

United States
Department of the Treasury

Director, Office of Professional Responsibility,
Complainant-Appellee

v.

Complaint No. 2009-26

Tim W. Kaskey,
Respondent-Appellant

Decision on Appeal

Authority

Under the Authority of General Counsel Order No. 9 (January 19, 2001) and the authority vested in her as Acting Assistant General Counsel of the Treasury who was the Acting Chief Counsel of the Internal Revenue Service, through a delegation order dated June 26, 2009, Clarissa C. Potter delegated to the undersigned the authority to decide disciplinary appeals to the Secretary of the Treasury filed under Subpart D of Part 10 of Title 31, Code of Federal Regulations 31 C.F.R. Part 10, *Practice Before the Internal Revenue Service* (reprinted in and hereinafter referred to as Treasury Department Circular No. 230). This is such an Appeal from a Default Decision and Order entered in this proceeding against Tim W. Kaskey by Administrative Law Judge William B. Moran (the ALJ) on September 9, 2009.¹

Background

This proceeding was commenced on June 19, 2009, when Melissa Martinez, an attorney acting as the authorized representative of the Director of the Office of Professional Responsibility (OPR), filed a Complaint against Respondent-Appellant. The Complaint alleges that Respondent-Appellant: (i) has engaged in practice before the Internal Revenue Service, as defined by 31 C.F.R. § 10.2(a)(4) as a Certified Public Accountant, (ii) had willfully failed to file Federal income tax returns as required by 26 U.S.C. §§ 6011, 6012, and 6072 for the years 2001, 2002, 2003, 2004, and 2005, (iv) that with respect to the 2001 tax year such willful failure constituted disreputable conduct within the meaning of 31 C.F.R. § 10.51

¹ A copy of the ALJ's Decision appears as Attachment 1.

generally et. seq. and a willful violation of 31 C.F.R. § 10.51(d) (Rev. 1994) more particularly, (v) that with respect to the years 2002, 2003, 2004, and 2005, each such willful failure constituted disreputable conduct within the meaning of 31 C.F.R. § 10.51 generally and a willful violation of § 10.51(f) (Rev. 2002) more particularly, (vi) that for the tax years 2004 and 2005 he was required to exercise due diligence in the preparation of the tax returns of corporate client S and individual clients N² in accordance with the requirements of 31 U.S.C. § 330 and 31 C.F.R. § 10.22(a)(1) and Respondent also failed to exercise due diligence when he failed to determine the correctness of the representations he made to the IRS concerning the tax matters of taxpayers S and N³, and (vi) that for the tax years 2004 and 2005 he was required by 31 U.S.C. § 330 and 31 C.F.R. §10.34(b) “to disclose and avoid penalties likely to apply with respect to the tax position he submitted to the IRS on behalf of corporate and individual taxpayers” S and N “for the Tax Years 2004 and 2005” and he failed to disclose and avoid such penalties. Complainant-Appellee requested that Respondent-Appellant “be disbarred from practice before the Internal Revenue Service pursuant to the provisions of 31 C.F.R. § 10.50 and § 10.70, issued under the authority of 31 U.S.C § 330, reinstatement thereafter being at the sole discretion of OPR, and at a minimum requiring the Respondent-Appellant to have filed all Federal tax returns and paid all outstanding Federal tax liabilities for which he is responsible, or to have entered into an installment agreement or offer of (sic) compromise which has been accepted by the Service and with which the practitioner has remained in compliance.”⁴

The Complaint notified Respondent-Appellant that an Answer must be filed within 30 days after service of the Complaint and that failure to answer the Complaint may result in a decision by default. Respondent-Appellant failed to file an Answer to the Complaint. On August 6, 2009, Complainant-Appellee filed Complainant’s Motion for a Decision by Default. Respondent-Appellant failed to file a response to the Motion.

On September 9, 2009, the ALJ issued a Default Decision and Order holding that the failure to file an answer within the time prescribed constitutes an admission of the allegations of the complaint and a waiver of hearing pursuant to 31 C.F.R. § 10.64(d). The ALJ found that Respondent-Appellant’s failure to file returns constitutes disreputable conduct under 31 C.F.R. § 10.51 and reflected adversely on his current fitness of practice. The ALJ found that Respondent-Appellant failed to exercise due diligence as required by 31 C.F.R. § 10.22(a) in preparing,

² I have chosen to use a single letter to represent the third party taxpayers whose returns are in issue in this matter. S is a corporation owned by married couple N who filed a joint return. Respondent has been made aware of the taxpayers involved through correspondence from OPR and through the Complaint.

³ 31 C.F.R. § 10.22(a)(2)

⁴ The Complaint also asserts that Respondent-Appellant’s failures to file returns for 2006 and 2007 constitute aggravating factors.

approving, and filing tax returns for S and N and in failing to determine the correctness of oral or written representations made to the Department of Treasury, that Respondent-Appellant failed to inform clients S and N of any penalties reasonably likely to apply to S and N, as well as the opportunities to avoid such penalties, with respect to the tax position the Respondent-Appellant submitted to the IRS on S's and N's behalf in violation of the regulations under 31 C.F.R. § 10.34(b). The ALJ found that these violations constitute disreputable conduct under 31 C.F.R. § 10.51.

The ALJ granted Complainant-Appellee's Motion for a Decision by Default and determined that Tim W. Kaskey is disbarred from practice before the Internal Revenue Service, "reinstatement thereafter being at the sole discretion of OPR, and at a minimum requiring Respondent-Appellant to have filed all Federal tax returns and paid all outstanding Federal tax liabilities for which he is responsible, or to have entered into an installment agreement or offer of (sic) compromise which has been accepted by the Service and with which the practitioner has remained in compliance."

Decision on Motion for Default Judgment

I concur with the decision of the ALJ that a decision on the Motion for a Decision by Default is appropriate. Respondent-Appellant never filed an Answer to the complaint. Respondent-Appellant never requested an extension of time to file an Answer to the Complaint. In his Appeal, Respondent-Appellant did not provide any reasons for his failure to file an Answer. Since Respondent-Appellant failed to file an Answer, all of the allegations in the Complaint are deemed admitted as detailed in the opinion of the ALJ. Respondent-Appellant engaged in disreputable conduct within the meaning of 31 C.F.R. § 10.51(d) by willfully failing to timely file Federal income tax returns for the years 2001, 2002, 2003, 2004, and 2005 which were required to be filed, by failing to exercise due diligence as required by 31 C.F.R. § 10.22(a) in preparing, approving, and filing tax returns for S and N and in failing to determine the correctness of oral or written representations made to the Department of Treasury, by failing to inform clients S and N in violation of the regulations under 31 C.F.R. § 10.34(b) of any penalties reasonably likely to apply to S and N, as well as the opportunities to avoid such penalties with respect to the tax position the Respondent-Appellant submitted to the IRS on S and N's behalf

Defenses to the Allegations Raised in the Appeal

In his Appeal, Respondent-Appellant states that his failure to file returns was due to an ongoing medical condition. The only evidence other than Respondent-Appellant's statements was a copy of a prescription. Throughout the period in which Respondent-Appellant failed to file his personal income tax returns, he prepared many returns for other taxpayers.

Respondent-Appellant claims that his clients misrepresented their income to him, and he implies that the misrepresentation was the reason the returns of S and N were incorrect. The examination of the returns of S and N developed a great deal of evidence reflecting the lack of due diligence by Respondent-Appellant in the preparation of these returns. A portion of that evidence includes: the fact that the officer compensation reported on the corporate return of S did not match the wages reported on the returns of N even though the only officers of the corporation were N, the corporate books clearly identified personal items of N which were being paid by S with no loans or distributions being shown on the returns of S, and it was inconceivable that N could pay their living expenses based on the income reported on their returns.

The defenses raised by Respondent-Appellant in his Appeal lack merit.

Conclusion

For the reasons stated, I hereby determine that the Respondent-Appellant, Tim W. Kaskey, is disbarred from practice before the Internal Revenue Service, reinstatement thereafter being at the sole discretion of OPR, and at a minimum requiring Respondent-Appellant to have filed all Federal tax returns and paid all outstanding Federal tax liabilities for which he is responsible (or to have arranged with the IRS to pay, all outstanding Federal tax). This constitutes FINAL AGENCY ACTION in this proceeding.

**Ronald D. Pinsky
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
(As authorized delegate of
Timothy F. Geithner,
Secretary of the Treasury)**

**May 28, 2010
Lanham, MD**