconduct, Complainant requests that Respondent be disbarred from practice before the IRS. The proposed sanction is reasonable. The willful failure to file individual tax returns has been found to constitute sufficient grounds for disbarment. *E.g. Poole v. U.S.*, Docket No. 84-0300, 1984 U.S. Dist. LEXIS 15351, at *1-2 (D.D.C. June 29, 1984) (upholding the disbarment of a Certified Public Accountant who had failed to file his individual tax returns for three consecutive tax years). Given Respondent's failure to file her individual tax returns for six consecutive tax years, her effective admission of the allegations in the Complaint, and the absence of any information indicating that disbarment is unwarranted, the sanction of disbarment from practice before the IRS is appropriate in this matter.

ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record, the Court grants Complainant's Motion for a Decision by Default, and accordingly, finds Respondent, Marjorie J. Hillerman, to have engaged in disreputable conduct within the meaning of 31 C.F.R. § 10.51 as alleged in the Complaint. From the date of this Default Decision and Order, the Court orders that Marjorie J. Hillerman is disbarred from practice before the IRS, reinstatement thereafter being at the sole discretion of the Office of Professional Responsibility and at a minimum requiring Respondent to have filed all Federal tax returns and paid all outstanding Federal tax liabilities for which she is responsible, or to have entered into an installment agreement or offer in compromise which the IRS has accepted and with which Respondent has remained in compliance.

This Default Order constitutes a Decision as provided in 31 C.F.R. § 10.64(d). Pursuant to 31 C.F.R. § 10.76(d), a decision by an Administrative Law Judge becomes, without further proceedings, the decision of the Department of the Treasury thirty (30) days after the date of the Administrative Law Judge's decision unless a party files an appeal pursuant to 31 C.F.R. § 10.77 within thirty (30) days of the date on which the decision is served on the parties.

So ordered.

William B. Moran
United States Administrative Law Judge

Dated: January 26, 2010
Washington, D.C.