

**United States
Department of the Treasury**

**Director, Office of Professional
Responsibility, Complainant-Appellee**

v.

Complaint No. 2007-1

**Jay P. Jacobs, Esq.,
Respondent-Appellant**

Decision on Appeal

Authority

Under the Authority of General Counsel Order No. 9 (January 19, 2001) and the authority vested in him as Assistant General Counsel of the Treasury who was the Chief Counsel of the Internal Revenue Service, through a series of Delegation Orders (most recently, an Order dated January 15, 2008) Donald L. Korb delegated to the undersigned the authority to decide disciplinary appeals to the Secretary of the Treasury filed under Part 10 of title 31, Code of Federal Regulation (“Practice Before the Internal Revenue Service,” sometimes known and hereafter referred to as “Treasury Circular 230”). This is such an Appeal from a Decision by Default and Order of Disbarment entered in this proceeding against Respondent-Appellant by Chief Administrative Law Judge Robert A. Giannasi (the “ALJ”)¹ on May 10, 2007.²

Background

This proceeding was commenced on January 12, 2007 when Complainant-Respondent filed a Complaint against Respondent-Appellant alleging that Respondent-Appellant was an attorney authorized to practice before and who had in fact practiced before the Internal Revenue Service, that Respondent-Appellant had knowingly failed to timely file Federal income tax returns for the tax years

¹ The ALJ is the Chief Administrative Law Judge of the National Labor Relations Board (“NLRB”) and sits as the ALJ in this proceeding under an inter-agency agreement between the NLRB and the Department of the Treasury.

² A copy of the ALJ’s Order of Disbarment appears as Attachment 1.

2000, 2001, 2002 and 2003, having earned enough gross income in each of those tax years to require him to file, and had knowingly failed to pay tax for each of those years when due.³ The Complaint contains a detailed list of the provisions of Treasury Circular 230 under which the alleged acts and omissions, if proved, would constitute disreputable conduct and violate various specified provisions of the Treasury Circular 230, and which asked that Respondent be disbarred from practice before the Internal Revenue Service.

Respondent-Appellant failed to timely file an Answer to the Complaint. Respondent-Appellant had been advised by Complainant-Appellee that a failure to file Answer to Complaint within 30 days could result in a Decision by Default being entered against him.⁴

On May 4, 2007, Complainant-Appellee filed a Motion for a Decision by Default with the ALJ, which the ALJ granted when he issued his Order of Disbarment on May 10, 2007. Parties aggrieved by an ALJ's Decision must appeal that decision to the Secretary of the Treasury (or his or her delegate) within thirty (30) days of the date of the ALJ's Decision. In the absence of proof of a timely Appeal, the ALJ's Decision becomes the decision of the Agency and constitutes FINAL AGENCY ACTION. §1076(b) of Treasury Circular 230.

Respondent-Appellant's undated Appeal was received by Complainant on June 20, 2007. I find that no evidence has been presented by Respondent-Appellant that his Appeal was timely filed. Accordingly, the ALJ's Order of Disbarment was not timely appealed and became FINAL AGENCY ACTION on June 9, 2007.⁵

I further find that, although the disease from which Respondent-Appellant claims to suffer is indeed a debilitating disease, it does not excuse either his failure to seek assistance from another person not afflicted by the disease to permit him to timely resolve his tax matters in an appropriate forum, or to timely

³ A copy of the Complaint appears as Attachment 2.

⁴ Under § 10.64© of Treasury Circular 230, [[e]very allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved"

⁵ Under §§ 10.79(a) and 10.81 of Treasury Circular 230, Respondent-Appellant may apply for reinstatement by the Director of Practice five (5) years following disbarment.

respond to the charges made against him which he admitted through his inaction in this proceeding. Accordingly, had Respondent-Appellant's Appeal been timely filed, I would have affirmed the ALJ's Decision.⁶ Since Respondent-Appellant's Appeal was not timely, no further action is required by me.

David F.P. O'Connor
Special Counsel to the Senior Counsel
Office of Chief Counsel
Internal Revenue Service
(As Authorized delegate of Henry M. Paulson,
Secretary of the Treasury)

April 9, 2008
Washington, D.C.

⁶ I would have found Respondent-Appellant's acts and omissions to be both knowing and Willful. See § 10.52(a) of Treasury Circular 230. See Cheek v. United States, 498 U.S. 1992 (1991).