

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. 2007-12

HAROLD L. HURWITZ,

Respondent

DECISION ON MOTION FOR SUMMARY JUDGMENT

On March 30, 2007, a Complaint was issued on behalf of the Director, Office of Professional Responsibility, Internal Revenue Service, Department of the Treasury, pursuant to 31 C.F.R. 10.60, issued under the authority of 31 U.S.C. 330, alleging that the Respondent, Harold L. Hurwitz, an enrolled agent who practices before the Internal Revenue Service, engaged in disreputable conduct within the meaning of 31 C.F.R. 10.51. The complaint seeks to have the Respondent suspended from practice for 36 months. Specifically, it is alleged that Respondent willfully failed to timely file income tax returns for the years 2000 through 2004. The Complaint was duly served upon Respondent. He subsequently submitted a letter answer to the complaint, dated, ironically, April 15, 2007. In his answer, Respondent conceded that he had failed to file timely returns as alleged, and asserted that he was "painfully aware of the legalities" as to the timely filing of returns, but he intended to file "as soon as I could." He stated that all returns were now filed and all taxes paid. He claimed that his late filings were not "wilfull" and were due to health problems, the complexity of the returns and other factors. all of the returns were filed before the end of January 2007, within the extended amount of time granted by the Internal Revenue Service, and that all of the taxes owed were paid.

On May 7, 2008, counsel for the Director filed a motion for summary judgment, with attached exhibits, including an affidavit from Carolyn H. Gray, Deputy Director of the Office of Professional Responsibility (OPR) of the Internal Revenue Service (IRS), as well as certified records from the IRS with respect to Respondent's tax filings, which was served on Respondent by certified mail. The Director asserts that there are no genuine and material issues of fact in dispute in this matter and that thus no evidentiary hearing is necessary. Respondent has failed to file a response to the motion for summary judgment.

Having carefully reviewed the pleadings and the exhibits in support of the motion for summary judgment, I find that there are no material issues of fact to be resolved and that

the matter can appropriately be decided without a hearing. By letter dated February 22, 2006, OPR informed Respondent of his delinquencies in timely filing tax returns for the relevant tax years. In a response, dated March 24, 2006, Respondent did not dispute his delinquencies, but offered the same explanations he later articulated in his answer to the complaint. Respondent's 2000 individual tax return was due on or before October 15, 2001, but was not filed by the due date; the IRS filed a return on his behalf. His 2001 return was filed on January 31, 2005, well after the due date of October 15, 2002. His 2002 return was due on October 15, 2003 and was filed on June 10, 2005. His 2003 return was due on October 15, 2004, but was filed on January 9, 2006. And his 2004 return was due on October 15, 2005, but was not filed until July 11, 2006.

In these circumstances, I find that the Director has established that Respondent has exhibited a pattern of failing to file tax returns in a timely manner. Willfully failing to file tax returns amounts to disreputable conduct. In this context, "willful" as used in the applicable regulations simply means the "voluntary intentional violation of a known legal duty." *United States v. Pomponio*, 429 U. S. 10, 12 (1976). Willfulness does not require proof of an evil motive or bad faith. *Ibid.* Respondent is an enrolled licensed to practice before the IRS. His eligibility to practice before the IRS subjects him to suspension or disbarment by reason of engaging in disreputable conduct. As an enrolled agent authorized to represent other taxpayers and practice before the IRS, Respondent knew that it was his responsibility to timely file his own tax returns. Indeed, Respondent pointed out that he helped his clients file their tax returns in a timely manner, but he failed to timely file his own tax returns. His failure to do so was thus willful. And his willful failure to timely file returns for 5 years constitutes disreputable conduct within the meaning of 31 C. F. R. 10.51 (f). Such disreputable conduct has been shown by clear and convincing evidence, as required under 31 C.F.R. Section 10.76(a).

In support of the requested penalty of disbarment, Gray's affidavit points out that Respondent has repeatedly failed to timely file tax returns and that there are no mitigating factors apparent in the record. The affidavit also mentions that allowing tax practitioners to fail to timely file their own tax returns seriously undermines the entire system of voluntary compliance. Gray also points out that she reviewed the reasons given for Respondent's failure to timely file his tax returns and found them wanting, in part because he continued to prepare timely tax returns for his clients. I agree. Whatever health and other problems Respondent was suffering, they did not prevent him from helping to file timely tax returns for his clients and presumably getting paid for such help. Thus, those problems were not so serious as to prevent him from timely filing his own tax returns for the period in question.

In these circumstances, I find that a suspension of Respondent from practice before the IRS for 36 months, the penalty requested by the Director, is appropriate. Accordingly, it is

ORDERED that Respondent Harold L. Hurwitz is hereby suspended from practice before the Internal Revenue Service for a period of thirty-six (36) months from the date of this Order.<sup>1</sup>

Dated at Washington, D.C., June 9, 2008

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Robert A. Giannasi  
Administrative Law Judge

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<sup>1</sup> Pursuant to 31 C.F.R. Section 10.77, either party may appeal this decision to the Secretary of the Treasury within thirty (30) days of issuance.

CERTIFICATION OF RECORD

I, Robert A. Giannasi, Administrative Law Judge, certify that the attached documents, consisting of the following:

Complaint No. 2007-12, *Director, Office of Professional Responsibility v. Harold L. Hurwitz*, dated March 30, 2007;

Answer submitted by Respondent, dated April 15, 2008;

Motion for Summary Judgment, together with supporting exhibits, and covering letter, dated May 7, 2008; and

Decision on Motion for Summary Judgment, dated June 9, 2008;

constitute the complete administrative record in the matter of *Director, Office of Professional Responsibility v. Harold L. Hurwitz*, Complaint No. 2007-12.

Dated at Washington, DC, June 9, 2008



Robert A. Giannasi  
Administrative Law Judge