

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

DIRECTOR,  
OFFICE OF PROFESSIONAL RESPONSIBILITY  
Complainant

v.

Complaint No. 2006-33

LEONARD FEIN,  
Respondent

Heather Southwell, Esq.,  
for the Complainant.  
Leonard L. Fein, CPA  
for the Respondent, pro se.

DECISION

MICHAEL A. ROSAS, Administrative Law Judge: This matter arises from a complaint issued on January 5, 2007, by the Acting Director, Office of Professional Responsibility, Department of the Treasury, Internal Revenue Service (OPR), pursuant to 31 C.F.R. § 10.60 (also referred to as Section 10.60 of the Treasury Department Circular No. 230).

The complaint seeks to have the Respondent, Leonard Fein (the Respondent), a certified public accountant engaged in practice before the Internal Revenue Service (IRS), suspended from such practice, pursuant to 31 C.F.R. §§ 10.50 and 10.70, for having engaged in disreputable conduct as set forth in 31 C.F.R. § 10.51. Specifically, it is alleged that the Respondent engaged in a pattern and practice of willfully failing to timely file his Federal individual income tax returns for tax years 2002 through 2004 as required by 26 U.S.C. §§ 6011, 6012 and 6072. In his answer, dated January 30, 2007, the Respondent denied the material allegations in the complaint. With respect to tax year 2002, he contends that he "was prevented by severe mitigating circumstances from filing by the extended due date." With respect to tax years 2003 and 2004, the Respondent contends that completion of those returns were attributable to his failure to timely file his 2002 income tax return, since each return requires information from the prior year's return.

On October 30, 2007, a hearing was held before me in New York, New York, at which the parties were given a full opportunity to examine and cross-examine witnesses and to present other evidence and argument. Closing arguments were

made at the conclusion of the hearing, and the parties submitted proposed findings and conclusions of law and supporting reasons.

Upon the entire record, and based on my observation of the demeanor of the witnesses, I make the following:

#### FINDINGS OF FACT

The Respondent, Leonard Fein, is a self-employed certified public accountant, licensed by New York State. His address of record is Redacted, Brooklyn, New York.

The Respondent was required to file a Federal individual income tax return if his net earnings from self employment exceeded \$400.00 in any given tax year. 26 U.S.C. §§ 6017. For each of the tax years 2002, 2003, and 2004, the Respondent filed tax returns on behalf of clients and earned income in excess of \$400.00.<sup>1</sup> The Respondent was aware that he was required to timely file a Federal individual income tax return for tax years 2002, 2003, and 2004. In each of those years. the Respondent requested and received extensions of time in which to file his Federal income tax returns. Based on those extensions of time, the Respondent's 2002 tax return was due by August 15, 2003, the 2003 tax return was due by October 15, 2004, and the 2004 tax return was due by October 15, 2005. The Respondent did not, however, file his tax returns by the extended due date in any of those tax years.<sup>2</sup>

On January 20, 2006, the OPR contacted the Respondent about his failure to timely file his Federal income tax returns for tax years 2002, 2003, and 2004.<sup>3</sup> On February 20, 2006, the Respondent filed his 2002 tax return. His 2003 tax return was filed March 3, 2006 and his 2004 tax return was filed March 13, 2006.<sup>4</sup> On December 11, 2006, the Complainant's Office of Chief Counsel informed the Respondent that the OPR was considering a proceeding to suspend him from practice before the Internal Revenue Service for a period of 36 months based on the allegations in the OPR's January 20, 2006 letter.<sup>5</sup>

On January 5, 2007, the Office of Chief Counsel commenced the instant proceeding charging that the Respondent failed to timely file his Federal income tax returns for tax years 2002 through 2004 and sought to suspend the Respondent from practice before the Internal Revenue Service for a period of 36 months. The Respondent, in his answer, and in letters, dated February 1, 4, and 16, 2007, and July 10, 2007, conceded he failed to timely file his income tax returns in 2002, 2003, and 2004. However, he attributed that failure to a stroke suffered by his mother in March 2003 and the subsequent need to care for her until her death at "the end of 2004."<sup>6</sup>

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<sup>1</sup> Complainant's Exh. 5.

<sup>2</sup> Complainant's Exh. 11; Tr. 143-146.

<sup>3</sup> Complainant's Exh. 10.

<sup>4</sup> Complainant's Exh. 5, 11.

<sup>5</sup> Complainant's Exh. 1.

<sup>6</sup> Complainant's Exh. 3-6.

At trial, the Complainant submitted incontrovertible evidence that the Respondent failed to timely file his Federal income tax returns for 2002, 2003, and 2004. However, in light of explanations offered by the Respondent's [sic] as to mitigating circumstances, the Complainant reduced the requested penalty to a suspension of 24 months.

At trial, the Respondent provided testimony as to his circumstances during and since 2002. His circumstances, which were not disputed by the Complainant, involve the care of his mother, who became ill in 2003 and passed away in 2004. In addition, he explained that he was unable to complete and file his 2003 and 2004 tax returns because he lacked the information necessary to file his 2002 tax return. The Respondent's explanations were not, however, credible, as there was clear evidence that he filed a total of 363 tax returns for 2002, 449 tax returns for 2003, and 558 tax returns for 2004. Similarly, I did not credit the Respondent's alternative argument that certain unnamed relatives actually completed the tax returns in his name. Finally, the Respondent conceded that, even though he allegedly lacked certain information for his returns, as a taxpayer, he was required to timely file his tax returns and amend them at a later time. Somewhat disingenuously and without any basis in law or fact, the Respondent suggested that such a course would be inappropriate for a certified public accountant.<sup>7</sup>

### ANALYSIS AND DISCUSSION

The Respondent is a certified public accountant who has engaged in practice before the Internal Revenue Service. As such, the Respondent is subject to the disciplinary authority of the Secretary of the Treasury and the Director or Acting Director of OPR. 31 U.S.C. § 330(a)(1). The Respondent was required to file a Federal income tax return for tax years 2002, 2003, and 2004, as his net income for those years exceeded \$400.00. The Respondent's willful failure to timely file his tax returns constitutes disreputable conduct for which he may be suspended from practice before the Internal Revenue Service pursuant to 31 C.F.R. § 10.51 (f) (2002). In conclusion, the clear and convincing evidence establishes that Respondent's failure to timely file his Federal income tax returns for tax years 2002 through 2004 – a period when the Respondent was completing and filing hundreds of Federal income tax returns on behalf of clients – was willful.

### SANCTION

The complaint seeks to have the Respondent suspended from practice before the IRS because of his failure to timely file his Federal income tax returns for 2002, 2003, and 2004. The Director's decision is entitled to substantial deference and I concur with his determination as to the sanction sought suspension from practicing before the Internal Revenue Service for a period of 24 months.

I realize that, prior to 2002, the Respondent, a CPA for over 20 years, had an unblemished record before the IRS. However, the allegations against the Respondent are serious in nature and it is important to deter similar conduct by other certified

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<sup>7</sup> Complainant's Exh. 9; Tr. 106-116, 144-145.

professional accountants [sic]. Accordingly, I find that, under all the circumstances, disbarment from practicing before the IRS is appropriate.

I find that the allegations against the Respondent have been proven by clear and convincing evidence in the record, the standard provided in 31 C.F.R. § 10.50 to support the sanction of debarment from practicing law before the IRS.

#### CONCLUSIONS OF LAW

1. The Respondent, Leonard Fein, is a certified public accountant who has practiced before the Internal Revenue Service and is subject to the disciplinary authority of the Secretary of the Treasury and the Director, Office of Professional Responsibility.

2. 31 C.F.R. §10.51 (f) (2002) provides that willfully failing to make a Federal income tax return is grounds for discipline.

2. The Respondent violated the provisions of 31 C.F.R. §10.51 (f) (2002) and §10.51(d) (1994) by engaging in a pattern and practice of willfully failing to timely file his Federal individual income tax returns for tax years 2002 through 2004. That violation has been proven by clear and convincing evidence in the record.

3. Upon the foregoing findings of fact and conclusions of law, and the entire record, pursuant to 31 C.F.R. §10.76, I issue the following:



Certificate of Service

I certify that a copy of the foregoing Decision was sent by first class mail on this 20th day of December, 2007, to each of the following:

Heather Southwell, Esq.  
Department of the Treasury  
Internal Revenue Service  
Office of Chief Counsel  
Associate Chief Counsel General Legal Services  
Redacted  
New York, NY 10038

Leonard Fein, CPA  
Redacted  
Brooklyn, New York 11230-3104.

By Federal Express:

Elizabeth C. Ahn, Esq.  
Office of Professional Responsibility  
Internal Revenue Service  
SE: OPR Redacted  
Redacted  
Washington, DC 20224

Barbara Hawkins [by hand]  
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Secretary, Division of Judges  
National Labor Relations Board

## CERTIFICATION OF RECORD

I, Michael A. Rosas, Administrative Law Judge, hereby certify that the attached documents consisting of the following:

1. One volume of the transcript of the hearing held on October 30, 2007.

2. Complainant Exhibits:

A1 – Letter dated December 11, 2006, from Heather A. Southwell, Esq., to the Respondent.

A2 – Letter, dated March 7, 2007, from the Respondent to the Hon. Robert A. Giannasi.

A3 – Letter, dated February 1, 2006, from the Respondent to Bradley D. Johnson, Esq.

A4 – Letter, dated February 24, 2006, from the Respondent to Bradley D. Johnson, Esq.

A5 – Letter, dated February 16, 2006, from the Respondent to Bradley D. Johnson, Esq.

A6 – Letter, dated July 10, 2006, from the Respondent to Bradley D. Johnson, Esq.

A7 – Fax cover sheet and Letter, dated August 23, 2006, from the Respondent to the District Director.

A8 – Letter, dated December 14, 2006, from the Respondent to Heather Southwell, Esq.

A9 – Computer printouts of tax returns filed by the Respondent (6 sheets)

A10 – Letter, dated January 20, 2006, from Director, OPR to the Respondent, with Circular 230 attached.

A11 – Certified copy of transcripts, dated October 4, 2007, reflecting assessments, payments and other specified matters for the 2002, 2003 and 2004 tax years for the Respondent.

A12 – Letter, dated January 5, 2006, with attached Complaint, from Heather Southwell, Esq., to the Hon. Robert Giannasi.

### 3. Respondent's Exhibits

A - Copy of Form 1040 for tax year 2002.

B – Copy of Form 1040 for tax year 2003.

C – Copy of Form 1040 for tax year 2004.

D – Standard PSI Confirmation Form.

E – Excerpts from U.S. Mater Tax Guide. pp. 760-775.

F – Social Security Statement for Pearl Fein, dated April 26, 2007.

G – Fein family photograph

H – Collection letter from Asset Acceptance LLC, dated October 25, 2007

I – Fein family photograph

constitute the complete administrative record in the matter of Director, Office of Professional Responsibility v. Leonard Fein, Complaint No. 2006-33.

Dated: Washington, D.C. December 20, 2007

/s/

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Michael A. Rosas  
Administrative Law Judge