

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

DIRECTOR, OFFICE OF
PROFESSIONAL RESPONSIBILITY
Complainant

Complaint No. 2007-28

v.

JUANITA A. GONZALES
Respondent

DECISION GRANTING COMPLAINANT'S
MOTION FOR SUMMARY JUDGMENT

On May 22, 2007, the Director of the Office of Professional Responsibility (OPR) of the Internal Revenue Service filed a Complaint seeing to suspend Respondent, Juanita A. Gonzales, an enrolled agent, from practice before the IRS for a period of 48 months.

The Complaint alleges that Respondent failed to file her Federal Income Tax Returns for tax years 2001, 2002, 2003, 2004 and 2005 in a timely fashion. The Director further alleges that her failure to do so was willful and constitutes "disreputable conduct" pursuant to 31 C.F.R. section 10.51(f).

In her Answer filed July 9, 2007, Respondent, by counsel, admits that her Federal Income Tax returns for the years 2001-2005 were not timely filed and in fact were not filed until December 19, 2006. Respondent contends that her failure to timely file her returns were not willful due the fact that she was suffering from Diagnosis 1 and had many personal difficulties during the period in question. Respondent admits however, that during this period she continued to operate her tax practice for her clients.

On May 15, 2008, the Director of OPR filed a motion for summary judgment. The Director took issue with Respondent's assertions that she filed returns for tax years 2001 and 2002. On the other hand, IRS' records indicate that Respondent filed her returns for 2003, 2004 and 2005 earlier in 2006 than she stated in her Answer. Nevertheless, there is no question that she failed to timely file her returns for tax years 2001-2005.

Ms. Gonzalez has responded to the Director's motion by counsel. She attached to her response a letter from Doctor 1. Doctor 1 indicates that Ms. Gonzalez was a patient of his from March 2005-May 2006 with a follow-up visit in June 2007. He suggests that Ms. Gonzalez was [incapable due to] Diagnosis 1 of filing her returns on time, even though she was otherwise engaged in her tax practice.

I conducted two conference calls with counsel after the filing of the motion for summary judgment.

On July 25, 2008, I told that parties that with the exception of one “loose end,” Doctor 1’s letter, I was prepared to grant the Complainant’s motion and suspend Respondent from practice before the IRS for three years. I explained that I am “a creature of the Secretary of Treasury” in that I am bound by the precedent reflected in his rulings, or those of his designee, in similar cases.

I informed counsel that I was prepared to hold a video conference hearing if Ms. Gonzalez’ counsel wished to present Doctor 1 as a witness, with treatment records, and subject him to cross-examination. If Respondent wanted such a hearing, I told counsel I would allow Ms. Gonzalez to testify as well. I would note however that Ms. Gonzalez’s Federal Tax Returns for tax years 2001, 2002 and 2003 were due to be filed before she became a patient of Doctor 1.

Following the July 25, conference call, Respondent filed a motion for this judge to recuse himself, which I denied in an order dated July 30, 2008.

I conducted a follow-up conference call on August 8, 2008. Respondent’s counsel informed me that his client had told him that she wished to forgo a hearing but as of that morning, she may have changed her mind. I told counsel that I would require him to notify me in writing within two weeks (by August 22, 2008) as to whether he wanted a hearing or not, otherwise I would grant the motion for summary judgment. I reiterated that Doctor 1 must testify from treatment records, that I would not credit an unsupported opinion. Respondent has not notified me as to whether or not it wants an evidentiary hearing regarding Ms. Gonzalez’s Diagnosis 1 and its bearing of her failure to timely file her income tax returns.

The designee of the Secretary of Treasury has held that repeated failure of a practitioner to file his or her Federal Income Tax returns on time constitutes willfulness within the meaning of section 10.51(f) and 10.52(a) of Treasury Circular 230 and therefore constitutes disreputable conduct appropriately sanctioned by a suspension from practice before the Internal Revenue Service. “Willful” merely means a voluntary, intentional violation of a known legal duty, *See, e.g., Director, OPR v. Martin M. Chandler, C.P.A.*, Complaint No. 2006-23 (Decision on Appeal, May 14, 2008).

Respondent’s voluminous submissions, including a supplemental answer filed on August 8, 2008, boil down to several essential contentions. First, she contends that her conduct was not willful because she was unaware that the IRS considered her failure to timely file her returns to be disreputable conduct. That is not the correct legal standard. An act or omission is willful if it violates a known legal duty, i.e., filing one’s taxes on time, not whether or not one is aware of the consequences of failing to comply with a known legal duty. An enrolled agent knows that Federal Income Tax Returns must be filed in a timely fashion. A repeated failure to do so is willful.

Respondent's reliance on *Cheek v. United States*, 498 U.S. 192 (1991) is misplaced. Ms. Gonzalez has never contended that she believed that she was not required to file her taxes in a timely fashion. Whether or not she had a reasonable good faith belief that her failure to timely file was not "disreputable conduct" for which she could be suspended is irrelevant to this matter. Moreover, the Secretary's designee has made it clear that certain requirements in the tax code are so unambiguous as to preclude a finding that a taxpayer had an honest belief that he or she need not comply with it. The requirement to file one's returns on time is one of those requirements. *Director, OPR v. Michael A. Dobkin*, Complaint No. 2006-30 (Decision on Appeal, April 15, 2008).

Secondly, Respondent challenges the wisdom of the IRS policy and the authority of the Secretary of Treasury to suspend an enrolled agent for repeated untimely filings of his or her tax returns. Neither the wisdom of the policy nor whether the Secretary has the authority to suspend Respondent is before me.

In the *Chandler* case, in increasing the penalty that I had recommended, the Director cited the Supreme Court's decision in *United States v. Boyle*, 469 U.S. 241 (1985). That decision discussed the necessity of having strict fixed dates for the filing of tax returns. The Director stated that the time and energy devoted to securing returns of those practitioners who do not timely file diverts IRS resources from other tasks and imposes an excessive burden on the system of tax administration.

The Secretary's designee has also held that whether or not a practitioner has timely paid his or her taxes is irrelevant to a proceeding predicated on a failure to timely file one's returns. The designee noted in *Dobkin, supra*, that "until the Internal Revenue Service receives returns . . . , it cannot determine whether Respondent-Appellant has fully paid his Federal income tax liabilities for the years in issue."

Finally, the Secretary and his designee have held that they have the authority to suspend Respondent for failing to timely file her Federal income tax returns. I am bound by the prior decisions of the Secretary in similar cases. Respondent's recourse is to challenge the Secretary's authority in Federal court.

Thus, I grant the Director's motion for summary judgment and suspend Juanita Gonzalez from practice before the IRS for a period of three years (36 months). I have reduced the requested suspension from 48 to 36 months by taking at face value Ms. Gonzalez's assertions regarding the Diagnosis 1 and personal problems she experienced during the relevant time period. However, there is nothing in this record that would lead me to conclude that she was unable to file her returns on time. I would also note that every single practitioner whose case I have handled has an excuse for failing to comply with the unambiguous legal requirement to file one's Federal income tax returns on time.

Respondent shall not be reinstated at the end of the 36 months unless she has filed all of her outstanding Federal tax returns and paid any outstanding Federal tax liabilities, or has entered into an installment agreement or offer of compromise which has been accepted by the IRS and with which Respondent has remained in compliance.

Arthur J. Amchan
Federal Administrative Law Judge

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