

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

DIRECTOR,  
OFFICE OF PROFESSIONAL  
RESPONSIBILITY,  
Complainant

v.

JOSEPH G. KOZELSKY,  
Respondent

Complaint Number: 2010-16  
Docket Number: 10-IRS-0002

**HON. WALTER J. BRUDZINSKI**  
**Administrative Law Judge**

**ORDER GRANTING MOTION FOR A DECISION BY DEFAULT**

**Introduction**

Complainant IRS requests a Default Decision because the Respondent has not filed his Answer to the Complaint or asked for an extension of time to file his answer. Further, Respondent has not replied to Complainant's Motion for a Default Decision. As shown below, Complainant's Motion for Default Decision is granted.

**The Complaint**

On August 18, 2010, the Department of the Treasury, Office of Professional Responsibility, Internal Revenue Service (Complainant or IRS) filed its Complaint and served it on Joseph G. Kozelsky (Respondent). The Complaint alleges Respondent committed eleven (11) violations of disreputable conduct under the regulations by failing to file timely Federal individual income tax returns for tax years 2001 through 2007 and for failing to timely pay his Federal tax liability.

The Complaint alleges that pursuant to 26 U.S.C. §§ 6011, 6012, and 6072 Respondent was required to file Federal individual tax returns for tax years 2001, 2002,

2003, 2004, 2005, 2006 and 2007, and that Respondent's failure to file timely Federal income tax returns for tax years 2001-2007 was willful and constitutes disreputable conduct pursuant to 31 C.F.R. § 10.51.

On June 29, 2010, the IRS sent its Complaint to Respondent via certified mail at his address of record listed on his Request for Hearing with instructions on how to file an answer. The Complaint specifically provided that pursuant to 31 C.F.R. § 10.62, Respondent's Answer to the Complaint must be filed at the ALJ Docketing Center, Room 412, 40 S. Gay Street, Baltimore Maryland 21202-4022 with a copy served on the IRS Attorney within thirty (30) calendar days of service.

### **Law and Procedure**

To date, Respondent has not filed his answer to the Complaint nor has he replied to the Motion for a Default Decision. Title 31 C.F.R. § 10.64(d) provides that "[f]ailure to file an answer within the time prescribed (or within the time for answer as extended by the Administrative Law Judge), constitutes an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make the decision by default without a hearing or further procedure. A decision by default constitutes a decision under §10.76."

### **Decision**

Title 31 C.F.R. § 10.68(b) prescribes "if a non-moving party does not respond within 30 days to a filing of a motion for decision by default for failure to file a timely answer ... the nonmoving party is deemed not to oppose the motion." Therefore, in accordance with 31 C.F.R. § 10.64(d) and § 10.76, the allegations in the Complaint are hereby deemed ADMITTED. The IRS has met its burden to demonstrate that no genuine issue of material fact is present and is entitled to a decision as a matter of law.

Respondent's actions as set forth above constitute disreputable conduct pursuant to 31 C.F.R. § 10.51, and reflect adversely on his fitness to practice. Upon review of the facts presented in the record as a whole, I find IRS's proposed penalty of disbarment is fair and appropriate. Respondent failed to follow the law concerning his personal tax liability. Such failure impacts directly on his fitness to practice before the Internal Revenue Service.

WHEREFORE,

**ORDER**

**IT IS HEREBY ORDERED** that Complainant's Motion for Default Decision is **GRANTED**.

**IT IS FURTHER ORDERED** that Respondent, Joseph G. Kozelsky, is **DISBARRED** from practice before the Internal Revenue Service.

**PLEASE TAKE NOTICE** that Attachment A provides your appeal rights.

Done and dated November 17, 2010  
New York, New York

/s/

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**HON. WALTER J. BRUDZINSKI**  
**Administrative Law Judge**  
**U.S. Coast Guard**