

United States
Department of the Treasury

Director, Office of Professional Responsibility,
Complainant-Appellee

v.

Complaint No. 2010-16

Joseph G. Kozelsky,
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 the Chief Counsel of the Internal Revenue Service (IRS), through a delegation order dated March 2, 2011, William J. Wilkins delegated the undersigned the authority to decide disciplinary appeals to the Secretary of the Treasury filed under Part 10 of Title 31, Code of Federal Regulations (Practice Before the Internal Revenue Service, reprinted by the Treasury Department and hereinafter referred to as Circular 230 – all references are to Circular 230 as in effect for the period(s) at issue). This is such an appeal from a Decision entered into this proceeding by Administrative Law Judge Walter J. Brudzinski (the ALJ) on November 17, 2010.

Background

This proceeding was commenced on August 18, 2010, when Complainant-Appellee Director of the Office of Professional Responsibility (OPR) filed a Complaint against Respondent-Appellant Joseph G. Kozelsky (“Mr. Kozelsky”), a Certified Public Accountant. The Complaint alleged that Mr. Kozelsky has practiced before the IRS as defined in § 10.2 of Circular 230; that he willfully failed to timely file federal individual income tax returns for 2001 through 2003; that he willfully failed to file federal income tax returns for 2004 through 2007, as required by 26 U.S.C. §§6011, 6012, and 6072; that he willfully evaded the payment of his federal income taxes for 2003, as required by 26 U.S.C. §6151(a); and that he failed to provide OPR with requested information on May 18, 2009, November 5, 2009, and June 16, 2009, as required by §10.20(b) of Circular 230. The Complaint asserts that the willful failures to timely file and pay constitute disreputable conduct under Circular 230 for which Mr. Kozelsky may be disbarred from practice, and that the failures to provide OPR with information violate §10.20(b) of Circular 230 and are a basis for which Mr. Kozelsky may be disbarred from practice. OPR requested that Mr. Kozelsky be disbarred from practice before the IRS pursuant to §§10.50 and 10.70 of Circular 230.

The Complaint was served on Mr. Kozelsky at his last known address, by certified mail, on August 18, 2011, return receipt requested and was delivered to him on August 23, 2010. It informed him that a failure to file an answer to the Complaint within 30 days could result in a decision by default being entered against him. Mr. Kozelsky did not file an answer to the Complaint. On September 29, 2010, OPR filed a motion for default and on November 17, 2010, the ALJ entered an Order Granting Motion for a Decision by Default (Default Order) against Mr. Kozelsky as provided for in §10.64 of Circular 230. The Default Order disbars Mr. Kozelsky from practice before the IRS. The Default Order contains as an attachment §§10.77 and 10.78 of Circular 230, informing Mr. Kozelsky that an appeal must be filed within 30 days of the date that the decision of the ALJ is served on the parties. The certificate of service for the Default Order states that Mr. Kozelsky was served on November 17, 2010, by certified mail, return receipt requested and by First Class Mail and a notice was left by the U.S. Postal Service on November 23, 2010, for Mr. Kozelsky to pick up the mailing.

Mr. Kozelsky picked up the Decision Order sent by certified mail on December 8, 2010. Mr. Kozelsky does not assert in his appeal that he did not receive the first class mailing. On December 23, 2010, Mr. Kozelsky filed an appeal with OPR by certified mail, return receipt requested, which was received by OPR on January 3, 2011. The appeal does not address why he did not answer the Complaint but briefly describes mitigating circumstances in support of his appeal.

Section 10.76(d) of Circular 230 provides that in the absence of an appeal, the decision of the ALJ will, without further proceedings, become the decision of the agency 30 days after the date of the ALJ's decision. Section 10.77(b) provides that an appeal of the decision of the ALJ must be filed with OPR within 30 days of the date that the ALJ's decision is served on the parties. Service of process by mail is completed when a properly addressed document is mailed – the date of mailing is the date of service. Since Mr. Kozelsky was served on November 17, 2010, he had until December 17, 2010 to timely file his appeal. Since Mr. Kozelsky did not do so, the Default Order became FINAL AGENCY ACTION on December 17, 2010.

_____/s/_____
Bernard H. Weberman
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
(As Authorized Delegate of the
Secretary of the Treasury)

April 13, 2011
Lanham, MD

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Order

On April 13, 2011, I issued a Decision on Appeal in the above case. The second line of page two of the Decision on Appeal contains a typo. The date "August 18, 2011" should read "August 18, 2010."

It is ORDERED that the date "August 18, 2011" in my Decision on Appeal dated April 13, 2011, is corrected to read "August 18, 2010."

/s/ _____
Bernard H. Weberman
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
(As Authorized Delegate of the
Secretary of the Treasury)

April 14, 2011
Lanham, MD