

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

DIRECTOR,  
OFFICE OF PROFESSIONAL  
RESPONSIBILITY,  
Complainant

v.

SUSAN R. TOMSHA-MIGUEL, E.A.  
Respondent.

Complaint Number: 2010-18  
Docket Number: 10-IRS-0004

**HON. PARLEN L. McKENNA**  
**Administrative Law Judge**

**ORDER GRANTING MOTION FOR DECISION BY DEFAULT**

**Introduction**

On December 21, 2010, Complainant IRS filed a Motion for Decision by Default because Susan R. Tomsha-Miguel (Respondent) had not filed an Answer to the Complaint nor asked for an extension of time to file and answer. Respondent has not replied to Complainant's Motion for Decision by Default and the time period for such a response has lapsed. For the reasons given herein, Complainant's Motion for Decision by Default is **GRANTED**.

**The Complaint**

On October 28, 2010, The Department of the Treasury, Office of Professional Responsibility, Internal Revenue Service (Complainant or IRS) filed its Complaint and served it on Respondent at both her last known address and business address on record with the IRS. See Decl. of Timothy Heinlein ¶ 1 (attached to Complainant's Motion for Decision by Default). The signed Return Receipt for delivery of the Complaint sent to respondent's last known business address was returned to the IRS on or about November 12, 2010; whereas the copy of the Complaint sent to Respondent's last known address was returned to the IRS unclaimed on or about November 27, 2010. Id. at ¶¶ 2, 3; see also Exhs. 2 & 3 to Decl. of Timothy Heinlein.<sup>1</sup>

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<sup>1</sup> Under 31 C.F.R. § 10.6(c), respondent is obligated to inform the Office of Professional Responsibility about any change of address. The addresses on record with the IRS are thus appropriate locations at which to service Respondent any pleadings in this matter.

The Complaint alleged Respondent committed eleven (11) violations of disreputable conduct under the applicable IRS regulations by failing to file timely Federal income tax returns for tax year 2002 through 2009 (Counts 1, 3, 5, and 7-11) and for failing to timely pay Federal tax liability for the years 2002 through 2004 (Counts 2, 4, and 6).

Pursuant to 26 U.S.C. §§ 6011, 6012 and 6072, Respondent was required to file Federal tax returns for tax years 2002-2009 and timely pay her Federal income taxes for the years 2002-2004. The Complaint maintained the Respondent's failure to file timely Federal income tax returns for those years and failure to pay or timely pay her income tax was willful and constituted disreputable conduct under 31 C.F.R. §§ 10.51(f)(Rev. 2002, 2005) & 10.51(a)(6)(Rev. 2007), respectively. The IRS alleged that such disreputable conduct warranted Respondent's disbarment from practice before the IRS.

The Complaint specifically stated in bold lettering on the first and second pages 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. Respondent failed to file an answer in response to the Complaint.

#### **Law and Procedure**

Service of both the Complaint and the Motion for decision by Default were proper under the service rule found at 31 C.F.R. § 10.63. To date, Respondent has not filed an answer to the Complaint, nor has she replied to the Motion for Decision by Default. IRS regulations at 31 C.F.R. § 10.64(d) provide that:

Failure to file and 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

The undersigned never extended the time for Respondent to file an answer and so the provisions of Section 10.64(d) apply. Respondent has therefore admitted the allegations in the Complaint and waived a hearing by her failure to file an answer to a properly served complaint.

## **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 issues of material fact is present and is entitled to a decision as a matter of law.

Respondent’s actions as set forth in the Complaint (the allegations of which are now deemed admitted by default) constitute disreputable conduct pursuant to 31 C.F.R. § 10.51, and reflect adversely on respondent’s fitness to practice before the IRS. Upon review of the facts presented in the record as a whole, the undersigned finds the IRS’s proposed penalty of disbarment is appropriate. Respondent failed to follow the law concerning her personal tax liability. Such failure impacts directly on her fitness to practice before the Internal Revenue Service and advise others on their compliance with IRS laws and regulations.

## **ORDER**

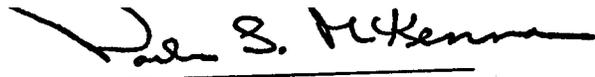
### **WHEREFORE:**

**IT IS HEREBY ORDERED** that Complainant’s Motion for decision by Default is **GRANTED**.

**IT IS HEREBY FURTHER ORDERED** that Respondent, Susan R. Tomsha-Miguel, is **DISBARRED** from practice before the Internal Revenue Service pursuant to 31 C.F.R. § 10.50 and the procedures provided at 31 C.F.R. Part 10, Subpart D.

**PLEASE TAKE NOTICE** that **Attachment A** provides respondent’s appeal rights.

Done and dated February 8, 2010 [sic] at  
Alameda California



**HON. PARLEN L. McKenna**  
**Administrative Law Judge**  
**U.S. Coast Guard**

## **Attachment A**

### 31 C.F.R. PART 10 SUBPART D, APPEALS

#### **§ 10.77 Appeal of decision of Administrative Law Judge.**

(a) Appeal. Any party to the proceeding under this subpart D may file an appeal of the decision of the Administrative Law Judge with the Secretary of the Treasury, or delegate. The appeal must include a brief that states exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions.

(b) Time and place for filing of appeal. The appeal and brief must be filed, in duplicate, with the Director of the Office of Professional Responsibility within 30 days of the date that the decision of the Administrative Law Judge is served on the parties. The Director of the Office of Professional Responsibility will immediately furnish a copy of the appeal to the Secretary of the Treasury or delegate who decides appeals. A copy of the appeal for review must be sent to any non-appealing party. If the Director of the Office of Professional Responsibility files an appeal, he or she will provide a copy of the appeal and certify to the respondent that the appeal has been filed.

(c) Effective/applicability date. This section is applicable on September 26, 2007.

#### **§ 10.78 Decision on review.**

(a) Decision on review. On appeal from or review of the decision of the Administrative Law Judge, the Secretary of the Treasury, or delegate, will make the agency decision. The Secretary of the Treasury, or delegate, should make the agency decision within 180 days after receipt of the appeal.

(b) Standard of review. The decision of the Administrative Law Judge will not be reversed unless the appellant establishes that the decision is clearly erroneous in light of the evidence in the record and applicable law. Issues that are exclusively matters of law will be reviewed de novo. In the event that the Secretary of the Treasury, or delegate, determines that there are unresolved issues raised by the record, the case may be remanded to the Administrative Law Judge to elicit additional testimony or evidence.

(c) Copy of decision on review. The Secretary of the Treasury, or delegate, will provide copies of the agency decision to the Director of the Office of Professional Responsibility and the respondent or the respondent's authorized representative.

(d) Effective/applicability date. This section is applicable on September 26, 2007.