

United States
Department of the Treasury

Director, Office of Professional Responsibility,
Complainant – Appellee

v.

Complaint No. 2009-24

Kirk G. Salisbury,
Respondent-Appellant¹

Decision on Appeal

Authority

Under the Authority of General Counsel Order No.9 (January 19, 2001) and the authority vested in her as Acting Assistant General Counsel of the Treasury who was the Acting Chief Counsel of the Internal Revenue Service, through a delegation order dated June 26, 2009, Clarissa C. Potter delegated to the undersigned the authority to decide disciplinary appeals to the Secretary of the Treasury filed under Subpart D of Part 10 of Title 31, Code of Federal Regulations 31 C.F.R. Part 10, *Practice Before the Internal Revenue Service* (reprinted in and hereinafter referred to as Treasury Department Circular No. 230). On December 31, 2009, Administrative Law Judge Susan Biro (the ALJ) entered a Decision By Default and Order in this proceeding against Kirk G. Salisbury.²

Background

This proceeding was commenced on October 5, 2009, when Attorney 1, an attorney acting as the authorized representative of Karen Hawkins, the Director of the Office of Professional Responsibility, filed a complaint against Respondent-Appellant. The complaint alleges that Respondent-Appellant has engaged in practice before the Internal Revenue Service, as defined by 31 C.F.R. § 10.2(a) as a Certified Public Accountant (CPA), had willfully failed to timely file Federal income tax returns for the years 2002 and 2003, had willfully failed to file Federal income tax returns for the years

¹ While I refer to Kirk G. Salisbury as "Respondent-Appellant" and the Director of the Office of Professional Responsibility as "Complainant-Appellee," Kirk G. Salisbury never filed a proper appeal in this case, as discussed later in this Decision.

² A copy of the ALJ's Decision Granting Complainant's Motion for Default Judgment appears as Attachment 1.

2004, 2005, 2006 and 2007 Respondent- Appellant was required by 26 U.S.C §§ 6011, 6012 and 6072 to timely file Federal tax returns, and had knowingly failed to timely pay taxes due for the years 2002 and 2003. The complaint asserts that such actions constitutes disreputable conduct under Treasury Circular 230 and recommends that Respondent- Appellant should be disbarred from practice before the Internal Revenue Service.

Respondent-Appellant never filed an Answer to the Complaint. Respondent Appellant had been advised by Complainant-Appellee that a failure to file an Answer to Complaint within 30 days could result in a Decision by Default being entered against him.

On December 1, 2009, Complainant-Appellee filed Complainant's Motion for Default Judgment. The Administrative Law Judge (ALJ) entered a Decision by Default and Order on December 31, 2009, in which she ordered that Kirk G. Salisbury, a certified public accountant, be disbarred from practice before the Internal Revenue Service.

The December 31, 2009, Decision by Default and Order informed Respondent- Appellant that the Decision and Order may be appealed to the Secretary within 30 days of the date the Decision and order was served. Respondent-Appellant was also informed that the appeal must be filed in duplicate with the Director of Practice and shall include exceptions to the Decision and supporting reasons therefore.

On January 14, 2010, Attorney 2, Enforcement Attorney, Office of Professional Responsibility, sent a letter to Respondent-Appellant informing him that pursuant to 31 C.F.R. § 10.77(b), the appeal and brief must be submitted in duplicate no later than February 1, 2010, and the address to which the appeal and brief should be sent. She also quoted from section 10.77(a) that "[t]he appeal must include a brief that states exceptions to the decision of the Administrative Judge and supporting reasons for such exceptions." Respondent-Appellant sent in copies of tax returns with a very brief note dated 2/1/10 which merely indicated that this was a package. It did not indicate that he was appealing the decision

The submission of the copies of the return did not constitute an appeal. Respondent-Appellant did not indicate he was appealing the decision of the ALJ. Furthermore, he did not state any exceptions to the decision of the ALJ and did not provide supporting reasons for any exceptions.

Conclusion

The ALJ's Order of Disbarment was not appealed and became FINAL AGENCY ACTION on February 2, 2010. Respondent-Appellant is disbarred effective as of the beginning of February 2, 2010.

**Ronald D. Pinsky
Appellate Authority
Office of Chief Counsel
Internal Revenue Service
(As authorized delegate of
Timothy F. Geithner,
Secretary of the Treasury)**

**August 5, 2010
Lanham, MD**